

52:27EE-1

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2005 **CHAPTER:** 155

NJSA: 52:27EE-1 ("Public Advocate Restoration Act of 2005")

BILL NO: A1424

SPONSOR(S): Caraballo and others

DATE INTRODUCED: January 13, 2004

COMMITTEE: **ASSEMBLY:** State Government; Appropriations

SENATE:

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** June 23, 2005

SENATE: June 20, 2005

DATE OF APPROVAL: July 12, 2005

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (Assembly Committee Substitute (2R) for A1424 enacted)

[SPONSOR'S STATEMENT:](#) (Begins on page 44 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** Yes [2-14-2005 \(State Gov't\)](#)
[3-10-2005 \(Approp.\)](#)
SENATE: No

[FLOOR AMENDMENT STATEMENT:](#) [Yes](#)

[LEGISLATIVE FISCAL ESTIMATE:](#) [Yes](#)

VETO MESSAGE: No

[GOVERNOR'S PRESS RELEASE ON SIGNING:](#) [Yes](#)

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

"Codey signs law to restore Office of Public Advocate," 7-13-2005 New York Times, p.B6

"State watchdog lives again," 7-13-2005 The Record, p.A3

"Law restores Public Advocate department," 7-13-2005 Courier News, p.A3

"Public advocate office returns to NJ," 7-13-2005 The Times, p.A5

"Watchdog agency regains its bite," 7-13-2005 The Star Ledger, p.13

"Codey signs law to reinstate office for state grievances, 7-13-2005 The Philadelphia Inquirer, p.B1

Title 52.
Chapter 27EE (New)
Public Advocate
§§1-85 -
C.52:27EE-1
to 52:27EE-85
§110 - Repealer
§111 - Approp.
§112 - Note to all §§

P.L. 2005, CHAPTER 155, *approved July 12, 2005*
Assembly Committee Substitute (*Second Reprint*) for
Assembly, No. 1424

1 **AN ACT** restoring the Department of the Public Advocate as a
2 principal department in the Executive Branch of State government,
3 supplementing Title 52 of the Revised Statutes ¹[.] and¹ amending
4 and repealing various parts of the statutory law ¹[and making an
5 appropriation]¹ .

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

9
10 **ARTICLE 1. GENERAL PROVISIONS**

11

12 1. (New section) Short title.

13 This act shall be known and may be cited as the "Public Advocate
14 Restoration Act of 2005."

15

16 2. (New section) Legislative findings and declaration.

17 The Legislature finds and declares that:

18 a. There is a great need for consumer protection and advocacy on
19 behalf of the indigent, the elderly, children, and other persons unable
20 to protect themselves as individuals or a class.

21 b. Consolidating the diffuse functions of ombudspersons,
22 ratepayer advocate, and other functions within a single Department of
23 the Public Advocate will produce cost savings and more effective
24 protection of the public interest and empower the Public Advocate to
25 coordinate an efficient and timely process for evaluation and resolution
26 of problems and disputes that affect consumers and other interested
27 parties.

28 c. The abolition of the Public Advocate and the transfer of some
29 of its functions to various departments has resulted in diffuse,
30 ineffective representation of the rights of those unable to effectively
31 advocate for themselves.

32 d. It is essential that the State of New Jersey marshal existing

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 Assembly AAP committee amendments adopted March 10, 2005.

² Senate floor amendments adopted May 12, 2005.

1 resources scattered throughout State government and create
2 economies of scale that will aid in the effective delivery of public
3 services and the appropriate allocation of public resources.

4 e. The Legislature must protect the public and restore confidence
5 in government through effective advocacy, provided by the
6 Department of the Public Advocate.

7 f. Litigation is a costly and oftentimes ineffective means of
8 resolving disputes, and State government must provide leadership and
9 foster an environment for alternative dispute resolution. The public
10 will benefit greatly from a Public Advocate devoted to a cost-effective
11 means to avoid expensive litigation and an amicable way to resolve
12 disputes.

13 g. Children have special advocacy needs that require familiarity
14 and expertise regarding the issues that affect them and the ¹[Division]
15 Office¹ of ¹the¹ Child ¹[Advocacy] Advocate allocated¹ within the
16 Department of the Public Advocate can effectively fulfill those needs.

17 h. The elderly represent an ever-increasing portion of the
18 population that requires special attention, and a Division of Elder
19 Advocacy can effectively meet those needs.

20 i. There must be a transfer of funding ¹[and an appropriation]¹
21 to fund the operations of the Department of the Public Advocate and
22 the salary of its appointed commissioner known as the “Public
23 Advocate”.

24
25 3. (New section) Department established.

26 There is hereby established in the Executive Branch of the State
27 Government a principal department which shall be known as the
28 Department of the Public Advocate.

29
30 4. (New section) Commissioner; appointment; term; salary.

31 The administrator and chief executive officer of the Department of
32 the Public Advocate shall be a commissioner, who shall be known as
33 the Public Advocate and who shall be an attorney-at-law of this State
34 and a person qualified by training and experience to perform the duties
35 of the office. The Public Advocate shall be appointed by the
36 Governor, with the advice and consent of the Senate, and shall serve
37 during the Governor's term of office and until the appointment and
38 qualification of the Public Advocate's successor.

39 The Governor shall have the power to remove the Public Advocate
40 for cause.

41 The Public Advocate shall receive such salary as shall be provided
42 by law.

43 The Public Advocate may, in the discretion of the Governor,
44 concurrently hold another position established in or allocated to the
45 Department of the Public Advocate, notwithstanding any requirement
46 of law that the Public Advocate devote his or her entire time to the

1 duties of one position or the other. In such case, the Public Advocate
2 shall receive only the salary provided for the Public Advocate, and not
3 the salary for such other position.

4
5 5. (New section) Powers and duties of Public Advocate.

6 The Public Advocate as administrator and chief executive officer
7 of the department shall:

8 a. administer the work of the department;

9 b. appoint and remove such officers, investigators, stenographic
10 and clerical assistants and other personnel as may be required for the
11 conduct of the department, subject to the provisions of Title 11A of
12 the New Jersey Statutes, Civil Service, and other applicable statutes,
13 except as provided otherwise herein;

14 c. adopt, issue and promulgate, in the name of the department,
15 such rules and regulations as may be necessary, consistent with the
16 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
17 seq.);

18 d. formulate and adopt rules and regulations for the efficient
19 conduct of the work and general administration of the department, its
20 officers and employees;

21 e. institute or cause to be instituted such legal proceedings or
22 processes consistent with the rules governing the courts of New Jersey
23 and the practice of law therein as may be necessary to properly enforce
24 and give effect to any of his or her powers or duties;

25 f. have the authority to issue subpoenas to compel the attendance
26 and testimony of witnesses or the production of books, papers and
27 other documents, and administer oaths to witnesses in any matter
28 under the investigation of the office. If any person to whom such
29 subpoena is issued fails to appear or, having appeared, refuses to give
30 testimony, or fails to produce the books, papers or other documents
31 required, the public advocate may apply to the Superior Court, which
32 may order the person to appear and give testimony or produce the
33 books, papers or other documents, as applicable;

34 g. prepare schedules of rates to be paid for services rendered other
35 than by the staff, taking into account the nature of the services, the
36 time involved, the skill and experience required and other pertinent
37 factors;

38 h. make such reports of the department's operation as the
39 Governor or the Legislature shall from time to time request, or as may
40 be required by law. In addition, the Public Advocate shall report to
41 the Governor and the Legislature annually with respect to such matters
42 relating to the work of the Public Advocate and at such times as he or
43 she may deem in the public interest. This report shall describe the
44 matters and activities involving the Department of the Public
45 Advocate, its divisions and offices, including the status and description
46 of significant cases that have been litigated, mediated, or otherwise

1 administered by the Public Advocate. This report shall include an
2 analysis on the costs and benefits of the litigation brought by the
3 Public Advocate, and include any recommendations for administrative
4 or legislative action that he or she deems necessary or appropriate;

5 i. perform, exercise and discharge the functions, powers and duties
6 of the department through such divisions or offices as may be
7 established by this act or otherwise by law;

8 j. organize and coordinate the work of the department in such
9 divisions or offices, not inconsistent with the provisions of this act,
10 and in such other organizational units as he or she may determine to
11 be necessary for efficient and effective operation;

12 k. integrate within the department, so far as practicable, all staff
13 services of the department and of the several divisions and other
14 offices therein;

15 l. maintain suitable headquarters for the department and such other
16 quarters as he or she shall deem necessary to the proper functioning of
17 the department;

18 m. except as otherwise provided by law, appoint division
19 directors, office directors, and ombudspersons who are qualified by
20 training and experience to direct, under the supervision of the Public
21 Advocate, the several divisions and offices established pursuant to this
22 act. Such division directors, office directors, and ombudspersons shall
23 serve at the pleasure of the Public Advocate who shall fix their
24 compensation within the limits of available appropriations;

25 n. adopt policies and procedures to manage any litigation so that
26 the Public Advocate may reasonably ensure that all litigation matters
27 are effectively managed by the relevant division overseeing such
28 actions;

29 o. solicit and accept grants of funds from the federal government
30 and from private foundations, and allocate or restrict the use of such
31 funds as may be required by the grantor;

32 p. be the request officer for the department within the meaning of
33 such term as defined in P.L.1944, c.112 (C.52:27B-1 et seq.);

34 q. hire independent counsel on a case-by-case basis to provide
35 competent representation in light of the nature of the case, the services
36 to be performed, the experience of the particular attorney and other
37 relevant factors, notwithstanding the provisions of section 11 of
38 P.L.1944, c.20 (C.52:17A-11) to the contrary;

39 ¹r. consult with the child advocate prior to the exercise of the
40 Public Advocate's duties, or those of a division, office or
41 ombudsperson, by commencing an investigation, legal proceeding or
42 other matter, or taking an action, that may be co-extensive with the
43 duties of the child advocate. The purpose of the consultation shall be
44 to provide the child advocate with an opportunity to assist or
45 collaborate with the Public Advocate on such investigation, legal
46 proceeding, matter or action if the extent of the assistance or

1 collaboration is within the powers and duties of the child advocate as
2 those powers and duties are provided in this act. This requirement to
3 consult the child advocate or the failure to do so in a timely manner
4 shall not preclude or serve to restrict the Public Advocate in the
5 performance of his duties, or those of a division, office or
6 ombudsperson, at the Public Advocate's discretion;¹ and

7 ¹[r.] s.¹ perform such other functions as may be prescribed in this
8 act or by any other law.

9
10 6. (New section) Appointment of Assistant Public Advocate.

11 The Public Advocate may appoint an Assistant Public Advocate to
12 serve at the pleasure of the Public Advocate. Such appointment shall
13 be in writing and filed with the Secretary of State. The Assistant
14 Public Advocate shall have and shall exercise the powers and perform
15 the functions and duties of the Public Advocate during the absence or
16 disability of the Public Advocate. The Assistant Public Advocate shall
17 also have and exercise such of the powers and perform such of the
18 functions and duties of the Public Advocate as he or she shall be
19 authorized and directed by the Public Advocate. Any such
20 authorization and direction shall be in writing, signed by the Public
21 Advocate and filed with the Secretary of State, and shall include a
22 designation of the period during which it shall be and remain in force.
23 No such authorization and direction shall be deemed to preclude the
24 Public Advocate from himself or herself exercising the powers and the
25 performance of the duties included in the authorization and direction.
26 In the event that the Public Advocate shall die, resign or be removed
27 from office, or become disqualified to execute the duties of the office,
28 or a vacancy shall occur in the office of the Public Advocate for any
29 cause whatsoever, the person then holding the office of Assistant
30 Public Advocate shall continue to hold such office and shall have and
31 shall exercise the powers and perform the functions and duties of the
32 Public Advocate until the successor of the Public Advocate shall be
33 appointed and shall qualify.

34 The Assistant Public Advocate shall receive such salary as shall be
35 provided by law.

36
37 7. (New section) Deputy public advocates and other assistants.

38 The Public Advocate shall appoint deputy public advocates and
39 other expert assistants in such number as he or she shall require to
40 assist him or her in the performance of the duties of the office.
41 Deputies shall be attorneys-at-law of this State. Deputies and other
42 expert assistants shall serve at the pleasure of the Public Advocate and
43 shall receive such salaries as the Public Advocate shall from time to
44 time designate.

45
46 8. (New section) Professional responsibilities.

1 The primary duty of all staff members and of others engaged by the
2 department on a temporary or case basis shall be to the individual
3 client, with like effect and to the same purpose as though privately
4 engaged by the client and without regard to the use of public funds to
5 provide the service. This responsibility shall not preclude the
6 designation or assignment of different individuals to perform various
7 parts of the service from time to time, the duty in such cases to be the
8 same as would exist in the case of a privately engaged law firm.

9
10 9. (New section) Attorney-client and work product privileges.

11 a. All communications between the individual client and any
12 attorney in or engaged by the Department of the Public Advocate shall
13 be fully protected by the attorney-client privilege to the same extent
14 and degree as though counsel has been engaged privately, and the
15 work product of such attorneys shall be fully protected by the work
16 product privilege to the same extent and degree as though counsel has
17 been engaged privately. These privileges shall in no way preclude the
18 use by the department of material in its files, otherwise privileged, for
19 the preparation and disclosure of statistical, case study and other
20 sociological data, provided always that in any such use there shall be
21 no disclosure of the identity or the means for discovering the identity
22 of particular clients.

23 b. Any record held by the department which includes information
24 about the identity, care or treatment of any person seeking or receiving
25 services from the department, or the identity of any person seeking
26 services from the department on behalf of another person, shall not be
27 a government record as defined in section 1 of P.L.1995, c.23
28 (C.47:1A-1.1) and shall not be available for public inspection, copying,
29 or the purchase of copies.

30 c. Any person acting reasonably and in good faith who seeks
31 assistance from the department on behalf of another person shall be
32 immune from civil or criminal liability that might otherwise be incurred
33 or imposed and shall have the same immunity with respect to
34 testimony given in any judicial proceeding resulting from that request
35 for assistance.

36
37 10. (New section) Standard of performance.

38 In providing legal services to clients pursuant to this act, every
39 attorney, whether a member of the staff or engaged by the department
40 on a temporary or case basis, shall adhere to the standards of
41 performance established from time to time by the Supreme Court of
42 New Jersey in the execution of its duty to supervise the practice of
43 law.

44
45 11. (New section) Organization of department.

46 ¹a. ¹ There are hereby established ¹[eight] seven¹ divisions and

1 one office within the Department of the Public Advocate.

2 The divisions within the department shall be the: Division of
3 Administration; Division of Citizen Relations; Division of Mental
4 Health Advocacy; Division of Advocacy for the Developmentally
5 Disabled; Division of Rate Counsel; Division of Public Interest
6 Advocacy; ¹and¹ Division of Elder Advocacy ¹[; and Division of
7 Child Advocacy]¹.

8 The office within the department shall be the Office of Public
9 Advocate.

10 ¹b. The Office of the Child Advocate shall be an office allocated
11 within the Department of the Public Advocate, but shall be
12 independent of supervision and control by the department and its
13 officers and divisions, as provided in this act. ¹

14

15 12. (New section) Definitions.

16 As used in this act:

17 "administrative action" means and includes any action, omission,
18 decision, recommendation, practice or procedure of an agency, but
19 does not include the preparation, presentation or introduction of
20 legislation;

21 "agency" means and includes the State of New Jersey and its
22 principal departments, and any division, bureau, board, commission,
23 agency, office, authority, or institution of the Executive Branch of the
24 State government, or any other agency, including bi-state agencies, or
25 any instrumentality created by the State, including counties,
26 municipalities, or political subdivisions thereof, or any officer,
27 employee, or member thereof acting or purporting to act in the
28 exercise of his or her official duties, except the Governor and the
29 Governor's personal staff and any portion of the Legislative Branch or
30 Judicial Branch of State government;

31 "compensatory damages" means damages intended to make good
32 the loss of an injured party, and no more. The term includes general
33 and special damages, and does not include nominal, exemplary, or
34 punitive damages;

35 "consumer insurance rate increases" means prior approval rate
36 increases for: personal lines property casualty coverages; Medicare
37 supplemental coverages; or a rating system change pursuant to section
38 14 of P.L.1997, c.151 (C.17:29A-46.1 et seq.);

39 "correctional facility" means a jail, prison, lockup, penitentiary,
40 reformatory, training school, or other similar facility within the State
41 of New Jersey;

42 "department" means the Department of the Public Advocate
43 established herein, unless the context clearly indicates otherwise;

44 "elderly" means a person age 60 years or older;

45 "facility" whenever referred to in sections 61 through 65 of this
46 act, means any facility or institution, whether public or private,

1 offering health or health related services for the institutionalized
2 elderly, and which is subject to regulation, visitation, inspection, or
3 supervision by any government agency. Facilities include, but are not
4 limited to, nursing homes, skilled nursing homes, intermediate care
5 facilities, extended care facilities, convalescent homes, rehabilitation
6 centers, residential health care facilities, special hospitals, veterans'
7 hospitals, chronic disease hospitals, psychiatric hospitals, mental
8 hospitals, mental retardation centers or facilities, day care facilities for
9 the elderly, and medical day care centers;

10 “funded entity” means any party to and beneficiary of contracts
11 with the State or its political subdivisions, including any business,
12 corporation, association, partnership, sole proprietorship, firm, trust,
13 organization, unincorporated organization, individual, enterprise, or
14 other legal entity receiving public funds;

15 “indigent mental hospital admittee” means a person who has been
16 admitted to and is a patient in a mental hospital, an institution for the
17 care and treatment of the mentally ill, or a similar facility, whether
18 public or private, State, county or local, or who is the subject of an
19 action for admission as provided by P.L.1987, c.116 (C.30:4-27.1 et
20 seq.) and who does not have the financial ability to secure competent
21 representation and to provide all other necessary expenses of
22 representation;

23 "institutionalized elderly" means any person 60 years of age or
24 older, who is a patient, resident or client of any facility, as described
25 herein;

26 “nominal damages” means damages that are designed to
27 compensate a plaintiff and are less than \$500;

28 “public employee” means an employee of a public entity, and
29 includes a person participating, under the supervision of the Palisades
30 Interstate Park Commission, in a volunteer program in that part of the
31 Palisades Interstate Park located in New Jersey;

32 “public entity” means and includes the State, and any county,
33 municipality, district, public authority, public agency, and any other
34 political subdivision or public body in the State;

35 “public interest” means an interest or right arising from the
36 Constitution, decisions of court, common law or other laws of the
37 United States or of this State inhering in the citizens of this State or
38 in a broad class of such citizens;

39 “punitive damages” means and includes exemplary damages and
40 means damages awarded against a party in a civil action because of
41 aggravating circumstances in order to penalize and to provide
42 additional deterrence against a defendant to discourage similar conduct
43 in the future. Punitive damages do not include compensatory damages
44 or nominal damages.

45

46 ARTICLE 2. OFFICE OF PUBLIC ADVOCATE

1 13. (New section) Office of Public Advocate; established.

2 The Public Advocate may establish an Office of Public Advocate
3 and appoint to such office those persons necessary to the supervision
4 and efficient operations of the department.

5

6 ARTICLE 3. DIVISION OF ADMINISTRATION

7

8 14. (New section) Division of Administration; established.

9 There is hereby established in the Department of the Public
10 Advocate the Division of Administration to be under the supervision
11 of the Director of the Division of Administration.

12

13 15. (New section) Division of Administration; duties.

14 It shall be the duty of the Division of Administration, at the
15 direction of the Public Advocate, to prepare a budget for the
16 department, fulfill personnel requirements, provide public information
17 concerning department activities, and conduct such research as the
18 Public Advocate determines to be relevant and necessary to the
19 department's functions.

20

21 ARTICLE 4. DIVISION OF CITIZEN RELATIONS

22

23 16. (New section) Division of Citizen Relations; established.

24 There is hereby established in the Department of the Public
25 Advocate the Division of Citizen Relations to be under the supervision
26 of the Director of the Division of Citizen Relations.

27

28 17. (New section) Division of Citizen Relations; powers and
29 duties.

30 The Division of Citizen Relations shall, under the direction and
31 supervision of the Director of the Division of Citizen Relations, in
32 addition to other powers and duties vested in it by this act, or any
33 other law:

34 a. receive and forward to appropriate agencies of the State for
35 determination complaints from any citizen relating to the
36 administrative action or inaction of agencies;

37 b. investigate any complaint from any citizen relating to the
38 administrative action or inaction of any agency, whether or not such
39 action or inaction is final, where the complaint indicates that the action
40 or inaction may have been:

41 (1) unreasonable, unfair, oppressive, or potentially discriminatory,
42 although in accordance with law;

43 (2) unaccompanied by an adequate explanation; or

44 (3) performed in an inefficient manner; and

45 c. maintain records indicating the final disposition of any
46 complaint forwarded by the division to an agency.

1 18. (New section) Division of Citizen Relations; notice to
2 complainant and agency.

3 The Division of Citizen Relations shall determine whether a
4 complaint is or is not an appropriate subject for investigation under
5 this act, and shall inform the complainant of that decision, stating its
6 reasons therefore. If the division decides to investigate a complaint,
7 it shall also notify the affected agency of its decision.

8

9 19. (New section) Division of Citizen Relations; procedure after
10 investigation.

11 If, after investigation, the Division of Citizen Relations finds that:

12 a. a matter should be further considered by the agency,

13 b. an administrative action or inaction should be modified or
14 canceled,

15 c. a statute or regulation on which an administrative action or
16 inaction is based should be altered,

17 d. reasons or more complete reasons should be given for an
18 administrative action or inaction, or

19 e. any other action should be taken by the agency, it shall report
20 its findings and recommendations to the Public Advocate who may
21 request the agency to notify him or her, within a specified time, of the
22 action taken on such recommendations. The division is also
23 authorized to conduct public hearings on such an issue if it determines
24 that such hearings are necessary. The Public Advocate may refer the
25 findings and recommendations of the Division of Citizen Relations to
26 the Division of Public Interest Advocacy or, if appropriate, to the
27 Division of Rate Counsel.

28

29 20. (New section) Division of Citizen Relations; notice to the
30 complainant.

31 After a reasonable time has elapsed, the Division of Citizen
32 Relations shall notify the complainant of the action taken by the
33 Division of Citizen Relations and by the agency which was the subject
34 of the complaint.

35

36 21. (New section) Division of Citizen Relations; Dispute
37 Settlement Office; established.

38 There is hereby established in the Division of Citizen Relations the
39 Dispute Settlement Office.

40

41 22. (New section) Dispute Settlement Office; services.

42 a. The Dispute Settlement Office may provide, in the discretion of
43 the Public Advocate, mediation and other third party neutral services
44 in the resolution of disputes which involve the public interest and may
45 enter into agreements or contracts to carry out any of the purposes or
46 functions of this section. The office may assist public or private

1 parties in resolving disputes. The office is authorized to:

2 (1) facilitate the resolution of disputes through the provision of
3 mediation and other neutral dispute resolution services;

4 (2) establish standards for the selection, assignment, and conduct
5 of persons acting on behalf of the office in the resolution of disputes;

6 (3) conduct educational programs and provide other services
7 designed to reduce the occurrence, magnitude, or cost of disputes;

8 (4) design, develop, or operate dispute resolution programs, or
9 assist in improving or extending existing dispute resolution programs;

10 (5) work with the business ombudsman or advocate in the New
11 Jersey Commerce and Economic Growth Commission and take such
12 other action as will promote and facilitate dispute resolution in the
13 State; and

14 (6) coordinate and cooperate with the Office of Administrative
15 Law so as to avoid duplication of effort and to facilitate alternate
16 resolution of disputes that would otherwise require administrative
17 hearings.

18 b. The Public Advocate may establish reasonable fees to be charged
19 to public or private parties for the provision of the educational,
20 consultation, dispute resolution, or other services authorized herein
21 and may apply for and accept on behalf of the State any federal, local,
22 or private grants, bequests, gifts, or contributions to aid in the
23 financing of any of the programs or activities of the office. The Public
24 Advocate in the name of the State shall do all that is necessary and
25 proper to receive or to collect all moneys due to the State, including
26 such fees, grants, bequests, gifts, or contributions, by or
27 reimbursement for services rendered pursuant to this section.

28
29 23. (New section) Dispute Settlement Office; transfer of functions.

30 All functions, powers and duties which had been vested in the
31 Office of Dispute Settlement in the Division of Citizen Complaints and
32 Dispute Settlement in the Department of Public Advocate prior to the
33 effective date of P.L.1994, c.58 (C.52:27E-50 et al.) and which were
34 transferred by P.L.1994, c.58 (C.52:27E-50 et al.) to the Office of the
35 Public Defender, and are now vested in the Office of the Public
36 Defender, are hereby transferred to and assumed by the Dispute
37 Settlement Office of the Division of Citizen Relations in the
38 Department of the Public Advocate.

39 Whenever any law, rule, regulation, order, reorganization plan,
40 contract, document, judicial or administrative proceeding or otherwise,
41 reference is made to the Office of Dispute Settlement in the Office of
42 the Public Defender concerning functions, powers and duties which
43 had been vested in the Office of Dispute Settlement in the Division of
44 Citizen Complaints and Dispute Settlement in the Department of
45 Public Advocate prior to the effective date of P.L.1994, c.58
46 (C.52:27E-50 et al.) and are now vested in the Dispute Settlement

1 Office of the Division of Citizen Relations in the Department of the
2 Public Advocate, the same shall mean and refer to the Dispute
3 Settlement Office in the Division of Citizens Relations in the
4 Department of the Public Advocate.

5
6 24. (New section) Corrections Ombudsperson; established.

7 There is hereby established in the Division of Citizen Relations in
8 the Department of the Public Advocate a Corrections Ombudsperson.

9
10 25. (New section) Corrections Ombudsperson; appointment.

11 The Corrections Ombudsperson shall be appointed by the Public
12 Advocate and shall serve at the pleasure of the Public Advocate during
13 the Public Advocate's term of office.

14
15 26. (New section) Corrections Ombudsperson; transfer of
16 functions.

17 a. All functions, powers, and duties now vested in the Ombudsman
18 in the Department of Corrections, as referenced in N.J.A.C.10A:1-1.1
19 et seq., are hereby transferred to and assumed by the Corrections
20 Ombudsperson in the Division of Citizen Relations in the Department
21 of the Public Advocate.

22 b. Whenever, in any law, rule, regulation, order, reorganization
23 plan, contract, document, judicial or administrative proceeding, or
24 otherwise, reference is made to the Ombudsman in the Department of
25 Corrections concerning functions, powers, and duties which had been
26 vested in the Ombudsman, the same shall mean and refer to the
27 Corrections Ombudsperson in the Division of Citizen Relations in the
28 Department of the Public Advocate.

29
30 27. (New section) Corrections Ombudsperson; jurisdiction.

31 Any person, over the age of 18 years, who is convicted of a crime
32 under the laws of the State of New Jersey and sentenced to a
33 correctional facility for more than 364 days is a "State-sentenced"
34 inmate and considered to be among the individuals who may properly
35 seek redress from the Corrections Ombudsperson concerning the
36 conditions of their confinement.

37
38 28. (New section) Corrections Ombudsperson; duties.

39 The Corrections Ombudsperson shall establish and implement
40 procedures for eliciting, receiving, processing, responding, and
41 resolving complaints from inmates, their families, other interested
42 citizens, public officials, and government agencies concerning
43 conditions in the correctional facilities noted in section 27 of this act.

44
45 ARTICLE 5. DIVISION OF MENTAL HEALTH ADVOCACY

1 29. (New section) Division of Mental Health Advocacy;
2 established.

3 a. There is hereby established in the Department of the Public
4 Advocate a Division of Mental Health Advocacy to be under the
5 supervision of the Director of the Division of Mental Health
6 Advocacy.

7 b. The division is hereby designated as the State's mental health
8 protection and advocacy agency. ²The intent of this article is that the
9 division shall have all the powers necessary to carry out its
10 responsibilities as required to qualify for federal funding as the State
11 protection and advocacy agency. Until such designation is effectuated,
12 the division may take such action as it deems appropriate for the
13 purpose of coordinating with the private entity designated as the
14 State's mental health protection and advocacy agency on the date of
15 enactment of this act. ²

16
17 30. (New section) Division of Mental Health Advocacy; objective;
18 duties.

19 a. The Division of Mental Health Advocacy shall promote,
20 advocate, and ensure the adequacy of the care received, and the
21 quality of life experienced, by persons with mental illness, including
22 patients, residents, and clients within the mental health facilities and
23 programs operated, funded, or licensed by the State. In determining
24 what elements are essential to ensure adequate care and quality of life,
25 the division shall consider the unique medical, social, and economic
26 needs and problems of persons with mental illness as patients,
27 residents, and clients of facilities and as citizens and community
28 members.

29 b. The director shall establish and implement procedures to elicit,
30 receive, process, respond, and resolve complaints from patients, their
31 families, other interested citizens, public officials, and government
32 agencies concerning conditions in the State's mental health facilities.
33

34 31. (New section) Division of Mental Health Advocacy; class
35 actions.

36 The Director of the Division of Mental Health Advocacy may
37 represent, with the approval of the Public Advocate, the interests of
38 indigent mental hospital admittees in such disputes and litigation as
39 will, in the discretion of the Public Advocate, best advance the
40 interests of indigent mental hospital admittees as a class on an issue of
41 general application to them, and may act as representative of indigent
42 mental hospital admittees with any principal department or other
43 instrumentality of State, county or local government.
44

45 32. (New section) Division of Mental Health Advocacy; legal
46 representation; medical consultation.

1 The Division of Mental Health Advocacy may provide such legal
2 representation and medical consultation as the director deems
3 appropriate for any indigent mental hospital admittee in any
4 proceeding concerning the admittee's admission to, and retention in,
5 or release from confinement in such a hospital, institution or facility.

6
7 33. (New section) Division of Mental Health Advocacy; eligibility
8 for services.

9 Eligibility for mental health ¹advocacy¹ services shall be
10 determined on the basis of the need of the client. Need shall be
11 measured according to the financial ability of the client to engage and
12 compensate competent private counsel and to provide all other
13 necessary expenses of representation. Such ability shall be recognized
14 to be a variable depending on the nature, extent and liquidity of assets
15 and on the disposable net income of the client as compared with the
16 nature of the case, the effort and skill required to gather pertinent
17 information, render advice, conduct trial or render other legal services,
18 and probable expenses to be incurred. In the event that a
19 determination of eligibility cannot be made before the time when the
20 first services are to be rendered, or if an initial determination is found
21 to be erroneous, the division shall undertake the same provisionally,
22 and if it is determined subsequently that the client is ineligible, the
23 division shall so inform the client, and the client shall thereupon, with
24 the approval of the court, be obliged to engage his or her own counsel
25 and to reimburse the division for the cost of the services rendered to
26 that time.

27
28 34. (New section) Division of Mental Health Advocacy; financial
29 status of client; investigation.

30 The Division of Mental Health Advocacy shall make such
31 investigation of the financial status of each mental health client as the
32 circumstances warrant. The division, pursuant to rules and regulations
33 promulgated by the department for this purpose, may obtain
34 information from any public record, office of the State or of any
35 subdivision or agency thereof on request and without payment of the
36 fees ordinarily required by law.

37
38 35. (New section) Division of Mental Health Advocacy; staff.

39 ¹a.¹ The Director of the Division of Mental Health Advocacy may
40 employ, with the approval of the Public Advocate, such assistants on
41 a full-time basis as are necessary to protect the rights of persons with
42 mental illness. When exceptional circumstances arise, the director may
43 retain, with the approval of the Public Advocate, on a temporary basis
44 such other expert assistants as are necessary pursuant to a reasonable
45 fee schedule established in advance by the Public Advocate.

46 ¹b.¹ Cases shall be assigned to staff attorneys or attorneys hired

1 by case on a basis calculated to provide competent representation in
2 light of the nature of the case, the services to be performed, the
3 experience of the particular attorney and other relevant factors.

4 ²[¹c. Employees of the Division of Mental Health Services in the
5 Department of Human Services who are client services representatives
6 or patient advocates for the mentally ill providing patient advocacy
7 services in State or county facilities that provide inpatient care,
8 supervision and treatment for persons with mental illness, including
9 psychiatric facilities, and the functions of such employees, are hereby
10 transferred to the Department of the Public Advocate to be employees
11 and functions thereof. The Public Advocate through the Division of
12 Mental Health Advocacy shall employ such persons and continue such
13 functions in the manner the Public Advocate and the director of the
14 division shall deemed appropriate and necessary. These employees
15 shall report to the division director and the Public Advocate.¹]²

16
17 36. (New section) Division of Mental Health Advocacy; status of
18 staff.

19 Independent contractors or other individuals, agencies, or entities
20 not established in or employed by the Department of the Public
21 Advocate retained to provide protection and advocacy services to
22 indigent mental hospital admittees ², or designated to provide mental
23 health protection and advocacy services.² are not public entities or
24 public employees for purposes of the "New Jersey Tort Claims Act,"
25 N.J.S.59:1-1 et seq.

