

# ASSEMBLY, No. 1236

## STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

**Sponsored by:**

**Assemblyman VINCENT PRIETO**

**District 32 (Bergen and Hudson)**

**Assemblyman PAUL D. MORIARTY**

**District 4 (Camden and Gloucester)**

**Assemblyman JOSEPH A. LAGANA**

**District 38 (Bergen and Passaic)**

**Assemblywoman ANNETTE QUIJANO**

**District 20 (Union)**

**SYNOPSIS**

Creates Construction Trades Licensing Board for licensing and regulation of several construction professions; creates new division for homeowner protection in Department of Law and Public Safety.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 5/8/2015)

1   **AN ACT** concerning regulation of the construction industry,  
 2       establishing a new office for homeowner protection, revising  
 3       various parts of the statutory law and supplementing Title 45 of  
 4       the Revised Statutes.

5

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

8

9       1. (New section) Sections 1 through 18, 24 through 30, 40 and  
 10      49 of this act shall be known and may be cited as the "Construction  
 11      Trades License Law."

12

13      2. (New section) The Legislature finds and declares that:

14      a. It is necessary and in the interest of the public health, safety,  
 15      and welfare to regulate the various trades comprising the  
 16      construction industry;

17      b. In its report entitled "The Good, the Bad and the Ugly - New  
 18      Home Construction in New Jersey," dated March 2005, the New  
 19      Jersey State Commission of Investigation (SCI) cited serious  
 20      construction deficiencies in new homes built in New Jersey,  
 21      including such defects as improperly installed walls, beams, roof  
 22      trusses and foundations, as well as improperly installed vent  
 23      systems and pipes;

24      c. The SCI report indicated that these and other types of  
 25      deficiencies were not isolated. The SCI attributed these  
 26      deficiencies mainly to low-quality materials and inferior  
 27      construction practices.

28      d. The SCI report also found that a major contributing factor to  
 29      the deficiencies was that builders commonly utilized subcontractors  
 30      who employ laborers with no direct link to the builder;

31      e. The SCI report noted a need for specially trained and skilled  
 32      experts to be present on construction sites at all times;

33      f. The commission found that construction deficiencies were  
 34      exacerbated and enabled by an ineffective inspection and  
 35      construction code enforcement system;

36      g. While Executive Order No. 33 of 2005 signed by Acting  
 37      Governor Richard Codey was aimed at addressing many of the  
 38      problems cited by the commission, the depth of reform required  
 39      may only be properly accomplished through Legislative enactments;

40      h. In order to remedy the faults uncovered in the new home  
 41      construction industry and in the State regulation thereof, it is  
 42      necessary to develop a consolidated approach which will strengthen  
 43      the expertise and competency of those individuals working in the  
 44      construction trades. A licensing system will provide the best  
 45      method to ensure that adequate training and education are possessed

**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.

1 by those operating in the trades, and that safe and defect-free  
2 residential housing is the standard for construction in New Jersey;

3 i. Reliance upon local code officials as the sole source of  
4 ensuring proper workmanship in every phase of construction is not  
5 prudent. Providing for a project supervisor, licensed in one or more  
6 of the construction trades, will make certain that proper  
7 construction techniques are employed in the day to day operations,  
8 and will both serve to increase the level of superior workmanship  
9 and assist code officials in the inspection of construction; and

10 j. In order to: (1) provide more balanced, but in-depth, State  
11 oversight of the construction industry, (2) clearly recognize and  
12 provide consumer protections, and (3) lessen confusion for the  
13 public concerning the registration of construction contractors,  
14 including contractors of home improvements as well as new home  
15 construction, all registration of construction contractors shall be  
16 subject to the administration of the Department of Law and Public  
17 Safety, Division of Consumer Affairs. The processes of  
18 construction code establishment and enforcement, including the  
19 licensing and management of code enforcement agents, and the  
20 administration of the New Home Warranty program shall remain  
21 under the authority of the Division of Codes and Standards in the  
22 Department of Community Affairs, which department is charged  
23 with the enforcement of the State Uniform Construction Code.

24  
25 3. (New section) As used in the "Construction Trades License  
26 Law":

27 "Board" means the Construction Trades Licensing Board created  
28 by section 5 of P.L. , c. (C. ) (pending before the  
29 Legislature as this bill).

30 "Bona fide representative" means: in the case of a sole  
31 proprietorship, the owner; in the case of a partnership, a partner; in  
32 the case of a limited liability company, a manager; or in the case of  
33 a corporation, an executive officer.

34 "Business organization" means any partnership, corporation,  
35 business trust, joint venture, or other legal entity which engages or  
36 offers to engage in the business of contracting or acts as a  
37 contractor as defined in this section.

38 "Commission" means the Construction Trades Services  
39 Commission created pursuant to section 4 of P.L. , c. (C. )  
40 (pending before the Legislature as this bill).

41 "Construction trades" means those trades for which licensure is  
42 required under this act.

43 "Contracting" means engaging in business as a contractor and  
44 includes, but is not limited to, performance of any of the activities  
45 of a contractor engaged in a construction trade. The attempted sale  
46 of contracting services and the negotiation or bid for a contract on  
47 these services also constitutes contracting. If the services offered  
48 require licensure or agent qualification, the offering, negotiation for

1 a bid, or attempted sale of these services requires the corresponding  
2 licensure. However, the term "contracting" shall not extend to an  
3 individual, partnership, corporation, trust, or other legal entity that  
4 offers to sell or sells completed residences on property on which the  
5 individual or business entity has any legal or equitable interest, if  
6 the services of a licensed contractor have been or will be retained  
7 for the purpose of constructing such residences.

