

26:3-31(p)

August 22, 1975

Legislative Notes on NJSA 26:3-31 (p)
(Heat insufficiency -- local board of health to act as agent for
landlord)

32

Laws of 1971, Chapter 360 A441

Introduced on Jan. 29, 1970 by Kravarik, Macrae, Garibaldi, Haelig.

April 23, 1970 - Passed in Assembly.
May 3, 1971 - Passed in Senate, amended.
May 6, 1971 - Senate amendment passed in Assembly.
Dec. 2, 1971 - Returned by Governor with recommended amendment.
Dec. 2, 1971 - Amended as recommended, re-enacted in the Assembly.
Dec. 6, 1971 - Re-enacted in Senate under emergency resolution.
Dec. 21, 1971 - Approved. (2nd OCR)

No statement of purpose.
(Copies of original A441, Senate amendments and governor's
conditional veto enclosed.)

New Jersey State League of Municipalities Legislative Committee
approves of A441 -- see letter dated 5/17/71. (Copy enclosed)

No hearings discovered on A441.

Background:

See
974.90 New Jersey. Landlord-Tenant Relationship Study Commission.
H842 Interim Report, April, 1970, p. 19 "D. Heat and Hot
1970 Water" (copy enclosed)

GC - yes

JA/ks

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ASSEMBLY, No. 441

STATE OF NEW JERSEY

INTRODUCED JANUARY 29, 1970

By Assemblymen KRAVARIK, MACRAE, GARIBALDI and
HAELIG

Referred to Committee on County and Municipal Government

AN ACT concerning the powers of local boards of health, and amend-
ing R. S. 26:3-31.

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

1 1. R. S. 26:3-31 is amended to read as follows:

2 26:3-31. The local board of health shall have power to pass, alter
3 or amend ordinances and make rules and regulations in regard to
4 the public health within its jurisdiction, for the following purposes:

5 a. To protect the public water supply and prevent the pollution
6 of any stream of water or well, the water of which is used for
7 domestic purposes, and to prevent the use of or to close any well,
8 the water of which is polluted or detrimental to the public health.

9 b. (1) To prohibit the cutting, sale or delivery of ice in any
10 municipality without obtaining a permit from the local board. No
11 person shall cut, sell or deliver ice in any municipality without
12 obtaining such permit.

13 (2) To refuse such permit or revoke any permit granted by it
14 when in its judgment the use of any ice cut, sold or delivered
15 under the permit would be detrimental to the public health. Upon
16 the refusal or revocation of a permit by the local board, an appeal
17 may be taken to the State department. Upon order of the State
18 department a permit shall be granted or the revocation set aside.

19 (3) To prohibit the importation, distribution or sale of any im-
20 pure ice which would be detrimental to the public health.

21 c. To license and regulate the sanitary conditions of hotels,
22 restaurants, cafes, and other public eating houses and to provide
23 for the posting of ratings or score cards setting forth the sanitary
24 condition of any public eating house after inspection of the same
25 and to post the rating or score card in some conspicuous or public
26 place in such eating house.

27 d. To compel any owner of property along the line of any sewer
28 to connect his house or other building therewith. This paragraph
29 shall be enforced by the local board within its jurisdiction and it
30 shall by ordinance provide a fine of \$25.00 to be imposed upon any
31 person who shall not comply with any order issued under the
32 authority of this paragraph, within 30 days after notice by the
33 proper officer of the board to make the required connections. An
34 additional fine of \$10.00 shall be provided for each day of delay,
35 after the expiration of the 30 days, in which the provisions of the
36 order or notice are not complied with. Such notice may be served
37 upon the owner personally or by leaving it at his usual place of
38 abode with a member of his family above the age of 18 years.

39 e. To regulate the practice of plumbing, to issue licenses and
40 to create an examining board to determine the qualification of any
41 applicant for a license to practice plumbing. The board shall con-
42 sist of 3 persons, of whom one shall be a plumbing inspector in the
43 employ of the local board, one a master plumber, and one a journey-
44 man plumber. No such ordinance or rule or regulation adopted
45 thereunder shall require the obtaining of a license by any person,
46 firm or corporation licensed in accordance with the "State Plumb-
47 ing License Law of 1968."

48 f. To regulate, control, and prohibit the accumulation of offal
49 and any decaying or vegetable substance.

50 g. (1) To regulate the location, construction, maintenance,
51 method of emptying or cleaning, and the frequency of cleaning of
52 any privy or other place used for the reception or storage of human
53 excrement, and to prohibit the construction or maintenance of any
54 privy or other such place until a license therefor shall have been
55 issued by the board, which license shall continue in force for 1 year
56 from the date of issue.