26
27 37. (New section) Division of Mental Health Advocacy; transfer
28 of functions.

29 All functions, powers, and duties which had been vested in the
30 Division of Mental Health Advocacy in the Department of the Public
31 Advocate prior to the effective date of P.L.1994, c.58 (C.52:27E-50
32 et al.) and which ²[were transferred by P.L.1994, c.58 (C.52:27E-50
33 et al.) to] are exercised by² the private entity New Jersey Protection
34 and Advocacy, Inc. or its successor, ²[designated] pursuant to
35 designation² by the Governor as the State's mental health protection
36 and advocacy agency, or ²which were transferred by P.L.1994, c.58
37 (C.52:27E-50 et al.)² to the Office of the Public Defender, and are
38 now ²exercised by or² vested in ², as the case may be,² the private
39 entity or the Office of the Public Defender, including those related to
40 any indigent mental hospital admittee's admission to, retention in, or
41 release from confinement in a hospital, institution or facility, are
42 hereby transferred to and assumed by the Division of Mental Health
43 Advocacy in the Department of the Public Advocate ², except that the
44 private entity shall exercise the functions, powers and duties as the
45 State's mental health protection and advocacy agency until the
46 designation of the division as the State's mental health protection and

1 advocacy agency is effectuated².

2 Whenever, in any law, rule, regulation, order, reorganization plan,
3 contract, document, judicial or administrative proceeding, or
4 otherwise, reference is made to the private entity New Jersey
5 Protection and Advocacy, Inc. or its successor, designated by the
6 Governor as the State's mental health protection and advocacy agency,
7 or the Office of the Public Defender, concerning functions, powers,
8 and duties which had been vested in the Division of Mental Health
9 Advocacy in the Department of the Public Advocate prior to the
10 effective date of P.L.1994, c.58 (C.52:27E-50 et al.) and are now
11 vested in the private entity or the Office of the Public Defender, the
12 same shall mean and refer to the Division of Mental Health Advocacy
13 in the Department of the Public Advocate ², except that with regard
14 to the private entity the reference shall be effective when the
15 designation of the division as the State's mental health protection and
16 advocacy agency is effectuated².

17

18 ARTICLE 6. DIVISION OF ADVOCACY FOR THE
19 DEVELOPMENTALLY DISABLED

20

21 38. (New section) Division of Advocacy for the Developmentally
22 Disabled; established; appointment.

23 a. There is hereby established in the Department of the Public
24 Advocate the Division of Advocacy for the Developmentally Disabled
25 to be under the supervision of the Director of the Division of
26 Advocacy for the Developmentally Disabled, appointed by the Public
27 Advocate.

28 b. The division is hereby designated as the State's protection and
29 advocacy agency for persons with developmental disabilities. ²The
30 intent of this article is that the division shall have all the powers
31 necessary to carry out its responsibilities as required to qualify for
32 federal funding as the State protection and advocacy agency. Until
33 such designation is effectuated, the division may take such action as
34 it deems appropriate for the purpose of coordinating with the private
35 entity designated the State's protection and advocacy agency for
36 persons with developmental disabilities on the date of enactment of
37 this act.²

38

39 39. (New section) Division of Advocacy for the Developmentally
40 Disabled; objective; duties.

41 a. The Division of Advocacy for the Developmentally Disabled
42 shall promote, advocate, and ensure the adequacy of the care received,
43 and the quality of life experienced, by persons with developmental
44 disabilities, including patients, residents, and clients within the
45 developmental disabilities facilities and programs operated, funded, or
46 licensed by the State. In determining what elements are essential to

1 ensure adequate care and quality of life, the division shall consider the
2 unique medical, social, and economic needs and problems of persons
3 with developmental disabilities as patients, residents, and clients of
4 facilities and as citizens and community members.

5 b. The director shall establish and implement procedures to elicit,
6 receive, process, respond, and resolve complaints from patients, their
7 families, other interested citizens, public officials, and government
8 agencies concerning conditions in the State's developmental
9 disabilities facilities.

10
11 40. (New section) Division of Advocacy for the Developmentally
12 Disabled; services.

13 The Division of Advocacy for the Developmentally Disabled may
14 receive and investigate complaints and provide such legal
15 representation and other advocacy services on an individual or class
16 basis as the Public Advocate deems appropriate to protect and
17 advocate the rights of developmentally disabled persons. The division
18 may also, within the limits of available funding, provide services to
19 other handicapped persons or classes of persons found by the Public
20 Advocate to have needs similar to developmentally disabled people.

21
22 41. (New section) Division of Advocacy for the Developmentally
23 Disabled; eligibility for services.

24 Eligibility for services for the developmentally disabled shall be
25 determined on the basis of the need of the client and in a manner
26 consistent with the conditions of any grant obtained by the Public
27 Advocate to assist in implementing this act.

28
29 42. (New section) Division of Advocacy for the Developmentally
30 Disabled; staff.

31 The Director of the Division of Advocacy for the Developmentally
32 Disabled may employ, with the approval of the Public Advocate, such
33 assistants on a full-time basis as are necessary to protect the rights of
34 developmentally disabled persons. When exceptional circumstances
35 arise, the director may retain, with the approval of the Public
36 Advocate, on a temporary basis such other expert assistants as are
37 necessary pursuant to a reasonable fee schedule established in advance
38 by the Public Advocate.

39 Cases shall be assigned to staff attorneys or attorneys hired by case
40 on a basis calculated to provide competent representation in light of
41 the nature of the case, the services to be performed, the experience of
42 the particular attorney and other relevant factors.

43
44 43. (New section) Division of Advocacy for the Developmentally
45 Disabled; status of staff.

46 Independent contractors or other individuals, agencies, or entities

1 not established in or employed by the Department of the Public
2 Advocate retained ²or designated² to provide protection and advocacy
3 services to persons with a developmental disability as the term is
4 defined in section 3 of the "Developmentally Disabled Rights Act,"
5 P.L.1977, c.82 (C.30:6D-3), are not public entities or public
6 employees for purposes of the "New Jersey Tort Claims Act,"
7 N.J.S.59:1-1 et seq..

8

9 44. (New section) Division of Advocacy for the Developmentally
10 Disabled; definition.

11 For purposes of this act, a developmentally disabled person is a
12 person with a developmental disability as that term is defined in
13 section 3 of the "Developmentally Disabled Rights Act," P.L.1977,
14 c.82 (C.30:6D-3).

15

16 45. (New section) Division of Advocacy for the Developmentally
17 Disabled; transfer of functions.

18 All functions, powers, and duties which had been vested in the
19 Division of Advocacy for the Developmentally Disabled in the
20 Department of the Public Advocate prior to the effective date of
21 P.L.1994, c.58 (C.52:27E-50 et al.) and which ²[were transferred by
22 P.L.1994, c.58 (C.52:27E-50 et al.) to] are exercised by² the private
23 entity New Jersey Protection and Advocacy, Inc. or its successor,
24 ²[designated] pursuant to designation² by the Governor as the State's
25 protection and advocacy agency for persons with developmental
26 disabilities, or ²which were transferred by P.L.1994, c.58 (C.52:27E-
27 50 et al.)² to the Office of the Public Defender, and are ²now exercised
28 by² or vested in ², as the case may be,² the private entity or the Office
29 of the Public Defender, are hereby transferred to and assumed by the
30 Division of Advocacy for the Developmentally Disabled in the
31 Department of the Public Advocate ², except that the private entity
32 shall continue to exercise the functions, powers and duties as the
33 State's protection and advocacy agency for persons with
34 developmental disabilities until the designation of the division as the
35 State's protection and advocacy agency for persons with
36 developmental disabilities is effectuated².

37 Whenever, in any law, rule, regulation, order, reorganization plan,
38 contract, document, judicial or administrative proceeding, or
39 otherwise, reference is made to the private entity New Jersey
40 Protection and Advocacy, Inc. or its successor, designated by the
41 Governor as the State's protection and advocacy agency for persons
42 with developmental disabilities, or the Office of the Public Defender,
43 concerning functions, powers, and duties which had been vested in the
44 Division of Advocacy for the Developmentally Disabled in the
45 Department of the Public Advocate prior to the effective date of
46 P.L.1994, c.58 (C.52:27E-50 et al.) and are now vested in the private

1 entity or the Office of the Public Defender, the same shall mean and
2 refer to the Division of Advocacy for the Developmentally Disabled in
3 the Department of the Public Advocate ², except that with regard to
4 the private entity the reference shall be effective when the designation
5 of the division as the State's protection and advocacy agency for
6 persons with developmental disabilities is effectuated².

7
8 ARTICLE 7. DIVISION OF RATE COUNSEL

9
10 46. (New section) Division of Rate Counsel; established.

11 There is hereby established in the Department of the Public
12 Advocate the Division of Rate Counsel to be under the supervision of
13 the Director of the Division of Rate Counsel.

14
15 47. (New section) Director of the Division of Rate Counsel; staff.

16 a. The Director of the Division of Rate Counsel shall be an
17 attorney-at-law of this State, appointed by the Public Advocate.

18 b. When exceptional circumstances arise, the Director of the
19 Division of Rate Counsel, with the approval of the Public Advocate,
20 may on a temporary basis retain such expert assistants as are necessary
21 to protect the public interest, pursuant to a reasonable fee schedule
22 established in advance by the Public Advocate.

23 c. Cases shall be assigned to staff attorneys or to attorneys hired
24 on a case by case basis calculated to provide competent representation
25 in the light of the nature of the case, the services to be performed, the
26 experience of the particular attorney, and other relevant factors.

27
28 48. (New section) Division of Rate Counsel; jurisdiction.

29 The Division of the Rate Counsel shall have the authority to
30 conduct investigations, initiate studies, conduct research, present
31 comments and testimony before governmental bodies, issue reports,
32 and produce and disseminate consumer guides on any matters that fall
33 within the Rate Counsel's jurisdiction. The Rate Counsel shall also
34 have the authority to represent the public interest as set forth below.

35 a. Utilities. The Division of Rate Counsel may represent and
36 protect the public interest as defined in section 12 of this act in
37 proceedings before and appeals from any State department,
38 commission, authority, council, agency, or board charged with the
39 regulation or control of any business, industry, or utility regarding a
40 requirement that the business, industry, or utility provide a service or
41 regarding the fixing of a rate, toll, fare, or charge for a product or
42 service. The Division of Rate Counsel may initiate any such
43 proceedings when the director determines that a discontinuance or
44 change in a required service or a rate, toll, fare, or charge for a
45 product or service is in the public interest.

46 b. Insurance; limited jurisdiction. The ¹Department of the Public

1 Advocate shall represent and protect the public interest with respect
 2 to insurance matters through the¹ Division of Rate Counsel ¹, which¹
 3 may represent and protect the public interest as defined in section 12
 4 of this act in significant proceedings that pertain ¹solely¹ to ¹[(1)]¹
 5 prior approval rate increases for ¹[(a)]¹ personal lines property
 6 casualty coverages ¹[(b)] or¹ Medicare supplemental coverages ¹[
 7 or (2) a rating system change pursuant to P.L.1997, c.151 (C.17:29A-
 8 46.1 et seq.), if the Commissioner of the Department of Banking and
 9 Insurance advises the Rate Counsel that such proposed change
 10 pursuant to P.L.1997, c.151 (C.17:29A-46.1 et seq.) is likely to result
 11 in an overall increase in revenue of greater than seven percent in a
 12 filing made by an insurer or affiliated group of insurers]¹. The
 13 Division of Rate Counsel shall have no jurisdiction or authority to
 14 participate or intervene in ¹(1)¹ expedited prior approval rate filings
 15 made by an insurer or affiliated group of insurers pursuant to section
 16 34 of P.L.1997, c.151 (C.17:29A-46.6) or section 3 of P.L.2001,
 17 c.409 (C.17:36-5.35) ¹, or (2) prior approval rate filings of seven
 18 percent or less, or (3) rule or form filings for any other form of
 19 insurance¹.

20 In determining, in his or her discretion, whether a proceeding is
 21 significant, the Director of the Division of Rate Counsel shall consider
 22 the following factors:

23 (1) the overall dollar impact of the requested increase, considering
 24 the filer's market share and the magnitude of the requested rate
 25 change;

26 (2) whether the increase, if granted, will increase the filer's rates
 27 significantly above market norms;

28 (3) whether the filer is advancing a significantly different alternate
 29 ratemaking methodology to the standard methodology established
 30 pursuant to section 8 of P.L.1988, c.119 (C.17:29A-36.2);

31 (4) whether the insurer is experiencing financial difficulties at its
 32 present rate level, as evidenced by the filing of rehabilitation
 33 proceedings, recent downgrading by insurance rating services, or
 34 significant losses reported on the filer's public financial statement.

35 Upon the effective date of this act, the Director of the Division of
 36 Rate Counsel in the Department of the Public Advocate shall, in
 37 addition to the powers set forth in this act, have the express authority
 38 to intervene in public hearings pursuant to section 66 of P.L.1998,
 39 c.21 (C.17:29A-46.8).

40

41 49. (New section) Division of Rate Counsel; intent.

42 It is the intent of the Legislature that the resources of the Division
 43 of Rate Counsel be devoted to the maximum extent possible to
 44 ensuring adequate representation of the interests of those consumers
 45 whose interests would otherwise be inadequately represented in
 46 matters within the jurisdiction of the Division of Rate Counsel.

1 When the interests of consumers differ, the Director of the
2 Division of Rate Counsel shall give priority to representing the
3 interests of consumers whose interests the Director of the Division of
4 Rate Counsel finds to be inadequately represented.

5 This section does not require the Division of Rate Counsel to
6 represent the interests of a consumer or group of consumers if the
7 Director of the Division of Rate Counsel determines that such
8 representation is adverse to the overall interests of the using and
9 consuming public.

10

11 50. (New section) Division of Rate Counsel; required notices to
12 the division.

13 The Division of Rate Counsel shall receive a copy from the filer of
14 any 1prior approval¹ rate filing seeking consumer insurance rate
15 increases, including any amendments or supplements thereto. A copy
16 of such rate filing shall be received by the Division of Rate Counsel
17 concurrent with any rate filing with the Commissioner of Banking and
18 Insurance; except, however, the filer is not required to provide a copy
19 of such rate filing with the Division of Rate Counsel if: (a) the filing
20 is an expedited prior approval rate filing made pursuant to either
21 section 34 of P.L.1997, c.151 (C.17:29A-46.6) or section 3 of
22 P.L.2001, c.409 (C.17:36-5.35); or (b) the filing is made pursuant to
23 any statutory change in coverage provided under a policy of private
24 passenger automobile insurance ¹; or (c) the filing is a prior approval
25 rate filing of seven percent or less¹.

26

27 51. (New section) Division of Rate Counsel; public notices of
28 certain consumer insurance rate increases.

29 The Division of Rate Counsel and the Department of Banking and
30 Insurance may publish on their respective official websites, to the
31 extent practicable, as the case may be: (a) notice of all filings for
32 consumer insurance rate increases; (b) all requests for hearing dates
33 for such increases; and (c) the date or dates a hearing is to be held.
34 The Division of Rate Counsel and the Department of Banking and
35 Insurance, pursuant to regulations established by the Division of Rate
36 Counsel, shall establish operational links such that each respective
37 website may be accessed from the other. Publication on the applicable
38 website shall take place within three business days of the applicable
39 notice of filing, request for hearing, and date or dates of hearings.

40 If an insurer or rating organization files for a ¹[consumer
41 insurance] personal lines prior approval¹ rate increase, excluding
42 rating system changes made pursuant to P.L.1997, c.151 (C.17:29A-
43 46.1 et seq.), the insurer or ratings organization shall, in conjunction
44 with such filing, notify the public of the proposed rate change; except,
45 however, the filer is not required to notify the public of the proposed
46 rate change if the rate increase pertains to: (a) an expedited prior

1 approval rate filing made pursuant to either section 34 of P.L.1997,
2 c.151 (C.17:29A-46.6) or section 3 of P.L.2001, c.409 (C.17:36-
3 5.35); or (b) a rate filing made pursuant to any statutory change in
4 coverage provided under a policy of private passenger automobile
5 insurance; or (c) a ¹[rating system change made pursuant to P.L.1997,
6 c.151 (C.17:29A-46.1 et seq.), as referenced above] prior approval
7 rate filing of seven percent or less¹.

8 Such notice shall be communicated through regular or electronic
9 mail to the named policy holders who use the products and services
10 subject to the rate increase, within seven business days of the
11 applicable filing and shall conform to a form prescribed by the
12 Department of Banking and Insurance pursuant to regulations
13 established in conjunction with the Rate Counsel.
14

15 52. (New section) Division of Rate Counsel; payment of expenses
16 of division; annual utility assessment.

17 a. Annual utility assessment. The Division of Rate Counsel shall
18 annually make an assessment against each public utility consistent
19 with, but separate from, the Board of Public Utilities' assessments
20 under the provisions of P.L.1968, c.173 (C.48:2-59 et seq.). All
21 assessments due and owing to the Division of Rate Counsel as of the
22 effective date of this act shall be deemed due and owing to the
23 Division of Rate Counsel in the Department of the Public Advocate as
24 of the effective date of this act.

25 b. Calculation of annual utility assessment. The annual assessment
26 shall be equal to a percentage of the gross operating revenue of the
27 public utilities under the jurisdiction of the Board of Public Utilities
28 derived from intrastate operations during the preceding calendar year
29 at a rate determined annually by the Director of the Division of Rate
30 Counsel in the manner set forth in section 2 of P.L.1968, c.173
31 (C.48:2-60), except that the total amount assessed to any public utility
32 shall not exceed $\frac{1}{4}$ of 1 percent of the gross operating revenue subject
33 to assessment hereunder. The minimum annual assessment under this
34 section shall not be less than \$500.

35 c. Levy and payment of annual assessment. The annual
36 assessment set forth in subsections a. and b. above shall be levied by
37 the Division of the Rate Counsel no later than August 15, and shall be
38 paid within 30 days of mailing notice thereof and a statement of the
39 amount by first class mail to any public utility, except that for Fiscal
40 Year 2006 this assessment shall be levied no later than
41 August 1, 2005.
42

43 53. (New section) Division of Rate Counsel; payment of expenses
44 of division; annual insurance assessment.

45 a. Annual insurance assessment. The Director of the Division of
46 Budget and Accounting in the Department of the Treasury shall, on or

1 before August 15 in each year, ascertain and certify to the
2 Commissioner of Banking and Insurance by category the total amount
3 of expenses incurred by the State in connection with the administration
4 of the special functions of the Division of Rate Counsel in the
5 Department of the Public Advocate relative to the expenses of the
6 Division of Rate Counsel in connection with the administration of
7 insurance rate cases during the preceding fiscal year. The Department
8 of Banking and Insurance shall make a separate special assessment on
9 lines of insurance subject to the jurisdiction of the Rate Counsel
10 pursuant to subsection b. of section 48 of this act, on an annual basis,
11 in accordance with the formula set forth in P.L.1995 c.156 (C.17:1C-
12 19 et seq.).

13 b. Calculation of annual insurance assessment. The annual
14 assessment shall be no more than a specified aggregate amount
15 adjusted annually for inflation, which shall be calculated and applied
16 separately from the maximum total assessment set forth in section 13
17 of P.L.1995, c.156 (C.17:1C-31). The amount collected for expenses
18 pursuant subsection a. of this section, shall not exceed the amount
19 appropriated by the Legislature for those expenses.

20

21 54. (New section) Division of Rate Counsel; transfer of powers
22 and duties.

23 All functions, powers, and duties which had been vested in the
24 Division of Rate Counsel in the Department of the Public Advocate
25 prior to the effective date of P.L.1994, c.58 (C.52:27E-50 et al.) and
26 which were transferred by P.L.1994, c.58 (C.52:27E-50 et al.) to the
27 Department of Insurance and to the Division of the Ratepayer
28 Advocate established by Reorganization Plan 94-001, are hereby
29 transferred to and assumed by the Division of Rate Counsel in the
30 Department of the Public Advocate.

31 Whenever, in any law, rule, regulation, order, reorganization plan,
32 contract, document, judicial or administrative proceeding, or
33 otherwise, reference is made to the Department of Banking and
34 Insurance, or to the Division of the Ratepayer Advocate concerning
35 functions, powers and duties which had been vested in the Division of
36 Rate Counsel in the Department of the Public Advocate prior to the
37 effective date of P.L.1994, c.58 (C.52:27E-50 et al.), the same shall
38 mean and refer to the Division of Rate Counsel in the Department of
39 the Public Advocate.

40

41 55. (New section) Division of Rate Counsel; right to intervene in
42 federal proceedings.

43 The Division of Rate Counsel shall have the right to represent the
44 public interest in any federal proceeding, including but not limited to
45 proceedings before the Federal Communications Commission, the
46 Federal Energy Regulatory Commission, and the Federal Trade

1 Commission.

2

3 ARTICLE 8. DIVISION OF PUBLIC INTEREST ADVOCACY

4

5 56. (New section) Division of Public Interest Advocacy;
6 established.

7 There is hereby established in the Department of the Public
8 Advocate the Division of Public Interest Advocacy to be under the
9 supervision of the Director of the Division of Public Interest
10 Advocacy, who shall be an attorney-at-law of this State, appointed by
11 the Public Advocate.

12

13 57. (New section) Division of Public Interest Advocacy;
14 jurisdiction.

15 The Division of Public Interest Advocacy may represent the public
16 interest in such administrative and court proceedings, other than those
17 under the jurisdiction of the Division of Rate Counsel pursuant to this
18 act, as the Public Advocate deems shall best serve the public interest.

19

20 58. (New section) Division of Public Interest Advocacy; decision
21 to represent particular public interest.

22 The Public Advocate shall have sole discretion to represent or
23 refrain from representing the public interest in any proceeding. The
24 Public Advocate shall consider in exercising his or her discretion the
25 importance and the extent of the public interest involved and whether
26 that interest would be adequately represented without the action of the
27 department. If the Public Advocate determines that there are
28 inconsistent public interests involved in a particular matter, the Public
29 Advocate may choose to represent one such interest based on the
30 considerations in this section, to represent no interest in that matter,
31 or to represent one such interest through the Division of Public
32 Interest Advocacy and another or others through other divisions of the
33 department or through outside counsel engaged on a case by case
34 basis. The Public Advocate has the authority to use his or her
35 discretion to refer potential litigation or other matters to the Dispute
36 Settlement Office in the Division of Citizen Relations for mediation
37 and resolution.

38

39 59. (New section) Division of Public Interest Advocacy; power.

40 The Division of Public Interest Advocacy may represent and
41 protect the public interest by:

- 42 a. intervening in or instituting proceedings before any department,
43 commission, agency, or board leading to an administrative adjudication
44 or administrative rule as defined in section 2 of P.L.1968, c.410
45 (C.52:14B-2), or intervening in any matter involving the grant or
46 denial of a permit issued by an agency; and

1 b. instituting litigation on behalf of a broad public interest when
2 authorized to do so by the Public Advocate. Such litigation or
3 representation may include, but is not limited to, litigation on behalf
4 of, or representation of, consumers, the indigent, the elderly, senior
5 citizens, people with disabilities, persons with mental illness and
6 developmental disabilities, or any other group or interest deemed
7 appropriate by the Public Advocate.

8
9 60. (New section) Division of Public Interest Advocacy;
10 additional powers

11 a. The Division of Public Interest Advocacy may receive and
12 investigate complaints and provide such legal representation and other
13 advocacy services as the Public Advocate deems appropriate to
14 protect and advocate the rights of any group or interest deemed
15 appropriate by the Public Advocate, except, however, the provisions
16 of this act shall not be construed to authorize the Division of Public
17 Interest Advocacy, or any other division within the Department of the
18 Public Advocate, to ¹[(1) represent any individual in any civil
19 commitment proceeding pursuant to section 10 of P.L.1987, c.116
20 (C.30:4-27.10); or (2)]¹ represent any individual in any matters
21 involving incarceration, except as expressly set forth as the duties of
22 the Corrections Ombudsperson in the Division of Citizen Relations.

23 b. The Division of Public Interest Advocacy may, in its discretion,
24 commence negotiation, mediation, or alternative dispute resolution
25 prior to, or in lieu of, the initiation of any litigation.

26
27 **ARTICLE 9. DIVISION OF ELDER ADVOCACY**

28
29 61. (New section) Division of Elder Advocacy; established.

30 There is hereby established in the Department of the Public
31 Advocate the Division of Elder Advocacy to be under the supervision
32 of the Director of the Division of Elder Advocacy, appointed by the
33 Public Advocate.

34
35 62. (New section) Division of Elder Advocacy; jurisdiction.

36 The Division of Elder Advocacy may represent the public interest
37 in such administrative and court proceedings as the Public Advocate
38 deems shall best serve the interests of elderly adults.

39
40 63. (New section) Division of Elder Advocacy; powers and
41 duties.

42 The Division of Elder Advocacy may protect the interests of the
43 elderly by:

44 a. intervening in or instituting proceedings involving the interests
45 of the elderly before any department, commission, agency, or board of
46 the State leading to an administrative adjudication or administrative

1 rule as defined in section 2 of P.L.1968, c.410 (C.52:14B-2);

2 b. instituting litigation on behalf of the elderly when authorized to
3 do so by the Public Advocate; and

4 c. commencing negotiation, mediation, or alternative dispute
5 resolution prior to, or in lieu of, the initiation of any litigation.

6

7 64. (New section) Division of Elder Advocacy; additional powers
8 and duties.

9 a. The Division of Elder Advocacy shall report to the Governor
10 and the Legislature on recommendations that will further the State's
11 ability to secure, preserve, and promote the health, safety, and welfare
12 of New Jersey's elderly.

13 b. The Division of Elder Advocacy shall have the authority to hold
14 a public hearing on the subject of any investigation or study. The
15 division shall hear testimony from agency and program representatives,
16 the public in general, and such others as may be deemed appropriate.

17 c. The Division of Elder Advocacy shall have access to the records
18 and facilities of every agency, funded entity, or other recipient of
19 public funds to the extent that any such records and facilities are
20 related to the expenditure of public funds, provided that the division
21 complies with all privacy and confidentiality protections applicable to
22 those records and facilities, notwithstanding any contrary provision of
23 law. Notwithstanding the foregoing, the Division of Elder Advocacy
24 shall have access to any facility or institution, whether public or
25 private, offering health or health-related services for the
26 institutionalized elderly which is subject to regulation, visitation,
27 inspection or supervision by any government agency, provided such
28 access is permitted by State or federal law. All agencies shall
29 cooperate with the Division of Elder Advocacy and, when requested,
30 shall provide specific information in the form requested.

31

32 65. (New section) Ombudsperson for the Institutionalized Elderly;
33 transfer to Department of the Public Advocate.

34 a. There is hereby established in the Division of Elder Advocacy
35 in the Department of the Public Advocate an Ombudsperson for the
36 Institutionalized Elderly.

37 b. The Ombudsperson for the Institutionalized Elderly shall be
38 appointed by the Public Advocate.

39 c. All functions, powers, and duties now vested in the Office of
40 the Ombudsman for the Institutionalized Elderly pursuant to P.L.1977,
41 c.239 (C.52:27G-1 et seq.) are hereby transferred to and assumed by
42 the Ombudsperson for the Institutionalized Elderly in the Department
43 of the Public Advocate.

44 Whenever, in any law, rule, regulation, order, reorganization plan,
45 contract, document, judicial or administrative proceeding, or
46 otherwise, reference is made to the Office of the Ombudsman for the

1 Institutionalized Elderly in, but not of, the Department of Community
2 Affairs, or the Office of the Ombudsman for the Institutionalized
3 Elderly in, but not of, the Department of Health and Senior Services,
4 or Nursing Home Ombudsman in Department of Community Affairs,
5 the same shall mean and refer to the Ombudsperson for the
6 Institutionalized Elderly in the Department of the Public Advocate.
7

8 ARTICLE 10. ¹[DIVISION] OFFICE ¹ OF THE ¹CHILD
9 ¹[ADVOCACY] ADVOCATE¹
10

11 66. (New section) ¹[Division of Child Advocacy] Office of the
12 Child Advocate¹; established.

13 There is established ¹[in the Department of the Public Advocate
14 the Division of Child Advocacy to be under the supervision of the
15 child advocate] the Office of the Child Advocate in the Executive
16 Branch of the State Government. For purposes of complying with
17 Article V, Section IV, paragraph 1 of the New Jersey Constitution, the
18 office is allocated within the Department of the Public Advocate, but
19 notwithstanding the allocation, the office shall be independent of any
20 supervision or control by the department, or a division, office or
21 officer thereof, in the performance of its duties¹.

22
23 67. (New section) ¹[Division of Child Advocacy; qualifications of
24 child advocate; appointment.] Office of the Child Advocate;
25 qualifications; appointment; term.¹

26 ¹[The child advocate shall be an attorney admitted to practice law
27 in New Jersey and qualified by training and experience to perform the
28 duties of the division. The child advocate shall be appointed by the
29 Public Advocate.]

30 a. The administrator and chief executive officer of the office shall
31 be the Child Advocate, who shall be an attorney admitted to practice
32 law in New Jersey and be qualified by training and experience to
33 perform the duties of the office.

34 b. The child advocate shall be appointed by the Governor and shall
35 serve for a term of five years and until the appointment and
36 qualification of his successor. The Governor shall have the power to
37 remove the child advocate for cause. The child advocate shall devote
38 his or her entire professional time to the duties of this position and
39 receive such salary as shall be provided by law. A vacancy occurring
40 in the position of child advocate shall be filled in the same manner as
41 the original appointment, except that if the child advocate dies,
42 resigns, becomes ineligible to serve for any reason or is removed from
43 office, the Governor shall appoint an acting child advocate who shall
44 serve until the appointment and qualification of the child advocate's
45 successor.¹

46 68. (New section) ¹[Division of Child Advocacy] Office of Child

1 Advocate¹; purpose¹; consultation¹.

2 ¹a.¹ The child advocate shall seek to ensure the provision of
3 effective, appropriate and timely services for children at risk of abuse
4 and neglect in the State, and that children under State supervision due
5 to abuse or neglect are served adequately and appropriately by the
6 State.

7 ¹b.¹ The ¹[division] Office of the Child Advocate shall be
8 deemed a child protective agency for the purposes of section 1 of
9 P.L.1977, c.102 (C.9:6-8.10a).

10 ¹c. The child advocate shall consult with the Public Advocate
11 prior to exercising his duties by commencing an investigation, legal
12 proceeding, inspection, evaluation or other matter that may be co-
13 extensive with the duties of the Public Advocate or of a division of the
14 Department of the Public Advocate. The purpose of the consultation
15 shall be to provide the Public Advocate with an opportunity to assist
16 or collaborate with the child advocate on such investigation, legal
17 proceeding, inspection, evaluation or other matter if the extent of the
18 assistance or collaboration is within the powers and duties of the
19 Public Advocate or of a division as those powers and duties are
20 provided in this act. This requirement to consult the Public Advocate
21 or the failure to do so in a timely manner shall not preclude or serve
22 to restrict the child advocate in the performance of his duties at his
23 discretion.¹

24

25 69. (New section) ¹[Division of Child Advocacy] Office of the
26 Child Advocate¹; duties.

27 a. The child advocate shall:

28 (1) administer the work of the ¹[division] Office of the Child
29 Advocate¹;

30 (2) ¹[employ, with the approval of the Public Advocate, such
31 officers and investigators as may be required for the conduct of the
32 work of the division, except as otherwise provided herein] appoint
33 and remove such officers, investigators, stenographic and clerical
34 assistants and other personnel, in the career or unclassified service, as
35 may be required for the conduct of the office, subject to the provisions
36 of Title 11A of the New Jersey Statutes (Civil Service), and other
37 applicable statutes, except as provided otherwise herein¹ ;

38 (3) formulate ¹and adopt¹ rules and regulations for the efficient
39 conduct of the work and ¹general¹ administration of the ¹[division
40 and] office.¹ its officers and employees, ¹ [which rules and regulations
41 shall be adopted]¹ in accordance with the "Administrative Procedure
42 Act," P.L.1968, c.410 (C.52:14B-1 et seq.); and

43 (4) institute or cause to be instituted such legal proceedings or
44 processes consistent with the Rules Governing the Courts of New
45 Jersey as may be necessary to properly enforce and give effect to any
46 of the child advocate's powers or duties.

1 b. Consistent with the provisions of federal and State law,
2 (1) the child advocate shall have access to, and the right to inspect
3 and copy, any records, including pupil records in accordance with the
4 provisions of N.J.S.18A:36-19, necessary to carry out the
5 responsibilities under this act; and

6 (2) the child advocate shall have reasonable access to, and the
7 right to copy any records from, the Division of Youth and Family
8 Services' Service Information System, or its successor, necessary to
9 carry out its responsibilities under this act, and only with regard to
10 individuals who are or may be the subject of an investigation by the
11 child advocate, or to assess the status of an individual complaint or
12 inquiry to determine whether further action by the child advocate is
13 appropriate; except that, access provided to the successor system,
14 including the Statewide Automated Child Welfare Information System,
15 shall be limited to information available through the Service
16 Information System, unless otherwise agreed to by the child advocate
17 and the Department of Human Services.