8 "Contractor" means any person who, for compensation other than  
9 wages as an employee, undertakes any work in the construction  
10 trade for which licensure is required under P.L. , c. (C. )  
11 (pending before the Legislature as this bill) and includes:

12 a. a person who builds any structure on his own property for  
13 the purpose of sale or who builds any structure intended for public  
14 use on his own property;

15 b. any person who represents himself to be a contractor by  
16 advertising or any other means;

17 c. any person engaged as a maintenance person, other than an  
18 employee, who regularly engages in activities which routinely are  
19 performed by a specific construction trade for which licensure is  
20 required under this act;"

21 d. any person engaged in any construction trade for which  
22 licensure is required under P.L. , c. (C. ) (pending before  
23 the Legislature as this bill); or

24 e. a construction manager who performs management and  
25 counseling services on a construction project for a fee.

26 "Department" means the Department of Law and Public Safety.

27 "Director" means the Director of the Division of Consumer  
28 Affairs in the Department of Law and Public Safety.

29 "Division" means the Division of Consumer Affairs in the  
30 Department of Law and Public Safety.

31 "General building contractor" means a person licensed under this  
32 act as a general building contractor qualified by education, training,  
33 experience, and knowledge to perform or superintend construction  
34 of structures for the support, shelter, and enclosure of persons,  
35 animals, chattels, or movable property of any kind or any of the  
36 components of that construction except: plumbing, electrical work,  
37 and mechanical work, including heating, ventilation, air  
38 conditioning and refrigeration (HVACR), for which the general  
39 building contractor shall employ the services of a contractor  
40 licensed in the particular specialty.

41 "Immediate supervision" means reasonable direction, oversight,  
42 inspection, and evaluation of the work of a person, in or out of the  
43 immediate presence of the supervising person, so as to ensure that  
44 the end result complies with applicable standards.

45 "Individual" means a natural person.

46 "Primary project supervisor" means a person who possesses the  
47 requisite skill, knowledge, and experience, is licensed in at least one

1 of the construction trades, and has the responsibility to supervise,  
2 direct, manage, and control the contracting activities of a business  
3 organization with which he or she is connected or has the  
4 responsibility to supervise, direct, manage, and control construction  
5 activities for which he or she has obtained the building permit.

6 "Primary qualifying agent" means the individual in a business  
7 organization who is responsible for supervision of all operations of  
8 the business organization; for all field work at all sites; and for  
9 financial matters, both for the organization in general and for each  
10 specific job. The primary qualifying agent shall be the primary  
11 project supervisor, unless another individual has been designated by  
12 the primary qualifying agent for that function, provided, however,  
13 that the primary qualifying agent shall remain responsible for all  
14 operations of the business organization regardless of delegation for  
15 on-site supervision.

16 "Registration" means registration with the Department of Law  
17 and Public Safety, Division of Consumer Affairs, pursuant to  
18 P.L. , c. (C. ) (pending before the Legislature as this bill).

19 "Residential and small commercial contractor" means a person  
20 licensed under this act as a residential and small commercial  
21 contractor qualified by education, training, experience, and  
22 knowledge to perform or superintend the construction of single  
23 family residences, multifamily residences up to four units, and  
24 commercial construction of not more than three stories above  
25 ground and not more than 20,000 square feet, or any of the  
26 components of that construction except plumbing, electrical work,  
27 mechanical work, and manufactured housing installation, for which  
28 the residential and small commercial contractor shall employ the  
29 services of a contractor licensed in the particular specialty.

30 "Secondary qualifying agent" means the individual in a business  
31 organization who is delegated the responsibility for supervision of  
32 all operations of the business organization; for all field work at all  
33 sites; and for financial matters, both for the organization in general  
34 and for each specific job, either by contract or by the primary  
35 qualifying agent.

36 "Swimming pool contractor" means a contractor whose scope of  
37 work involves, but is not limited to, the construction, repair, and  
38 servicing of any swimming pool, or hot tub or spa, whether public,  
39 private, or otherwise, regardless of use. The scope of work includes  
40 the installation, repair, or replacement of existing equipment, any  
41 cleaning or equipment sanitizing which requires at least a partial  
42 disassembling, excluding filter changes, and the installation of new  
43 pool or spa equipment, interior finishes, the installation of package  
44 pool heaters, the installation of all perimeter piping and filter  
45 piping, and the construction of equipment rooms or housing for  
46 pool or spa equipment, and also includes the scope of work of a  
47 swimming pool or spa servicing contractor. The scope of such work

1 shall not include direct connections to a sanitary sewer system or to  
2 potable water lines. The installation, construction, modification, or  
3 replacement of equipment permanently attached to and associated  
4 with the pool or spa for the purpose of water treatment or cleaning  
5 of the pool or spa requires licensure; however, the usage of such  
6 equipment for the purposes of water treatment or cleaning shall not  
7 require licensure unless the usage involves construction,  
8 modification, or replacement of such equipment. Water treatment  
9 that does not require such equipment does not require a license. In  
10 addition, a license shall not be required for the cleaning of the pool  
11 or spa in any way that does not affect the structural integrity of the  
12 pool or spa or its associated equipment.

13 "Roofing contractor" means a contractor whose services are  
14 unlimited in the roofing trade and who has the experience,  
15 knowledge, and skill to install, maintain, repair, alter, extend, or  
16 design, when not prohibited by law, and use materials and items  
17 used in the installation, maintenance, extension, and alteration of all  
18 kinds of roofing, waterproofing, and coating, except when coating  
19 is not represented to protect, repair, waterproof, stop leaks, or  
20 extend the life of the roof.

21 "Secondary project supervisor" means a person who possesses  
22 the requisite skill, knowledge, and experience, and has the  
23 responsibility to supervise, direct, manage, and control construction  
24 activities for which he or she has obtained a permit, and whose  
25 technical and personal qualifications have been determined by  
26 investigation and examination as provided in this part, as attested  
27 by the department.