57 (2) To fix the fee, not exceeding \$5.00, for such license, and to
58 use the fees so collected in supervising and maintaining said privies
59 or other places and in removing and disposing of the excrement
60 therefrom.

61 (3) To revoke such license at any time if the owner or tenant
62 of the property on which any privy or other such place is located,
63 maintains the same in violation of law, or of the State sanitary
64 code, or any ordinance or rule of the board.

65 h. To regulate, control, or prohibit the cleaning of any sewer,
66 the dumping of garbage, the filling of any sunken lot or marsh
67 land, and to provide for the filling up of any such lot or land, which
68 has become filled with stagnant water and is located in any built-up
69 area.

70 i. (1) To license and regulate the business of cleaning cesspools
71 and privies, which license shall continue for the term of 1 year from
72 the date of granting, and to fix the fee that shall be charged for such
73 license, not exceeding \$20.00 for each vehicle or conveyance.

74 (2) To prohibit unlicensed persons from engaging in such
75 business.

76 (3) To require any vehicle or conveyance used in such business
77 within its jurisdiction to be approved by it.

78 (4) To revoke such license if any licensee or his employee or
79 agent shall violate any ordinance or rule of the board in cleaning
80 any cesspool or privy, or in removing the contents thereof.

81 j. To aid in the enforcement of laws as to the adulteration of
82 all kinds of food and drink, and to prevent the sale or exposure
83 for sale of any meat or vegetable that is unwholesome or unfit for
84 food.

85 k. To regulate, control, or prohibit the keeping or slaughtering
86 of animals.

87 l. To license and regulate the keeping of boarding houses for
88 infants and children and to fix a license fee for the same and to pre-
89 vent unlicensed persons from keeping such boarding houses. This
90 paragraph shall not apply to:

91 (1) The Bureau of Children's Services.

92 (2) Any children's home, orphan asylum, or children's aid
93 society incorporated under the laws of this State.

94 (3) Any aid society of a properly organized and accredited
95 church or fraternal society organized for aid and relief to its
96 members.

97 (4) Any charitable society incorporated under the laws of this
98 State having as one of its objects the prevention of cruelty to
99 children or the care and protection of children.

100 m. To compel owners of buildings, designed to be occupied, or
101 occupied, as residences by more than 2 families and when the
102 owners have agreed to supply heat, to provide heat from October 1
103 in each year to May 1 of the succeeding year so that the temperature
104 of said apartment where one or more persons reside shall always
105 be kept at 68 degrees Fahrenheit or above, between the hours of
106 6 ante meridian and 10 post peridian.

107 n. To regulate the practice of midwifery, but the exercise of
108 such authority shall not conflict with the provisions of chapter 10
109 of the Title Professions and Occupations (§ 45:10-1 et seq.).

110 o. To enforce the making of returns or reports to the local board
111 on the part of any person charged with such duty under any law

112 and to take cognizance of any failure to make such returns and deal
113 with the same in an effective manner.

114 *p. To act as the agent for a landlord in the engaging of repair-*
115 *men and the ordering of any parts necessary to restore to operating*
116 *condition the furnace, boiler or other equipment essential to the*
117 *proper heating of any residential unit rented by said landlord, pro-*
118 *vided, however, that at least 12 hours have elapsed since the tenant*
119 *has lodged a complaint with the local board of health; a bona fide*
120 *attempt has been made to notify the landlord of the failure of the*
121 *heating equipment; and the outside air temperature is less than*
122 *51°F.*

123 *Any person who supplies material or services in accordance with*
124 *this section shall bill the landlord directly and by filing a notice*
125 *approved by the local board of health, with the county clerk, shall*
126 *have a lien on the premises where the materials were used or ser-*
127 *vices supplied.*

1 2. This act shall take effect immediately.

SENATE AMENDMENT TO
ASSEMBLY, No. 441

—•—
STATE OF NEW JERSEY
—•—

ADOPTED APRIL 29, 1971

Amend page 4, section 1, line 118, delete "12", insert "24".

[OFFICIAL COPY REPRINT]
ASSEMBLY, No. 441

STATE OF NEW JERSEY

INTRODUCED JANUARY 29, 1970

By Assemblymen KRAVARIK, MACRAE, GARIBALDI and
HAELIG

Referred to Committee on County and Municipal Government

AN ACT concerning the powers of local boards of health, and amend-
ing R. S. 26:3-31.

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

1 1. R. S. 26:3-31 is amended to read as follows:

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3 or amend ordinances and make rules and regulations in regard to
4 the public health within its jurisdiction, for the following purposes:

5 a. To protect the public water supply and prevent the pollution
6 of any stream of water or well, the water of which is used for
7 domestic purposes, and to prevent the use of or to close any well,
8 the water of which is polluted or detrimental to the public health.