18 c. The child advocate may issue subpoenas to compel the
19 attendance and testimony of witnesses or the production of books,
20 papers and other documents, and administer oaths to witnesses in any
21 matter under the investigation of the ¹[division] office¹.

22 If any person to whom such subpoena is issued fails to appear or,
23 having appeared, refuses to give testimony, or fails to produce the
24 books, papers or other documents required, the child advocate may
25 apply to the Superior Court, which may order the person to appear
26 and give testimony or produce the books, papers or other documents,
27 as applicable.

28 d. The child advocate shall disseminate information to the public
29 on the objectives of the ¹[division] office¹, the services the
30 ¹[division] office¹ provides and the methods by which the ¹[division]
31 office¹ may be contacted.

32 e. The child advocate shall aid the Governor in proposing methods
33 of achieving increased coordination and collaboration among State
34 agencies to ensure maximum effectiveness and efficiency in the
35 provision of services to children.

36

37 70. (New section) ¹[Division of Child Advocacy] Office of the
38 Child Advocate¹; powers.

39 The child advocate may:

40 a. investigate, review, monitor or evaluate any State agency
41 response to, or disposition of, an allegation of child abuse or neglect
42 in this State;

43 b. inspect and review the operations, policies and procedures of:

44 (1) juvenile detention centers operated by the counties and all
45 juvenile justice facilities operated by or under contract with the
46 Juvenile Justice Commission, including, but not limited to, secure

- 1 correctional facilities and residential and day treatment programs;
- 2 (2) resource family homes, group homes, residential treatment
3 facilities, shelters for the care of abused or neglected children, shelters
4 for the care of juveniles considered as juvenile-family crisis cases,
5 shelters for the care of homeless youth, or independent living
6 arrangements operated, licensed, or approved for payment, by the
7 Department of Human Services, Department of Community Affairs or
8 Department of Health and Senior Services; and
- 9 (3) any other public or private setting in which a child has been
10 placed by a State or county agency or department;
- 11 c. review, evaluate, report on and make recommendations
12 concerning the procedures established by any State agency providing
13 services to children who are at risk of abuse or neglect, children in
14 State or institutional custody, or children who receive child protective
15 or permanency services;
- 16 d. review, monitor and report on the performance of State-funded
17 private entities charged with the care and supervision of children due
18 to abuse or neglect by conducting research audits or other studies of
19 case records, policies, procedures and protocols, as deemed necessary
20 by the child advocate to assess the performance of the entities;
- 21 e. receive, investigate and make referrals to other agencies or take
22 other appropriate actions with respect to a complaint received by the
23 ¹[division] office¹ regarding the actions of a State, county or
24 municipal agency or a State-funded private entity providing services
25 to children who are at risk of abuse or neglect;
- 26 f. hold a public hearing on the subject of an investigation or study
27 underway by the ¹[division] office¹, and receive testimony from
28 agency and program representatives, the public and other interested
29 parties, as the child advocate deems appropriate;
- 30 g. establish and maintain a 24-hour toll-free telephone hotline to
31 receive and respond to calls from citizens referring problems to the
32 child advocate, both individual and systemic, in how the State, through
33 its agencies or contract services, protects children;
- 34 h. in exercising the authority provided in subsection a. of this
35 section, the child advocate may conduct unannounced site visits to any
36 institution or facility to which children are committed, placed or
37 otherwise disposed if the child advocate, prior to conducting an
38 unannounced site visit, has initiated a project or investigation into the
39 response or disposition of an allegation of abuse or neglect and there
40 is a reasonable basis to believe that an unannounced site visit is
41 necessary to carry out the child advocate's responsibilities under this
42 act, provided, however, that any unannounced site visit shall be
43 conducted at a reasonable time and in a reasonable manner;
- 44 i. in exercising the authority provided under subsections a. through
45 e. of this section, the child advocate shall consult with any appropriate
46 State, county or municipal agency or a State-funded private entity

1 providing services to children, and may request from any such entity,
2 and the entity is hereby authorized and directed to provide, such
3 cooperation and assistance as will enable the child advocate to
4 properly perform its responsibilities under this act; and

5 j. notwithstanding the provisions of section 11 of P.L.1944, c.20
6 (C.52:17A-11) to the contrary ¹[and with the approval of the Public
7 Advocate]¹, hire independent counsel on a case-by-case basis to
8 provide competent representation in light of the nature of the case, the
9 services to be performed, the experience of the particular attorney and
10 other relevant factors.

11
12 71. (New section) ¹[Division of Child Advocacy] Office of the
13 Child Advocate¹; findings; recommendations.

14 a. If the child advocate identifies a systemic problem in how the
15 State, through its agencies or contract services, protects children, the
16 child advocate shall meet with the State agency or agencies with
17 jurisdiction to provide a reasonable opportunity to discuss the problem
18 and identify possible responses the agency may consider. Taking into
19 account any information provided during the meeting and discussion,
20 the child advocate shall provide its findings and recommendations to
21 the agency affected by the findings and recommendations, and, except
22 as provided in subsections b. and c. of section 76 of this act, make
23 those findings and recommendations available to the public.

24 b. Within 30 days from the receipt of the child advocate's findings
25 and recommendations, the agency shall develop a corrective action
26 response that addresses the findings and recommendations of the child
27 advocate and specifies what actions, if any, the agency will take in
28 response to the systemic problem identified by the child advocate,
29 which response may be developed in conjunction with the child
30 advocate.

31 c. The agency shall submit its corrective action response to the
32 head of the relevant department or departments with jurisdiction over
33 the agency and simultaneously provide a copy to the child advocate.

34 d. The child advocate shall monitor an agency's implementation of
35 its corrective action response. An agency implementing a corrective
36 action response shall provide the child advocate with periodic reports
37 on the status of the actions taken by the agency pursuant to its
38 corrective action response. The child advocate shall monitor the
39 agency's implementation of its corrective action response for a period
40 of one year, during which time the agency shall provide the child
41 advocate with periodic reports, except that the child advocate may
42 determine that the monitoring and periodic reports are required for a
43 period of less than one year. The agency's obligation to provide
44 periodic reports on the implementation of its corrective action
45 response may exceed a period of one year if the child advocate and the
46 agency jointly agree that an extended reporting period is appropriate.

1 e. If an agency fails to promptly and adequately implement a
2 corrective action response, the child advocate shall take such action as
3 the child advocate deems necessary.

4 f. An agency shall make public the corrective action responses and
5 periodic status reports required by this section, except that the agency
6 may provide to the child advocate an additional response or report
7 containing confidential information.

8
9 72. (New section) ¹[Division of Child Advocacy] Office of the
10 Child Advocate¹; additional powers.

11 a. In addition to the powers granted in section 70 of this act, the
12 child advocate may:

13 (1) intervene in or institute litigation, including appearing in the
14 capacity of an amicus curiae, as appropriate, or

15 (2) intervene in or institute administrative proceedings before any
16 department, commission, agency or State board, to assert the broad
17 public interest of the State in the welfare of children and to protect and
18 promote the rights of children.

19 In taking such actions, the child advocate shall consider whether
20 a child or family may be in need of assistance from the child advocate
21 or whether there is a systemic issue in the State's provision of services
22 to children that should be addressed. The child advocate shall make
23 a good faith effort to resolve issues or problems, and shall have the
24 authority to commence negotiations, mediation or alternative dispute
25 resolution in its advocacy efforts prior to, or in lieu of, the initiation
26 of any action brought pursuant to this section.

27 b. The child advocate shall have discretion to decide whether to
28 intervene in any particular matter or to represent or refrain from
29 representing the public interest in a proceeding. The child advocate
30 shall consider, in exercising his discretion, the resources available, the
31 importance and extent of the public interest involved, and whether that
32 interest would be adequately represented without the action of the
33 ¹[division] office¹ .

34
35 73. (New section) ¹[Division of Child Advocacy] Office of the
36 Child Advocate¹; communication.

37 a. The child advocate shall seek the approval of a parent, guardian
38 or law guardian, as applicable, or obtain the approval of a court of
39 competent jurisdiction so as to communicate directly with a child who
40 is the subject of a complaint or allegation of child abuse or neglect, if
41 necessary to conduct an investigation authorized under the provisions
42 of this act. The communications with the child shall be conducted
43 under such terms and conditions that protect the best interests of the
44 child.

45 b. If court approval is sought, the court, in reviewing an
46 application for approval, shall consider: (1) the best interests of the

1 child, so as to minimize any detrimental effects on the child that may
2 occur as a result of the communication; and (2) the investigative needs
3 of the child advocate and law enforcement authorities, when
4 applicable. Upon consideration of the factors in this subsection, the
5 court may order any alternative methods for obtaining the required
6 information.

7
8 74. (New section) ¹[Division of Child Advocacy] Office of the
9 Child Advocate¹; protection; resource.

10 The child advocate shall seek to ensure the protection of children
11 who are in an institution or resource family care by reviewing,
12 evaluating and monitoring the operation and activities of the
13 Institutional Abuse Investigation Unit in the Department of Human
14 Services.

15 a. In order to enable the child advocate to carry out the child
16 advocate's responsibilities under this section, the Institutional Abuse
17 Investigation Unit shall:

18 (1) promptly notify the child advocate of any allegations of abuse
19 or neglect made against an institution or resource family home serving
20 children in this State;

21 (2) promptly provide the child advocate with a copy of the unit's
22 response to the complaint and the actions taken by the unit to address
23 the complaint;

24 (3) provide the child advocate with monthly updates of the status
25 of actions proposed by the unit regarding an existing complaint that
26 has not been resolved; and

27 (4) provide the child advocate with such other information as the
28 child advocate may deem necessary to carry out the child advocate's
29 responsibilities to review, evaluate and monitor the operation and
30 activities of the unit.

31 b. As used in this section, "institution" means a public or private
32 facility, in this State or out-of-State, that provides children with
33 out-of-home care, supervision or maintenance. Institution includes,
34 but is not limited to: a correctional facility, detention facility,
35 treatment facility, child care center, group home, public and nonpublic
36 elementary or secondary school and school bus or other similar vehicle
37 used to transport students to and from school, residential school,
38 shelter, psychiatric hospital and developmental center.

39
40 75. (New section) ¹[Division of Child Advocacy] Office of the
41 Child Advocate¹; reports.

42 The child advocate shall report annually to the Governor, the
43 Public Advocate, the Commissioner of Human Services, and the
44 Legislature on: the activities of the ¹ [division] office¹; priorities for
45 children's services that have been identified by the child advocate; and
46 recommendations for improvement or needed changes concerning the

1 provision of services to children who are at risk of abuse or neglect,
2 and are in State or institutional custody or receive child protective or
3 permanency services by State agencies and State-funded private
4 entities.

5 The annual report shall be made available to the public.

6
7 76. (New section) ¹[Division of Child Advocacy] Office of the
8 Child Advocate¹; disclosure; confidentiality.

9 a. The child advocate shall make public its findings of
10 investigation reports or other studies undertaken by the ¹[division]
11 office¹, including its investigatory findings to complaints received
12 pursuant to section 70 of this act, and shall forward any publicly
13 reported findings to the Governor, the Legislature, the Public
14 Advocate, the Commissioner of Human Services, the affected public
15 agencies and the Governor's Cabinet for Children.

16 b. The child advocate shall not disclose:

17 (1) any information that would likely endanger the life, safety, or
18 physical or emotional well-being of a child or the life or safety of a
19 person who filed a complaint or which may compromise the integrity
20 of a State or county department or agency investigation, civil or
21 criminal investigation or judicial or administrative proceeding; and

22 (2) the name of or any other information identifying the person
23 who filed a complaint with, or otherwise provided information to, the
24 ¹[division] office¹ without the written consent of that person.

25 The information subject to the provisions of this subsection shall
26 not be considered a public record pursuant to the provisions of
27 P.L.1963, c.73 (C.47:1A-1 et seq.) and P.L.2001, c.404 (C.47:1A-5
28 et al.).

29 c. The child advocate shall not disclose any information that may
30 be deemed confidential by federal or State law, except when necessary
31 to allow the Department of the Public Advocate, Department of
32 Human Services, Attorney General, Juvenile Justice Commission and
33 other State or county department or agency to perform its duties and
34 obligations under the law.

35
36 77. (New section) ¹ [Division of Child Advocacy] Office of the
37 Child Advocate¹; transfer of functions.

38 All functions, powers, and duties now vested in the Office of the
39 Child Advocate pursuant to P.L.2003, c.187 (C.52:17D-1 et seq.) are
40 transferred to and assumed by the ¹[Division of Child Advocacy in]
41 Office of the Child Advocate allocated in, but not of,¹ the Department
42 of the Public Advocate.

43 Whenever, in any law, rule, regulation, order, plan, contract,
44 document, judicial or administrative proceeding, or otherwise,
45 reference is made to the Office of the Child Advocate in, but not of,
46 the Department of Law and Public Safety, the same shall mean and

1 refer to the ¹[Division of Child Advocacy] Office of the Child
2 Advocate allocated¹ in ¹, but not of,¹ the Department of the Public
3 Advocate.

4
5 ARTICLE ¹[10.] 11.¹ ACTIONS, TRANSFERS, REPEALS ¹[,
6 AND REPORTS]¹

7
8 78. (New section) Actions; name of party; prior communication
9 to public entity.

10 a. Any action brought by the Public Advocate or any persons
11 authorized herein to institute or participate in actions before the courts
12 or agencies of this State shall be brought in the name of the person
13 serving as the Public Advocate or in the name of an affected individual
14 or group, but shall not be brought in the name of the State or the
15 people thereof.

16 b. Prior to initiating litigation, the Public Advocate shall
17 communicate, in writing, with a public entity against which the Public
18 Advocate anticipates filing adversarial action. The Public Advocate
19 shall state unequivocally in its written transmittal to the public entity
20 that the Public Advocate anticipates filing litigation to resolve the
21 matter in controversy. The purpose of this requirement is to clearly
22 provide the potential litigants with a final opportunity to resolve the
23 matters in controversy outside the court system.

24
25 79. (New section) Suits or causes of action against Legislature or
26 officers thereof.

27 The provisions of this act in and of themselves shall not be
28 construed so as to create any new causes of action, or to authorize any
29 suit against the Legislature or either House or the officers thereof.

30
31 80. (New section) No award of punitive or exemplary damages
32 against public entities or employees.

33 No punitive or exemplary damages shall be awarded against a
34 public entity or public employee in any action brought by the Public
35 Advocate.

36
37 81. (New section) Applicability of State Agency Transfer Act.

38 This act shall be subject to the provisions of the "State Agency
39 Transfer Act," P.L.1971, c.375 (C.52:14D-1 et seq.).

40
41 82. (New section) Preservation of rights and terms.

42 This act shall not:

43 a. affect the tenure, compensation, and pension rights, if any, of
44 the lawful holder thereof, in any position not specifically abolished
45 herein, upon the effective date of this act; or

46 b. alter the term of any member of any board, commission, or

1 public body, not specifically abolished or repealed herein, lawfully in
2 office on the effective date of this act, or require the reappointment
3 thereof.

4
5 83. (New section) Supersedure and repeal of inconsistent acts.

6 All acts and parts of acts inconsistent with any of the provisions of
7 this act are, to the extent of such inconsistency, superseded and
8 repealed.

9
10 84. (New section) Assertion of claim against spill compensation
11 fund for class by Public Advocate.

12 The Department of the Public Advocate may act to assert claims
13 as alleged against the Spill Compensation Fund established pursuant
14 to the "Spill Compensation and Control Act," P.L.1976, c.141
15 (C.58:10-23.11 et seq.).

16
17 85. (New section) Severability.

18 If any section, subsection, paragraph, sentence, or other part of
19 this act is adjudged unconstitutional or invalid, such judgment shall not
20 affect, impair, or invalidate the remainder of this act, but shall be
21 confined in its effect to the section, subsection, paragraph, sentence,
22 or other part of this act directly involved in the controversy in which
23 the judgment shall have been rendered.

24
25 86. Section 3 of P.L.1977, c.239 (C.52:27G-3) is amended to read
26 as follows:

27 3. There is [hereby] established in the [Executive Branch of the
28 State Government the Office of the Ombudsman] Department of the
29 Public Advocate the Ombudsperson for the Institutionalized Elderly.
30 [For the purposes of complying with the provisions of Article V,
31 Section IV, paragraph 1 of the New Jersey Constitution, the Office of
32 the Ombudsman for the Institutionalized Elderly is hereby allocated
33 to the Department of Community Affairs, but, notwithstanding said
34 allocation, the said office shall be independent of any supervision or
35 control by the department or by any board or officer thereof.]
36 (cf: P.L.1977, c.239, s.3)

37
38 87. Section 4 of P.L.1977, c.239 (C.52:27G-4) is amended to read
39 as follows:

40 4. The administrator and chief executive officer of the office shall
41 be the [ombudsman] Ombudsperson, who shall be a person qualified
42 by training and experience to perform the duties of the office. [The
43 ombudsman shall be appointed by the Governor, with the advice and
44 consent of the Senate, and shall serve at the pleasure of the Governor
45 during the Governor's term of office and until the appointment and
46 qualification of the ombudsman's successor. He shall devote his entire

1 time to the duties of his position and shall receive such salary as shall
2 be provided by law. Any vacancy occurring in the position of
3 ombudsman shall be filled in the same manner as the original
4 appointment; provided, however, that whenever the ombudsman dies,
5 resigns, becomes ineligible to serve for any reason, or is removed
6 from office, the Governor shall appoint an acting ombudsman who
7 shall serve until the appointment and qualification of the ombudsman's
8 successor, but in no event longer than 6 months from the occurrence
9 of the vacancy, and who shall exercise during such period all the
10 powers and duties of the ombudsman pursuant to the provisions of
11 this act.]

12 (cf: P.L.1977, c.239, s.4)

13

14 88. Section 1 of P.L.1986, c.205 (C.30:1A-4) is amended to read
15 as follows:

16 1. a. There is established in, but not of, the Department of Human
17 Services the New Jersey Boarding Home Advisory Council. The
18 council shall consist of 14 members, to be appointed by the
19 Commissioner of Human Services in consultation with the
20 Commissioners of Community Affairs and Health and Senior Services,
21 the Public [Defender] Advocate, and the Public Guardian for Elderly
22 Adults [and the Ombudsman for the Institutionalized Elderly], as
23 follows: two persons who own or operate a boarding house as defined
24 in P.L.1979, c.496 (C.55:13B-1 et al.); two persons who own or
25 operate a residential health care facility as defined in section 1 of
26 P.L.1953, c.212 (C.30:11A-1) or licensed pursuant to P.L.1971, c.136
27 (C.26:2H-1 et seq.); two persons who currently reside in a boarding
28 house or a residential health care facility; one person who is a member
29 of the organization which represents operators of boarding houses or
30 residential health care facilities, or both; one person who represents
31 the health care professions; one person who represents a county office
32 on aging; one person who represents a municipal building code
33 department; one person who represents an organization or agency
34 which advocates for mentally ill persons in this State; one person who
35 represents an organization or agency which advocates for physically
36 disabled persons in this State; and two other members who shall be
37 chosen from among persons whose work, knowledge or interest
38 relates to boarding houses or residential health care facilities and the
39 residents thereof, including but not limited to municipal and county
40 elected officials, county prosecutors, social workers, and persons
41 knowledgeable about fire prevention standards and measures needed
42 to assure safety from structural, mechanical, plumbing and electrical
43 deficiencies in boarding houses and residential health care facilities.
44 In addition, the Chairman of the General Assembly Standing Reference
45 Committee on Health and Human [Resources] Services and the
46 Chairman of the Senate Standing Reference Committee on

1 **[Institutions, Health and Welfare]** Health, Human Services and Senior
2 Citizens or their designees shall serve as ex officio members of the
3 council.

4 b. The terms of office of each appointed member shall be three
5 years, but of the members first appointed, two shall be appointed for
6 **[terms]** a term of one year, five for terms of two years, and seven for
7 terms of three years. All vacancies shall be filled for the balance of the
8 unexpired term in the same manner as the original appointment. The
9 members of the council shall not receive any compensation for their
10 services, but shall be reimbursed for the actual and necessary expenses
11 incurred in the performance of their duties as members of the council.
12 (cf: P.L.1994, c.58, s.47)

13

14 89. Section 3 of P.L.1976, c.120 (C.30:13-3) is amended to read
15 as follows:

16 3. Every nursing home shall have the responsibility for:

17 a. Maintaining a complete record of all funds, personal property
18 and possessions of a nursing home resident from any source
19 whatsoever, which have been deposited for safekeeping with the
20 nursing home for use by the resident. This record shall contain a
21 listing of all deposits and withdrawals transacted, and these shall be
22 substantiated by receipts given to the resident or his guardian. A
23 nursing home shall provide to each resident or his guardian a quarterly
24 statement which shall account for all of such resident's property on
25 deposit at the beginning of the accounting period, all deposits and
26 withdrawals transacted during the period, and the property on deposit
27 at the end of the period. The resident or his guardian shall be allowed
28 daily access to his property on deposit during specific periods
29 established by the nursing home for such transactions at a reasonable
30 hour. A nursing home may, at its own discretion, place a limitation as
31 to dollar value and size of any personal property accepted for
32 safekeeping.

33 b. Providing for the spiritual needs and wants of residents by
34 notifying, at a resident's request, a clergyman of the resident's choice
35 and allowing unlimited visits by such clergyman. Arrangements shall
36 be made, at the resident's expense, for attendance at religious services
37 of his choice when requested. No religious beliefs or practices, or any
38 attendance at religious services, shall be imposed upon any resident.

39 c. Admitting only that number of residents for which it reasonably
40 believes it can safely and adequately provide nursing care. Any
41 applicant for admission to a nursing home who is denied such
42 admission shall be given the reason for such denial in writing.

43 d. Ensuring that an applicant for admission or a resident is treated
44 without discrimination as to age, race, religion, sex or national origin.
45 However, the participation of a resident in recreational activities,
46 meals or other social functions may be restricted or prohibited if

1 recommended by a resident's attending physician in writing and
2 consented to by the resident.

3 e. Ensuring that no resident shall be subjected to physical
4 restraints except upon written orders of an attending physician for a
5 specific period of time when necessary to protect such resident from
6 injury to himself or others. Restraints shall not be employed for
7 purposes of punishment or the convenience of any nursing home staff
8 personnel. The confinement of a resident in a locked room shall be
9 prohibited.

10 f. Ensuring that drugs and other medications shall not be employed
11 for purposes of punishment, for convenience of any nursing home staff
12 personnel or in such quantities so as to interfere with a resident's
13 rehabilitation or his normal living activities.

14 g. Permitting citizens, with the consent of the resident being
15 visited, legal services programs, employees of the [Office of the Public
16 Defender, employees of the private entity designated by the Governor
17 as the State's mental health protection and advocacy agency pursuant
18 to section 22 of P.L.1994, c.58 (C.52:27E-68), and employees and
19 volunteers of the Office of the Nursing Home Ombudsman Program in
20 the Department of Community Affairs] Department of the Public
21 Advocate ², and employees of the private entity, if any, designated
22 by the Governor as the State's mental health protection and advocacy
23 agency.² whose purposes include rendering assistance without charge
24 to nursing home residents, full and free access to the nursing home in
25 order to visit with and make personal, social and legal services
26 available to all residents and to assist and advise residents in the
27 assertion of their rights with respect to the nursing home, involved
28 governmental agencies and the judicial system.

29 (1) Such access shall be permitted by the nursing home at a
30 reasonable hour.

31 (2) Such access shall not substantially disrupt the provision of
32 nursing and other care to residents in the nursing home.

33 (3) All persons entering a nursing home pursuant to this section
34 shall promptly notify the person in charge of their presence. They
35 shall, upon request, produce identification to substantiate their
36 identity. No such person shall enter the immediate living area of any
37 resident without first identifying himself and then receiving permission
38 from the resident to enter. The rights of other residents present in the
39 room shall be respected. A resident shall have the right to terminate
40 a visit by a person having access to his living area pursuant to this
41 section at any time. Any communication whatsoever between a
42 resident and such person shall be confidential in nature, unless the
43 resident authorizes the release of such communication in writing.

44 h. Ensuring compliance with all applicable State and federal
45 statutes and rules and regulations.

46 i. Ensuring that every resident, prior to or at the time of admission

1 and during his stay, shall receive a written statement of the services
2 provided by the nursing home, including those required to be offered
3 by the nursing home on an as-needed basis, and of related charges,
4 including any charges for services not covered under Title XVIII and
5 Title XIX of the Social Security Act, as amended, or not covered by
6 the nursing home's basic per diem rate. This statement shall further
7 include the payment, fee, deposit and refund policy of the nursing
8 home.

9 j. Ensuring that a prospective resident or the resident's family or
10 guardian receives a copy of the contract or agreement between the
11 nursing home and the resident prior to or upon the resident's
12 admission.

13 (cf: P.L.1997, c.241, s.1)

14

15 90. Section 4 of P.L.1992. c.111 (C.30:4C-69) is amended to read
16 as follows:

17 4. The Commissioner of Human Services shall develop an
18 interdepartmental plan for the implementation of an individualized,
19 appropriate child and family driven care system for children with
20 special emotional needs and for the reduction of inappropriate use of
21 out-of-home placements of these children. The plan shall first address
22 children ready to be returned from institutions such as the Arthur
23 Brisbane Child Treatment Center and other in-State and out-of-State
24 residential facilities, and those at imminent risk of extended
25 out-of-home placement. The commissioner shall consult with
26 appropriate representatives from the State departments of Education,
27 Corrections, Health and Senior Services, Community Affairs and the
28 [Office of the Public Defender, the private entity designated by the
29 Governor as the State's mental health protection and advocacy agency
30 pursuant to section 22 of P.L.1994, c.58 (C.52:27E-68)] Public
31 Advocate, the Child Advocate² , the private entity, if any, designated
32 by the Governor as the State's mental health protection and advocacy
33 agency² , the Statewide Children's Coordinating Council in the
34 Department of Human Services, the Administrative Office of the
35 Courts, and Statewide family advocacy groups, in the development of
36 the plan.

37 (cf: P.L.1994, c.58, s.51)

38

39 91. Section 14 of P.L.1944, c.27 (C.17:29A-14) is amended to
40 read as follows:

41 14. a. With regard to all property and casualty lines, a filer may,
42 from time to time, alter, supplement, or amend its rates, rating
43 systems, or any part thereof, by filing with the commissioner copies of
44 such alterations, supplements, or amendments, together with a
45 statement of the reason or reasons for such alteration, supplement, or
46 amendment, in a manner and with such information as may be required

1 by the commissioner. If such alteration, supplement, or amendment
2 shall have the effect of increasing or decreasing rates, the
3 commissioner shall determine whether the rates as altered thereby are
4 reasonable, adequate, and not unfairly discriminatory. If the
5 commissioner shall determine that the rates as so altered are not
6 unreasonably high, or inadequate, or unfairly discriminatory, he shall
7 make an order approving them. If he shall find that the rates as altered
8 are unreasonable, inadequate, or unfairly discriminatory, he shall issue
9 an order disapproving such alteration, supplement or amendment.

10 b. (Deleted by amendment, P.L.1984, c.1.)

11 c. If an insurer or rating organization files a proposed alteration,
12 supplement or amendment to its private passenger automobile
13 insurance rating system, or any part thereof, the commissioner shall
14 transmit the filing to the appropriate office in the Division of
15 Insurance, which office shall issue a preliminary determination within
16 90 days of receipt of a rate filing, except that the commissioner may,
17 for good cause, extend the time for a preliminary determination by not
18 more than 30 days. The preliminary determination shall set forth the
19 basis for accepting, rejecting or modifying the rates as filed. A copy of
20 the preliminary determination shall be provided to the filer and other
21 interested parties. Unless the filer or other interested party, including
22 the Public Advocate, requests a hearing, the commissioner may adopt
23 the preliminary determination as final within 30 days of the preliminary
24 determination. If a hearing is requested, it shall proceed on an
25 expedited basis in accordance with the provisions of this section. If a
26 preliminary determination is not made within the time provided, a
27 filing shall be transmitted to the Office of Administrative Law for a
28 hearing and the commissioner shall adopt the determination of the
29 administrative law judge as a final decision on the filing.

30 For filings other than private passenger automobile, if an insurer or
31 rating organization files a proposed alteration, supplement or
32 amendment to its rating system, or any part thereof, which would
33 result in a change in rates, the commissioner may, or upon the request
34 of the filer or the appropriate office in the Division of Insurance shall,
35 certify the matter for a hearing. The hearing shall, at the
36 commissioner's discretion, be conducted by himself, by a person
37 appointed by the commissioner pursuant to section 26 of P.L.1944,
38 c.27 (C.17:29A-26), or by the Office of Administrative Law, created
39 by P.L.1978, c.67 (C.52:14F-1 et seq.), as a contested case. The
40 following requirements shall apply to the hearing:

41 (1) The hearing shall commence within 30 days of the date of the
42 request or decision that a hearing is to be held. The hearing shall be
43 held on consecutive working days, except that the commissioner may,
44 for good cause, waive the consecutive working day requirement. If
45 the hearing is conducted by an administrative law judge, the
46 administrative law judge shall submit his findings and

1 recommendations to the commissioner within 30 days of the close of
2 the hearing. The commissioner may, for good cause, extend the time
3 within which the administrative law judge shall submit his findings and
4 recommendations by not more than 30 days. A decision shall be
5 rendered by the commissioner not later than 60 days, or, if he has
6 granted a 30-day extension, not later than 90 days, from the close of
7 the hearing. A filing shall be deemed to be approved unless rejected
8 or modified by the commissioner within the time period provided
9 herein.

10 (2) The commissioner, or the Director of the Office of
11 Administrative Law, as appropriate, shall notify all interested parties,
12 including the [appropriate office in the Division of Insurance] Public
13 Advocate on behalf of insurance consumers, of the date set for
14 commencement of the hearing, on the date of the filing of the request
15 for a hearing, or within 10 days of the decision that a hearing is to be
16 held.

17 (3) The insurer or rating organization making a filing on which a
18 hearing is held shall bear the costs of the hearing.

19 (4) The commissioner may promulgate rules and regulations (a) to
20 establish standards for the submission of proposed filings,
21 amendments, additions, deletions and alterations to the rating system
22 of filers, which may include forms to be submitted by each filer; and
23 (b) making such other provisions as he deems necessary for effective
24 implementation of this act.

25 d. (Deleted by amendment, P.L.1984, c.1.)

26 e. (Deleted by amendment, P.L.2003, c.89.)

27 f. The notice provisions set forth in section 51 of the Public
28 Advocate Restoration Act of 2005, P.L. , c. (C.) (now
29 pending before the Legislature as this bill), shall apply to this section.
30 (cf: P.L.2003, c.89, s.41)

31

32 92. Section 66 of P.L.1998, c.21 (C.17:29A-46.8) is amended to
33 read as follows:

34 66. a. For the purposes of this section:

35 "Qualified person" means a person qualified by the Commissioner
36 of Banking and Insurance to intervene in public hearings pursuant to
37 this section, who shall be deemed a "public servant" within the
38 meaning of N.J.S.2C:30-2;

39 "Rate filing" means a filing for a rate increase by an automobile
40 insurer writing private passenger automobile insurance in this State,
41 other than an expedited prior approval rate filing made pursuant to
42 section 34 of P.L.1997, c.151 (C.17:29A-46.6) and other than a rate
43 filing made pursuant to any statutory change in coverage provided
44 under a policy of private passenger automobile insurance.

45 b. The Commissioner of Banking and Insurance shall establish
46 standards for qualifying persons to intervene in rate filings pursuant to

1 this section. The standards shall include, but shall not necessarily be
2 limited to, requiring that any person intervening in a rate filing
3 demonstrate: (1) expertise in the insurance laws of this State; (2) an
4 understanding of the actuarial principles employed in establishing rates
5 and rating systems; (3) sufficient access to a qualified actuary and
6 sufficient expertise to conduct a technical examination of a rate filing;
7 (4) sufficient resources to intervene in the rate filing process as
8 provided herein; and (5) that the person represents the interest of
9 consumers and accepts a duty of fidelity to do so.

10 c. The commissioner shall require such documentation as he
11 determines is necessary to qualify a person to intervene in a rate filing,
12 and may charge a fee for registration with the department as an
13 intervenor, which fee shall be payable annually.

14 d. The commissioner may remove the registration of an intervenor
15 if he determines that (1) the intervenor no longer meets the
16 qualifications, or (2) if the intervenor is convicted of a crime or loses
17 a professional license for misconduct.