28 "Sheet metal contractor" means a contractor whose services are  
29 unlimited in the sheet metal trade and who has the experience,  
30 knowledge, and skill necessary for the manufacture, fabrication,  
31 assembling, handling, erection, installation, dismantling,  
32 conditioning, adjustment, insulation, alteration, repair, servicing, or  
33 design, when not prohibited by law, of ferrous or nonferrous metal  
34 work of U.S. No. 10 gauge or its equivalent or lighter gauge and of  
35 other materials, including, but not limited to, fiberglass, used in lieu  
36 thereof and of air handling systems, including the setting of air  
37 handling equipment and reinforcement of same, the balancing of air  
38 handling systems, and any duct cleaning and equipment sanitizing  
39 which requires at least a partial disassembling of the system.

40 "Specialty" means a scope of work and responsibility which is  
41 limited to a particular phase of construction or to a subset of the  
42 activities described in one of the construction trades.

43 "Underground utility and excavation contractor" means a  
44 contractor whose services are limited to the construction,  
45 installation, and repair, on public or private property, whether  
46 accomplished through open excavations or through other means,  
47 including, but not limited to, directional drilling, auger boring,

1 jacking and boring, (other than drilling, boring, coring, driving,  
2 jetting, digging, sealing or other construction related to wells),  
3 trenchless technologies, wet and dry taps, grouting, and slip lining,  
4 of main sanitary sewer collection systems, main water distribution  
5 systems, storm sewer collection systems, and the continuation of  
6 utility lines from the main systems to a point of termination up to  
7 and including the meter location for the individual occupancy,  
8 sewer collection systems at property line on residential or single  
9 occupancy commercial properties, or on multi-family properties at  
10 manhole or wye lateral extended to an invert elevation as  
11 engineered to accommodate future building sewers, water  
12 distribution systems, or storm sewer collection systems at storm  
13 sewer structures. However, an underground utility and excavation  
14 contractor may install empty underground conduits in rights of way,  
15 easements, platted rights of way in new site development, and  
16 sleeves for parking lot crossings no smaller than 2 inches in  
17 diameter, provided that each conduit system installed is designed by  
18 a licensed professional engineer or an authorized employee of a  
19 municipality, county, or public utility and that the installation of  
20 any such conduit does not include installation of any conductor  
21 wiring or connection to an energized electrical system. An  
22 underground utility and excavation contractor shall not install any  
23 piping that is an integral part of a fire protection system, which  
24 shall be installed by a fire protection contractor as defined in  
25 P.L.2001, c.289 (C.52:27D-25n et seq.).

26

27 4. (New section) There is hereby created the "Construction  
28 Trades Services Commission." For the purpose of complying with  
29 Article V, section IV, paragraph 1 of the New Jersey Constitution,  
30 the commission is allocated within the Department of Law and  
31 Public Safety but, notwithstanding this allocation, the commission  
32 shall be independent of any supervision or control by the  
33 department or the Attorney General, except as otherwise provided  
34 in P.L. , c. (C. ) (pending before the Legislature as this  
35 bill).

36 a. In consultation with all of the professional boards  
37 comprising it as enumerated in subsection b. of this section, and  
38 notwithstanding any law or regulation to the contrary, the  
39 commission shall have the following responsibilities:

40 (1) To provide general guidance to all boards regulating the  
41 trades and professions which provide services to the construction  
42 industry;

43 (2) To establish model examination requirements for use by the  
44 various boards listed in subsection b. of this section;

45 (3) To establish model standards of supervision for students or  
46 persons in training to become qualified to obtain a license in the  
47 trade they represent; and

1 (4) To establish model standards of conduct for various  
2 licensees;

3 (5) To conduct administrative hearings not delegated to an  
4 administrative law judge relating to the licensing of any applicant  
5 when requested by a participating board;

6 (6) To advise the director on the administration and enforcement  
7 of any matters affecting the division and the construction industry  
8 in general;

9 (7) To advise the director on matters affecting the division  
10 budget;

11 (8) To advise and assist trade associations in conducting  
12 construction trade seminars and industry education and promotion;  
13 and

14 (9) To perform other duties as provided by this act.

15 The commission may adopt and amend regulations not  
16 inconsistent with the Constitution and the laws of New Jersey  
17 which may be reasonable necessary for the performance of its  
18 duties, including the employment of such persons it deems  
19 necessary

20 b. Initially, the commission shall be comprised of the following  
21 10 members:

22 (1) Five members of the Construction Trades Licensing Board  
23 established pursuant to section 5 of P.L. , c. (C. ) (pending  
24 before the Legislature as this bill); and

25 (2) One member of the Board of Examiners of Electrical  
26 Contractors, established pursuant to section 3 of P.L.1962, c.162  
27 (C.45:5A 3);

28 (3) One member of the State Board of Examiners of Master  
29 Plumbers established pursuant to section 3 of P.L.1968, c.362  
30 (C.45:14C 3);

31 (4) One member of the State Board of Examiners of Heating,  
32 Ventilation, Air Conditioning and Refrigeration Contractors  
33 established pursuant to section 3 of P.L. , c. (C. ) (pending  
34 before the Legislature as Assembly Bill No. 1016 of 2006);

35 (5) One member of the "State Well Drillers and Pump Installers  
36 Examining and Advisory Board," established pursuant to P.L.1947,  
37 c.377 (C.58:4A 5 et seq.); and

38 (6) One member of the "Fire Protection Equipment Advisory  
39 Committee," established pursuant to section 2 of P.L.2001, c.289,  
40 (C.52:27D-25o).

41 The terms of office of the commission members who are serving on  
42 the Contractors Licensing Board shall continue as they serve on the  
43 commission.