9 b. (1) To prohibit the cutting, sale or delivery of ice in any
10 municipality without obtaining a permit from the local board. No
11 person shall cut, sell or deliver ice in any municipality without
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14 when in its judgment the use of any ice cut, sold or delivered
15 under the permit would be detrimental to the public health. Upon
16 the refusal or revocation of a permit by the local board, an appeal
17 may be taken to the State department. Upon order of the State
18 department a permit shall be granted or the revocation set aside.

19 (3) To prohibit the importation, distribution or sale of any im-
20 pure ice which would be detrimental to the public health.

21 c. To license and regulate the sanitary conditions of hotels,
22 restaurants, cafes, and other public eating houses and to provide
23 for the posting of ratings or score cards setting forth the sanitary
24 condition of any public eating house after inspection of the same
25 and to post the rating or score card in some conspicuous or public
26 place in such eating house.

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

27 d. To compel any owner of property along the line of any sewer
28 to connect his house or other building therewith. This paragraph
29 shall be enforced by the local board within its jurisdiction and it
30 shall by ordinance provide a fine of \$25.00 to be imposed upon any
31 person who shall not comply with any order issued under the
32 authority of this paragraph, within 30 days after notice by the
33 proper officer of the board to make the required connections. An
34 additional fine of \$10.00 shall be provided for each day of delay,
35 after the expiration of the 30 days, in which the provisions of the
36 order or notice are not complied with. Such notice may be served
37 upon the owner personally or by leaving it at his usual place of
38 abode with a member of his family above the age of 18 years.

39 e. To regulate the practice of plumbing, to issue licenses and
40 to create an examining board to determine the qualification of any
41 applicant for a license to practice plumbing. The board shall con-
42 sist of 3 persons, of whom one shall be a plumbing inspector in the
43 employ of the local board, one a master plumber, and one a journey-
44 man plumber. No such ordinance or rule or regulation adopted
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46 firm or corporation licensed in accordance with the "State Plumb-
47 ing License Law of 1968."

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51 method of emptying or cleaning, and the frequency of cleaning of
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53 excrement, and to prohibit the construction or maintenance of any
54 privy or other such place until a license therefor shall have been
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58 use the fees so collected in supervising and maintaining said privies
59 or other places and in removing and disposing of the excrement
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62 of the property on which any privy or other such place is located,
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64 code, or any ordinance or rule of the board.

65 h. To regulate, control, or prohibit the cleaning of any sewer,
66 the dumping of garbage, the filling of any sunken lot or marsh
67 land, and to provide for the filling up of any such lot or land, which
68 has become filled with stagnant water and is located in any built-up
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80 any cesspool or privy, or in removing the contents thereof.

81 j. To aid in the enforcement of laws as to the adulteration of
82 all kinds of food and drink, and to prevent the sale or exposure
83 for sale of any meat or vegetable that is unwholesome or unfit for
84 food.

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86 of animals.

87 l. To license and regulate the keeping of boarding houses for
88 infants and children and to fix a license fee for the same and to pre-
89 vent unlicensed persons from keeping such boarding houses. This
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93 society incorporated under the laws of this State.

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95 church or fraternal society organized for aid and relief to its
96 members.

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98 State having as one of its objects the prevention of cruelty to
99 children or the care and protection of children.

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101 occupied, as residences by more than 2 families and when the
102 owners have agreed to supply heat, to provide heat from October 1
103 in each year to May 1 of the succeeding year so that the temperature
104 of said apartment where one or more persons reside shall always
105 be kept at 68 degrees Fahrenheit or above, between the hours of
106 6 ante meridian and 10 post peridian.

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108 such authority shall not conflict with the provisions of chapter 10
109 of the Title Professions and Occupations (§ 45:10-1 et seq.).

110 o. To enforce the making of returns or reports to the local board
111 on the part of any person charged with such duty under any law

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113 with the same in an effective manner.

114 *p. To act as the agent for a landlord in the engaging of repair-*
115 *men and the ordering of any parts necessary to restore to operating*
116 *condition the furnace, boiler or other equipment essential to the*
117 *proper heating of any residential unit rented by said landlord, pro-*
118 *vided, however, that at least ***[12]*** *24* hours have elapsed since*
119 *the tenant has lodged a complaint with the local board of health; a*
120 *bona fide attempt has been made to notify the landlord of the failure*
121 *of the heating equipment; and the outside air temperature is less*
122 *than 51° F.*

123 *Any person who supplies material or services in accordance with*
124 *this section shall bill the landlord directly and by filing a notice*
125 *approved by the local board of health, with the county clerk, shall*
126 *have a lien on the premises where the materials were used or ser-*
127 *vices supplied.*

1 2. This act shall take effect immediately.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

December 2, 1971

ASSEMBLY BILL NO. 441 (OCR)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14(b) of the Constitution, I herewith return Assembly Bill No. 441 (OCR), with my objections, for reconsideration.