18 e. If an insurer or rating organization files for a rate increase for
19 private passenger automobile insurance, the commissioner shall notify
20 the public of the proposed rate change in a newspaper or newspapers
21 of general circulation throughout the State. A qualified person may
22 request, and shall receive, a copy of the rate filing and any
23 amendments and supplements thereto and shall pay the expenses in
24 connection therewith. The qualified person may request that the
25 commissioner certify the rate filing for a hearing pursuant to section
26 14 of P.L.1944, c.27 (C.17:29A-14).

27 f. The commissioner shall establish by regulation the terms and
28 conditions under which the proceedings under this section shall be
29 conducted, including, but not limited to the supporting material which
30 shall accompany the intervention.

31 g. Upon determining that the intervenor has demonstrated that the
32 qualified person has made a substantial contribution to the adoption of
33 any order or decision by the commissioner or a court in connection
34 with a rate filing made pursuant to this section, the commissioner shall
35 award reasonable advocacy and witness fees and expenses.

36 h. A person commits a crime of the third degree if he solicits,
37 accepts or agrees to accept any benefits as consideration for
38 knowingly violating or agreeing to violate a duty of fidelity to which
39 he is subject pursuant to this section. In addition to any disposition
40 authorized by law, the Commissioner of Banking and Insurance shall
41 forever bar from registration as an intervenor any person convicted
42 under this subsection.

43 i. A person commits a crime of the third degree if he confers, or
44 offers or agrees to confer, any benefit the acceptance of which would
45 be criminal under this section. In addition to any disposition
46 authorized by law, the Commissioner of Banking and Insurance shall

1 deny the rate filing of any person convicted under this subsection and
2 the person shall be barred from filing for any rate increase for a period
3 of one year.

4 j. Nothing herein shall be construed to preclude a prosecution or
5 conviction for a violation of any other law.

6 k. This section shall expire 180 days after the effective date of the
7 Public Advocate Restoration Act of 2005, P.L. _____, c. _____
8 (now pending before the Legislature as this bill).

9 (cf: P.L.1998, c.22, s.8)

10

11 93. Section 1 of P.L.1974 c.55 (C.52:14-15.107) is amended to
12 read as follows:

13 1. Notwithstanding the provisions of the annual appropriations act
14 and section 7 of P.L.1974, c.55 (C.52:14-15.110), the Governor shall
15 fix and establish the annual salary, not to exceed \$133,330 in calendar
16 year 2000, \$137,165 in calendar year 2001 and \$141,000 in calendar
17 year 2002 and thereafter, for each of the following officers:

18 Title

19 Agriculture Department

20 Secretary of Agriculture

21 Community Affairs Department

22 Commissioner of Community Affairs

23 Corrections Department

24 Commissioner of Corrections

25 Education Department

26 Commissioner of Education

27 Environmental Protection Department

28 Commissioner of Environmental Protection

29 Health and Senior Services Department

30 Commissioner of Health and Senior

31 Services

32 Human Services Department

33 Commissioner of Human Services

34 Banking and Insurance Department

35 Commissioner of Banking and Insurance

36 Labor Department

37 Commissioner of Labor

38 Law and Public Safety Department

39 Attorney General

40 Military and Veterans' Affairs Department

41 Adjutant General

42 Personnel Department

43 Commissioner of Personnel

44 State Department

45 Secretary of State

46 Transportation Department

1 Commissioner of Transportation
2 Treasury Department
3 State Treasurer
4 Members, Board of Public Utilities
5 Public Advocate Department
6 Public Advocate
7

8 Notwithstanding the provisions of this section to the contrary, the
9 Chief Executive Officer and Secretary of the New Jersey Commerce
10 and Economic Growth Commission shall receive such salary as shall
11 be fixed by the Governor pursuant to subsection b. of section 8 of
12 P.L.1998, c.44 (C.52:27C-68).
13 (cf: P.L.1999, c.380, s.2)
14

15 94. Section 1 of P.L.1991, J.R.2 (C.52:9DD-1) is amended to read
16 as follows:

17 1. There is created a 21-member Commission on Racism, Racial
18 Violence and Religious Violence to be appointed as follows: two shall
19 be members of the Senate appointed by the President thereof, who
20 shall not be of the same political party; two shall be members of the
21 General Assembly appointed by the Speaker thereof, who shall not be
22 of the same political party; the Attorney General or his designee; the
23 Public ~~Defender~~ Advocate or his designee; and 15 public members
24 to be appointed by the Governor. The public members shall be
25 representative of the ethnic, racial and religious diversity of the State's
26 population and shall include representatives from the following
27 groups: the National Association for the Advancement of Colored
28 People, the Puerto Rican Congress, the Anti-Defamation League of
29 ~~B'Nai B'Rith~~ B'nai B'rith, the New Jersey Black Issues Convention,
30 the New Jersey Chapter of the National Rainbow Coalition, and the
31 American Civil Liberties Union.
32 (cf: P.L.1994, c.58, s.55)
33

34 95. Section 2 of P.L.1985, c.363 (C.52:9Y-2) is amended to read
35 as follows:

36 2. There is created a permanent commission to be known as the
37 "New Jersey Commission on Legal and Ethical Problems in the
38 Delivery of Health Care." The commission shall consist of ²[28] ²29²
39 members to be appointed as follows: the Commissioner of the
40 Department of Community Affairs, the Commissioner of the
41 Department of Health and Senior Services, the Commissioner of the
42 Department of Human Services, the Department of the Public
43 Advocate, the Public Defender, the ² [Ombudsman] Ombudsperson²
44 for the Institutionalized Elderly or their designees; [a representative
45 of the private entity designated by the Governor as the State's mental
46 health protection and advocacy agency pursuant to section 22 of

1 P.L.1994, c.58 (C.52:27E-68),] ²a representative of the private
2 entity, if any, designated by the Governor as the State's mental health
3 protection and advocacy agency.² two members of the Senate, to be
4 appointed by the President of the Senate, not more than one of whom
5 shall be of the same political party; two members of the General
6 Assembly, to be appointed by the Speaker of the General Assembly,
7 not more than one of whom shall be of the same political party; nine
8 public members, two to be appointed by the President of the Senate,
9 two to be appointed by the Speaker of the General Assembly and five
10 to be appointed by the Governor, who are distinguished in one or more
11 of the fields of medicine, health care and health administration, law,
12 ethics, theology, the natural sciences, the social sciences, the
13 humanities, and public affairs.

14 In addition to the nine public members described above, there shall
15 be on the commission five other public members who shall not be from
16 health-related disciplines nor from the immediate families of persons
17 in health-related disciplines. Of these five members, three shall be
18 appointed by the Governor, one by the President of the Senate, and
19 one by the Speaker of the General Assembly. In appointing these
20 members an effort shall be made to insure that diverse viewpoints are
21 represented on the commission.

22 Also on the commission shall be a representative of the New Jersey
23 Hospital Association, a representative of the New Jersey State Nurses'
24 Association, a representative of the New Jersey Association of Health
25 Care Facilities and a representative of the New Jersey Association of
26 Nonprofit Homes for the Aging, Inc. These representatives shall be
27 selected by their organizations.

28 Members of the commission shall serve for three-year terms or
29 until a successor is appointed. However, the term of every member
30 initially appointed shall expire on December 31, 1988.

31 Vacancies in the membership of the commission shall be filled in
32 the same manner as original appointments were made, and the term of
33 any person reappointed or appointed to fill a vacancy shall only run for
34 the balance of the three-year term that had commenced when the
35 reappointment was made or the vacancy occurred. Members shall
36 serve without compensation but shall be reimbursed for the reasonable
37 travel and other out-of-pocket expenses incurred in the performance
38 of their duties.

39 (cf: P.L.1994, c.58, s.52)

40

41 96. Section 12 of P.L.1980, c.125 (C.56:12-12) is amended to
42 read as follows:

43 12. The Office of the Attorney General, the Division of Consumer
44 Affairs, the Department of the Public Advocate, the Commissioner of
45 Banking and Insurance, in regard to contracts of insurance provided
46 for in subsection c. of section 1 of this act (C.56:12-1), or any

1 interested person may seek injunctive relief. The court may authorize
2 reasonable attorney's fees, not to exceed \$2,500.00, and court costs in
3 such a proceeding.

4 (cf: P.L.1994, c.58, s.56)

5

6 97. Section 1 of P.L.1981, c.347 (C.58:11-59) is amended to read
7 as follows:

8 1. a. Whenever a small water company or a small sewer company,
9 or both, are found to have failed to comply with any unstayed order of
10 the Department of Environmental Protection concerning the
11 availability of water, the potability of water, or the provision of water
12 at adequate volume and pressure, or any unstayed order finding a small
13 water company or a small sewer company or both a significant
14 noncomplier or requiring the abatement of a serious violation, as those
15 terms are defined pursuant to section 3 of P.L.1977, c.74
16 (C.58:10A-3), which the department is authorized to enforce pursuant
17 to Title 58 of the Revised Statutes, the department and the Board of
18 Public Utilities, and the Department of the Public Advocate, may, after
19 30 days' notice to capable proximate public or private water or sewer
20 companies, municipal utilities authorities established pursuant to
21 P.L.1957, c.183 (C.40:14B-1 et seq.), municipalities or any other
22 suitable public or private entities wherein the small water company,
23 small sewer company, or both, provide service, conduct a joint public
24 hearing to announce: the actions that may be taken and the
25 expenditures that may be required, including acquisition costs, to make
26 all improvements necessary to assure the availability of water, the
27 potability of water and the provision thereof at adequate volume and
28 pressure, and the compliance with all applicable federal and State
29 water pollution control requirements for a small sewer company,
30 including, but not necessarily limited to, the acquisition of the small
31 water company or small sewer company, or both, by the most suitable
32 public or private entity.

33 At the hearing the department and the board shall state the costs
34 that are expected to be borne by the current users of the small water
35 company, small sewer company, or both. The department shall
36 propose an administrative consent order setting forth an agreed upon
37 time schedule by which the acquiring entity would be required to make
38 improvements required to resolve existing violations of federal and
39 State safe drinking water and water pollution control statutes and
40 regulations. The administrative consent order shall stipulate that the
41 acquiring entity shall not be liable for any fines or penalties for
42 continuing violations arising from the deficiencies, obsolescence or
43 disrepair of the facilities at the time of the acquisition, provided that:

44 (1) the stipulation shall be conditioned upon compliance by the
45 acquiring entity with the time frames established for improving the
46 facilities and eliminating the existing violations; and

1 (2) the stipulation shall not include any violation to the extent
2 caused by operational error, lack of preventive maintenance or careless
3 or improper operation by the acquiring entity.

4 Under no circumstances shall the acquiring entity be liable for
5 violations occurring prior to the acquisition.

6 At the conclusion of a hearing conducted pursuant to this section
7 the record of the hearing shall be kept open for 30 days to allow for
8 the submission of additional comments.

9 b. As used in sections 1 through 4 of P.L.1981, c.347 (C.58:11-59
10 through 58:11-62):

11 "Small water company" means any company, purveyor or entity,
12 other than a governmental agency, that provides water for human
13 consumption and which regularly serves less than 1,000 customer
14 connections ; and

15 "Small sewer company" means any company, business, or entity,
16 other than a governmental agency, which is a public utility as defined
17 pursuant to R.S.48:2-13, that collects, stores, conveys, or treats
18 primarily domestic wastewater, and that regularly serves less than
19 1,000 customer connections.

20 (cf: P.L.1999, c.296, s.2)

21
22 98. Section 5 of P.L.1985, c.37 (C.58:26-5) is amended to read
23 as follows:

24 5. A contracting unit which intends to enter into a contract with
25 a private vendor for the provision of water supply services pursuant to
26 the provisions of this act shall notify, at least 60 days prior to issuing
27 a request for qualifications from interested vendors pursuant to section
28 6 of this act, the division, the department and the Board of Public
29 Utilities and the Department of the Public Advocate of its intention,
30 and shall publish notice of its intention in at least one newspaper of
31 general circulation in the jurisdiction which would be served under the
32 terms of the proposed contract.

33 (cf: P.L.1994, c.58, s.58)

34
35 99. Section 11 of P.L.1985, c.37 (C.58:26-11) is amended to read
36 as follows:

37 11. Upon designating the selected vendor or vendors pursuant to
38 section 10 of this act, a contracting unit shall negotiate with the
39 selected vendor or vendors a proposed contract, which shall include
40 the accepted proposal and the provisions required pursuant to section
41 15 of this act. Upon negotiating a proposed contract, the contracting
42 unit shall make the proposed contract available to the public at its
43 main offices, and shall transmit a copy of the proposed contract to the
44 division, the department ~~[and]~~, the Board of Public Utilities and the
45 Department of the Public Advocate.

46 (cf: P.L.1994, c.58, s.59)

1 100. Section 12 of P.L.1985, c.37 (C.58:26-12) is amended to
2 read as follows:

3 12. a. A contracting unit shall conduct a public hearing or
4 hearings on the charges, rates, or fees, or the formula for determining
5 these charges, rates, or fees, and the other provisions contained in a
6 proposed contract negotiated pursuant to section 11 of this act. The
7 contracting unit shall provide at least 90 days' public notice of this
8 public hearing to the Department of the Public Advocate, prospective
9 consumers and other interested parties. This notice shall be published
10 in at least one newspaper of general circulation in the jurisdiction to
11 be served under the terms of the proposed contract. Within 45 days
12 after giving notice of the public hearing, the contracting unit shall hold
13 a meeting with prospective consumers and other interested parties to
14 explain the terms and conditions of the proposed contract, and to
15 receive written questions which will be part of the record of the public
16 hearing. At the public hearing, the selected vendor or vendors shall be
17 present, and the contracting unit shall have the burden to answer the
18 questions received at the meeting, and to show that the proposed
19 contract complies with the provisions of section 15 of this act, and that
20 it constitutes the best means of securing the required water supply
21 services among available alternatives. The contracting unit shall
22 provide that a verbatim record be kept of the public hearing, and that
23 a written transcript of this record be printed and made available to the
24 public within 30 days of the close of the public hearing. After the
25 public hearing the contracting unit and the vendor may agree to make
26 changes to the proposed contract, and shall transmit the proposed
27 contract, a copy of the printed transcript of the public hearing, and a
28 statement summarizing the major issues raised at the public hearing
29 and the response of the contracting unit to these issues, to the division,
30 the department, the Board of Public Utilities, and the Department of
31 the Public Advocate, and to all persons who attended the public
32 hearing.

33 b. If the Division of Rate Counsel in the Department of the Public
34 Advocate represents the public interest at a public hearing or hearings
35 conducted pursuant to this section, the Division of Rate Counsel shall
36 be entitled to assess the vendor for costs incurred in this
37 representation in the manner provided in section 20 of P.L.1974, c.27
38 (C.52:27E-19). The basis of the assessment shall be the prospective
39 first year's revenue realized by the vendor from the provision of the
40 water supply services pursuant to the terms of the proposed contract.

41 c. If a contract awarded pursuant to the provisions of this act is
42 renegotiated, the contracting unit shall conduct a public hearing on the
43 renegotiated contract pursuant to the provisions of this section.

44 (cf: P.L.1994, c.58, s.60)

45

46 101. Section 5 of P.L.1985, c.72 (C.58:27-5) is amended to read

1 as follows:

2 5. A contracting unit which intends to enter into a contract with
3 a private vendor for the provision of wastewater treatment services
4 pursuant to the provisions of this act shall notify, at least 60 days prior
5 to issuing a request for qualifications from interested vendors pursuant
6 to section 6 of this act, the division ~~[and]~~, the department and the
7 Department of the Public Advocate of its intention, and shall publish
8 notice of its intention in at least one newspaper of general circulation
9 in the jurisdiction which would be served under the terms of the
10 proposed contract.

11 (cf: P.L.1994, c.58, s.61)

12

13 102. Section 11 of P.L.1985, c.72 (C.58:27-11) is amended to
14 read as follows:

15 11. Upon designating the selected vendor or vendors pursuant to
16 section 10 of this act, a contracting unit shall negotiate with the
17 selected vendor or vendors a proposed contract, which shall include
18 the accepted proposal and the provisions required pursuant to section
19 15 of this act. Upon negotiating a proposed contract, the contracting
20 unit shall make the proposed contract available to the public at its
21 main offices, and shall transmit a copy of the proposed contract to the
22 division ~~[and]~~, the department and the Department of the Public
23 Advocate.

24 (cf: P.L.1994, c.58, s.62)

25

26 103. Section 12 of P.L.1985, c.72 (C.58:27-12) is amended to
27 read as follows:

28 12. a. A contracting unit shall conduct a public hearing or
29 hearings on the charges, rates, or fees, or the formula for determining
30 these charges, rates, or fees, and the other provisions contained in a
31 proposed contract negotiated pursuant to section 11 of this act. The
32 contracting unit shall provide at least 90 days' public notice of this
33 public hearing to the Department of the Public Advocate, prospective
34 consumers and other interested parties. This notice shall be published
35 in at least one newspaper of general circulation in the jurisdiction to
36 be served under the terms of the proposed contract. Within 45 days
37 after giving notice of the public hearing, the contracting unit shall hold
38 a meeting with prospective consumers and other interested parties to
39 explain the terms and conditions of the proposed contract, and to
40 receive written questions which will be part of the record of the public
41 hearing. At the public hearing, the selected vendor or vendors shall be
42 present, and the contracting unit shall have the burden to answer the
43 questions received at the meeting, and to show that the proposed
44 contract complies with the provisions of section 15 of this act, and that
45 it constitutes the best means of securing the required wastewater
46 treatment services among available alternatives. The contracting unit

1 shall provide that a verbatim record be kept of the public hearing, and
2 that a written transcript of this record be printed and made available
3 to the public within 45 days of the close of the public hearing. Written
4 testimony received no more than 15 days after the public hearing shall
5 be included in the written transcript. After the public hearing the
6 contracting unit and the vendor may agree to make changes to the
7 proposed contract, and the contracting unit shall transmit the proposed
8 contract, a copy of the printed transcript of the public hearing, and a
9 statement summarizing the major issues raised at the public hearing
10 and the response of the contracting unit to these issues, to the division
11 [and], the department, and the Department of the Public Advocate,
12 and shall make copies available to any other person upon request.

13 b. If the Division of Rate Counsel in the Department of the Public
14 Advocate represents the public interest at a public hearing or hearings
15 conducted pursuant to this section, the Division of Rate Counsel shall
16 be entitled to assess the vendor for costs incurred in this
17 representation in the manner provided in section 20 of P.L.1974, c.27
18 (C.52:27E-19). The basis of the assessment shall be the prospective
19 first year's revenue realized by the vendor from the provision of the
20 wastewater treatment services pursuant to the terms of the proposed
21 contract.

22 c. If a contract awarded pursuant to the provisions of this act is
23 renegotiated, the contracting unit shall conduct a public hearing on the
24 renegotiated contract pursuant to the provisions of this section.
25 (cf: P.L.1994, c.58, s.63)

26

27 104. N.J.S.59:1-3 is amended to read as follows:

28 59:1-3. Definitions. As used in this subtitle:

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

33 "Employment" includes office; position; employment; or service,
34 under the supervision of the Palisades Interstate Park Commission, in
35 a volunteer program in that part of the Palisades Interstate Park
36 located in New Jersey, as an emergency management volunteer or as
37 a volunteer doing work for the Division of Parks and Forestry, the
38 Division of Fish, Game and Wildlife, or the New Jersey Natural Lands
39 Trust, as authorized by the Commissioner of Environmental
40 Protection, or for the New Jersey Historic Trust.

41 "Enactment" includes a constitutional provision, statute, executive
42 order, ordinance, resolution or regulation.

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

46 "Law" includes enactments and also the decisional law applicable

1 within this State as determined and declared from time to time by the
2 courts of this State and of the United States.

3 "Public employee" means an employee of a public entity, and
4 includes: a person participating, under the supervision of the Palisades
5 Interstate Park Commission, in a volunteer program in that part of the
6 Palisades Interstate Park located in New Jersey[; a volunteer doing
7 work for the Division of Parks and Forestry, the Division of Fish,
8 Game and Wildlife, or the New Jersey Natural Lands Trust, as
9 authorized by the Commissioner of Environmental Protection; a
10 volunteer doing work for the New Jersey Historic Trust; and any
11 person retained by the public defender to serve as an arbitrator,
12 mediator, or in such similar capacity. "Public employee" does not
13 include any independent contractors or other individuals, agencies, or
14 entities not established in or employed by the Office of the Public
15 Defender designated to provide protection and advocacy services to
16 indigent mental hospital admittees or persons with a developmental
17 disability as the term is defined in section 3 of P.L.1977, c.82
18 (C.30:6D-3).]

19 "Public entity" includes the State, and any county, municipality,
20 district, public authority, public agency, and any other political
21 subdivision or public body in the State. ["Public entity" does not
22 include any independent contractors or other individuals, agencies, or
23 entities not established in or employed by the Office of the Public
24 Defender designated to provide protection and advocacy services to
25 indigent mental hospital admittees or persons with a developmental
26 disability as the term is defined in section 3 of P.L.1977, c.82
27 (C.30:6D-3).]

28 "State" shall mean the State and any office, department, division,
29 bureau, board, commission or agency of the State, but shall not
30 include any such entity which is statutorily authorized to sue and be
31 sued. "State" also means the Palisades Interstate Park Commission,
32 but only with respect to employees, property and activities within the
33 State of New Jersey.

34 "Statute" means an act adopted by the Legislature of this State or
35 by the Congress of the United States.
36 (cf: P.L.1999, c.152, s.58)

37
38 105. Section 70 of P.L.2000, c.72 (C.18A:7G-43) is amended to
39 read as follows:

40 70. There is established in the Office of the Attorney General the
41 [Unit] Office of Fiscal Integrity in School Construction. The
42 Attorney General or his representative may investigate, examine, and
43 inspect the activities of the authority and districts related to the
44 financing and construction of school facilities and the implementation
45 of the provisions of P.L.2000, c.72 (C.18A:7G-1 et al.). The Attorney
46 General may require the submission of duly verified reports from the

1 authority and districts, which include such information in such form as
2 the Attorney General may require. The Attorney General or his
3 representative may also consult with the authority on issues and
4 procedures related to the exercise of its duties and responsibilities
5 under P.L.2000, c.72 (C.18A:7G-1 et al.). The Legislature shall
6 annually appropriate such funds as may be necessary to finance the
7 operations of the [unit] office.

8 (cf: P.L.2000, c.72, s.70)

9

10 106. Section 1 of P.L.1982, c.79 (C.2A:4A-60) is amended to
11 read as follows:

12 1. Disclosure of juvenile information; penalties for disclosure.

13 a. Social, medical, psychological, legal and other records of the
14 court and probation division, and records of law enforcement agencies,
15 pertaining to juveniles charged as a delinquent or found to be part of
16 a juvenile-family crisis, shall be strictly safeguarded from public
17 inspection. Such records shall be made available only to:

18 (1) Any court or probation division;

19 (2) The Attorney General or county prosecutor;

20 (3) The parents or guardian and to the attorney of the juvenile;

21 (4) The Department of Human Services, if providing care or
22 custody of the juvenile;

23 (5) Any institution or facility to which the juvenile is currently
24 committed or in which the juvenile is placed;

25 (6) Any person or agency interested in a case or in the work of the
26 agency keeping the records, by order of the court for good cause
27 shown, except that information concerning adjudications of
28 delinquency, records of custodial confinement, payments owed on
29 assessments imposed pursuant to section 2 of P.L.1979, c.396
30 (C.2C:43-3.1) or restitution ordered following conviction of a crime
31 or adjudication of delinquency, and the juvenile's financial resources,
32 shall be made available upon request to the Victims of Crime
33 Compensation Board established pursuant to section 3 of P.L.1971,
34 c.317 (C.52:4B-3), which shall keep such information and records
35 confidential;

36 (7) The Juvenile Justice Commission established pursuant to
37 section 2 of P.L.1995, c.284 (C.52:17B-170);

38 (8) Law enforcement agencies for the purpose of reviewing
39 applications for a permit to purchase a handgun or firearms purchaser
40 identification card;

41 (9) Any potential party in a subsequent civil action for damages
42 related to an act of delinquency committed by a juvenile, including the
43 victim or a member of the victim's immediate family, regardless of
44 whether the action has been filed against the juvenile; provided,
45 however, that records available under this paragraph shall be limited
46 to official court documents, such as complaints, pleadings and orders,

1 and that such records may be disclosed by the recipient only in
2 connection with asserting legal claims or obtaining indemnification on
3 behalf of the victim or the victim's family and otherwise shall be
4 safeguarded from disclosure to other members of the public. Any
5 potential party in a civil action related to the juvenile offense may file
6 a motion with the civil trial judge seeking to have the juvenile's social,
7 medical or psychological records admitted into evidence in a civil
8 proceeding for damages; [and]

9 (10) Any potential party in a subsequent civil action for damages
10 related to an act of delinquency committed by a juvenile, including the
11 victim or a member of the victim's immediate family, regardless of
12 whether the action has been filed against the juvenile; provided,
13 however, that records available under this paragraph shall be limited
14 to police or investigation reports concerning acts of delinquency,
15 which shall be disclosed by a law enforcement agency only with the
16 approval of the County Prosecutor's Office or the Division of Criminal
17 Justice. Prior to disclosure, all personal information regarding all
18 individuals, other than the requesting party and the arresting or
19 investigating officer, shall be redacted. Such records may be disclosed
20 by the recipient only in connection with asserting legal claims or
21 obtaining indemnification on behalf of the victim or the victim's family,
22 and otherwise shall be safeguarded from disclosure to other members
23 of the public; and

24 (11) The ¹[Division of Child Advocacy in the Department of the
25 Public Advocate,] Office of the Child Advocate¹ established pursuant
26 to P.L. , c. (C. _____)(now pending before the Legislature as this
27 bill). Disclosure of juvenile information received by the child advocate
28 pursuant to this paragraph shall be in accordance with the provisions
29 of section 76 of P.L. , c. (C. _____)(now pending before the
30 Legislature as this bill).

31 b. Records of law enforcement agencies may be disclosed for law
32 enforcement purposes, or for the purpose of reviewing applications for
33 a permit to purchase a handgun or a firearms purchaser identification
34 card to any law enforcement agency of this State, another state or the
35 United States, and the identity of a juvenile under warrant for arrest
36 for commission of an act that would constitute a crime if committed
37 by an adult may be disclosed to the public when necessary to execution
38 of the warrant.

39 c. At the time of charge, adjudication or disposition, information
40 as to the identity of a juvenile charged with an offense, the offense
41 charged, the adjudication and disposition shall, upon request, be
42 disclosed to:

- 43 (1) The victim or a member of the victim's immediate family;
- 44 (2) Any law enforcement agency which investigated the offense,
- 45 the person or agency which filed the complaint, and any law
- 46 enforcement agency in the municipality where the juvenile resides; and

1 (3) On a confidential basis, the principal of the school where the
2 juvenile is enrolled for use by the principal and such members of the
3 staff and faculty of the school as the principal deems appropriate for
4 maintaining order, safety or discipline in the school or to planning
5 programs relevant to the juvenile's educational and social
6 development, provided that no record of such information shall be
7 maintained except as authorized by regulation of the Department of
8 Education; or

9 (4) A party in a subsequent legal proceeding involving the juvenile,
10 upon approval by the court.

11 d. A law enforcement or prosecuting agency shall, at the time of
12 a charge, adjudication or disposition, advise the principal of the school
13 where the juvenile is enrolled of the identity of the juvenile charged,
14 the offense charged, the adjudication and the disposition if:

15 (1) The offense occurred on school property or a school bus,
16 occurred at a school-sponsored function or was committed against an
17 employee or official of the school; or

18 (2) The juvenile was taken into custody as a result of information
19 or evidence provided by school officials; or

20 (3) The offense, if committed by an adult, would constitute a
21 crime, and the offense:

22 (a) resulted in death or serious bodily injury or involved an attempt
23 or conspiracy to cause death or serious bodily injury; or

24 (b) involved the unlawful use or possession of a firearm or other
25 weapon; or

26 (c) involved the unlawful manufacture, distribution or possession
27 with intent to distribute a controlled dangerous substance or controlled
28 substance analog; or

29 (d) was committed by a juvenile who acted with a purpose to
30 intimidate an individual or group of individuals because of race, color,
31 religion, sexual orientation or ethnicity; or

32 (e) would be a crime of the first or second degree.

33 Information provided to the principal pursuant to this subsection
34 shall be treated as confidential but may be made available to such
35 members of the staff and faculty of the school as the principal deems
36 appropriate for maintaining order, safety or discipline in the school or
37 for planning programs relevant to a juvenile's educational and social
38 development, and no record of such information shall be maintained
39 except as authorized by regulation of the Department of Education.

40 e. Nothing in this section prohibits a law enforcement or
41 prosecuting agency from providing the principal of a school with
42 information identifying one or more juveniles who are under
43 investigation or have been taken into custody for commission of any
44 act that would constitute an offense if committed by an adult when the
45 law enforcement or prosecuting agency determines that the
46 information may be useful to the principal in maintaining order, safety

1 or discipline in the school or in planning programs relevant to the
2 juvenile's educational and social development. Information provided
3 to the principal pursuant to this subsection shall be treated as
4 confidential but may be made available to such members of the staff
5 and faculty of the school as the principal deems appropriate for
6 maintaining order, safety or discipline in the school or for planning
7 programs relevant to the juvenile's educational and social
8 development. No information provided pursuant to this section shall
9 be maintained.

10 f. Information as to the identity of a juvenile adjudicated
11 delinquent, the offense, the adjudication and the disposition shall be
12 disclosed to the public where the offense for which the juvenile has
13 been adjudicated delinquent if committed by an adult, would constitute
14 a crime of the first, second or third degree, or aggravated assault,
15 destruction or damage to property to an extent of more than \$500.00,
16 unless upon application at the time of disposition the juvenile
17 demonstrates a substantial likelihood that specific and extraordinary
18 harm would result from such disclosure in the specific case. Where
19 the court finds that disclosure would be harmful to the juvenile, the
20 reasons therefor shall be stated on the record.

21 g. (1) Nothing in this section shall prohibit the establishment and
22 maintaining of a central registry of the records of law enforcement
23 agencies relating to juveniles for the purpose of exchange between
24 State and local law enforcement agencies and prosecutors of this
25 State, another state, or the United States. These records of law
26 enforcement agencies shall be available on a 24-hour basis.

27 (2) Certain information and records relating to juveniles in the
28 central registry maintained by the courts shall be available to State and
29 local law enforcement agencies and prosecutors on a 24-hour basis.

30 h. Whoever, except as provided by law, knowingly discloses,
31 publishes, receives, or makes use of or knowingly permits the
32 unauthorized use of information concerning a particular juvenile
33 derived from records listed in subsection a. or acquired in the course
34 of court proceedings, probation, or police duties, shall, upon
35 conviction thereof, be guilty of a disorderly persons offense.

36 i. Juvenile delinquency proceedings.

37 (1) Except as provided in paragraph (2) of this subsection, the
38 court may, upon application by the juvenile or his parent or guardian,
39 the prosecutor or any other interested party, including the victim or
40 complainant or members of the news media, permit public attendance
41 during any court proceeding at a delinquency case, where it determines
42 that a substantial likelihood that specific harm to the juvenile would
43 not result. The court shall have the authority to limit and control
44 attendance in any manner and to the extent it deems appropriate;

45 (2) The court or, in cases where the county prosecutor has entered
46 an appearance, the county prosecutor shall notify the victim or a

1 member of the victim's immediate family of any court proceeding
2 involving the juvenile and the court shall permit the attendance of the
3 victim or family member at the proceeding except when, prior to
4 completing testimony as a witness, the victim or family member is
5 properly sequestered in accordance with the law or the Rules
6 Governing the Courts of the State of New Jersey or when the juvenile
7 or the juvenile's family member shows, by clear and convincing
8 evidence, that such attendance would result in a substantial likelihood
9 that specific harm to the juvenile would result from the attendance of
10 the victim or a family member at a proceeding or any portion of a
11 proceeding and that such harm substantially outweighs the interest of
12 the victim or family member to attend that portion of the proceeding;

13 (3) The court shall permit a victim, or a family member of a victim
14 to make a statement prior to ordering a disposition in any delinquency
15 proceeding involving an offense that would constitute a crime if
16 committed by an adult.

17 j. The Department of Education, in consultation with the Attorney
18 General, shall adopt, pursuant to the "Administrative Procedure Act,"
19 P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations
20 concerning the creation, maintenance and disclosure of pupil records
21 including information acquired pursuant to this section.