44 c. Beginning on January 1, 2007, the commission shall be  
45 comprised of twelve members appointed by the director with the  
46 approval of the Governor from the following groups:



- 1 (1) one member shall be a professional engineer licensed  
2 pursuant to P.L.1938, c.342 (C.45:8 27 et seq.);
- 3 (2) one member shall be a licensed architect pursuant to  
4 R.S.45:3 1 et seq;
- 5 (3) one member shall be a licensed general building contractor;
- 6 (4) two members shall be licensed residential and small  
7 commercial contractors;
- 8 (5) five members shall be the five chairpersons from the  
9 following: The Board of Examiners of Electrical Contractors, the  
10 State Board of Examiners of Master Plumbers, the State Board of  
11 Examiners of Heating, Ventilation, Air Conditioning and  
12 Refrigeration Contractors, the State Well Drillers and Pump  
13 Installers Examining and Advisory Board, and the Fire Protection  
14 Equipment Advisory Committee;
- 15 (6) two members shall be from the general public, provided,  
16 however that the certified public accountant on the Contractors  
17 Licensing Board will continue to serve until the current term  
18 expires, after which both members under this subparagraph shall be  
19 appointed from the general public.
- 20 d. (1) Except as required by subparagraph (2), as terms of  
21 current commission members expire, the director, with the approval  
22 of the Governor, shall appoint each new member or reappointed  
23 member to a four year term ending June 30.
- 24 (2) Notwithstanding the requirements of subparagraph (a) of this  
25 subsection, the director with the approval of the Governor shall, at  
26 the time of appointment or reappointment, adjust the length of terms  
27 to stagger the terms of commission members so that approximately  
28 1/2 of the commission members are appointed every two years.
- 29 (3) A commission member may not serve more than two  
30 consecutive terms.
- 31 (4) The commission shall elect annually one of its members as  
32 chair, for a term of one year.
- 33 (5) When a vacancy occurs in the membership for any reason,  
34 the replacement shall be appointed for the unexpired term.
- 35 (6) (a) Members of the commission shall serve without  
36 compensation, but are entitled to receive reasonable per diem and  
37 travel expenses while on official business.
- 38 (b) Members may decline to receive per diem and expenses for  
39 their service.
- 40 e. The commission shall meet at least monthly unless the  
41 director determines otherwise.
- 42 (1) The director may call additional meetings at the director's  
43 discretion, upon the request of the chair, or upon the written request  
44 of four or more commission members.
- 45 (2) Five members shall constitute a quorum for the transaction  
46 of business.

1 f. The commission shall promulgate all the rules necessary to  
2 effectuate its purposes under P.L. , c. (C. ) (pending before  
3 the Legislature as this bill) in accordance with the "Administrative  
4 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).  
5

6 5. (New section) There is created within the Division of  
7 Consumer Affairs in the Department of Law and Public Safety the  
8 Construction Trades Licensing Board. Members of the board shall  
9 be appointed by the Governor. The board shall consist of 16  
10 members who are residents of the State of New Jersey. In addition  
11 to the two public members appointed to represent the interests of  
12 the public pursuant to the provisions of subsection b. of section 2 of  
13 P.L.1971, c.60 (C.45:1-2.2), one member shall be from a  
14 department in the Executive Branch of State Government who shall  
15 serve without compensation at the pleasure of the Governor and the  
16 remaining 13 members shall consist of the following:

17 Three individuals who are primarily engaged in business as  
18 general building contractors;

19 Three individuals who are residential and small commercial  
20 contractors;

21 One individual who is primarily engaged in business as a roofing  
22 contractor;

23 One individual who is primarily engaged in business as a sheet  
24 metal contractor;

25 One individual who individual who is primarily engaged in  
26 business as a swimming pool or spa contractor;

27 One individual who is primarily engaged in business as an  
28 underground utility and excavation contractor;

29 Two individuals who are code enforcement officials; and

30 One individual who is primarily engaged in business as a  
31 certified public accountant.

32 The Governor shall appoint each member, other than the State  
33 executive department member, for terms of four years, except that  
34 of the members first appointed, other than the State executive  
35 department member, four shall serve for a term of four years, four  
36 shall serve for a term of three years, four shall serve for a term of  
37 two years, and three shall serve for terms of one year, as determined  
38 by the Governor. Any vacancy in the membership shall be filled for  
39 the unexpired term in the manner provided for the original  
40 appointment. No member of the board may serve more than two  
41 successive terms in addition to any unexpired term to which he has  
42 been appointed. The Governor may remove any member of the  
43 board, other than the State executive department member, for cause.

44 To be eligible to serve, each contractor member must have been  
45 actively engaged in the construction business for a period of not  
46 less than 10 years before the date of appointment.

1 The board shall meet at such times as the board deems necessary,  
2 and may form such committees as is deemed necessary, for the  
3 purpose of conducting disciplinary proceedings, or otherwise.  
4

5 6. (New section) The Construction Trades Licensing Board  
6 shall, in addition to other powers and duties it may possess by law:

7 a. Examine and pass on the qualifications of all applicants for  
8 license subject to its jurisdiction, and issue a license to each  
9 qualified successful applicant;

10 b. Examine, evaluate and supervise all examinations and  
11 procedures;

12 c. Adopt a seal which shall be affixed to all licenses issued by  
13 it;

14 d. Adopt rules and regulations pursuant to the "Administrative  
15 Procedure Act," P.L.1968, c.410 (C.52:14B 1 et seq.) as it may  
16 deem necessary to enable it to perform its duties under and to  
17 enforce the provisions of this act;

18 e. Annually publish a list of the names and addresses of all  
19 persons who are licensed under this act;

20 f. Establish standards for continuing education; and

21 g. Prescribe or change the charges for examinations, licensures,  
22 renewals and other services performed pursuant to P.L.1974, c.46  
23 (C.45:1-3.1 et seq.).  
24