This bill would empower local boards of health to order on behalf of landlords repairs to heating equipment for any residential unit providing 24 hours have elapsed since the tenant has listed a complaint with the local board, a bona fide attempt has been made to notify the landlord of the failure of the equipment, and the outside temperature is below 51 degrees Fahrenheit.

I favor the concept of this bill; however, I note certain language ambiguities which should be corrected. Additionally, I am recommending that the proposal conform with the "Hotel and Multiple Dwelling Law."

Accordingly, I herewith return Assembly Bill No. 441 (OCR), with the following changes, for your consideration:

1. Page 3, Section 1, Lines 100-106: Delete in its entirety and insert "m. To require in buildings, designed to be occupied, or occupied, as residences by more than two families and when the owners have agreed to supply heat, that from October 1 of each year to the next succeeding May 1, every unit of dwelling space and every habitable room therein shall be maintained at least at 68 degrees Fahrenheit whenever the outside temperature falls below 55 degrees during daytime hours from 6 a.m. to 11 p.m. At times other than those specified interiors of units of dwelling space shall be maintained at least at 55 degrees Fahrenheit whenever the outside temperature falls below 40 degrees.

"In meeting the aforesaid standards, the owner shall not be responsible for heat loss and the consequent drop in the interior temperature arising out of action by the occupants in leaving windows or doors open to the exterior of the building. The owner shall be obligated to supply required fuel or energy and maintain the heating system in good operating condition so that it can supply heat as required herein notwithstanding any contractual provision seeking to delegate or shift responsibility to the occupant or third person, except that the owner shall not be required to supply fuel or energy for

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

Assembly Bill No. 441 (OCR)

2

heating purposes to any unit where the occupant thereof agrees in writing to supply heat to his own unit of dwelling space and the said unit is served by its own exclusive heating equipment for which the source of heat can be separately computed and billed."

2. Page 4, Section 1, Line 119: After "health" delete ";" and insert ", prior to which".

3. Page 4, Section 1, Line 120: After "made" insert "by the tenant".

4. Page 4, Section 1, Line 121: After "equipment" delete ";" and insert ", the landlord has failed to take appropriate action,".

5. Page 4, Section 1, Line 122: Delete "51" and insert "55".

Respectfully,

/s/ William T. Cahill

GOVERNOR

[seal]

Attest:

/s/ Jean E. Mulford

Acting Secretary to the Governor

ASSEMBLY AMENDMENTS TO
ASSEMBLY, No. 441
[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

ADOPTED DECEMBER 2, 1971

Amend page 3, section 1, lines 100 to 106, delete in its entirety and insert:

“m. To require in buildings, designed to be occupied, or occupied, as residences by more than two families and when the owners have agreed to supply heat, that from October 1 of each year to the next succeeding May 1, every unit of dwelling space and every habitable room therein shall be maintained at least at 68° F. whenever the outside temperature falls below 55° during daytime hours from 6 a.m. to 11 p.m. At times other than those specified interiors of units of dwelling space shall be maintained at least at 55° F. whenever the outside temperature falls below 40°.

In meeting the aforesaid standards, the owner shall not be responsible for heat loss and the consequent drop in the interior temperature arising out of action by the occupants in leaving windows or doors open to the exterior of the building. The owner shall be obligated to supply required fuel or energy and maintain the heating system in good operating condition so that it can supply heat as required herein notwithstanding any contractual provision seeking to delegate or shift responsibility to the occupant or third person, except that the owner shall not be required to supply fuel or energy for heating purposes to any unit where the occupant thereof agrees in writing to supply heat to his own unit of dwelling space and the said unit is served by its own exclusive heating equipment for which the source of heat can be separately computed and billed.”

Amend page 4, section 1, line 119, after “health”, delete “;”, and insert “, prior to which”.

Amend page 4, section 1, line 120, after “made”, insert “by the tenant”.

Amend page 4, section 1, line 121, after “equipment”, delete “;”, and insert “, and the landlord has failed to take appropriate action,”.

Amend page 4, section 1, line 122, delete “51°”, and insert “55°”.