22 (cf: P.L.2001, c.407, s.1)

23

24 107. Section 3 of P.L.1994, c.119 (C.9:6-8.76) is amended to read
25 as follows:

26 3. The task force shall consist of [24] 25 members as follows: the
27 Commissioners of Human Services, Education, Community Affairs,
28 Corrections and Health, the Attorney General, the Chief Justice of the
29 Supreme Court, the Public Defender, the Child Advocate and the
30 Superintendent of State Police, or their designees, as ex officio
31 members; two members of the Senate and the General Assembly,
32 respectively, no more than one of whom in each case shall be of the
33 same political party; and the remaining public members to be
34 appointed by the Governor.

35 The task force membership shall comply with the multidisciplinary
36 requirements set forth in the "Child Abuse Prevention and Treatment
37 Act," Pub.L.93-247 (42 U.S.C. s.5101 et seq.).

38 The task force shall be co-chaired, one co-chair shall be the
39 Commissioner of Human Services and the other shall be appointed by
40 the Governor with the advice and consent of the Senate. The second
41 co-chair shall be selected from among the public members and shall
42 serve at the pleasure of the Governor for a term not to exceed three
43 years. The second co-chair shall be allowed to serve two three-year
44 terms.

45 (cf: P.L.1994, c.119, s.3)

1 108. Section 7 of P.L.1997, c.175 (C.9:6-8.89) is amended to read
2 as follows:

3 7. a. The board shall consist of ~~[13]~~ 14 members as follows: the
4 Commissioner of Human Services, the Commissioner of Health and
5 Senior Services, the Director of the Division of Youth and Family
6 Services in the Department of Human Services, the Attorney General,
7 the Child Advocate and the Superintendent of ~~[the]~~ State Police, or
8 their designees, the State Medical Examiner, and the Chairperson or
9 Executive Director of the New Jersey Task Force on Child Abuse and
10 Neglect, who shall serve ex officio; and six public members appointed
11 by the Governor, one of whom shall be a representative of the New
12 Jersey Prosecutors' Association, one of whom shall be a Law
13 Guardian, one of whom shall be a pediatrician with expertise in child
14 abuse and neglect, one of whom shall be a psychologist with expertise
15 in child abuse and neglect, one of whom shall be a social work
16 educator with experience and expertise in the area of child abuse or a
17 related field and one of whom shall have expertise in substance abuse.

18 b. The public members of the board shall serve for three-year
19 terms. Of the public members first appointed, three shall serve for a
20 period of two years, and three shall serve for a term of three years.
21 They shall serve without compensation but shall be eligible for
22 reimbursement for necessary and reasonable expenses incurred in the
23 performance of their official duties and within the limits of funds
24 appropriated for this purpose. Vacancies in the membership of the
25 board shall be filled in the same manner as the original appointments
26 were made.

27 c. The Governor shall appoint a public member to serve as
28 chairperson of the board who shall be responsible for the coordination
29 of all activities of the board and who shall provide the technical
30 assistance needed to execute the duties of the board.

31 d. The board is entitled to call to its assistance and avail itself of
32 the services of employees of any State, county or municipal
33 department, board, bureau, commission or agency as it may require
34 and as may be available for the purposes of reviewing a case pursuant
35 to the provisions of P.L.1997, c.175 (C.9:6-8.83 et al.). The board
36 may also seek the advice of experts, such as persons specializing in the
37 fields of pediatric, radiological, neurological, psychiatric, orthopedic
38 and forensic medicine; nursing; psychology; social work; education;
39 law enforcement; family law; substance abuse; child advocacy or other
40 related fields, if the facts of a case warrant additional expertise.

41 (cf: P.L.1997, c.175, s.7)

42

43 109. Section 2 of P.L.2001, c.252 (C.30:4C-3.2) is amended to
44 read as follows:

45 2. The Review Panel shall consist of ~~[nineteen (19)]~~ 20 members
46 as follows:

- 1 a. The Commissioner of Human Services, or a designee, shall
2 serve ex-officio.
- 3 b. The Commissioner of Personnel, or a designee, shall serve
4 ex-officio.
- 5 c. The State Treasurer, or a designee, shall serve ex-officio.
- 6 d. The Attorney General, or a designee, shall serve ex-officio.
- 7 e. The Public Defender, or a designee, shall serve ex-officio.
- 8 f. The Director of the Administrative Office of the Courts, or a
9 designee, shall serve ex-officio.
- 10 g. A representative of the Office of the Governor.
- 11 h. The Child Advocate, or a designee, shall serve ex-officio.
- 12 i. Two members of the Senate to be appointed by the President of
13 the Senate who shall each be of different political parties and who shall
14 serve during the legislative session in which the appointment is made,
15 one of whom shall be the Chairman of the Senate Health, Human
16 Services and Senior Citizens Committee, or its successor. A member
17 may be appointed for any number of successive terms.
- 18 [i.] j. Two members of the General Assembly to be appointed by
19 the Speaker of the General Assembly who shall each be of different
20 political parties and who shall serve during the legislative session in
21 which the appointment is made, one of whom shall be the Chairman of
22 the Assembly Family [Woman] Women and Children's Services
23 Committee, or its successor. A member may be appointed for any
24 number of successive terms.
- 25 [j.] k. Eight public members shall be directly appointed by the
26 Governor as follows:
- 27 (1) three public members who are representatives from employee
28 organizations, two of whom are representatives of the
29 Communications Workers of America;
- 30 (2) a public member who is a representative of the Association for
31 Children of New Jersey;
- 32 (3) a public member who is a representative of Legal Services of
33 New Jersey;
- 34 (4) a public member who is a representative of a contracted service
35 provider to the Division of Youth and Family Services; and
- 36 (5) two public members, one of whom is a resource family parent
37 and one of whom is an adoptive parent.
- 38 (cf: P.L.2004, c.130, s.48)
- 39
- 40 110. The following are repealed:
- 41 Section 17 of P.L.1979, c.496 (C.30:1A-2);
- 42 Sections 1 and 2 of P.L.1989, c.330 (C.52:27D-29.30 and 52:27D-
43 20.31);
- 44 Sections ¹[1 through 6] 2 through 4 ¹ of P.L.1994, c.58 [¹
45 (C.52:27E-50 through C.52:27E-55)] (C.52:27E-51 through 52:27E-
46 53)¹ ;

ASSEMBLY, No. 1424

STATE OF NEW JERSEY 211th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2004 SESSION

Sponsored by:

Assemblyman WILFREDO CARABALLO

District 29 (Essex and Union)

Assemblyman ALFRED E. STEELE

District 35 (Bergen and Passaic)

Assemblyman JOHN J. BURZICHELLI

District 3 (Salem, Cumberland and Gloucester)

Co-Sponsored by:

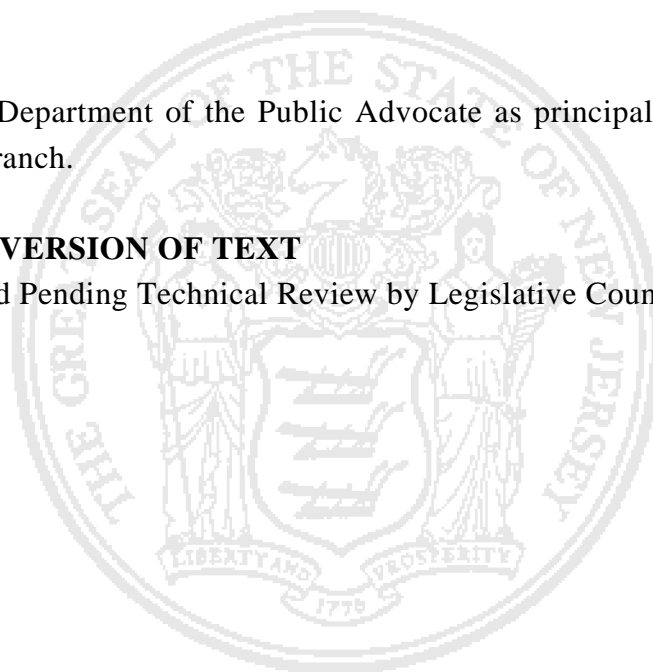
Assemblywoman Stender, Assemblyman Chivukula, Assemblywoman Greenstein, Assemblyman Gusciora, Assemblywomen Pou, Watson Coleman, Weinberg, Assemblymen Eagler, Stanley, Wisniewski, Fisher, Assemblywoman Vandervalk and Assemblyman Gordon

SYNOPSIS

Restores Department of the Public Advocate as principal department in Executive Branch.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 1/11/2005)

1 AN ACT restoring the Department of the Public Advocate as a
2 principal department in the Executive Branch of State government,
3 supplementing Title 52 of the Revised Statutes and amending and
4 repealing various parts of the statutory law.

5

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

8

9 ARTICLE I. GENERAL PROVISIONS

10

11 1. (New section) Short title.

12 This act shall be known and may be cited as the "Public Advocate
13 Restoration Act of 2002."

14

15 2. (New section) Legislative findings and declaration.

16 The Legislature finds and declares that:

17 a. There is a great need for consumer protection and advocacy on
18 behalf of the indigent, the elderly, children, and other persons unable
19 to protect themselves as individuals or a class.

20 b. Consolidating the diffuse functions of ombudspersons,
21 guardians, ratepayer advocate, and other functions within a single
22 Department of the Public Advocate will produce cost savings and
23 more effective protection of the public interest and empower the
24 Public Advocate to coordinate an efficient and timely process for
25 evaluation and resolution of problems and disputes that affect
26 consumers and other interested parties.

27 c. The abolition of the Public Advocate and the transfer of some of
28 its functions to various departments has resulted in diffuse, ineffective
29 representation of the rights of those unable to effectively advocate for
30 themselves.

31 d. It is essential that the State of New Jersey marshal existing
32 resources scattered throughout State government and create
33 economies of scale that will aid in the effective delivery of public
34 services and the appropriate allocation of public resources.

35 e. The Legislature must protect the public and restore confidence
36 in government through effective advocacy, provided by the
37 Department of the Public Advocate.

38 f. Litigation is a costly and oftentimes ineffective means of
39 resolving disputes, and State government must provide leadership and
40 foster an environment for alternative dispute resolution. The public
41 will benefit greatly from a Public Advocate devoted to a cost-effective
42 means to avoid expensive litigation and an amicable way to resolve
43 disputes.

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

Matter underlined thus is new matter.

1 g. Children have special advocacy needs that require familiarity and
2 expertise regarding the issues that affect them and a Division of Child
3 Advocacy within the Department of the Public Advocate can
4 effectively fulfill those needs.

5 h. The elderly represent an ever-increasing portion of the
6 population that requires special attention, and a Division of Elder
7 Advocacy can effectively meet those needs.

8 i. There must be a transfer of funding and an appropriation to fund
9 the operations of the Department of the Public Advocate and the
10 salary of its appointed commissioner known as the "Public Advocate".

11
12 3. (New section) Establishment.

13 There is hereby established in the Executive Branch of the State
14 Government a principal department which shall be known as the
15 Department of the Public Advocate.

16
17 4. (New section) Commissioner; appointment; term; salary.

18 The administrator and chief executive officer of the Department of
19 the Public Advocate shall be a commissioner, who shall be known as
20 the Public Advocate and who shall be an attorney-at-law of this State
21 and a person qualified by training and experience to perform the duties
22 of the office. The Public Advocate shall be appointed by the
23 Governor, with the advice and consent of the Senate, and shall serve
24 at the pleasure of the Governor during the Governor's term of office
25 and until the appointment and qualification of the Public Advocate's
26 successor. The Public Advocate shall receive such salary as shall be
27 provided by law.

28 The Public Advocate may, in the discretion of the Governor,
29 concurrently hold another position established in or allocated to the
30 Department of the Public Advocate, notwithstanding any requirement
31 of law that the Public Advocate devote his or her entire time to the
32 duties of one position or the other. In such case, the Public Advocate
33 shall receive only the salary provided for the Public Advocate, and not
34 the salary for such other position.

35
36 5. (New section) Powers and duties of Public Advocate.

37 The Public Advocate as administrator and chief executive officer of
38 the department shall:

39 a. administer the work of the department;

40 b. appoint and remove such officers, investigators, stenographic
41 and clerical assistants and other personnel as may be required for the
42 conduct of the department, subject to the provisions of Title 11A of
43 the New Jersey Statutes, Civil Service, and other applicable statutes,
44 except as provided otherwise herein;

45 c. adopt, issue and promulgate, in the name of the department,
46 such rules and regulations as may be necessary, consistent with the
47 Administrative Procedures Act, P.L.1968, c.410 (C.52:14B-1 et seq.);

- 1 d. formulate and adopt rules and regulations for the efficient
2 conduct of the work and general administration of the department, its
3 officers and employees;
- 4 e. institute or cause to be instituted such legal proceedings or
5 processes consistent with the rules governing the courts of New Jersey
6 and the practice of law therein as may be necessary to properly enforce
7 and give effect to any of his or her powers or duties;
- 8 f. prepare schedules of rates to be paid for services rendered other
9 than by the staff, taking into account the nature of the services, the
10 time involved, the skill and experience required and other pertinent
11 factors;
- 12 g. make such reports of the department's operation as the
13 Governor or the Legislature shall from time to time request, or as may
14 be required by law. In addition, the Public Advocate shall report to
15 the Governor and the Legislature annually with respect to such matters
16 relating to the work of the Public Advocate and at such times as he or
17 she may deem in the public interest. This report shall describe the
18 matters and activities involving the Department of the Public
19 Advocate, its divisions and offices, including the status and description
20 of significant cases that have been litigated, mediated, or otherwise
21 administered by the Public Advocate. This report shall include an
22 analysis on the costs and benefits of the litigation brought by the
23 Public Advocate, and include any recommendations for administrative
24 or legislative action that he or she deems necessary or appropriate;
- 25 h. perform, exercise and discharge the functions, powers and duties
26 of the department through such divisions or offices as may be
27 established by this act or otherwise by law;
- 28 i. organize and coordinate the work of the department in such
29 divisions or offices, not inconsistent with the provisions of this act,
30 and in such other organizational units as he or she may determine to
31 be necessary for efficient and effective operation;
- 32 j. integrate within the department, so far as practicable, all staff
33 services of the department and of the several divisions and other
34 agencies therein;
- 35 k. maintain suitable headquarters for the department and such other
36 quarters as he or she shall deem necessary to the proper functioning of
37 the department;
- 38 l. except as otherwise provided by law, appoint division directors,
39 office directors, and ombudspersons who are qualified by training and
40 experience to direct, under the supervision of the Public Advocate, the
41 several divisions and offices established pursuant to this act. Such
42 division directors, office directors, and ombudspersons shall serve at
43 the pleasure of the Public Advocate who shall fix their compensation
44 within the limits of available appropriations;
- 45 m. adopt policies and procedures to manage any litigation so that
46 the Public Advocate may reasonably ensure that all litigation matters
47 are effectively managed by the relevant division overseeing such

1 actions;

2 n. solicit and accept grants of funds from the federal government
3 and from private foundations, and allocate or restrict the use of such
4 funds as may be required by the grantor;

5 o. be the request officer for the department within the meaning of
6 such term as defined in P.L.1944, c.112 (C.52:27B-1 et seq.); and

7 p. perform such other functions as may be prescribed in this act or
8 by any other law.

9

10 6. (New section) Appointment of Assistant Public Advocate.

11 The Public Advocate may appoint an Assistant Public Advocate to
12 serve at the pleasure of the Public Advocate. Such appointment shall
13 be in writing and filed with the Secretary of State. The Assistant
14 Public Advocate shall have and exercise the powers and perform the
15 functions and duties of the Public Advocate during the absence or
16 disability of the Public Advocate. The Assistant Public Advocate shall
17 also have and exercise such of the powers and perform such of the
18 functions and duties of the Public Advocate as he or she shall be
19 authorized and directed by the Public Advocate. Any such
20 authorization and direction shall be in writing, signed by the Public
21 Advocate and filed with the Secretary of State, and shall include a
22 designation of the period during which it shall be and remain in force.
23 No such authorization and direction shall be deemed to preclude the
24 Public Advocate from himself or herself exercising the powers and the
25 performance of the duties included in the authorization and direction.
26 In the event that the Public Advocate shall die, resign or be removed
27 from office, or become disqualified to execute the duties of the office,
28 or a vacancy shall occur in the office of the Public Advocate for any
29 cause whatsoever, the person then holding the office of Assistant
30 Public Advocate shall continue to hold such office and shall have and
31 exercise the powers and perform the functions and duties of the Public
32 Advocate until the successor of the Public Advocate shall be appointed
33 and shall qualify.

34 The Assistant Public Advocate shall receive such salary as shall be
35 provided by law.

36

37 7. (New section) Deputy public advocates and other assistants.

38 The Public Advocate shall appoint deputy public advocates and
39 other expert assistants in such number as he or she shall require to
40 assist him or her in the performance of the duties of the office.
41 Deputies shall be attorneys-at-law of this State. Deputies and other
42 expert assistants shall serve at the pleasure of the Public Advocate and
43 shall receive such salaries as the Public Advocate shall from time to
44 time designate.

1 8. (New section) Professional responsibilities.

2 The primary duty of all staff members and of others engaged by the
3 department on a temporary or case basis shall be to the individual
4 client, with like effect and to the same purpose as though privately
5 engaged by the client and without regard to the use of public funds to
6 provide the service. This responsibility shall not preclude the
7 designation or assignment of different individuals to perform various
8 parts of the service from time to time, the duty in such cases to be the
9 same as would exist in the case of a privately engaged law firm.

10

11 9. (New section) Attorney-client and work product privileges.

12 a. All communications between the individual client and any
13 attorney in or engaged by the Department of the Public Advocate,
14 including the Advisory Council created by section 12 of this act, shall
15 be fully protected by the attorney-client privilege to the same extent
16 and degree as though counsel has been engaged privately, and the
17 work product of such attorneys, including the Advisory Council, shall
18 be fully protected by the work product privilege to the same extent
19 and degree as though counsel has been engaged privately. These
20 privileges shall in no way preclude the use by the department of
21 material in its files, otherwise privileged, for the preparation and
22 disclosure of statistical, case study and other sociological data,
23 provided always that in any such use there shall be no disclosure of the
24 identity or the means for discovering the identity of particular clients.

25 b. Any record held by the department which includes information
26 about the identity, care or treatment of any person seeking or receiving
27 services from the department, or the identity of any person seeking
28 services from the department on behalf of another person, shall not be
29 a government record as defined in section 1 of P.L.1995, c.23
30 (C.47:1A-1.1) and shall not be available for public inspection, copying,
31 or the purchase of copies.

32 c. Any person acting reasonably and in good faith who seeks
33 assistance from the department on behalf of another person shall be
34 immune from civil or criminal liability that might otherwise be incurred
35 or imposed and shall have the same immunity with respect to
36 testimony given in any judicial proceeding resulting from that request
37 for assistance.

38

39 10. (New section) Standard of performance.

40 In providing legal services to clients pursuant to this act, every
41 attorney, whether a member of the staff or engaged by the department
42 on a temporary or case basis, shall adhere to the standards of
43 performance established from time to time by the Supreme Court of
44 New Jersey in the execution of its duty to supervise the practice of
45 law.

1 11. (New section) Organization of department.

2 a. There are hereby established six divisions and one office within
3 the Department of the Public Advocate.

4 b. The divisions within the department shall be: the Division of
5 Administration; the Division of Public Interest Advocacy; the Division
6 of Ratepayer Advocate; the Division of Elder Advocacy; the Division
7 of Child Advocacy; and the Division of Citizen Relations.

8 c. The office within the department shall be the Office of Public
9 Advocate.

10

11 12. (New section) Advisory council; established.

12 There shall be within the Department of the Public Advocate an
13 Advisory Council. Such council shall be comprised of nine public
14 members, five to be appointed by the Governor, who serve at the
15 pleasure of the Governor, and one to be appointed by the Senate
16 President, one to be appointed by the Senate Minority Leader, one to
17 be appointed by the Speaker of the General Assembly, and one to be
18 appointed by the Minority Leader of the General Assembly, who shall
19 serve during the Legislative term in which they are appointed. If there
20 is no Minority Leader in the Senate or General Assembly, then the
21 Senate President or the Assembly Speaker, as the case may be, shall
22 appoint two members. Two of the members appointed by the
23 Governor shall be elected local government officials in this State.

24 The Advisory Council shall:

25 a. meet periodically with the Public Advocate to review litigation
26 proposed and pending litigation filed by the Public Advocate;

27 b. determine if such proposed or pending litigation benefits the
28 public and adheres to the mission of the Public Advocate;

29 c. propose alternative methods of resolving matters at issue in
30 proposed litigation or of settling litigation filed, if appropriate ; and

31 d. provide general advice to the Public Advocate and the directors
32 of the divisions on an on-going basis.

33 After consultation with the Public Advocate, the council shall make
34 recommendations, in writing, concerning proposed or pending
35 litigation and alternative methods and those recommendations shall be
36 submitted to the Public Advocate. The written recommendation shall
37 be available to the public.

38

39 13. (New section) Advisory council;expenses.

40 Members of the Advisory Council shall not receive any
41 compensation, but they shall be reimbursed for expenses incurred in
42 the performance of their duties.

43

44 14. (New section) Advisory council chairperson; established.

45 The Governor shall appoint a Chairperson to the Advisory Council
46 from among the nine members of the Advisory Council. Such
47 Chairperson shall serve at the pleasure of the Governor.

1 15. (New section) Advisory council chairperson; duties.

2 The Chairperson shall convene meetings of the entire Council at
3 least twice a calendar year to carry out the functions described in
4 section 12 of this act.

5

6 16. (New section) Definitions.

7 As used in this act:

8 "administrative action" means and includes any action, omission,
9 decision, recommendation, practice or procedure of an agency, but
10 does not include the preparation, presentation or introduction of
11 legislation;

12 "agency" means and includes the State of New Jersey and its
13 principal departments, and any division, bureau, board, commission,
14 agency, office, authority, or institution of the Executive Branch of the
15 State government, or any other agency, including bi-state agencies, or
16 any instrumentality created by the State, including counties,
17 municipalities, or political subdivisions thereof, or any officer,
18 employee, or member thereof acting or purporting to act in the
19 exercise of his or her official duties, except the Governor and the
20 Governor's personal staff and any portion of the Legislative Branch or
21 Judicial Branch of State government;

22 "child" means any individual less than 18 years of age;

23 "compensatory damages" means damages intended to make good
24 the loss of an injured party, and no more. The term includes general
25 and special damages, and does not include nominal, exemplary, or
26 punitive damages;

27 "consumer insurance rate increases" means prior approval rate
28 increases for: personal lines property casualty coverages; Medicare
29 supplemental coverages; or a rating system change pursuant to section
30 14 of P.L.1997, c.151 (C.17:29A-46.1 et seq.);

31 "correctional facility" means a jail, prison, lockup, penitentiary,
32 reformatory, training school, or other similar facility within the State
33 of New Jersey;

34 "department" means the Department of the Public Advocate
35 established herein, unless the context clearly indicates otherwise;

36 "elderly" means a person age 60 years or older;

37 "facility" whenever referred to in sections 53 through 57 of this act,
38 means any facility or institution, whether public or private, offering
39 health or health related services for the institutionalized elderly, and
40 which is subject to regulation, visitation, inspection, or supervision by
41 any government agency. Facilities include, but are not limited to,
42 nursing homes, skilled nursing homes, intermediate care facilities,
43 extended care facilities, convalescent homes, rehabilitation centers,
44 residential health care facilities, special hospitals, veterans' hospitals,
45 chronic disease hospitals, psychiatric hospitals, mental hospitals,
46 mental retardation centers or facilities, day care facilities for the
47 elderly, and medical day care centers;

1 “federal agency” means and includes the United States of America
2 and its principal departments, any division, bureau, board, commission,
3 agency, office, authority, or institution of the Executive branch of the
4 federal government, and any officer, employee, or member thereof
5 acting or purporting to act in the exercise of his or her official duties,
6 except the President of the United States and the President’s personal
7 staff;

8 “funded entities” means any parties to and beneficiaries of contracts
9 with the State or its political subdivisions, including any business,
10 corporation, association, partnership, sole proprietorship, firm, trust,
11 organization, unincorporated organization, individual, enterprise, or
12 other legal entity receiving public funds;

13 “indigent mental hospital admittee” means a person who has been
14 admitted to and is a patient in a mental hospital, an institution for the
15 care and treatment of the mentally ill, or a similar facility, whether
16 public or private, State, county or local, or who is the subject of an
17 action for admission as provided by R.S.30:4-27 and who does not
18 have the financial ability to secure competent representation and to
19 provide all other necessary expenses of representation;

20 "institutionalized elderly" means any person 60 years of age or
21 older, who is a patient, resident or client of any facility, as described
22 herein;

23 “nominal damages” means damages that are designed to
24 compensate a plaintiff and are less than \$500;

25 “public employee” means an employee of a public entity, and
26 includes a person participating, under the supervision of the Palisades
27 Interstate Park Commission, in a volunteer program in that part of the
28 Palisades Interstate Park located in New Jersey;

29 “public entity” means and includes the State, and any county,
30 municipality, district, public authority, public agency, and any other
31 political subdivision or public body in the State;

32 “public interest” means an interest or right arising from the
33 Constitution, decisions of court, common law or other laws of the
34 United States or of this State inhering in the citizens of this State or
35 in a broad class of such citizens;

36 “punitive damages” means and includes exemplary damages and
37 means damages awarded against a party in a civil action because of
38 aggravating circumstances in order to penalize and to provide
39 additional deterrence against a defendant to discourage similar conduct
40 in the future. Punitive damages do not include compensatory damages
41 or nominal damages; and

42 “State-sentenced” means an inmate convicted of a crime under the
43 laws of the State of New Jersey and sentenced to a correctional facility
44 within the State of New Jersey for more than 364 days.

1 ARTICLE 2. OFFICES

2

3 17. (New section) Office of Public Advocate.

4 The Public Advocate may establish an Office of Public Advocate
5 and appoint to such office those persons necessary to the supervision
6 and efficient operations of the department.

7

8 ARTICLE 3. DIVISION OF ADMINISTRATION

9

10 18. (New section) Division of Administration.

11 There is hereby established in the Department of the Public
12 Advocate the Division of Administration to be under the supervision
13 of the Director of the Division of Administration.

14

15 19. (New section) Division of Administration; duties.

16 It shall be the duty of the Division of Administration, at the
17 direction of the Public Advocate, to prepare a budget for the
18 department, fulfill personnel requirements, provide public information
19 concerning department activities, and conduct such research as the
20 Public Advocate determines to be relevant and necessary to the
21 department's functions.

22

23 ARTICLE 4. DIVISION OF CITIZEN RELATIONS

24

25 20. (New section) Division of Citizen Relations.

26 There is hereby established in the Department of the Public
27 Advocate the Division of Citizen Relations under the supervision of
28 the Director of the Division of Citizen Relations.

29

30 21. (New section) Division of Citizen Relations; powers and
31 duties.

32 The Division of Citizen Relations shall, under the direction and
33 supervision of the Director of the Division of Citizen Relations, in
34 addition to other powers and duties vested in it by this act, or any
35 other law:

36 a. receive and forward to appropriate agencies of the State for
37 determination complaints from any citizen relating to the
38 administrative action or inaction of agencies;

39 b. investigate any complaint from any citizen relating to the
40 administrative action or inaction of any agency, whether or not such
41 action or inaction is final, where the complaint indicates that the action
42 or inaction may have been:

43 (1) unreasonable, unfair, oppressive, or potentially discriminatory,
44 although in accordance with law;

45 (2) unaccompanied by an adequate explanation; or

46 (3) performed in an inefficient manner; and

47 c. maintain records indicating the final disposition of any complaint

1 forwarded by the division to an agency.

2

3 22. (New section) Notice to complainant and agency.

4 The Division of Citizen Relations shall determine whether a
5 complaint is or is not an appropriate subject for investigation under
6 this act, and shall inform the complainant of that decision, stating its
7 reasons therefore. If the division decides to investigate a complaint,
8 it shall also notify the affected agency of its decision.

9

10 23. (New section) Procedure after investigation.

11 If, after investigation, the Division of Citizen Relations finds that:

12 a. a matter should be further considered by the agency,

13 b. an administrative action or inaction should be modified or
14 canceled,

15 c. a statute or regulation on which an administrative action or
16 inaction is based should be altered,

17 d. reasons or more complete reasons should be given for an
18 administrative action or inaction, or

19 e. any other action should be taken by the agency, it shall report its
20 findings and recommendations to the Public Advocate who may
21 request the agency to notify him or her, within a specified time, of the
22 action taken on such recommendations. The division is also
23 authorized to conduct public hearings on such an issue if it determines
24 that such hearings are necessary. The Public Advocate may refer the
25 findings and recommendations of the Division of Citizen Relations to
26 the Division of Public Interest Advocacy or, if appropriate, to the
27 Division of Rate Counsel.

28

29 24. (New section) Notice to the complainant.

30 After a reasonable time has elapsed, the Division of Citizen
31 Relations shall notify the complainant of the action taken by the
32 Division of Citizen Relations and by the agency which was the subject
33 of the complaint.

34

35 25. (New section) Corrections Ombudsperson; established.

36 There is hereby established in the Division of Citizen Relations of
37 the Department of the Public Advocate a Corrections Ombuds person.

38

39 26. (New section) Corrections Ombudsperson; appointment.

40 The Corrections Ombudsperson shall be appointed by the Public
41 Advocate and shall serve at the pleasure of the Public Advocate during
42 the Public Advocate's term of office.

43

44 27. (New section) Corrections Ombudsperson; transfer of
45 functions.

46 a. All functions, powers, and duties now vested in the Ombudsman
47 in the Department of Corrections, as referenced in N.J.A.C.10A:1-1.1

1 et seq. are transferred to and assumed by the Division of Citizen
2 Complaints, Corrections Ombudsperson of the Department of the
3 Public Advocate.

4 b. Whenever, in any law, rule, regulation, order, reorganization
5 plan, contract, document, judicial or administrative proceeding, or
6 otherwise, reference is made to the Ombudsman in the Department of
7 Corrections concerning functions, powers, and duties which had been
8 vested in the Ombudsman, the same shall mean and refer to the
9 Corrections Ombudsperson in the Division of Citizen Complaints of
10 the Department of the Public Advocate.

11
12 28. (New section) Corrections Ombudsperson; jurisdiction.

13 Any person, over the age of 18 years, who is convicted of a crime
14 under the laws of the State of New Jersey and sentenced to a jail,
15 prison, lockup, penitentiary, reformatory, training school, or other
16 similar facility within the State of New Jersey for more than 364 days
17 is a "State-sentenced" inmate and considered to be among the
18 individuals who may properly seek redress from the Corrections
19 Ombudsperson concerning the conditions of their confinement.

20
21 29. (New section) Corrections Ombudsperson; duties.

22 The Corrections Ombudsperson shall establish and implement
23 procedures for eliciting, receiving, processing, responding, and
24 resolving complaints from inmates, their families, other interested
25 citizens, public officials, and government agencies concerning
26 conditions in the correctional facilities listed in section 28 of this act.

27
28 30. (New section) Ombudsperson for Persons with Mental Illness;
29 established.

30 There is hereby established in the Division of Citizen Relations in
31 the Department of the Public Advocate an Ombudsperson for Persons
32 with Mental Illness.

33
34 31. (New section) Ombudsperson for Persons with Mental Illness;
35 appointment.

36 The Ombudsperson for Persons with Mental Illness shall be
37 appointed by the Public Advocate and shall serve at the pleasure of the
38 Public Advocate during the Public Advocate's term of office.

39
40 32. (New section) Ombudsperson for Persons with Mental Illness;
41 objective; duties.

42 The Ombudsperson for Persons with Mental Illness shall promote,
43 advocate, and ensure the adequacy of the care received, and the
44 quality of life experienced, by persons with mental illness, including
45 patients, residents, and clients within the mental health facilities and
46 programs operated, funded, or licensed by the State. In determining
47 what elements are essential to ensure adequate care and quality of life,

1 the Ombudsperson shall consider the unique medical, social, and
2 economic needs and problems of persons with mental illness as
3 patients, residents, and clients of facilities and as citizens and
4 community members. The Ombudsperson for Persons with Mental
5 Illness may act as a representative of indigent mental hospital
6 admittees with any principal department or other instrumentality of
7 State, county, or local government.

8 The Ombudsperson shall establish and implement procedures to
9 elicit, receive, process, respond, and resolve complaints from patients,
10 their families, other interested citizens, public officials, and
11 government agencies concerning conditions in the State's mental
12 health facilities.

13 The Ombudsperson shall coordinate and cooperate with mental
14 health legal advocacy agencies and organizations, and meet with the
15 private entity New Jersey Protection and Advocacy, Inc. or its
16 successor, designated by the Governor as the State's protection and
17 advocacy agency and the Division of Mental Health and Guardianship
18 Advocacy in the Office of the Public Defender at least quarterly.
19 These meetings shall be for the purpose of preventing duplication of
20 efforts, optimizing resources and exchanging information that is not
21 privileged or confidential.