25 7. (New section) Any person desiring to obtain a State  
26 contractor's license for the following professions shall make  
27 application for licensure to the Construction Trades Licensing  
28 Board, pay all the fees required in connection with the application,  
29 and be examined as required by section 13 of P.L. , c. (C. )  
30 (pending before the Legislature as this bill):

31 a. general building contractor;

32 b. residential and small commercial contractor;

33 c. swimming pool contractor;

34 d. roofing contractor;

35 e. sheet metal contractor; and

36 f. underground utility and excavation contractor.  
37

38 8. (New section) a. A person shall not work as a building or  
39 construction contractor or use the title or designation of "licensed"  
40 in any manner concerning the construction trades listed in section 7  
41 of P.L. , c. (C. ) (pending before the Legislature as this  
42 bill), or concerning the trade of heating, ventilation, air  
43 conditioning and refrigeration unless licensed pursuant to the  
44 provisions of this act, or P.L. , c. (C. ) (pending before the  
45 Legislature as Assembly, No. 1016 of 2006), or working under the  
46 supervision of a person so licensed.

1       b. A person, firm, partnership, corporation or other legal entity  
2 shall not engage in the business of contracting or advertise in any  
3 manner as a contractor or use the title or designation of "licensed  
4 contractor" unless authorized to act as a contractor in one of the  
5 construction trades listed in section 7 of P.L.     , c.     (C.     )  
6 (pending before the Legislature as this bill) or other duly licensed  
7 trade.

8       c. A license issued pursuant to P.L.     , c.     (C.     ) (pending  
9 before the Legislature as this bill) shall not be transferable.

10  
11       9. (New section) A contractor shall subcontract all electrical,  
12 mechanical, plumbing, roofing, sheet metal, swimming pool, and air  
13 conditioning work, unless the contractor holds a construction  
14 contractor's license in the respective trade category, however:

15       a. A general building contractor, or residential and small  
16 commercial contractor, except as otherwise provided in this part,  
17 shall be responsible for any construction or alteration of a structural  
18 component of a building or structure, and any general building  
19 contractor or certified underground utility and excavation contractor  
20 may perform clearing and grubbing, grading, excavation, and other  
21 site work for any construction project in the State. Any licensed  
22 general building contractor may perform clearing and grubbing,  
23 grading, excavation, and other site work for any construction  
24 project in this State, limited to the lot on which any specific  
25 building is located.

26       b. A general building contractor or residential and small  
27 commercial contractor shall not be required to subcontract the  
28 installation, or repair made under warranty, of wood shingles, wood  
29 shakes, or asphalt or fiberglass shingle roofing materials on a new  
30 building of his or her own construction.

31       c. A general building contractor shall not be required to  
32 subcontract structural swimming pool work. All other swimming  
33 pool work shall be subcontracted to an appropriately licensed  
34 swimming pool contractor.

35       d. A general building contractor shall not be required to  
36 subcontract the construction of a main sanitary sewer collection  
37 system, storm collection system, or water distribution system, not  
38 including the continuation of utility lines from the mains to the  
39 buildings, and may perform any of the services, on public or private  
40 property, for which a license as an underground utility and  
41 excavation contractor is required under this part.

42       e. A general building contractor shall not be required to  
43 subcontract the continuation of utility lines from the mains in  
44 mobile home parks, and such continuations are to be considered a  
45 part of the main sewer collection and main water distribution  
46 systems.

1 f. No licensed general building contractor, or residential and  
2 small commercial contractor shall act as, hold himself or herself out  
3 to be, or advertise himself or herself to be a roofing contractor  
4 unless he or she is licensed as a roofing contractor.

5 Nothing in this section shall be construed to prevent any  
6 contractor from acting as a prime contractor where the majority of  
7 the work to be performed under the contract is within the scope of  
8 his or her license and from subcontracting to other licensed  
9 contractors that remaining work which is part of the project  
10 contracted.

11 The division may by rule exclude general building contractors  
12 from engaging in the performance of other construction trade  
13 specialties in which there is represented a substantial risk to the  
14 public health, safety, and welfare, and for which a license is  
15 required unless that general building contractor holds a valid license  
16 in that specialty trade classification.

17  
18 10. (New section) a. The provisions of P.L. , c. (C. )  
19 (pending before the Legislature as this bill) shall not apply to a  
20 single family home owner who personally occupies his own  
21 dwelling and who solely performs construction work on his own  
22 dwelling, upon receipt of all required permits, except that any  
23 construction work that requires a license tradesperson by law or  
24 regulation shall be performed only by a person duly licensed to  
25 perform such work.

26 b. The provisions of P.L. , c. (C. ) (pending before the  
27 Legislature as this bill) shall not apply to a professional engineer  
28 except that a professional engineer may not perform construction of  
29 structures built primarily for the support, shelter, or enclosure of  
30 persons, animals or chattel, unless that engineer is duly licensed  
31 under this act to perform such construction.

32  
33 11. (New section) The provisions of P.L. , c. (C. )  
34 (pending before the Legislature as this bill) shall not apply to any  
35 public utility company regulated by the Board of Public Utilities  
36 pursuant to Title 48 of the Revised Statutes that performs  
37 emergency repair services to prevent an imminent threat to the  
38 health and safety of life or property, which repair services include,  
39 but are not limited to, turning off, disconnecting, shutting down or  
40 disabling any equipment or condition or the provision of any  
41 products.

42  
43 12. (New section) The provisions of P.L. , c. (C. )  
44 (pending before the Legislature as this bill) shall not deny to any  
45 municipality the power to inspect construction work or equipment  
46 or the power to enforce the standards and manner in which  
47 construction work shall be done, but no municipality, local board of

1 health or other agency shall require any contractor licensed under  
2 this act to obtain any additional license, apply for or take any  
3 examination, or pay any licensing fee.