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STATE OF NEW JERSEY

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17 may be taken to the State department. Upon order of the State
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is not enacted and is intended to be omitted in the law.**

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102 **owners have agreed to supply heat, to provide heat from October 1**
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104 **of said apartment where one or more persons reside shall always**
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106 **6 ante meridian and 10 post peridian.]****

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109 *agreed to supply heat, that from October 1 of each year to the next*
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111 *room therein shall be maintained at least at 68° F. whenever the*
112 *outside temperature falls below 55° during daytime hours from*

113 6 a.m. to 11 p.m. At times other than those specified interiors of
 114 units of dwelling space shall be maintained at least at 55° F. when-
 115 ever the outside temperature falls below 40°.

116 In meeting the aforesaid standards, the owner shall not be
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 118 temperature arising out of action by the occupants in leaving
 119 windows or doors open to the exterior of the building. The owner
 120 shall be obligated to supply required fuel or energy and maintain
 121 the heating system in good operating condition so that it can supply
 122 heat as required herein notwithstanding any contractual provision
 123 seeking to delegate or shift responsibility to the occupant or third
 124 person, except that the owner shall not be required to supply fuel
 125 or energy for heating purposes to any unit where the occupant
 126 thereof agrees in writing to supply heat to his own unit of dwelling
 127 space and the said unit is served by its own exclusive heating
 128 equipment for which the source of heat can be separately computed
 129 and billed.**

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 131 such authority shall not conflict with the provisions of chapter 10
 132 of the Title Professions and Occupations (§ 45:10-1 et seq.).

133 o. To enforce the making of returns or reports to the local board
 134 on the part of any person charged with such duty under any law
 135 and to take cognizance of any failure to make such returns and deal
 136 with the same in an effective manner.

137 p. To act as the agent for a landlord in the engaging of repair-
 138 men and the ordering of any parts necessary to restore to operating
 139 condition the furnace, boiler or other equipment essential to the
 140 proper heating of any residential unit rented by said landlord, pro-
 141 vided, however, that at least *[12]* *24* hours have elapsed since
 142 the tenant has lodged a complaint with the local board of
 143 health**[;]** **, prior to which** a bona fide attempt has been made
 144 **by the tenant** to notify the landlord of the failure of the heating
 145 equipment**[;]** **, and the landlord has failed to take appro-
 146 priate action,** and the outside air temperature is less than
 147 **[51°]** **55°** F.

148 Any person who supplies material or services in accordance with
 149 this section shall bill the landlord directly and by filing a notice
 150 approved by the local board of health, with the county clerk, shall
 151 have a lien on the premises where the materials were used or
 152 services supplied.

1 2. This act shall take effect immediately.

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STATE OF NEW JERSEY.
LANDLORD TENANT RELATIONSHIP STUDY COMMISSION,

Interim Report ,
to the
Governor and Legislature

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ROBERT H. FUST, *Executive Director*

ROBERTA H. THATCHER, *Asst. Executive Director*

May 17, 1971

The Honorable William T. Cahill
Governor of the State of New Jersey
State House
Trenton, New Jersey 08625

Assembly 441

Dear Governor Cahill:

The League Legislative Committee approves the provisions of
Assembly 441.

This bill would facilitate proceedings by local boards of health in
instances where sufficient heat is unavailable in residential rented
dwelling units.

Very truly yours,

A handwritten signature in cursive script that reads "Robert H. Fust".

Robert H. Fust
Executive Director

RHF:erl

(4) The feasibility of self-regulation by the Real Estate Industry.

D. Heat and Hot Water - Unlike other services or obligations relating to the habitability of the premises, both the control of its source, and its mandatory provision, are clearly the responsibility of the landlord. This means, in effect, that a tenant is not compelled to argue that such services were or were not bargained for in the original lease. The study should consider the immediacy of the problem of their loss, possible civil penalties, notices, provisions and civil damages, a cause of action for willful failure to provide heat where punitive damages could be added, and perhaps most important the creation of an emergency repair squad, which could provide immediate relief for tenants in the cold winter months.

E. Public Housing - What role can the State play in public housing? Can the State prohibit punitive standards from being used in denying admission to public housing; i.e., criminal record, illegitimate children? Can the State require publication of eligibility standards, and publication of waiting lists where applicants would be issued identifying numbers? Can states require notification of reasons for rejected applications. The 1969 Housing Act, recently signed into law, the New York Provisions, and the Rhode Island Tenant Board, which have all addressed themselves to these problems will be examined.

F. Retaliatory Eviction - The housing crisis has not only fostered an accentuated use by landlords of arbitrary rental increases, but also the termination of tenants, who, aware of their own rights and the landlord's obligations under the law, have pro-