22

23 ARTICLE 5. DIVISION OF RATEPAYER ADVOCATE

24

25 33. (New section) Division of Ratepayer Advocate; established.

26 There is hereby established in the Department of the Public
27 Advocate the Division of Ratepayer Advocate to be under the
28 supervision of the Director of the Division of Ratepayer Advocate.

29

30 34. (New section) Director of the Division of Ratepayer
31 Advocate; staff.

32 The Director of the Division of Ratepayer Advocate shall be an
33 attorney-at-law of this State, appointed by the Public Advocate. When
34 exceptional circumstances arise, the Director of the Division of
35 Ratepayer Advocate, with the approval of the Public Advocate, may
36 on a temporary basis retain expert assistants as are necessary to
37 protect the public interest, pursuant to a reasonable fee schedule
38 established in advance by the Public Advocate.

39 Cases shall be assigned to staff attorneys or to attorneys hired on
40 a case by case basis calculated to provide competent representation in
41 the light of the nature of the case, the services to be performed, the
42 experience of the particular attorney, and other relevant factors.

43

44 35. (New section) Division of Ratepayer Advocate; jurisdiction.

45 The Division of the Ratepayer Advocate shall have the authority to
46 conduct investigations, initiate studies, conduct research, present
47 comments and testimony before governmental bodies, issue reports,

1 and produce and disseminate consumer guides on any matters that fall
2 within the Ratepayer Advocates's jurisdiction. The Ratepayer
3 Advocate shall also have the authority to represent the public interest
4 as set forth below.

5 a. Utilities. The Division of Ratepayer Advocate may represent
6 and protect the public interest as defined in section 16 of this act in
7 proceedings before and appeals from any State department,
8 commission, authority, council, agency, or board charged with the
9 regulation or control of any business, industry, or utility regarding a
10 requirement that the business, industry, or utility provide a service or
11 regarding the fixing of a rate, toll, fare, or charge for a product or
12 service. The Division of Ratepayer Advocate may initiate any such
13 proceedings when the director determines that a discontinuance or
14 change in a required service or a rate, toll, fare, or charge for a
15 product or service is in the public interest.

16 b. Insurance; limited jurisdiction. The Division of Ratepayer
17 Advocate may represent and protect the public interest as defined in
18 section 16 of this act in significant proceedings that pertain to: (1)
19 prior approval rate increases for: (a) personal lines property casualty
20 coverages, (b) Medicare supplemental coverages; or (2) a rating
21 system change pursuant to P.L.1997, c.151 (C.17:29A-46.1 et seq.),
22 if the Commissioner of the Department of Banking and Insurance
23 advises the Ratepayer Advocate that such proposed change pursuant
24 to P.L.1997, c.151 (C.17:29A-46.1 et seq.) is likely to result in an
25 overall increase in revenue of greater than three percent in a filing
26 made by an insurer or affiliated group of insurers. The Division of
27 Ratepayer Advocate shall have no jurisdiction or authority to
28 participate or intervene in expedited prior approval rate filings made
29 by an insurer or affiliated group of insurers pursuant to section 34 of
30 P.L.1997, c.151 (C.17:29A-46.6) or section 3 of P.L.2001, c.409
31 (C.17:36-5.35).

32 In determining, in his or her discretion, whether a proceeding is
33 significant, the Director of the Division of Ratepayer Advocate shall
34 consider the following factors:

35 (1) the overall dollar impact of the requested increase, considering
36 the filer's market share and the magnitude of the requested rate
37 change;

38 (2) whether the increase, if granted, will increase the filer's rates
39 significantly above market norms;

40 (3) whether the filer is advancing a significantly different alternate
41 ratemaking methodology to the standard methodology established
42 pursuant to section 8 of P.L.1988, c.119 (C.17:29A-36.2);

43 (4) whether the insurer is experiencing financial difficulties at its
44 present rate level, as evidenced by the filing of rehabilitation
45 proceedings, recent downgrading by insurance rating services, or
46 significant losses reported on the filer's public financial statement.

47 Upon the effective date of this act, the Director of the Division of

1 Ratepayer Advocate in the Department of the Public Advocate shall,
2 in addition to the powers set forth in this act, have the express
3 authority to intervene in public hearings pursuant to section 66 of
4 P.L.1998, c.21 (C.17:29A-46.8).

5
6 36. (New section) Division of Ratepayer Advocate; intent.

7 It is the intent of the Legislature that the resources of the Division
8 of Ratepayer Advocate be devoted to the maximum extent possible to
9 ensuring adequate representation of the interests of those consumers
10 whose interests would otherwise be inadequately represented in
11 matters within the jurisdiction of the Division of Ratepayer Advocate.

12 When the interests of consumers differ, the Director of the Division
13 of Ratepayer Advocate shall give priority to representing the interests
14 of consumers whose interests the Director of the Division of
15 Ratepayer Advocate finds to be inadequately represented.

16 This section does not require the Division of Ratepayer Advocate
17 to represent the interests of a consumer or group of consumers if the
18 Director of the Division of Ratepayer Advocate determines that such
19 representation is adverse to the overall interests of the using and
20 consuming public.

21
22 37. (New section) Division of Ratepayer Advocate; required
23 notices to the Division of Ratepayer Advocate.

24 The Division of Ratepayer Advocate shall receive a copy from the
25 filer of any rate filing seeking consumer insurance rate increases,
26 including any amendments or supplements thereto. A copy of such
27 rate filing shall be received by the Division of Ratepayer Advocate
28 concurrent with any rate filing with the Commissioner of Banking and
29 Insurance; except, however, the filer is not required to provide a copy
30 of such rate filing with the Division of Ratepayer Advocate if: (a) the
31 filing is an expedited prior approval rate filing made pursuant to either
32 section 34 of P.L.1997, c.151 (C.17:29A-46.6) or section 3 of
33 P.L.2001, c.409 (C.17:36-5.35); or (b) the filing is made pursuant to
34 any statutory change in coverage provided under a policy of private
35 passenger automobile insurance.

36
37 38. (New section) Division of Ratepayer Advocate; public notices
38 of certain consumer insurance rate increases.

39 The Division of Ratepayer Advocate and the Department of
40 Banking and Insurance may publish on their respective official
41 websites, to the extent practicable, as the case may be: (a) notice of all
42 filings for consumer insurance rate increases; (b) all requests for
43 hearing dates for such increases; and (c) the date or dates a hearing is
44 to be held. The Division of Ratepayer Advocate and the Department
45 of Banking and Insurance, pursuant to regulations established by the
46 Division of Ratepayer Advocate, shall establish operational links such
47 that each respective website may be accessed from the other.

1 Publication on the applicable website shall take place within three
2 business days of the applicable notice of filing, request for hearing, and
3 date or dates of hearings.

4 If an insurer or rating organization files for a consumer insurance
5 rate increase, excluding rating system changes made pursuant to
6 P.L.1997, c.151 (C.17:29A-46.1 et seq.), the insurer or ratings
7 organization shall, in conjunction with such filing, notify the public of
8 the proposed rate change; except, however, the filer is not required to
9 notify the public of the proposed rate change if the rate increase
10 pertains to: (a) an expedited prior approval rate filing made pursuant
11 to either section 34 of P.L.1997, c.151 (C.17:29A-46.6) or section 3
12 of P.L.2001, c.409 (C.17:36-5.35); or (b) a rate filing made pursuant
13 to any statutory change in coverage provided under a policy of private
14 passenger automobile insurance; or (c) a rating system change made
15 pursuant to P.L.1997, c.151 (C.17:29A-46.1 et seq.), as referenced
16 above.

17 Such notice shall be communicated through regular or electronic
18 mail to the named policy holders who use the products and services
19 subject to the rate increase, within seven business days of the
20 applicable filing and shall conform to a form prescribed by the
21 Department of Banking and Insurance pursuant to regulations
22 established in conjunction with the Ratepayer Advocate.

23

24 39. (New section) Payment of expenses of Division of Ratepayer
25 Advocate; annual utility assessment.

26 a. Annual utility assessment. The Division of Ratepayer Advocate
27 shall annually make an assessment against each public utility consistent
28 with, but separate from, the Board of Public Utilities' assessments
29 under the provisions of P.L.1968, c.173 (C.48:2-59 et seq.). All
30 assessments due and owing to the Division of Ratepayer Advocate as
31 of the effective date of this act shall be deemed due and owing to the
32 Division of Ratepayer Advocate in the Department of the Public
33 Advocate as of the effective date of this act.

34 b. Calculation of annual utility assessment. The annual assessment
35 shall be equal to a percentage of the gross operating revenue of the
36 public utilities under the jurisdiction of the Board of Public Utilities
37 derived from intrastate operations during the preceding calendar year
38 at a rate determined annually by the Director of the Division of
39 Ratepayer Advocate in the manner set forth in section 2 of P.L.1968,
40 c.173 (C.48:2-60), except that the total amount assessed to any public
41 utility shall not exceed $\frac{1}{4}$ of 1 percent of the gross operating revenue
42 subject to assessment hereunder. The minimum annual assessment
43 under this section shall not be less than \$500.

44 c. Levy and payment of annual assessment. The annual assessment
45 set forth in subsections a. and b. above shall be levied by the Division
46 of the Ratepayer Advocate no later than August 15, and shall be paid
47 within 30 days of mailing notice thereof and a statement of the amount

1 by first class mail to any public utility, except that for Fiscal Year 2003
2 this assessment shall be levied no later than August 1, 2002.

3

4 40. (New section) Payment of expenses of Division of Ratepayer
5 Advocate; annual insurance assessment.

6 a. Annual insurance assessment. The Director of the Division of
7 Budget and Accounting in the Department of the Treasury shall, on or
8 before August 15 in each year, ascertain and certify to the
9 Commissioner of Banking and Insurance by category the total amount
10 of expenses incurred by the State in connection with the administration
11 of the special functions of the Division of Ratepayer Advocate in the
12 Department of the Public Advocate relative to the expenses of the
13 Division of Ratepayer Advocate in connection with the administration
14 of insurance rate cases during the preceding fiscal year. The
15 Department of Banking and Insurance shall make an assessment, on an
16 annual basis, in accordance with the process set forth in P.L.1995
17 c.156 (C.17:1C-19 et seq.).

18 b. Calculation of annual insurance assessment. The annual
19 assessment shall be no more than a specified aggregate amount
20 adjusted annually for inflation, which shall be calculated and applied
21 separately from the maximum total assessment set forth in section 13
22 of P.L.1995, c.156 (C.17:1C-31). The amount collected for expenses
23 pursuant subsection a. of this section, shall not exceed the amount
24 appropriated by the Legislature for those expenses.

25

26 41. (New section) Division of Ratepayer Advocate; transfer of
27 powers and duties.

28 All functions, powers, and duties which had been vested in the
29 Division of Rate Counsel in the Department of the Public Advocate
30 prior to the effective date of P.L.1994, c.58 (C.52:27E-50 et al.) and
31 which were transferred by P.L.1994, c.58 (C.52:27E-50 et al.) to the
32 Department of Insurance and to the Division of the Ratepayer
33 Advocate established by Reorganization Plan 94-001, are hereby
34 transferred to and assumed by the Division of Ratepayer Advocate in
35 the Department of the Public Advocate.

36 Whenever, in any law, rule, regulation, order, reorganization plan,
37 contract, document, judicial or administrative proceeding, or
38 otherwise, reference is made to the Department of Banking and
39 Insurance, or to the Division of the Ratepayer Advocate concerning
40 functions, powers and duties which had been vested in the Division of
41 Rate Counsel in the Department of the Public Advocate prior to the
42 effective date of P.L.1994, c.58 (C.52:27E-50 et al.), the same shall
43 mean and refer to the Division of Ratepayer Advocate in the
44 Department of the Public Advocate.

45

46 42. (New section) Right to intervene in federal proceedings.

47 The Division of Ratepayer Advocate shall have the right to

1 represent the public interest in any federal proceeding, including but
2 not limited to proceedings before the Federal Communications
3 Commission, the Federal Energy Regulatory Commission, and the
4 Federal Trade Commission.

5
6 ARTICLE 6. DIVISION OF PUBLIC INTEREST ADVOCACY

7
8 43. (New section) Division of Public Interest Advocacy;
9 established.

10 There is hereby established in the Department of the Public
11 Advocate the Division of Public Interest Advocacy under the
12 supervision of the Director of the Division of Public Interest
13 Advocacy, who shall be an attorney-at-law of this State, appointed by
14 the Public Advocate.

15
16 44. (New section) Division of Public Interest Advocacy;
17 jurisdiction.

18 The Division of Public Interest Advocacy may represent the public
19 interest in such administrative and court proceedings, other than those
20 under the jurisdiction of the Division of Ratepayer Advocate pursuant
21 to this act, as the Public Advocate deems shall best serve the public
22 interest.

23
24 45. (New section) Decision to represent particular public interest.

25 The Public Advocate shall have sole discretion to represent or
26 refrain from representing the public interest in any proceeding. The
27 Public Advocate shall consider in exercising his or her discretion the
28 importance and the extent of the public interest involved and whether
29 that interest would be adequately represented without the action of the
30 department. If the Public Advocate determines that there are
31 inconsistent public interests involved in a particular matter, the Public
32 Advocate may choose to represent one such interest based on the
33 considerations in this section, to represent no interest in that matter,
34 or to represent one such interest through the Division of Public
35 Interest Advocacy and another or others through other divisions of the
36 department or through outside counsel engaged on a case by case
37 basis. The Public Advocate has the authority to use his or her
38 discretion to refer potential litigation or other matters to the Office of
39 Dispute Settlement within the Office of the Public Defender for
40 mediation and resolution.

1 46. (New section) Division of Public Interest Advocacy; power.
2 The Division of Public Interest Advocacy may represent and protect
3 the public interest by:

4 a. intervening in or instituting proceedings before any department,
5 commission, agency, or board leading to an administrative adjudication
6 or administrative rule as defined in section 2 of P.L.1968, c.410
7 (C.52:14B-2), or intervening in any matter involving the grant or
8 denial of a permit issued by an agency; and

9 b. instituting litigation on behalf of a broad public interest when
10 authorized to do so by the Public Advocate. Such litigation or
11 representation may include, but is not limited to, litigation on behalf
12 of, or representation of, consumers, the indigent, the elderly, senior
13 citizens, people with disabilities, persons with mental illness and
14 developmental disabilities, or any other group or interest deemed
15 appropriate by the Public Advocate.

16

17 47. (New section) Division of Public Interest Advocacy; additional
18 powers

19 a. The Division of Public Interest Advocacy may receive and
20 investigate complaints and provide such legal representation and other
21 advocacy services as the Public Advocate deems appropriate to
22 protect and advocate the rights of any group or interest deemed
23 appropriate by the Public Advocate, except, however, the provisions
24 of this act shall not be construed to authorize the Division of Public
25 Interest Advocacy, or any other division within the Department of the
26 Public Advocate, to: (1) represent any individual in any civil
27 commitment proceeding pursuant to section 10 of P.L.1987, c.116
28 (C.30:4-27.10 et seq.); or (2) represent any individual in any matters
29 involving incarceration, except as expressly set forth as the duties of
30 the Corrections Ombudsperson, pursuant to sections 27 through 30of
31 this act.

32 b. The Division of Public Interest Advocacy may, in its discretion,
33 commence negotiation, mediation, or alternative dispute resolution
34 prior to, or in lieu of, the initiation of any litigation.

35

36 ARTICLE 7. DIVISION OF CHILD ADVOCACY

37

38 48. (New section) Division of Child Advocacy; established.

39 There is hereby established in the Department of the Public
40 Advocate the Division of Child Advocacy under the supervision of the
41 Director of the Division of Child Advocacy, appointed by the Public
42 Advocate.

43

44 49. (New section) Division of Child Advocacy; jurisdiction.

45 The Division of Child Advocacy may represent the interests of
46 children in such administrative and court proceedings as the Public
47 Advocate deems shall best serve the interest of children.

1 50. (New section) Division of Child Advocacy; powers and duties.

2 The Division of Child Advocacy may represent and protect the
3 interest of children by:

4 a. intervening in or instituting proceedings involving the interests
5 of children before any department, commission, agency, or board of
6 the State leading to an administrative adjudication or administrative
7 rule as defined in section 2 of P.L.1968, c.410 (C.52:14B-2).

8 b. instituting litigation on behalf of broad interests of children when
9 authorized to do so by the Public Advocate.

10 c. commence negotiation, mediation, or alternative dispute
11 resolution in its advocacy efforts prior to, or in lieu of, the initiation
12 of any litigation.

13

14 51. (New section) Division of Child Advocacy: additional powers
15 and duties.

16 a. The Division of Child Advocacy shall report to the Governor
17 and the Legislature on recommendations that will further the State's
18 ability to secure, preserve, and promote the health, safety, and welfare
19 of New Jersey's children.

20 b. The Division of Child Advocacy shall have the authority to hold
21 a public hearing on the subject of any investigation or study. The
22 division may hear testimony from agency and program representatives,
23 the public in general, and such others as may be deemed appropriate.

24 c. The Division of Child Advocacy shall have access to the records
25 and facilities of every agency, funded entity, or other recipient of
26 public funds, to the extent that any such records and facilities are
27 related to the expenditure of public funds, provided that the division
28 complies with all privacy and confidentiality protections applicable to
29 those records and facilities, notwithstanding any contrary provision of
30 law. All agencies shall cooperate with the Division of Child Advocacy
31 and, when requested, shall provide specific information in the form
32 requested.

33 d. For the purpose of carrying out its duties under this act and
34 notwithstanding any contrary provision of law, the Division of Child
35 Advocacy shall act in furtherance of their clients wishes and interests,
36 as required by applicable statutes and ethical rules.

37

38 52. (New section) Division of Child Advocacy; transfer of
39 functions.

40 a. All functions, powers and duties now vested in the Office of
41 Public Defender in, but not of, the Department of Treasury, which had
42 been previously referred to as the "law guardian program", established
43 by section 1 of P.L.1974, c.119 (C.9:6-8.21) and section 3 of
44 P.L.1974, c.119 (C.9:6-8.23), are hereby transferred to the Division
45 of Child Advocacy in the Department of the Public Advocate.

1 b. Whenever, in any law, rule, regulation, order reorganization
2 plan, contract, document, judicial or administrative proceeding, or
3 otherwise, reference is made to the Office of Public Defender in, but
4 not of, the Department of State, or to the Office of Public Defender in,
5 but not of, the Department of Treasury, concerning functions, powers,
6 and duties which had been vested in the law guardian program prior to
7 the effective date of this act, the same shall mean and refer to the
8 Division of Child Advocacy in the Department of the Public Advocate.

9
10 ARTICLE 8. DIVISION OF ELDER ADVOCACY

11
12 53. (New section) Division of Elder Advocacy; established.

13 There is hereby established in the Department of the Public
14 Advocate the Division of Elder Advocacy under the supervision of the
15 Director of the Division of Elder Advocacy, appointed by the Public
16 Advocate.

17
18 54. (New section) Division of Elder Advocacy; jurisdiction.

19 The Division of Elder Advocacy may represent the public interest
20 in such administrative and court proceedings as the Public Advocate
21 deems shall best serve the interests of elderly adults.

22
23 55. (New section) Division of Elder Advocacy; powers and duties.

24 The Division of Elder Advocacy may protect the interests of the
25 elderly by:

26 a. intervening in or instituting proceedings involving the interests
27 of the elderly before any department, commission, agency, or board of
28 the State leading to an administrative adjudication or administrative
29 rule as defined in section 2 of P.L.1968, c.410 (C.52:14B-2);

30 b. instituting litigation on behalf of the elderly when authorized to
31 do so by the Public Advocate; and

32 c. commencing negotiation, mediation, or alternative dispute
33 resolution prior to, or in lieu of, the initiation of any litigation.

34
35 56. (New section) Division of Elder Advocacy; additional powers
36 and duties.

37 a. The Division of Elder Advocacy shall report to the Governor
38 and the Legislature on recommendations that will further the State's
39 ability to secure, preserve, and promote the health, safety, and welfare
40 of New Jersey's elderly.

41 b. The Division of Elder Advocacy shall have the authority to hold
42 a public hearing on the subject of any investigation or study. The
43 division shall hear testimony from agency and program representatives,
44 the public in general, and such others as may be deemed appropriate.

45 c. The Division of Elder Advocacy shall have access to the records
46 and facilities of every agency, funded entity, or other recipient of
47 public funds to the extent that any such records and facilities are

1 related to the expenditure of public funds, provided that the division
2 complies with all privacy and confidentiality protections applicable to
3 those records and facilities, notwithstanding any contrary provision of
4 law. Notwithstanding the foregoing, the Division of Elder Advocacy
5 shall have access to any facility or institution, whether public or
6 private, offering health or health-related services for the
7 institutionalized elderly which is subject to regulation, visitation,
8 inspection or supervision by any government agency, provided such
9 access is permitted by State or federal law. All agencies shall
10 cooperate with the Division of Elder Advocacy and, when requested,
11 shall provide specific information in the form requested.

12

13 57. (New section) Ombudsperson for the Institutionalized Elderly;
14 transfer to Department of the Public Advocate.

15 a. There is hereby established in the Division of Elder Advocacy of
16 the Department of the Public Advocate an Ombudsperson for the
17 Institutionalized Elderly.

18 b. The Ombuds person for the Institutionalized Elderly shall be
19 appointed by the Governor and shall serve at the pleasure of the
20 Governor during the Governor's term of office.

21 c. All functions, powers, and duties now vested in the Office of the
22 Ombudsman for the Institutionalized Elderly pursuant to section 1 of
23 P.L.1977, c.239 (C.52:27G-1 et seq.) are hereby transferred to and
24 assumed by the Ombudsman for the Institutionalized Elderly in the
25 Department of the Public Advocate.

26 d. Whenever, in any law, rule, regulation, order, reorganization
27 plan, contract, document, judicial or administrative proceeding, or
28 otherwise, reference is made to the Office of the Ombudsman for the
29 Institutionalized Elderly in, but not of, the Department of Community
30 Affairs, or the Office of the Ombudsman for the Institutionalized
31 Elderly in, but not of, the Department of Health and Senior Services,
32 or Nursing Home Ombudsman in Department of Community Affairs,
33 the same shall mean and refer to the Ombudsperson for the
34 Institutionalized Elderly in the Department of the Public Advocate.

35

36 ARTICLE 9. ACTIONS, TRANSFERS, REPEALS, AND REPORTS

37

38 58. (New section) a. Actions; name of party.

39 Any action brought by the Public Advocate or any persons
40 authorized herein to institute or participate in actions before the courts
41 or agencies of this State shall be brought in the name of the person
42 serving as the Public Advocate or in the name of an affected individual
43 or group, but shall not be brought in the name of the State or the
44 people thereof.

45 b. Actions against public entities.

46 No action shall be brought by the Public Advocate against a public
47 entity unless prior to filing litigation the Public Advocate submitted the

1 matter to mediation pursuant to this act.

2 c. Mediation required.

3 The Public Advocate must submit the matter to mediation in the
4 Office of Dispute Settlement in the Office of Public Defender, or
5 submit the matter to another mediator as agreed by the parties, to: (1)
6 promote discussion between the parties; (2) assist parties to develop
7 and exchange pertinent information concerning the subject of the
8 litigation; (3) arrive at a mutually acceptable resolution of the
9 controversy; and (4) avoid time-consuming and costly litigation
10 without infringing upon the rights or claims of any party.

11 d. Written communication; "No Other Recourse" requirement.

12 (1) The Public Advocate must determine that no other recourse to
13 litigation exists, prior to initiating litigation, and communicate such
14 determination in writing to the public entity against which the Public
15 Advocate anticipates filing adversarial action.

16 (2) The Public Advocate shall use the term "no other recourse" in
17 its written transmittal to the public entity to unequivocally
18 communicate that the Public Advocate anticipates filing litigation to
19 resolve the matter in controversy.

20 (3) The purpose of this requirement is to clearly provide the
21 potential litigants one final opportunity to resolve the matters in
22 controversy outside the court system.

23 e. Mandatory mediation.

24 (1) All mediation initiated pursuant to this act shall be conducted
25 by the Office of Dispute Settlement in the Office of the Public
26 Defender.

27 (2) The mediation shall commence upon receipt of the "No Other
28 Recourse" letter by the parties and Office of Dispute Settlement, and
29 shall proceed for a time period of not more than 90 days. The
30 mediation will conclude at that time, unless the parties consent to an
31 extension.

32 (3) The mediator may require each party to be represented at the
33 mediation by an agent or employee with settlement authority and may
34 require such agent or employee to attend mediation sessions as
35 requested by the mediator.

36 (4) The mediator may meet counsel and parties jointly or ex parte,
37 and shall direct them to participate in the mediation process in good
38 faith and with a sense of urgency, attending all sessions scheduled by
39 the mediator.

40 (5) The mediator may terminate the mediation at any time if the
41 mediator deems it to be in the public interest to terminate the
42 mediation.

43 (6) All mediation initiated pursuant to this act shall be confidential.
44 No statements or admissions made during the mediation, or documents
45 prepared for a mediation session, may be used, referred to, or
46 disclosed in any other proceeding or construed as an admission against
47 interest.

1 (7) No information presented to the mediator shall be disclosed by
2 the mediator to any other party or entity without the consent of the
3 parties. The mediator shall have quasi-judicial immunity and shall not
4 be subject to subpoena by any party.

5 (8) The parties may, at their discretion, agree to set forth the issues
6 in controversy and the resolution of those issues as agreed upon by the
7 parties, in writing, in a "Report of Mediation." The report of the
8 issues and their resolution may be available to the public for inspection
9 and copying during regular business hours, upon consent of the
10 parties.

11 (9) The Office of Dispute Settlement shall be compensated at an
12 hourly rate, with costs to be borne equally by each of the parties
13 participating in the mediation.

14 (10) Any and all statutes of limitation applicable to the claim or
15 dispute that gives rise to litigation shall be tolled from the date the
16 Public Advocate transmits its letter of "no other recourse" until the
17 date the mediation concludes.

18
19 59. (New section) Suits or causes of action against Legislature or
20 officers thereof.

21 The provisions of this act in and of themselves shall not be
22 construed so as to create any new causes of action, or to authorize any
23 suit against the Legislature or either House or the officers thereof.

24
25 60. (New section) No award of punitive or exemplary damages
26 against public entities or employees.

27 No punitive or exemplary damages shall be awarded against a
28 public entity or public employee in any action brought by the Public
29 Advocate.

30
31 61. (New section) Applicability of State Agency Transfer Act.

32 This act shall be subject to the provisions of the "State Agency
33 Transfer Act," P.L.1971, c.375 (C.52:14D-1 et seq.).

34
35 62. (New section) Preservation of rights and terms.

36 This act shall not:

37 a. affect the tenure, compensation, and pension rights, if any, of the
38 lawful holder thereof, in any position not specifically abolished herein,
39 upon the effective date of this act; or

40 b. alter the term of any member of any board, commission, or
41 public body, not specifically abolished or repealed herein, lawfully in
42 office on the effective date of this act, or require the reappointment
43 thereof.

44
45 63. (New section) Superseding and repeal of inconsistent acts.

46 All acts and parts of acts inconsistent with any of the provisions of
47 this act are, to the extent of such inconsistency, superseded and

1 repealed.

2

3 64. (New section) Assertion of claim against spill compensation
4 fund for class by Public Advocate.

5 The Department of the Public Advocate may act to assert claims as
6 alleged against the Spill Compensation Fund established pursuant to
7 the "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10-
8 23.11 et seq.).

9

10 65. (New section) Severability.

11 If any section, subsection, paragraph, sentence, or other part of
12 this act is adjudged unconstitutional or invalid, such judgment shall not
13 affect, impair, or invalidate the remainder of this act, but shall be
14 confined in its effect to the section, subsection, paragraph, sentence,
15 or other part of this act directly involved in the controversy in which
16 the judgment shall have been rendered.

17

18 66. Section 3 of P.L.1977, c.239 (C.52:27G-3) is amended to read
19 as follows:

20 3. There is hereby established in the [Executive Branch of the
21 State Government the Office of the Ombudsman] Department of the
22 Public Advocate the Ombudsperson for the Institutionalized Elderly.
23 [For the purposes of complying with the provisions of Article V,
24 Section IV, paragraph 1 of the New Jersey Constitution, the Office of
25 the Ombudsman for the Institutionalized Elderly is hereby allocated to
26 the Department of Community Affairs, but, notwithstanding said
27 allocation, the said office shall be independent of any supervision or
28 control by the department or by any board or officer thereof.]
29 (cf: P.L.1977, c.239, s.3)

30

31 67. Section 4 of P.L.1977, c.239 (C.52:27G-4) is amended to read
32 as follows:

33 4. The administrator and chief executive officer of the office shall
34 be the [ombudsman] Ombudsperson, who shall be a person qualified
35 by training and experience to perform the duties of the office. [The
36 ombudsman shall be appointed by the Governor, with the advice and
37 consent of the Senate, and shall serve at the pleasure of the Governor
38 during the Governor's term of office and until the appointment and
39 qualification of the ombudsman's successor. He shall devote his entire
40 time to the duties of his position and shall receive such salary as shall
41 be provided by law. Any vacancy occurring in the position of
42 ombudsman shall be filled in the same manner as the original
43 appointment; provided, however, that whenever the ombudsman dies,
44 resigns, becomes ineligible to serve for any reason, or is removed from
45 office, the Governor shall appoint an acting ombudsman who shall
46 serve until the appointment and qualification of the ombudsman's
47 successor, but in no event longer than 6 months from the occurrence

1 of the vacancy, and who shall exercise during such period all the
2 powers and duties of the ombudsman pursuant to the provisions of this
3 act.]

4 (cf: P.L.1977, c.239, s.4)

5

6 68. Section 1 of P.L.1986, c.205 (C.30:1A-4) is amended to read
7 as follows:

8 1. a. There is established in, but not of, the Department of Human
9 Services the New Jersey Boarding Home Advisory Council. The
10 council shall consist of 14 members, to be appointed by the
11 Commissioner of Human Services in consultation with the
12 Commissioners of Community Affairs and Health and Senior Services,
13 the Public [Defender] Advocate, and the Public Guardian for Elderly
14 Adults [and the Ombudsman for the Institutionalized Elderly], as
15 follows: two persons who own or operate a boarding house as defined
16 in P.L.1979, c.496 (C.55:13B-1 et al.); two persons who own or
17 operate a residential health care facility as defined in section 1 of
18 P.L.1953, c.212 (C.30:11A-1) or licensed pursuant to P.L.1971, c.136
19 (C.26:2H-1 et seq.); two persons who currently reside in a boarding
20 house or a residential health care facility; one person who is a member
21 of the organization which represents operators of boarding houses or
22 residential health care facilities, or both; one person who represents
23 the health care professions; one person who represents a county office
24 on aging; one person who represents a municipal building code
25 department; one person who represents an organization or agency
26 which advocates for mentally ill persons in this State; one person who
27 represents an organization or agency which advocates for physically
28 disabled persons in this State; and two other members who shall be
29 chosen from among persons whose work, knowledge or interest
30 relates to boarding houses or residential health care facilities and the
31 residents thereof, including but not limited to municipal and county
32 elected officials, county prosecutors, social workers, and persons
33 knowledgeable about fire prevention standards and measures needed
34 to assure safety from structural, mechanical, plumbing and electrical
35 deficiencies in boarding houses and residential health care facilities.
36 In addition, the Chairman of the General Assembly Standing Reference
37 Committee on Health and Human [Resources] Services and the
38 Chairman of the Senate Standing Reference Committee on
39 [Institutions, Health and Welfare] Health, Human Services and Senior
40 Citizens or their designees shall serve as ex officio members of the
41 council.

1 b. The terms of office of each appointed member shall be three
2 years, but of the members first appointed, two shall be appointed for
3 [terms] a term of one year, five for terms of two years, and seven for
4 terms of three years. All vacancies shall be filled for the balance of the
5 unexpired term in the same manner as the original appointment. The
6 members of the council shall not receive any compensation for their
7 services, but shall be reimbursed for the actual and necessary expenses
8 incurred in the performance of their duties as members of the council.
9 (cf: P.L.1994, c.58, s.47)

10
11 69. Section 9 of P.L.1985, c.133 (C.30:4-165.14) is amended to
12 read as follows:

13 9. The court shall appoint the Public [Defender] Advocate to
14 serve as counsel for persons who do not have an attorney and over
15 whom guardianship is sought pursuant to P.L.1985, c.133
16 (C.30:4-165.4 et al.) if the petition seeks only guardianship of the
17 person, to the extent that funds are available for this purpose. If the
18 Public [Defender] Advocate is unable to perform this service, the
19 court shall appoint an attorney licensed by the State of New Jersey and
20 in good standing. No attorney's fee is payable for the rendering of this
21 service by the private attorney.