4  
5 13. (New section) a. On or after January 1, 2007, no person  
6 shall advertise, enter into contracts or engage in work as a  
7 contractor in the construction trades set forth in section 7 of  
8 P.L. , c. (C. ) (pending before the Legislature as this  
9 bill) unless that person has first obtained a license from the  
10 Construction Trades Licensing Board in accordance with P.L. ,  
11 c. (C. ) (pending before the Legislature as this bill).

12 b. Not less than 30 days and not more than 60 days prior to the  
13 date set for the examination for a contractor's license for a  
14 construction trade set forth in section 7 P.L. , c. (C. )  
15 (pending before the Legislature as this bill), every person, except as  
16 provided in this act, desiring to apply for a license, who meets the  
17 qualifications as set forth in this act, shall deliver to the board,  
18 personally or by certified mail, return receipt requested, postage  
19 prepaid, a certified check or money order payable to the Treasurer  
20 of the State of New Jersey in the required amount, together with a  
21 written application required by the board, completed as described in  
22 the application, and together with proof that the applicant qualifies  
23 in accordance with this act.

24 The qualifications for a contractor's license under this act shall  
25 be as follows: The person shall be 21 or more years of age and a  
26 citizen or legal resident of the United States, and shall have been  
27 employed in the contracting business, extensively in the area of  
28 concentration for the specific license sought, for a period of five  
29 years next preceding the date of his application for a license. Three  
30 or more of the five years shall have been spent while engaged or  
31 employed as a journeyman tradesperson. At least two years of the  
32 five years shall have been spent in an apprenticeship or other  
33 training program approved by the Department of Education, with  
34 proof of passage and successful completion of this program while  
35 actively engaged or employed as an apprentice as determined by the  
36 board. In lieu of the above requirements a person shall have been  
37 awarded a bachelor's degree from an accredited college or  
38 university in the United States which the board finds acceptable  
39 and, in addition, shall have been engaged or employed in the  
40 practical work of the relevant construction subtrade for three years.

41 The applicant, if registered as a builder with the department, shall  
42 not be in any negative standing on the registration list. An  
43 applicant shall be afforded an opportunity to correct a negative  
44 standing, either by remedial action or by reporting any inaccuracies  
45 for correction.

46 Proof of compliance with the qualifications or those in lieu  
47 thereof shall be submitted to the board in writing, sworn to by the

1 applicant, and accompanied by two recent passport size  
2 photographs of the applicant.

3

4 14. (New section) a. Every contractor's license examination  
5 shall be substantially uniform and shall be designed so as to  
6 establish the competence and qualifications of the applicant to  
7 perform the type of work in the construction trade for which  
8 licensure is sought. The examination may be theoretical or  
9 practical in nature, or both.

10 b. The examination shall be held at least four times a year, at  
11 Trenton or other place the board deems necessary. Public notice of  
12 the time and place of the examination shall be given by the board in  
13 accordance with the "Open Public Meetings Act," P.L.1975, c.231  
14 (C.10:4-6 et seq.).

15 c. No person who has failed the examination shall be eligible  
16 to be reexamined for a period of six months from the date of the  
17 examination failed by that person.

18 d. All applicants for construction contractor's licenses,  
19 renewals or reexaminations shall pay a fee for each license issuance  
20 or renewal, or reexamination as determined by the board.

21

22 15. (New section) Contractors licenses shall be renewed  
23 biennially by the board upon written application of the holder and  
24 payment of the prescribed fee and renewal of the bond required by  
25 section 18 of P.L. , c. (C. ) (pending before the Legislature  
26 as this bill). A license may be renewed without reexamination, if  
27 the application for renewal is made within 30 days next preceding  
28 or following the scheduled expiration date. Any applicant for  
29 renewal making application at any time subsequent to the 30th day  
30 next following the scheduled expiration date may be required by the  
31 board to be re- examined, and that person shall not continue to act  
32 as a licensed contractor in a construction trade, as described in this  
33 act, and no firm, corporation or other legal entity for which the  
34 person is the bona fide representative shall operate under a license  
35 in the construction trade, as described in this act, until a valid  
36 license has been secured or is held by a bona fide representative.

37 Any license expiring while the holder is outside the continental  
38 limits of the United States in connection with any project  
39 undertaken by the government of the United States, or while in the  
40 services of the Armed Forces of the United States, shall be renewed  
41 without the holder being required to be reexamined, upon payment  
42 of the prescribed fee at any time within four months after the  
43 person's return to the United States or discharge from the armed  
44 forces, whichever is later.

45

46 16. (New section) The board may in its discretion grant licenses  
47 without examination to applicants so licensed by other states;

1 provided that equal reciprocity is provided for New Jersey licensed  
2 contractors by the law of the applicant's domiciliary state and  
3 provided further that the domiciliary state's standards are equal to or  
4 comparable to those of this State.

5  
6 17. (New section) Notwithstanding any other provision of this  
7 act to the contrary, the board shall, upon application to it and  
8 submission of satisfactory proof and the payment of the prescribed  
9 fee within six months following the effective date of this act, issue a  
10 construction license in one of the trades listed in section 7 of  
11 P.L. , c. (C. ) (pending before the Legislature as this bill)  
12 without examination to any person who has been engaged as a  
13 contractor in that trade for at least five years prior to his date of  
14 application for a license, provided proof of the following is  
15 provided:

16 a. proof of income from performance of such work, such as  
17 copies of filed income tax returns or W-2 or 1099 forms;

18 b. building permits reflecting the applicant's name, or a  
19 company for which the applicant was an agent;

20 c. proof of insurance or bonds issued covering the applicant;  
21 and

22 d. letters of reference from construction code officials who  
23 have examined the applicant's work.

24 A person entitled to a license under the provisions of this section  
25 shall comply with the remaining provisions of this act.

26  
27 18. (New section) In addition to any other bonds that may be  
28 required pursuant to contract, no contractor licensed under this act  
29 shall undertake to do any construction work in the State unless and  
30 until he shall have first entered into a bond in favor of the State of  
31 New Jersey in the sum of \$3,000 executed by a surety company  
32 authorized to transact business in this State, approved by the  
33 Department of Banking and Insurance and to be conditioned on the  
34 faithful performance of the provisions of this act. No municipality  
35 shall require any similar bond from any construction contractor  
36 licensed under this act. The board shall by rule and regulation  
37 provide who shall be eligible to receive the financial protection  
38 afforded by the bond required to be filed by this section. The bond  
39 shall be for the term of 12 months and shall be renewed at each  
40 expiration for a similar period.

41  
42 19. Section 1 of P.L.1971, c.60 (C.45:1-2.1) is amended to read  
43 as follows:

44 1. The provisions of this act shall apply to the following boards  
45 and commissions: the New Jersey State Board of Accountancy, the  
46 New Jersey State Board of Architects, the New Jersey State Board  
47 of Cosmetology and Hairstyling, the Board of Examiners of



1 Electrical Contractors, the New Jersey State Board of Dentistry, the  
2 State Board of Mortuary Science of New Jersey, the State Board of  
3 Professional Engineers and Land Surveyors, the State Board of  
4 Marriage and Family Therapy Examiners, the State Board of  
5 Medical Examiners, the New Jersey Board of Nursing, the New  
6 Jersey State Board of Optometrists, the State Board of Examiners of  
7 Ophthalmic Dispensers and Ophthalmic Technicians, the Board of  
8 Pharmacy, the State Board of Professional Planners, the State Board  
9 of Psychological Examiners, the State Board of Examiners of  
10 Master Plumbers, the New Jersey Real Estate Commission, the  
11 State Board of Court Reporting, the State Board of Veterinary  
12 Medical Examiners, the Radiologic Technology Board of  
13 Examiners, the Acupuncture Examining Board, the State Board of  
14 Chiropractic Examiners, the State Board of Respiratory Care, the  
15 State Real Estate Appraiser Board, the State Board of Social Work  
16 Examiners, the State Board of Examiners of Heating, Ventilation  
17 Air Conditioning and Refrigeration, the Construction Trades  
18 Licensing Board, and the State Board of Physical Therapy  
19 Examiners, the Orthotics and Prosthetics Board of Examiners, the  
20 New Jersey Cemetery Board, the State Board of Polysomnography  
21 and any other entity hereafter created under Title 45 to license or  
22 otherwise regulate a profession or occupation.  
23 (cf: P.L.2005, c.308, s.8.)  
24

25 20. Section 2 of P.L.1971, c.60 (C.45:1-2.2) is amended to read  
26 as follows:

27 2. a. All members of the several professional boards and  
28 commissions shall be appointed by the Governor in the manner  
29 prescribed by law; except in appointing members other than those  
30 appointed pursuant to subsection b. or subsection c., the Governor  
31 shall give due consideration to, but shall not be bound by,  
32 recommendations submitted by the appropriate professional  
33 organizations of this State.

34 b. In addition to the membership otherwise prescribed by law,  
35 the Governor shall appoint in the same manner as presently  
36 prescribed by law for the appointment of members, two additional  
37 members to represent the interests of the public, to be known as  
38 public members, to each of the following boards and commissions:  
39 the New Jersey State Board of Accountancy, the New Jersey State  
40 Board of Architects, the New Jersey State Board of Cosmetology  
41 and Hairstyling, the New Jersey State Board of Dentistry, the State  
42 Board of Mortuary Science of New Jersey, the State Board of  
43 Professional Engineers and Land Surveyors, the State Board of  
44 Medical Examiners, the New Jersey Board of Nursing, the New  
45 Jersey State Board of Optometrists, the State Board of Examiners of  
46 Ophthalmic Dispensers and Ophthalmic Technicians, the Board of  
47 Pharmacy, the State Board of Professional Planners, the State Board

1 of Psychological Examiners, the New Jersey Real Estate  
2 Commission, the State Board of Court Reporting, the State Board of  
3 Social Work Examiners, the State Board of Examiners of Heating,  
4 Ventilation, Air Conditioning and Refrigeration, the Construction  
5 Trades Licensing Board, and the State Board of Veterinary Medical  
6 Examiners, and one additional public member to each of the  
7 following boards: the Board of Examiners of Electrical Contractors,  
8 the State Board of Marriage and Family Therapy Examiners, the  
9 State Board of Examiners of Master Plumbers, and the State Real  
10 Estate Appraiser Board. Each public member shall be appointed for  
11 the term prescribed for the other members of the board or  
12 commission and until the appointment of his successor. Vacancies  
13 shall be filled for the unexpired term only. The Governor may  
14 remove any such public member after hearing, for misconduct,  
15 incompetency, neglect of duty or for any other sufficient cause.

16 No public member appointed pursuant to this section shall have  
17 any association or relationship with the profession or a member  
18 thereof regulated by the board of which he is a member, where such  
19 association or relationship would prevent such public member from  
20 representing the interest of the public. Such a relationship includes  
21 a relationship with members of one's immediate family; and such  
22 association includes membership in the profession regulated by the  
23 board. To receive services rendered in a customary client  
24 relationship will not preclude a prospective public member from  
25 appointment. This paragraph shall not apply to individuals who are  
26 public members of boards on the effective date of this act.

27 It shall be the responsibility of the Attorney General to insure  
28 that no person with the aforementioned association or relationship  
29 or any other questionable or potential conflict of interest shall be  
30 appointed to serve as a public member of any board regulated by  
31 this section.