22 (cf: P.L.1994, c.58, s.36)

23
24 70. Section 10 of P.L.1985, c.133 (C.30:4-165.15) is amended to
25 read as follows:

26 10. a. Whenever the commissioner believes that guardianship is no
27 longer required or that another person should be appointed to serve as
28 guardian, he shall apply to the Superior Court for an order modifying
29 or terminating the letters of guardianship. Where someone other than
30 the commissioner is serving as guardian, notice shall be provided to
31 that person.

32 b. At least once every three years, the commissioner shall review
33 the case of each person who receives functional or other services and
34 who has a guardian.

35 c. The Public [Defender] Advocate, the incompetent person, or
36 someone acting in his behalf may institute a similar action for judicial
37 review at any time.

38 d. In cases where the commissioner serves as guardian, the Public
39 [Defender] Advocate shall be given notice of any actions taken
40 pursuant to subsection a. or b. of this section. The Public [Defender]
41 Advocate shall be given an opportunity to meet the person subject to
42 review and inspect the commissioner's records.

43 (cf: P.L.1994, c.58, s.49)

44
45 71. Section 3 of P.L.1976, c.120 (C.30:13-3) is amended to read
46 as follows:

47 3. Every nursing home shall have the responsibility for:

1 a. Maintaining a complete record of all funds, personal property
2 and possessions of a nursing home resident from any source
3 whatsoever, which have been deposited for safekeeping with the
4 nursing home for use by the resident. This record shall contain a
5 listing of all deposits and withdrawals transacted, and these shall be
6 substantiated by receipts given to the resident or his guardian. A
7 nursing home shall provide to each resident or his guardian a quarterly
8 statement which shall account for all of such resident's property on
9 deposit at the beginning of the accounting period, all deposits and
10 withdrawals transacted during the period, and the property on deposit
11 at the end of the period. The resident or his guardian shall be allowed
12 daily access to his property on deposit during specific periods
13 established by the nursing home for such transactions at a reasonable
14 hour. A nursing home may, at its own discretion, place a limitation as
15 to dollar value and size of any personal property accepted for
16 safekeeping.

17 b. Providing for the spiritual needs and wants of residents by
18 notifying, at a resident's request, a clergyman of the resident's choice
19 and allowing unlimited visits by such clergyman. Arrangements shall
20 be made, at the resident's expense, for attendance at religious services
21 of his choice when requested. No religious beliefs or practices, or any
22 attendance at religious services, shall be imposed upon any resident.

23 c. Admitting only that number of residents for which it reasonably
24 believes it can safely and adequately provide nursing care. Any
25 applicant for admission to a nursing home who is denied such
26 admission shall be given the reason for such denial in writing.

27 d. Ensuring that an applicant for admission or a resident is treated
28 without discrimination as to age, race, religion, sex or national origin.
29 However, the participation of a resident in recreational activities,
30 meals or other social functions may be restricted or prohibited if
31 recommended by a resident's attending physician in writing and
32 consented to by the resident.

33 e. Ensuring that no resident shall be subjected to physical restraints
34 except upon written orders of an attending physician for a specific
35 period of time when necessary to protect such resident from injury to
36 himself or others. Restraints shall not be employed for purposes of
37 punishment or the convenience of any nursing home staff personnel.
38 The confinement of a resident in a locked room shall be prohibited.

39 f. Ensuring that drugs and other medications shall not be employed
40 for purposes of punishment, for convenience of any nursing home staff
41 personnel or in such quantities so as to interfere with a resident's
42 rehabilitation or his normal living activities.

43 g. Permitting citizens, with the consent of the resident being
44 visited, legal services programs, employees of the [Office of the Public
45 Defender, employees of the private entity designated by the Governor
46 as the State's mental health protection and advocacy agency pursuant
47 to section 22 of P.L.1994, c.58 (C.52:27E-68), and employees and

1 volunteers of the Office of the Nursing Home Ombudsman Program in
2 the Department of Community Affairs] Department of the Public
3 Advocate , and volunteers, and employees of the private entity
4 designated by the Governor as the State's mental health protection and
5 advocacy agency pursuant to section 22 of P.L.1994, c.58 (C.52:27E-
6 68) whose purposes include rendering assistance without charge to
7 nursing home residents, full and free access to the nursing home in
8 order to visit with and make personal, social and legal services
9 available to all residents and to assist and advise residents in the
10 assertion of their rights with respect to the nursing home, involved
11 governmental agencies and the judicial system.

12 (1) Such access shall be permitted by the nursing home at a
13 reasonable hour.

14 (2) Such access shall not substantially disrupt the provision of
15 nursing and other care to residents in the nursing home.

16 (3) All persons entering a nursing home pursuant to this section
17 shall promptly notify the person in charge of their presence. They
18 shall, upon request, produce identification to substantiate their
19 identity. No such person shall enter the immediate living area of any
20 resident without first identifying himself and then receiving permission
21 from the resident to enter. The rights of other residents present in the
22 room shall be respected. A resident shall have the right to terminate
23 a visit by a person having access to his living area pursuant to this
24 section at any time. Any communication whatsoever between a
25 resident and such person shall be confidential in nature, unless the
26 resident authorizes the release of such communication in writing.

27 h. Ensuring compliance with all applicable State and federal
28 statutes and rules and regulations.

29 i. Ensuring that every resident, prior to or at the time of admission
30 and during his stay, shall receive a written statement of the services
31 provided by the nursing home, including those required to be offered
32 by the nursing home on an as-needed basis, and of related charges,
33 including any charges for services not covered under Title XVIII and
34 Title XIX of the Social Security Act, as amended, or not covered by
35 the nursing home's basic per diem rate. This statement shall further
36 include the payment, fee, deposit and refund policy of the nursing
37 home.

38 j. Ensuring that a prospective resident or the resident's family or
39 guardian receives a copy of the contract or agreement between the
40 nursing home and the resident prior to or upon the resident's
41 admission.

42 (cf: P.L.1997, c.241, s.1)

43

44 72. Section 4 of P.L.1992. c.111 (C.30:4C-69) is amended to read
45 as follows:

46 4. The Commissioner of Human Services shall develop an
47 interdepartmental plan for the implementation of an individualized,

1 appropriate child and family driven care system for children with
2 special emotional needs and for the reduction of inappropriate use of
3 out-of-home placements of these children. The plan shall first address
4 children ready to be returned from institutions such as the Arthur
5 Brisbane Child Treatment Center and other in-State and out-of-State
6 residential facilities, and those at imminent risk of extended
7 out-of-home placement. The commissioner shall consult with
8 appropriate representatives from the State departments of Education,
9 Corrections, Health and Senior Services, Community Affairs and the
10 [Office of the Public Defender, the private entity designated by the
11 Governor as the State's mental health protection and advocacy agency
12 pursuant to section 22 of P.L.1994, c.58 (C.52:27E-68)] Public
13 Advocate, the Statewide Children's Coordinating Council in the
14 Department of Human Services, the Administrative Office of the
15 Courts, and Statewide family advocacy groups, in the development of
16 the plan. (cf: P.L.1994, c.58, s.51)

17

18 73. Section 1 of P.L.1974, c.119 (C.9:6-8.21) is amended to read
19 as follows:

20 1. As used in this act, unless the specific context indicates
21 otherwise:

22 a. "Parent or guardian" means any natural parent, adoptive parent,
23 foster parent, stepparent, or any person, who has assumed
24 responsibility for the care, custody or control of a child or upon whom
25 there is a legal duty for such care. Parent or guardian includes a
26 teacher, employee or volunteer, whether compensated or
27 uncompensated, of an institution who is responsible for the child's
28 welfare and any other staff person of an institution regardless of
29 whether or not the person is responsible for the care or supervision of
30 the child. Parent or guardian also includes a teaching staff member or
31 other employee, whether compensated or uncompensated, of a day
32 school as defined in section 1 of P.L.1974, c.119 (C.9:6-8.21).

33 b. "Child" means any child alleged to have been abused or
34 neglected.

35 c. "Abused or neglected child" means a child less than 18 years of
36 age whose parent or guardian, as herein defined, (1) inflicts or allows
37 to be inflicted upon such child physical injury by other than accidental
38 means which causes or creates a substantial risk of death, or serious
39 or protracted disfigurement, or protracted impairment of physical or
40 emotional health or protracted loss or impairment of the function of
41 any bodily organ; (2) creates or allows to be created a substantial or
42 ongoing risk of physical injury to such child by other than accidental
43 means which would be likely to cause death or serious or protracted
44 disfigurement, or protracted loss or impairment of the function of any
45 bodily organ; (3) commits or allows to be committed an act of sexual
46 abuse against the child; (4) or a child whose physical, mental, or
47 emotional condition has been impaired or is in imminent danger of

1 becoming impaired as the result of the failure of his parent or
2 guardian, as herein defined, to exercise a minimum degree of care (a)
3 in supplying the child with adequate food, clothing, shelter, education,
4 medical or surgical care though financially able to do so or though
5 offered financial or other reasonable means to do so, or (b) in
6 providing the child with proper supervision or guardianship, by
7 unreasonably inflicting or allowing to be inflicted harm, or substantial
8 risk thereof, including the infliction of excessive corporal punishment;
9 or by any other acts of a similarly serious nature requiring the aid of
10 the court; (5) or a child who has been willfully abandoned by his
11 parent or guardian, as herein defined; (6) or a child upon whom
12 excessive physical restraint has been used under circumstances which
13 do not indicate that the child's behavior is harmful to himself, others
14 or property; (7) or a child who is in an institution and (a) has been
15 placed there inappropriately for a continued period of time with the
16 knowledge that the placement has resulted or may continue to result
17 in harm to the child's mental or physical well-being or (b) who has
18 been willfully isolated from ordinary social contact under
19 circumstances which indicate emotional or social deprivation.

20 A child shall not be considered abused or neglected pursuant to
21 paragraph (7) of subsection c. of this section if the acts or omissions
22 described therein occur in a day school as defined in this section.

23 No child who in good faith is under treatment by spiritual means
24 alone through prayer in accordance with the tenets and practices of a
25 recognized church or religious denomination by a duly accredited
26 practitioner thereof shall for this reason alone be considered to be
27 abused or neglected.

28 d. "Law guardian" means an attorney admitted to the practice of
29 law in this State, regularly employed by the [Office of the Public
30 Defender] Department of the Public Advocate or appointed by the
31 court, and designated under this act to represent minors in alleged
32 cases of child abuse or neglect and in termination of parental rights
33 proceedings. The Public Advocate may, by regulation, provide that
34 certain classes of cases be handled by the Office of the Public
35 Defender.

36 e. "Attorney" means an attorney admitted to the practice of law in
37 this State who shall be privately retained; or, in the instance of an
38 indigent parent or guardian, an attorney from the [Office of the Public
39 Defender] Office of the Public Defender or an attorney appointed by
40 the court who shall be appointed in order to avoid conflict between the
41 interests of the child and the parent or guardian in regard to
42 representation. The Public Advocate may, by regulation, provide that
43 certain classes of cases be handled by the Office of the Public
44 Defender.

45 f. "Division" means the Division of Youth and Family Services in
46 the Department of Human Services unless otherwise specified.

47 g. "Institution" means a public or private facility in the State which

1 provides children with out of home care, supervision or maintenance.
2 Institution includes, but is not limited to, a correctional facility,
3 detention facility, treatment facility, day care center, residential school,
4 shelter and hospital.

5 h. "Day school" means a public or private school which provides
6 general or special educational services to day students in grades
7 kindergarten through 12. Day school does not include a residential
8 facility, whether public or private, which provides care on a 24-hour
9 basis.

10 (cf: P.L.1999, c.53, s.55)

11

12 74. Section 23 of P.L.1974, c.119 (C.9:6-8.43) is amended to read
13 as follows:

14 23. Notice of rights. a. The court shall advise the parent or
15 guardian of his right to have an adjournment to retain counsel and
16 consult with him. The court shall advise the respondent that if he is
17 indigent, he may apply for an attorney through the [Office of the
18 Public Defender] Office of the Public Defender. The court shall
19 appoint a law guardian for the child as provided by this act.

20 b. The general public may be excluded from any hearing under this
21 act, and only such persons and the representatives of authorized
22 agencies may be admitted thereto as have an interest in the case.

23 (cf: P.L.1994, c.58, s.40)

24

25 75. Section 14 of P.L.1944, c.27 (C.17:29A-14) is amended to
26 read as follows:

27 14. a. With regard to all property and casualty lines, a filer may,
28 from time to time, alter, supplement, or amend its rates, rating
29 systems, or any part thereof, by filing with the commissioner copies of
30 such alterations, supplements, or amendments, together with a
31 statement of the reason or reasons for such alteration, supplement, or
32 amendment, in a manner and with such information as may be required
33 by the commissioner. If such alteration, supplement, or amendment
34 shall have the effect of increasing or decreasing rates, the
35 commissioner shall determine whether the rates as altered thereby are
36 reasonable, adequate, and not unfairly discriminatory. If the
37 commissioner shall determine that the rates as so altered are not
38 unreasonably high, or inadequate, or unfairly discriminatory, he shall
39 make an order approving them. If he shall find that the rates as altered
40 are unreasonable, inadequate, or unfairly discriminatory, he shall issue
41 an order disapproving such alteration, supplement or amendment.

42 b. (Deleted by amendment, P.L.1984, c.1.)

43 c. If an insurer or rating organization files a proposed alteration,
44 supplement or amendment to its rating system, or any part thereof,
45 which would result in a change in rates, the commissioner may, or
46 upon the request of the filer or the [appropriate division or office in
47 the Department of Insurance] Public Advocate shall], certify the

1 matter for a hearing. The hearing shall, at the commissioner's
2 discretion, be conducted by himself, by a person appointed by the
3 commissioner pursuant to section 26 of P.L.1944, c.27 (C.17:29A-26),
4 or by the Office of Administrative Law, created by P.L.1978, c.67
5 (C.52:14F-1 et seq.), as a contested case. The following requirements
6 shall apply to the hearing:

7 (1) [The hearing shall commence within 30 days of the date of the
8 request or decision that a hearing is to be held. The hearing shall be
9 held on consecutive working days, except that the commissioner may,
10 for good cause, waive the consecutive working day requirement. If
11 the hearing is conducted by an administrative law judge, the
12 administrative law judge shall submit his findings and
13 recommendations to the commissioner within 30 days of the close of
14 the hearing. The commissioner may, for good cause, extend the time
15 within which the administrative law judge shall submit his findings and
16 recommendations by not more than 30 days. A decision shall be
17 rendered by the commissioner not later than 60 days, or, if he has
18 granted a 30 day extension, not later than 90 days, from the close of
19 the hearing. A filing shall be deemed to be approved unless rejected
20 or modified by the commissioner within the time period provided
21 herein.] Such hearings are contested cases and shall be conducted in
22 accordance with the provisions of the Administrative Procedures Act,
23 P.L.1968, c.410 (C.52:14B-1 et seq.).

24 (2) The commissioner, or the Director of the Office of
25 Administrative Law, as appropriate, shall notify all interested parties,
26 including the [appropriate division or office in the Department of
27 Insurance] Public Advocate on behalf of insurance consumers, of the
28 date set for commencement of the hearing, on the date of the filing of
29 the request for a hearing, or within 10 days of the decision that a
30 hearing is to be held.

31 (3) The insurer or rating organization making a filing on which a
32 hearing is held shall bear the costs of the hearing.

33 (4) The commissioner may promulgate rules and regulations (a) to
34 establish standards for the submission of proposed filings,
35 amendments, additions, deletions and alterations to the rating system
36 of filers, which may include forms to be submitted by each filer; and
37 (b) making such other provisions as he deems necessary for effective
38 implementation of this act.

39 d. (Deleted by amendment, P.L.1984, c.1.)

1 e. In order to meet, as closely as possible, the deadlines in section
2 17 of P.L.1983, c.362 (C.39:6A-23) for provision of notice of
3 available optional automobile insurance coverages pursuant to section
4 13 of P.L.1983, c.362 (C.39:6A-4.3) and section 8 of P.L.1972, c.70
5 (C.39:6A-8), and to implement these coverages, the commissioner may
6 require the use of rates, fixed by him in advance of any hearing, for
7 deductible, exclusion, setoff and tort limitation options, on an interim
8 basis, subject to a hearing and to a provision for subsequent
9 adjustment of the rates, by means of a debit, credit or refund
10 retroactive to the effective date of the interim rates. The public
11 hearing on initial rates applicable to the coverages available under
12 section 13 of P.L.1983, c.362 (C.39:6A-4.3) and section 8 of
13 P.L.1972, c.70 (C.39:6A-8) shall not be limited by the provisions of
14 subsection c. of this section governing changes in previously approved
15 rates or rating systems.

16 f. The notice provisions set forth in section 46 of the Public
17 Advocate Restoration Act of 2002, P.L. , c. (C.)(now pending
18 before the Legislature as this act), shall apply to this section.
19 (cf: P.L.1994, c.58, s.43)
20

21 76. Section 66 of P.L.1998, c.21 (C.17:29A-46.8) is amended to
22 read as follows:

23 66. a. For the purposes of this section:

24 "Qualified person" means a person qualified by the Commissioner
25 of Banking and Insurance to intervene in public hearings pursuant to
26 this section, who shall be deemed a "public servant" within the
27 meaning of N.J.S.2C:30-2;

28 "Rate filing" means a filing for a rate increase by an automobile
29 insurer writing private passenger automobile insurance in this State,
30 other than an expedited prior approval rate filing made pursuant to
31 section 34 of P.L.1997, c.151 (C.17:29A-46.6) and other than a rate
32 filing made pursuant to any statutory change in coverage provided
33 under a policy of private passenger automobile insurance.

34 b. The Commissioner of Banking and Insurance shall establish
35 standards for qualifying persons to intervene in rate filings pursuant to
36 this section. The standards shall include, but shall not necessarily be
37 limited to, requiring that any person intervening in a rate filing
38 demonstrate: (1) expertise in the insurance laws of this State; (2) an
39 understanding of the actuarial principles employed in establishing rates
40 and rating systems; (3) sufficient access to a qualified actuary and
41 sufficient expertise to conduct a technical examination of a rate filing;
42 (4) sufficient resources to intervene in the rate filing process as
43 provided herein; and (5) that the person represents the interest of
44 consumers and accepts a duty of fidelity to do so.

45 c. The commissioner shall require such documentation as he
46 determines is necessary to qualify a person to intervene in a rate filing,
47 and may charge a fee for registration with the department as an

1 intervenor, which fee shall be payable annually.

2 d. The commissioner may remove the registration of an intervenor
3 if he determines that (1) the intervenor no longer meets the
4 qualifications, or (2) if the intervenor is convicted of a crime or loses
5 a professional license for misconduct.

6 e. If an insurer or rating organization files for a rate increase for
7 private passenger automobile insurance, the commissioner shall notify
8 the public of the proposed rate change in a newspaper or newspapers
9 of general circulation throughout the State. A qualified person may
10 request, and shall receive, a copy of the rate filing and any
11 amendments and supplements thereto and shall pay the expenses in
12 connection therewith. The qualified person may request that the
13 commissioner certify the rate filing for a hearing pursuant to section
14 14 of P.L.1944, c.27 (C.17:29A-14).

15 f. The commissioner shall establish by regulation the terms and
16 conditions under which the proceedings under this section shall be
17 conducted, including, but not limited to the supporting material which
18 shall accompany the intervention.

19 g. Upon determining that the intervenor has demonstrated that the
20 qualified person has made a substantial contribution to the adoption of
21 any order or decision by the commissioner or a court in connection
22 with a rate filing made pursuant to this section, the commissioner shall
23 award reasonable advocacy and witness fees and expenses.

24 h. A person commits a crime of the third degree if he solicits,
25 accepts or agrees to accept any benefits as consideration for
26 knowingly violating or agreeing to violate a duty of fidelity to which
27 he is subject pursuant to this section. In addition to any disposition
28 authorized by law, the Commissioner of Banking and Insurance shall
29 forever bar from registration as an intervenor any person convicted
30 under this subsection.

31 i. A person commits a crime of the third degree if he confers, or
32 offers or agrees to confer, any benefit the acceptance of which would
33 be criminal under this section. In addition to any disposition
34 authorized by law, the Commissioner of Banking and Insurance shall
35 deny the rate filing of any person convicted under this subsection and
36 the person shall be barred from filing for any rate increase for a period
37 of one year.

38 j. Nothing herein shall be construed to preclude a prosecution or
39 conviction for a violation of any other law.

40 k. This section shall expire 180 days after the effective date of the
41 Public Advocate Restoration Act of 2002, P.L. , c. (C.)
42 (now pending before the Legislature as this bill).
43 (cf: P.L.1998, c.22, s.8)

1 77. Section 1 of P.L.1974 c.55 (C.52:14-15.107) is amended to
2 read as follows:

3 1. Notwithstanding the provisions of the annual appropriations act
4 and section 7 of P.L.1974, c.55 (C.52:14-15.110), the Governor shall
5 fix and establish the annual salary, not to exceed \$133,330 in calendar
6 year 2000, \$137,165 in calendar year 2001 and \$141,000 in calendar
7 year 2002 and thereafter, for each of the following officers:

- 8 Title
- 9 Agriculture Department
 - 10 Secretary of Agriculture
 - 11 Community Affairs Department
 - 12 Commissioner of Community Affairs
 - 13 Corrections Department
 - 14 Commissioner of Corrections
 - 15 Education Department
 - 16 Commissioner of Education
 - 17 Environmental Protection Department
 - 18 Commissioner of Environmental Protection
 - 19 Health and Senior Services Department
 - 20 Commissioner of Health and Senior
 - 21 Services
 - 22 Human Services Department
 - 23 Commissioner of Human Services
 - 24 Banking and Insurance Department
 - 25 Commissioner of Banking and Insurance
 - 26 Labor Department
 - 27 Commissioner of Labor
 - 28 Law and Public Safety Department
 - 29 Attorney General
 - 30 Military and Veterans' Affairs Department
 - 31 Adjutant General
 - 32 Personnel Department
 - 33 Commissioner of Personnel
 - 34 State Department
 - 35 Secretary of State
 - 36 Transportation Department
 - 37 Commissioner of Transportation
 - 38 Treasury Department
 - 39 State Treasurer
 - 40 Members, Board of Public Utilities
 - 41 Public Advocate Department
 - 42 Public Advocate

43

44 Notwithstanding the provisions of this section to the contrary, the
45 Chief Executive Officer and Secretary of the New Jersey Commerce
46 and Economic Growth Commission shall receive such salary as shall
47 be fixed by the Governor pursuant to subsection b. of section 8 of

1 P.L.1998, c.44 (C.52:27C-68).

2 (cf: P.L.1999, c.380, s.2)

3

4 78. Section 1 of P.L.1991, J.R.2 (C.52:9DD-1) is amended to read
5 as follows:

6 1. There is created a 21-member Commission on Racism, Racial
7 Violence and Religious Violence to be appointed as follows: two shall
8 be members of the Senate appointed by the President thereof, who
9 shall not be of the same political party; two shall be members of the
10 General Assembly appointed by the Speaker thereof, who shall not be
11 of the same political party; the Attorney General or his designee; the
12 Public [Defender] Advocate or his designee; and 15 public members
13 to be appointed by the Governor. The public members shall be
14 representative of the ethnic, racial and religious diversity of the State's
15 population and shall include representatives from the following
16 groups: the National Association for the Advancement of Colored
17 People, the Puerto Rican Congress, the Anti-Defamation League of
18 [B'Nai B'Rith] B'nai B'rith, the New Jersey Black Issues Convention,
19 the New Jersey Chapter of the National Rainbow Coalition, and the
20 American Civil Liberties Union.

21 (cf: P.L.1994, c.58, s.55)

22

23 79. Section 12 of P.L.1980, c.125 (C.56:12-12) is amended to read
24 as follows:

25 12. The Office of the Attorney General, the Division of Consumer
26 Affairs, the Department of the Public Advocate, the Commissioner of
27 Banking and Insurance, in regard to contracts of insurance provided
28 for in subsection c. of section 1 of this act (C.56:12-1), or any
29 interested person may seek injunctive relief. The court may authorize
30 reasonable attorney's fees, not to exceed \$2,500.00, and court costs in
31 such a proceeding.

32 (cf: P.L.1994, c.58, s.56)

33

34 80. Section 1 of P.L.1981, c.347 (C.58:11-59) is amended to read
35 as follows:

36 1. a. Whenever a small water company or a small sewer company,
37 or both, are found to have failed to comply with any unstayed order of
38 the Department of Environmental Protection concerning the
39 availability of water, the potability of water, or the provision of water
40 at adequate volume and pressure, or any unstayed order finding a small
41 water company or a small sewer company or both a significant
42 noncomplier or requiring the abatement of a serious violation, as those
43 terms are defined pursuant to section 3 of P.L.1977, c.74
44 (C.58:10A-3), which the department is authorized to enforce pursuant
45 to Title 58 of the Revised Statutes, the department and the Board of
46 Public Utilities, and the Department of the Public Advocate, may, after
47 30 days' notice to capable proximate public or private water or sewer

1 companies, municipal utilities authorities established pursuant to
2 P.L.1957, c.183 (C.40:14B-1 et seq.), municipalities or any other
3 suitable public or private entities wherein the small water company,
4 small sewer company, or both, provide service, conduct a joint public
5 hearing to announce: the actions that may be taken and the
6 expenditures that may be required, including acquisition costs, to make
7 all improvements necessary to assure the availability of water, the
8 potability of water and the provision thereof at adequate volume and
9 pressure, and the compliance with all applicable federal and State
10 water pollution control requirements for a small sewer company,
11 including, but not necessarily limited to, the acquisition of the small
12 water company or small sewer company, or both, by the most suitable
13 public or private entity.

14 At the hearing the department and the board shall state the costs
15 that are expected to be borne by the current users of the small water
16 company, small sewer company, or both. The department shall
17 propose an administrative consent order setting forth an agreed upon
18 time schedule by which the acquiring entity would be required to make
19 improvements required to resolve existing violations of federal and
20 State safe drinking water and water pollution control statutes and
21 regulations. The administrative consent order shall stipulate that the
22 acquiring entity shall not be liable for any fines or penalties for
23 continuing violations arising from the deficiencies, obsolescence or
24 disrepair of the facilities at the time of the acquisition, provided that:

25 (1) the stipulation shall be conditioned upon compliance by the
26 acquiring entity with the time frames established for improving the
27 facilities and eliminating the existing violations; and

28 (2) the stipulation shall not include any violation to the extent
29 caused by operational error, lack of preventive maintenance or careless
30 or improper operation by the acquiring entity.

31 Under no circumstances shall the acquiring entity be liable for
32 violations occurring prior to the acquisition.

33 At the conclusion of a hearing conducted pursuant to this section
34 the record of the hearing shall be kept open for 30 days to allow for
35 the submission of additional comments.

36 b. As used in sections 1 through 4 of P.L.1981, c.347 (C.58:11-59
37 through 58:11-62):

38 "Small water company" means any company, purveyor or entity,
39 other than a governmental agency, that provides water for human
40 consumption and which regularly serves less than 1,000 customer
41 connections ; and

42 "Small sewer company" means any company, business, or entity,
43 other than a governmental agency, which is a public utility as defined
44 pursuant to R.S.48:2-13, that collects, stores, conveys, or treats
45 primarily domestic wastewater, and that regularly serves less than
46 1,000 customer connections.

47 (cf: P.L.1999, c.296, s.2)

1 81. Section 5 of P.L.1985, c.37 (C.58:26-5) is amended to read as
2 follows:

3 5. A contracting unit which intends to enter into a contract with a
4 private vendor for the provision of water supply services pursuant to
5 the provisions of this act shall notify, at least 60 days prior to issuing
6 a request for qualifications from interested vendors pursuant to section
7 6 of this act, the division, the department and the Board of Public
8 Utilities and the Department of the Public Advocate of its intention,
9 and shall publish notice of its intention in at least one newspaper of
10 general circulation in the jurisdiction which would be served under the
11 terms of the proposed contract.

12 (cf: P.L.1994, c.58, s.58)

13

14 82. Section 11 of P.L.1985, c.37 (C.58:26-11) is amended to read
15 as follows:

16 11. Upon designating the selected vendor or vendors pursuant to
17 section 10 of this act, a contracting unit shall negotiate with the
18 selected vendor or vendors a proposed contract, which shall include
19 the accepted proposal and the provisions required pursuant to section
20 15 of this act. Upon negotiating a proposed contract, the contracting
21 unit shall make the proposed contract available to the public at its
22 main offices, and shall transmit a copy of the proposed contract to the
23 division, the department [and], the Board of Public Utilities and the
24 Department of the Public Advocate.

25 (cf: P.L.1994, c.58, s.59)

26

27 83. Section 12 of P.L.1985, c.37 (C.58:26-12) is amended to read
28 as follows:

29 12. a. A contracting unit shall conduct a public hearing or hearings
30 on the charges, rates, or fees, or the formula for determining these
31 charges, rates, or fees, and the other provisions contained in a
32 proposed contract negotiated pursuant to section 11 of this act. The
33 contracting unit shall provide at least 90 days' public notice of this
34 public hearing to the Department of the Public Advocate, prospective
35 consumers and other interested parties. This notice shall be published
36 in at least one newspaper of general circulation in the jurisdiction to
37 be served under the terms of the proposed contract. Within 45 days
38 after giving notice of the public hearing, the contracting unit shall hold
39 a meeting with prospective consumers and other interested parties to
40 explain the terms and conditions of the proposed contract, and to
41 receive written questions which will be part of the record of the public
42 hearing. At the public hearing, the selected vendor or vendors shall be
43 present, and the contracting unit shall have the burden to answer the
44 questions received at the meeting, and to show that the proposed
45 contract complies with the provisions of section 15 of this act, and that
46 it constitutes the best means of securing the required water supply
47 services among available alternatives. The contracting unit shall

1 provide that a verbatim record be kept of the public hearing, and that
2 a written transcript of this record be printed and made available to the
3 public within 30 days of the close of the public hearing. After the
4 public hearing the contracting unit and the vendor may agree to make
5 changes to the proposed contract, and shall transmit the proposed
6 contract, a copy of the printed transcript of the public hearing, and a
7 statement summarizing the major issues raised at the public hearing
8 and the response of the contracting unit to these issues, to the division,
9 the department, the Board of Public Utilities, and the Department of
10 the Public Advocate, and to all persons who attended the public
11 hearing.

12 b. If the Division of Ratepayer Advocate in the Department of the
13 Public Advocate represents the public interest at a public hearing or
14 hearings conducted pursuant to this section, the Division of Ratepayer
15 Advocate shall be entitled to assess the vendor for costs incurred in
16 this representation in the manner provided in section 20 of P.L.1974,
17 c.27 (C.52:27E-19). The basis of the assessment shall be the
18 prospective first year's revenue realized by the vendor from the
19 provision of the water supply services pursuant to the terms of the
20 proposed contract.

21 c. If a contract awarded pursuant to the provisions of this act is
22 renegotiated, the contracting unit shall conduct a public hearing on the
23 renegotiated contract pursuant to the provisions of this section.
24 (cf: P.L.1994, c.58, s.60)

25

26 84. Section 5 of P.L.1985, c.72 (C.58:27-5) is amended to read as
27 follows:

28 5. A contracting unit which intends to enter into a contract with a
29 private vendor for the provision of wastewater treatment services
30 pursuant to the provisions of this act shall notify, at least 60 days prior
31 to issuing a request for qualifications from interested vendors pursuant
32 to section 6 of this act, the division [and], the department and the
33 Department of the Public Advocate of its intention, and shall publish
34 notice of its intention in at least one newspaper of general circulation
35 in the jurisdiction which would be served under the terms of the
36 proposed contract.

37 (cf: P.L.1994, c.58, s.61)

38

39 85. Section 11 of P.L.1985, c.72 (C.58:27-11) is amended to read
40 as follows:

1 11. Upon designating the selected vendor or vendors pursuant to
2 section 10 of this act, a contracting unit shall negotiate with the
3 selected vendor or vendors a proposed contract, which shall include
4 the accepted proposal and the provisions required pursuant to section
5 15 of this act. Upon negotiating a proposed contract, the contracting
6 unit shall make the proposed contract available to the public at its
7 main offices, and shall transmit a copy of the proposed contract to the
8 division [and], the department and the Department of the Public
9 Advocate.

10 (cf: P.L.1994, c.58, s.62)

11

12 86. Section 12 of P.L.1985, c.72 (C.58:27-12) is amended to read
13 as follows:

14 12. a. A contracting unit shall conduct a public hearing or hearings
15 on the charges, rates, or fees, or the formula for determining these
16 charges, rates, or fees, and the other provisions contained in a
17 proposed contract negotiated pursuant to section 11 of this act. The
18 contracting unit shall provide at least 90 days' public notice of this
19 public hearing to the Department of the Public Advocate, prospective
20 consumers and other interested parties. This notice shall be published
21 in at least one newspaper of general circulation in the jurisdiction to
22 be served under the terms of the proposed contract. Within 45 days
23 after giving notice of the public hearing, the contracting unit shall hold
24 a meeting with prospective consumers and other interested parties to
25 explain the terms and conditions of the proposed contract, and to
26 receive written questions which will be part of the record of the public
27 hearing. At the public hearing, the selected vendor or vendors shall be
28 present, and the contracting unit shall have the burden to answer the
29 questions received at the meeting, and to show that the proposed
30 contract complies with the provisions of section 15 of this act, and that
31 it constitutes the best means of securing the required wastewater
32 treatment services among available alternatives. The contracting unit
33 shall provide that a verbatim record be kept of the public hearing, and
34 that a written transcript of this record be printed and made available
35 to the public within 45 days of the close of the public hearing. Written
36 testimony received no more than 15 days after the public hearing shall
37 be included in the written transcript. After the public hearing the
38 contracting unit and the vendor may agree to make changes to the
39 proposed contract, and the contracting unit shall transmit the proposed
40 contract, a copy of the printed transcript of the public hearing, and a
41 statement summarizing the major issues raised at the public hearing
42 and the response of the contracting unit to these issues, to the division
43 [and], the department, and the Department of the Public Advocate,
44 and shall make copies available to any other person upon request.

45 b. If the Division of Rate Counsel in the Department of the Public
46 Advocate represents the public interest at a public hearing or hearings
47 conducted pursuant to this section, the Division of Rate Counsel shall

1 be entitled to assess the vendor for costs incurred in this
2 representation in the manner provided in section 20 of P.L.1974, c.27
3 (C.52:27E-19). The basis of the assessment shall be the prospective
4 first year's revenue realized by the vendor from the provision of the
5 wastewater treatment services pursuant to the terms of the proposed
6 contract.

7 c. If a contract awarded pursuant to the provisions of this act is
8 renegotiated, the contracting unit shall conduct a public hearing on the
9 renegotiated contract pursuant to the provisions of this section.

10 (cf: P.L.1994, c.58, s.63)

11

12 87. N.J.S.59:1-3 is amended to read as follows:

13 59:1-3. Definitions. As used in this subtitle:

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

18 "Employment" includes office; position; employment; or service,
19 under the supervision of the Palisades Interstate Park Commission, in
20 a volunteer program in that part of the Palisades Interstate Park
21 located in New Jersey, as an emergency management volunteer or as
22 a volunteer doing work for the Division of Parks and Forestry, the
23 Division of Fish, Game and Wildlife, or the New Jersey Natural Lands
24 Trust, as authorized by the Commissioner of Environmental
25 Protection, or for the New Jersey Historic Trust.

26 "Enactment" includes a constitutional provision, statute, executive
27 order, ordinance, resolution or regulation.

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

31 "Law" includes enactments and also the decisional law applicable
32 within this State as determined and declared from time to time by the
33 courts of this State and of the United States.

34 "Public employee" means an employee of a public entity, and
35 includes: a person participating, under the supervision of the Palisades
36 Interstate Park Commission, in a volunteer program in that part of the
37 Palisades Interstate Park located in New Jersey[]; a volunteer doing
38 work for the Division of Parks and Forestry, the Division of Fish,
39 Game and Wildlife, or the New Jersey Natural Lands Trust, as
40 authorized by the Commissioner of Environmental Protection; a
41 volunteer doing work for the New Jersey Historic Trust; and any
42 person retained by the public defender to serve as an arbitrator,
43 mediator, or in such similar capacity. "Public employee" does not
44 include any independent contractors or other individuals, agencies, or
45 entities not established in or employed by the Office of the Public
46 Defender designated to provide protection and advocacy services to
47 indigent mental hospital admittees or persons with a developmental

1 disability as the term is defined in section 3 of P.L.1977, c.82
2 (C.30:6D-3).]

3 "Public entity" includes the State, and any county, municipality,
4 district, public authority, public agency, and any other political
5 subdivision or public body in the State. ["Public entity" does not
6 include any independent contractors or other individuals, agencies, or
7 entities not established in or employed by the Office of the Public
8 Defender designated to provide protection and advocacy services to
9 indigent mental hospital admittees or persons with a developmental
10 disability as the term is defined in section 3 of P.L.1977, c.82
11 (C.30:6D-3).]

12 "State" shall mean the State and any office, department, division,
13 bureau, board, commission or agency of the State, but shall not
14 include any such entity which is statutorily authorized to sue and be
15 sued. "State" also means the Palisades Interstate Park Commission,
16 but only with respect to employees, property and activities within the
17 State of New Jersey.

18 "Statute" means an act adopted by the Legislature of this State or
19 by the Congress of the United States.
20 (cf: P.L.1999, c.152, s.58)

21
22 88. Section 70 of P.L.2000, c.72 (C.18A:7G-43) is amended to
23 read as follows:

24 70. There is established in the Office of the Attorney General the
25 [Unit] Office of Fiscal Integrity in School Construction. The
26 Attorney General or his representative may investigate, examine, and
27 inspect the activities of the authority and districts related to the
28 financing and construction of school facilities and the implementation
29 of the provisions of P.L.2000, c.72 (C.18A:7G-1 et al.). The Attorney
30 General may require the submission of duly verified reports from the
31 authority and districts, which include such information in such form as
32 the Attorney General may require. The Attorney General or his
33 representative may also consult with the authority on issues and
34 procedures related to the exercise of its duties and responsibilities
35 under P.L.2000, c.72 (C.18A:7G-1 et al.). The Legislature shall
36 annually appropriate such funds as may be necessary to finance the
37 operations of the [unit] office.

38 (cf: P.L.2000, c.72, s.70)

39

40 89. Section 22 of P.L.1994, c.58 (C.52:27E-68) is amended to
41 read as follows:

42 22. The Office of the Public Defender, through the Division of
43 Mental Health and Guardianship Advocacy, may take such actions as
44 the Governor shall by Executive Order, or other formal redesignation
45 document, authorize for the purpose of coordinating and cooperating
46 with any private entity designated by the Governor as the State's
47 mental health protection and advocacy agency. In addition, the

1 protection and advocacy agency and the Division of Mental Health and
2 Guardianship Advocacy shall coordinate and cooperate with the
3 Ombudsperson for Persons with Mental Illness in accordance with
4 section 32 of P.L. , c. (C.)(now pending before the
5 Legislature as this bill).

6 (cf: P.L.1994, c.58, s.22)

7

8 90. The following are repealed:

9 Section 17 of P.L.1979, c.496 (C.30:1A-2);

10 Section 2 of P.L.1989, c.330 (C.52:27D-29.31);

11 Sections 1 through 6 of P.L.1994, c.58 (C.52:27E-50 through
12 C.52:27E-55);

13 Section 8 of P.L.1994, c.58 (C.52:27E-56);

14 Sections 10 through 16 of P.L.1994, c.58 (C.52:27E-57 through
15 C.52:27E-64);

16 Sections 27 through 28 of P.L.1994, c.58 (C.52:27E-72 through
17 C.52:27E-73); and

18 Sections 4 and 5 of P.L.1985, c.298 (C.52:27G-23 and 52:27G-24).

19

20 91. This act shall take effect immediately but remain inoperative
21 until the enactment into law of P.L. , c. (C.) (now pending
22 before the Legislature as Senate Bill No.1009 of 2002 or Assembly
23 Bill No.2124 of 2002, which establish the New Jersey General
24 Accounting Office).

25

26

27

STATEMENT

28

29 This bill, entitled the "Public Advocate Restoration Act of 2002,"
30 establishes within the Executive Branch a Department of the Public
31 Advocate. It reconstitutes the department, which was abolished in
32 1994.

33 Under the bill, a Public Advocate will be appointed by the
34 Governor, with the advice and consent of the Senate, to operate the
35 department. The Public Advocate is to serve at the pleasure of the
36 Governor, during the Governor's term of office, and until the
37 appointment and qualification of a successor.

38 The bill establishes six divisions and one office within the
39 department. The divisions will be:

40 1) the Division of Administration, which will be responsible for
41 carrying out the administrative duties of the department;

42 2) the Division of Public Interest Advocacy, which will be
43 responsible for representing the public interest in those administrative
44 and court proceedings, other than those under the jurisdiction of the
45 Division of Ratepayer Advocate, that the Public Advocate deems best
46 serve the public interest;

47 3) the Division of Ratepayer Advocate, whose functions are

1 currently split among several executive departments, and which will be
2 transferred to and consolidated in the Department of the Public
3 Advocate, with the division's duties to include oversight of utility and
4 insurance rates and charges, and federal issues, report writing, and the
5 transmission of advance notice of certain insurance rate increases;

6 4) the Division of Elder Advocacy, which will protect the interests
7 of the elderly and investigate and study issues concerning the elderly.
8 The division will include an Ombudsperson for the Institutionalized
9 Elderly;

10 5) the Division of Child Advocacy, which will assume the duties
11 of the Law Guardian Program in the Office of the Public Defender and
12 have the authority to represent the interests of children and investigate
13 and study issues concerning children; and

14 6) the Division of Citizen Relations, which is based on the
15 Division of Citizen Complaints that existed before the department was
16 abolished and will be responsible for receiving and forwarding to
17 appropriate agencies of the State complaints from any citizen relating
18 to administrative action or the inaction of agencies and for
19 investigating any complaint from any citizen relating to the
20 administrative action or inaction of any agency. The division would
21 include the Corrections Ombudsperson, located currently in the
22 Department of Corrections, and the Ombudsperson for Persons with
23 Mental Illness, a new entity created to address the concerns of the
24 institutionalized mentally ill.

25 The office created will be the Office of Public Advocate, which will
26 be responsible for the supervision and efficient operation of the
27 department.

28 The bill also establishes a nine-member advisory council, to consist
29 of five members to be appointed by the Governor and four members
30 to be appointed by legislative leaders.

31 The bill repeals various sections of the law that: abolished the
32 Department of the Public Advocate (P.L.1994, c.58) and transferred
33 its functions, powers and duties to other departments; created the
34 Office of the Public Guardian for Elderly Adults and the
35 Interdepartmental Task Force on the Elderly in the Department of
36 Community Affairs; relate to applications of the board of the New
37 Jersey Individual Health Coverage Program to the Hospital Rate
38 Setting Commission; and that relate to oversight of residential health
39 care facilities, rooming houses and boarding houses.

40 This bill remove a provision authorizing payment of a per diem fee
41 to members of the Advisory Council in the Department of the Public
42 Advocate and provide instead for their reimbursement for expenses
43 incurred in the performance of their duties.

ASSEMBLY STATE GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 1424**

STATE OF NEW JERSEY

DATED: FEBRUARY 14, 2005

The Assembly State Government Committee reports favorably an Assembly Committee Substitute for Assembly, No. 1424.

This committee substitute, entitled the "Public Advocate Restoration Act of 2005," establishes within the Executive Branch a Department of the Public Advocate. It reconstitutes the department that was abolished in 1994.

Under the substitute, a Public Advocate will be appointed by the Governor, with the advice and consent of the Senate. The Public Advocate is to serve during the Governor's term of office and until the appointment and qualification of a successor. The Governor may remove the Public Advocate for cause.

The substitute establishes eight divisions and one office within the department. Specifically,

1) the Division of Administration will be responsible for carrying out the administrative duties of the department;

2) the Division of Citizen Relations will be responsible for receiving and forwarding to appropriate agencies of the State complaints from any citizen relating to administrative action or the inaction of agencies and for investigating any complaint from any citizen relating to the administrative action or inaction of any agency; it will include the Corrections Ombudsperson, located currently in the Department of Corrections, and the Dispute Settlement Office, located currently in the Office of the Public Defender;

3) the Division of Mental Health Advocacy will advocate for persons with mental illness, receive and respond to complaints, and represent the interests of indigent mental hospital admittees in disputes and litigation on an individual or class basis; and

4) the Division for Advocacy for the Developmentally Disabled will advocate for persons with developmental disabilities, receive and respond to complaints, and provide legal representation on an individual or class basis to protect and advocate the rights of developmentally disabled persons.

5) the Division of Rate Counsel will oversee utility and insurance rates and charges, federal issues, and the dissemination of advance notice of certain insurance rate increases;

6) the Division of Public Interest Advocacy will be responsible for representing the public interest in those administrative and court proceedings, other than those under the jurisdiction of the Division of Rate Counsel, that the Public Advocate deems best serves the public interest;

7) the Division of Elder Advocacy will protect the interests of the elderly and investigate and study issues concerning the elderly and it will include the Ombudsperson for the Institutionalized Elderly, an existing position currently in, but not of, the Department of Community Affairs; and

8) the current Office of the Child Advocate is transferred to the Department of the Public Advocate and becomes the Division of Child Advocacy.

The directors of each of these divisions will be appointed by the Public Advocate. The Office of Public Advocate will be responsible for the supervision and efficient operation of the department.

The substitute repeals various sections of the law that:

1) abolished the Department of the Public Advocate (P.L.1994, c.58) and transferred its functions, powers and duties to other departments and agencies;

2) created the Interdepartmental Task Force on the Elderly in the Department of Community Affairs;

3) relate to oversight of residential health care facilities, rooming houses and boarding houses; and

4) established the Office of the Child Advocate in, but not of, the Department of Law and Public Safety.

MINORITY STATEMENT

Submitted by Assemblymen Carroll and Gregg

On one of the rare occasions in which a needless and wasteful governmental program was consigned to a well-deserved place on the ash heap of history, the unlamented Department of the Public Advocate met a long overdue death less than one decade ago.

Proving, however, that old governmental programs never die – and never fade away – the Assembly State Government Committee today resurrects the corpse. Despite record deficits and runaway property taxes, the Committee majority reanimates a creature which will, inevitably, cost State taxpayers tens of millions and, if the past is any guide, will bloat property tax levies with tens of millions of dollars in litigation costs, while effecting policies contrary to the good of the public the office ostensibly serves.

In its previous incarnation, the Department of the Public Advocate engaged in costly and counterproductive lawsuits, the deleterious consequences of which continue to plague the Public. It engaged, for instance, in lawsuits assertedly designed to increase the supply of low

and moderate income housing, the net effect of which was to blight the suburbs with inappropriately dense housing – four units of which were market rate for every “affordable” unit – thereby undercutting urban revitalization initiatives, efforts to preserve the environment, and property tax stabilization efforts.

The Department found its genesis in the thought that policy ought to be made by litigation. Such is clearly a foolish – indeed, a dangerous – philosophy. Not one of the programs for which the Department spent millions in litigation expenses could not have been effected by a sympathetic Legislature. This end run around the legislative process constitutes a fundamental assault on the very essence of democratic self government.

In the “findings” section, the Bill asserts that people at the margins of society lack an effective advocate for their concerns. If so, the solution lies in reforming those entities presently charged with those undertakings. For instance, the Board of Public Utilities exists for the very purpose of governing and regulating monopoly utilities in the public interest. The wholly extraneous “Ratepayer Advocate” effectively duplicates the BPU’s role. If the interests of the people are not being zealously safeguarded by the Attorney General, he should be importuned to resign and be replaced by someone who will.

While paying lip service to the notion that litigation constitutes a costly and ineffective means of resolving policy disputes, history demonstrates that the Department repeatedly resorted to litigation, contrary to the best interests of the public it purported to serve. Indeed, the present Bill fairly drips with references to litigation, lawsuits, and the like. The clear intention of this proposal is to establish the Department as a litigation engine.

Notwithstanding the general objections, certain aspects of the proposal merit unqualified support, in theory if not in practice. For instance, the proposed Division of Citizen Relations merits serious consideration. All too often, citizens, confronted with some action on the part of government which significantly affects their lives or property, confront an unresponsive if not hostile bureaucracy seemingly unconcerned with the devastating effects administrative action often entails.

The difficulty, though, is that adding yet another governmental official to the process offers no guarantee that the relevant agency will mend its ways. State law already provides for an officer with the responsibility to oversee Administrative agencies, to ensure that they act in a reasonable, responsible manner. This officer enjoys the title “Governor”. The people also possess direct recourse to numerous officials charged with ensuring that the Administration recognizes and protects their interests. These officials occupy 80 Assembly seats and 40 Senatorial positions.

If any of these officials fails to do his/her job – that is, should the

Governor fail to preside over an efficient, responsive, and just administration, or if the elected representatives fail to take the needs of their constituents seriously – they should be replaced.

And some of the provisions of the Bill are downright offensive. The last thing that government should be doing is opening more avenues for criminals to file vexatious and expensive suits, the entire cost of which is borne by the already overburdened taxpayers.

The entire concept of a nest of lawyers, effectively unchecked, to decide for themselves what the “public interest” requires – and, hence, to weigh in with the not-inconsiderable resources of the State of New Jersey – is problematic at best. Elected officials, not courts, craft policy and, hence, a Court should find evidence of the State’s policy not in the advocacy of an unelected “Public Advocate” but in the expressions of the Legislature.

Put simply, if a particular action involves a criminal offense, the responsibility for prosecuting same rests with the Attorney General. If it affects some policy of the State – beach access comes readily to mind – such policy should be expressed by the Legislature and, absent legislative action, is not a proper subject for litigation commenced by an officious busybody.

This entire proposal constitutes one long invitation to expensive litigation. This proposal envisions one branch of government suing another; the only possible “winners” as a result of such misbegotten policies will be lawyers.

The Department of the Public Advocate duplicates services already rendered by other departments and, most importantly, by the elected representatives of the people. It is little more than a litigation engine, the costs of which will be borne by the unfortunate and overtaxed citizenry. The proposal fails to recognize that policy making authority rests exclusively with the elected branches and that litigation must never be employed for that purpose.

The Public Advocate was a rogue entity when first created and abolishing it constitutes one of the signal accomplishments of the past ten years. Its reanimation would be a grave error and, in times of extreme fiscal austerity, the expense associated therewith simply cannot be justified.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 1424**

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: MARCH 10, 2005

The Assembly Appropriations Committee reports favorably Assembly Bill No. 1424 (ACS), with committee amendments.

Assembly Bill No. 1424 (ACS), as amended, the "Public Advocate Restoration Act of 2005," establishes within the Executive Branch a Department of the Public Advocate. It reconstitutes the department that was abolished in 1994.

Under the bill, a Public Advocate will be appointed by the Governor, with the advice and consent of the Senate. The Public Advocate is to serve during the Governor's term of office and until the appointment and qualification of a successor. The Governor may remove the Public Advocate for cause. The bill establishes seven divisions and one office within the department. Specifically:

(1) The Division of Administration will be responsible for carrying out the administrative duties of the department;

(2) The Division of Citizen Relations will be responsible for receiving and forwarding to appropriate agencies of the State complaints from any citizen relating to the administrative action or inaction of agencies and, in certain cases, for investigating such citizen complaints itself. The Division would include the Corrections Ombudsperson, located currently in the Department of Corrections, and the Dispute Settlement Office, located currently in the Office of the Public Defender;

(3) The Division of Mental Health Advocacy will advocate for persons with mental illness, receive and respond to complaints, and represent the interests of indigent mental hospital admittees in disputes and litigation on an individual or class basis;

(4) The Division for Advocacy for the Developmentally Disabled will advocate for persons with developmental disabilities, receive and respond to complaints, and provide legal representation on an individual or class basis to protect and advocate the rights of developmentally disabled persons;

(5) The Division of Rate Counsel will oversee utility and insurance rates and charges, federal issues, and the transmission of advance

notice of certain insurance rate increases;

(6) The Division of Public Interest Advocacy will be responsible for representing the public interest in those administrative and court proceedings, other than those under the jurisdiction of the Division of Rate Counsel, as the Public Advocate deems best serves the public interest; and

(7) The Division of Elder Advocacy will protect the interests of the elderly and investigate and study issues concerning the elderly and will include the Ombudsperson for the Institutionalized Elderly, an existing position currently in, but not of, the Department of Community Affairs.

The Office of Public Advocate will be responsible for the supervision and efficient operation of the department.

Finally, the current Office of the Child Advocate is transferred to the Department of the Public Advocate, but will remain independent of supervision or control by the department or its officers. The child advocate will be appointed by the Governor, with the advice and consent of the Senate.

The bill repeals various sections of the law that:

(1) Abolished the Department of the Public Advocate (P.L.1994, c.58) and transferred its functions, powers and duties to other departments and agencies;

(2) Created the Interdepartmental Task Force on the Elderly in the Department of Community Affairs;

(3) Relate to oversight of residential health care facilities, rooming houses and boarding houses;

(4) Established the Office of the Child Advocate in, but not of, the Department of Law and Public Safety; and

(5) Concern notice to be given on the official website of the Department of Banking and Insurance of filings for consumer insurance rate increases and hearings on those increases.

FISCAL IMPACT

The bill provides for the transfer from existing appropriations to the Department of the Public Advocate of such sums as are necessary to implement the provisions of the bill. The Executive Branch has estimated that the cost of implementing those functions of the department, not currently being performed by the agencies and personnel to be transferred to it, at \$10 million in the first year of operation, \$9.1 million in the second year, and \$9.5 million in the third year. The Executive Branch has further estimated that the department, through the Ratepayer Advocate, may realize annual revenue of \$1 million or more in connection with the administration of insurance rate cases.

COMMITTEE AMENDMENTS

The amendments:

(1) Convert the Division of Child Advocacy in the Department of

the Public Advocate to an Office of Child Advocate allocated in, but not of, the Department of the Public Advocate;

(2) Require the Public Advocate and the child advocate to consult with the each other before either exercises duties that are co-extensive between them. The purpose of the consultation, as initiated by either officer, would be to allow the other to assist or collaborate in the pending action. Neither the requirement nor failure to undertake the consultation in a timely way, however, would restrict the officers in performing their respective duties;

(3) Provide for transfer to the Department of the Public Advocate of client service representatives, and patient advocates, for the mentally ill in State or county mental facilities, who are employed by the Division of Mental Health Services in the Department of Human Services;

(4) (a) Remove, from the Division of Rate Counsel's authority to represent the public interest in insurance matters, a provision conferring jurisdiction to participate in proceedings pertaining to rating system changes likely to increase the revenue of insurers filing the changes by more than seven percent, and (b) exclude from the division's subject matter jurisdiction (i) prior approval rate filings of seven percent or less, and (ii) rule or form filings for any other form of insurance;

(5) Delete language prohibiting the Division of Public Interest Advocacy, or any other division within the new department, from representing individuals in certain civil commitment proceedings;

(6) Repeal the statutory provision for official notice by the Department of Banking and Insurance of insurer filings to request consumer insurance rate increases;

(7) In language providing support for the new department, replace a specific appropriation amount with a provision for the transfer to the department of such sums as may be required for its costs, subject to ordinary approvals; and

(8) Make various technical and editorial corrections.

STATEMENT TO
[First Reprint]
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 1424

with Senate Floor Amendments
(Proposed By Senator VITALE)

ADOPTED: MAY 12, 2005

These amendments:

remove a provision that would have transferred to the new Department of Public Advocate employees of the Division of Mental Health Services in the Department of Human Services who are client services representatives or patient advocates for the mentally ill providing patient advocacy services in State or county facilities that provide inpatient care, supervision and treatment for persons with mental illness, including psychiatric facilities, and the functions of such employees. These employees must remain in the Department of Human Services by court order;

clarify the intent of the bill and adjust references with regard to the private entity designated by the Governor as the State's mental health and developmental disabilities protection and advocacy agency. This bill envisions that the Division of Mental Health Advocacy and the Division of Advocacy for the Developmentally Disabled will take over the services provided by this private entity. However, the federal government requires, for federal funding eligibility, a formal redesignation process to occur with regard to the services for the developmentally disabled. This process may take as long as one year. Therefore, these amendments are needed to retain provisions in the law that refer to this private entity so that it may continue to function until the redesignation is finalized. These provisions cover access by the private entity to client records at private and public institutions; the entity's membership on the New Jersey Commission on Legal and Ethical Problems in the Delivery of Health Care; consultation by the Commissioner of Human Services with the entity in the development of a system for children with special emotional needs; access by the entity to nursing homes residents; the status of such an entity under the New Jersey Tort Claims Act; and coordination and cooperation with the entity by the two relevant divisions in the new department; and

change the effective date to January 17, 2006.

LEGISLATIVE FISCAL ESTIMATE
 [Second Reprint]
 ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 1424
STATE OF NEW JERSEY
211th LEGISLATURE

DATED: SEPTEMBER 20, 2005

SUMMARY

Synopsis: Restores Department of the Public Advocate as principal department in Executive Branch; appropriates \$5 million.

Type of Impact: General Fund expenditure

Agencies Affected: New Department of the Public Advocate

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	\$6,368,874	\$6,560,000	\$6,757,000

- ! The Office of Legislative Services (OLS) notes that several of the duties to be performed by the newly constituted Department of the Public Advocate currently exist in other State agencies and are to be transferred along with their funding to the new department.
- ! The OLS further notes that other duties outlined in the bill have been performed by the former Department of the Public Advocate. Assuming a 3 percent inflation rate since FY 1994 when these activities were eliminated, the cost of re-establishing these activities would total \$6,368,874 in the first year of implementation, and increase to \$6,560,000 and \$6,757,000 in the second and third years of implementation.
- ! The OLS notes that while this estimate provides the cost of activities which had been conducted in the past, it does not account for possible expansion of these activities under the new Department of the Public Advocate. Therefore, depending upon the scope of activities to be conducted by the proposed Department of the Public Advocate, the cost of implementing this legislation may be higher.
- ! The bill, the "Public Advocate Restoration Act of 2005", would restore the Department of the Public Advocate as a principal department in the Executive branch. The Department of the Public Advocate was abolished in 1994.

BILL DESCRIPTION

Assembly Bill No. 1424 (ACS)(2R), as amended, the "Public Advocate Restoration Act of 2005," establishes within the Executive Branch a Department of the Public Advocate. It reconstitutes the department that was abolished in 1994.

Under the bill, a Public Advocate will be appointed by the Governor, with the advice and consent of the Senate. The Public Advocate is to serve during the Governor's term of office and until the appointment and qualification of a successor. The Governor may remove the Public Advocate for cause. The bill establishes seven divisions and one office within the department. Specifically:

(1) The Division of Administration will be responsible for carrying out the administrative duties of the department;

(2) The Division of Citizen Relations will be responsible for receiving and forwarding to appropriate agencies of the State complaints from any citizen relating to the administrative action or inaction of agencies and, in certain cases, for investigating such citizen complaints itself. The Division would include the Corrections Ombudsperson, located currently in the Department of Corrections, and the Dispute Settlement Office, located currently in the Office of the Public Defender;

(3) The Division of Mental Health Advocacy will advocate for persons with mental illness, receive and respond to complaints, and represent the interests of indigent mental hospital admittees in disputes and litigation on an individual or class basis;

(4) The Division for Advocacy for the Developmentally Disabled will advocate for persons with developmental disabilities, receive and respond to complaints, and provide legal representation on an individual or class basis to protect and advocate the rights of developmentally disabled persons;

(5) The Division of Rate Counsel will oversee utility and insurance rates and charges, federal issues, and the transmission of advance notice of certain insurance rate increases;

(6) The Division of Public Interest Advocacy will be responsible for representing the public interest in those administrative and court proceedings, other than those under the jurisdiction of the Division of Rate Counsel, as the Public Advocate deems best serves the public interest; and

(7) The Division of Elder Advocacy will protect the interests of the elderly and investigate and study issues concerning the elderly and will include the Ombudsperson for the Institutionalized Elderly, an existing position currently in, but not of, the Department of Community Affairs.

(8) The current Office of the Child Advocate is transferred to the Department of the Public Advocate, but will remain independent of supervision or control by the department or its officers. The child advocate will be appointed by the Governor, with the advice and consent of the Senate.

The Office of Public Advocate will be responsible for the supervision and efficient operation of the department.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES**Existing duties**

The Office of Legislative Services (OLS) notes that several of the duties to be performed by the newly constituted Department of the Public Advocate currently exist in other State agencies and are to be transferred along with their funding to the new department. These include:

Program	FY 2005 Appropriation
Division of Ratepayer Advocacy	\$ 5,871,000
Division of Citizen Relations	
Office of Dispute Settlement	343,000
Corrections Ombudsperson	905,000
Division of Elder Advocacy	
Ombudsperson for Institutionalized Elderly	826,000
Office of the Child Advocate	2,000,000
Child Welfare Unit	1,430,000
TOTAL	\$11,375,000

The OLS notes that although the Child Welfare Unit is not mentioned in the Senate Substitute, this unit may be transferred to the new Department of the Public Advocate as part of the Office of the Child Advocate.

Re-established duties

The OLS further notes that other duties outlined in the bill have been performed by the former Department of the Public Advocate. Assuming a 3 percent inflation rate since FY 1994 when these activities were eliminated, the cost of re-establishing these activities are as follows:

Program	Estimated FY2006 Cost
Department of the Public Advocate	
Division of Administration	\$ 2,218,110
Division of Mental Health Advocacy	2,593,459
Division of Advocacy for the Developmentally Disabled	688,643
Division of Public Interest Advocacy	868,662
TOTAL	\$ 6,368,874

Second- and third-year costs of these activities would total \$6,560,000 and \$6,757,000, respectively. The OLS notes that while this estimate provides the cost of activities which had been conducted in the past, it does not account for possible expansion of these activities under the new Department of the Public Advocate. Therefore, depending upon the scope of activities to be conducted by the proposed Department of the Public Advocate, the cost of implementing this legislation may be higher.

Section: *Judiciary*

Analyst: *Anne C. Raughley*
Principal Fiscal analyst

Approved: *David J. Rosen*
Legislative Budget and Finance Officer

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.

PO BOX 004
TRENTON, NJ 08625

Contact: Kelley Heck
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RELEASE: July 12, 2005

Codey Signs Bill Restoring the Public Advocate

(TRENTON) –Acting Governor Richard J. Codey today signed into law A1424, a bill that restores the Department of the Public Advocate as an independent government watchdog for New Jersey’s residents and a powerful voice for those unable to protect themselves.

“For more than two decades the Public Advocate was an indispensable part of New Jersey government, a champion of ordinary people with real needs but without political capital,” Codey said. “Today we are accomplishing another goal I laid out in the State of the State address, by restoring that voice to the people of New Jersey.

“Thanks to our action today, the Public Advocate will again stand independent, ready to fight anyone, even government itself, on behalf of everyday citizens.”

Codey signed the bill during a public ceremony at the Governor’s Outer Office, in the State House. Assemblyman Wilfredo Caraballo (D-Essex, Union), who is a former Public Advocate; Senator Joseph F. Vitale (D-Middlesex); and Lauren Skowronski, Executive Director of Common Cause New Jersey; all joined the Acting Governor.

The bill’s sponsors include Caraballo, Vitale, Senator Robert J. Martin (R-Morris, Passaic), Assemblyman Alfred E. Steele (D-Bergen, Passaic), Assemblyman John J. Burzichelli (D-Cumberland, Gloucester, Salem), and Assemblyman Mims Hackett (D-Essex).

Under the new law, the Department of the Public Advocate will be established at noon on January 17, 2006. The Public Advocate will be appointed by the incoming governor, and serve during that governor’s term of office.

The Department will act on ordinary citizens’ complaints about the action or inaction of state agencies; oversee utility and insurance rates and charges; represent people with mental illness, those with developmental disabilities, children and the elderly; and represent the public interest in administrative and court proceedings.

Vitale said, “The restoration of the Public Advocate will once again give voice to the voiceless, and ensure that government is truly accountable to the needs of the people. The agency will stand as a watchdog, independent of interference from within the bureaucracy, and able to take the state to court if need be in order to accomplish its goals. With a strong Public Advocate in place, New Jersey will have another level of scrutiny that will only benefit the state’s residents and keep government serving the public, and not corrupt

politicians.”

Caraballo said, “The elderly, developmentally disabled, mentally ill and indigent lost a strong voice and a trusted ally in Trenton when the Department of the Public Advocate was dissolved in 1994. New Jersey needs the Public Advocate more than ever before now that the federal government is trying to privatize Social Security and slash funding for Medicaid and other programs critical to our seniors and those with marginal incomes.”

Steele said, “Restoring the Department of the Public Advocate will allow many of the services currently being performed by various agencies – such as ombudsmen and the Ratepayer Advocate – to be consolidated into a single department. Centralizing these critical services will provide both significant cost savings and a more organized, effective protection of the public interest.”

Burzichelli said, “The Child Advocate has been a tireless fighter for the rights and protection of the children of this state. Preserving the independence of this successful office will provide for its continued operation free from any political agenda.”

Hackett said, “The Public Advocate will be a powerful watchdog for the public’s interest. Had the Department of the Public Advocate been in existence for the last 10 years, we may have been able to avoid many of the problems we encountered with E-ZPass, the Parsons inspection contract and the collapse of the HIP-NJ managed health care plan.”

Skowronski, of Common Cause New Jersey, said, “The restoration of the Office of Public Advocate is an important step forward for New Jersey citizens. Once again, there will be an office of state government that is designed to stand up for people when they are being treated unfairly by powerful interests.”