32 Where a board is required to examine the academic and  
33 professional credentials of an applicant for licensure or to test such  
34 applicant orally, no public member appointed pursuant to this  
35 section shall participate in such examination process; provided,  
36 however, that public members shall be given notice of and may be  
37 present at all such examination processes and deliberations  
38 concerning the results thereof, and, provided further, that public  
39 members may participate in the development and establishment of  
40 the procedures and criteria for such examination processes.

41 c. The Governor shall designate a department in the Executive  
42 Branch of the State Government which is closely related to the  
43 profession or occupation regulated by each of the boards or  
44 commissions designated in section 1 of P.L.1971, c.60 (C.45:1-2.1)  
45 and shall appoint the head of such department, or the holder of a  
46 designated office or position in such department, to serve without

1 compensation at the pleasure of the Governor as a member of such  
2 board or commission.

3 d. A majority of the voting members of such boards or  
4 commissions shall constitute a quorum thereof and no action of any  
5 such board or commission shall be taken except upon the  
6 affirmative vote of a majority of the members of the entire board or  
7 commission.

8 (cf: P.L.2005, c.308, s.9)

9

10 21. Section 1 of P.L.1974, c.46 (C.45:1-3.1) is amended to read  
11 as follows:

12 1. The provisions of this act shall apply to the following boards  
13 and commissions: the New Jersey State Board of Accountancy, the  
14 New Jersey State Board of Architects, the New Jersey State Board  
15 of Cosmetology and Hairstyling, the Board of Examiners of  
16 Electrical Contractors, the New Jersey State Board of Dentistry, the  
17 State Board of Mortuary Science of New Jersey, the State Board of  
18 Professional Engineers and Land Surveyors, the State Board of  
19 Marriage and Family Therapy Examiners, the State Board of  
20 Medical Examiners, the New Jersey Board of Nursing, the New  
21 Jersey State Board of Optometrists, the State Board of Examiners of  
22 Ophthalmic Dispensers and Ophthalmic Technicians, the Board of  
23 Pharmacy, the State Board of Professional Planners, the State Board  
24 of Psychological Examiners, the State Board of Examiners of  
25 Master Plumbers, the State Board of Court Reporting, the State  
26 Board of Veterinary Medical Examiners, the Radiologic  
27 Technology Board of Examiners, the Acupuncture Examining  
28 Board, the State Board of Chiropractic Examiners, the State Board  
29 of Respiratory Care, the State Real Estate Appraiser Board, the New  
30 Jersey Cemetery Board, the State Board of Social Work Examiners,  
31 the State Board of Examiners of Heating, Ventilation, Air  
32 Conditioning and Refrigeration, the Construction Trades Licensing  
33 Board, and the State Board of Physical Therapy Examiners, the  
34 State Board of Polysomnography, the Orthotics and Prosthetics  
35 Board of Examiners and any other entity hereafter created under  
36 Title 45 to license or otherwise regulate a profession or occupation.  
37 (cf: P.L.2005, c.308, s.10)

38

39 22. Section 2 of P.L.1973, c.254 (C.45:1-9) is amended to read  
40 as follows:

41 2. Any contractor licensed by the State shall indicate his  
42 license or certificate number on all contracts, subcontracts, bids,  
43 construction permits, and all forms of advertising as a contractor.  
44 (cf: P.L.1973, c.254, s.2)

45

46 23. Section 2 of P.L.1978, c.73 (C.45:1-15) is amended to read  
47 as follows:

2. The provisions of this act shall apply to the following boards and all professions or occupations regulated by, through or with the advice of those boards: the New Jersey State Board of Accountancy, the New Jersey State Board of Architects, the New Jersey State Board of Cosmetology and Hairstyling, the Board of Examiners of Electrical Contractors, the New Jersey State Board of Dentistry, the State Board of Mortuary Science of New Jersey, the State Board of Professional Engineers and Land Surveyors, the State Board of Marriage and Family Therapy Examiners, the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Optometrists, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Board of Pharmacy, the State Board of Professional Planners, the State Board of Psychological Examiners, the State Board of Examiners of Master Plumbers, the State Board of Court Reporting, the State Board of Veterinary Medical Examiners, the State Board of Chiropractic Examiners, the State Board of Respiratory Care, the State Real Estate Appraiser Board, the State Board of Social Work Examiners, the State Board of Examiners of Heating, Ventilation, Air Conditioning and Refrigeration Contractors, the Construction Trades Licensing Board, the State Board of Physical Therapy Examiners, the State Board of Polysomnography, the Professional Counselor Examiners Committee, the New Jersey Cemetery Board, the Orthotics and Prosthetics Board of Examiners, the Occupational Therapy Advisory Council, the Electrologists Advisory Committee, the Acupuncture Advisory Committee, the Alcohol and Drug Counselor Committee, the Athletic Training Advisory Committee, the Certified Psychoanalysts Advisory Committee, the Fire Alarm, Burglar Alarm, and Locksmith Advisory Committee, the Home Inspection Advisory Committee, the Interior Design Examination and Evaluation Committee, the Hearing Aid Dispensers Examining Committee, the Landscape Architect Examination and Evaluation Committee, the Massage, Bodywork and Somatic Therapy Examining Committee, the Perfusionists Advisory Committee, the Physician Assistant Advisory Committee, and the Audiology and Speech-Language Pathology Advisory Committee and any other entity hereafter created under Title 45 to license or otherwise regulate a profession or occupation.

(cf: P.L.2005, c.308, s.11)

24. (New section) a. The Division of Consumer Affairs in the Department of Law and Public Safety shall issue a cease and desist order to prohibit any person from engaging in the business of contracting who does not hold the required license or who has failed to properly register under the "New Home Warranty and Builders' Registration Act," P.L.1977, c.467 (C.46:3B 1 et seq.). For the purpose of enforcing a cease and desist order, the department may

1 file a proceeding in the name of the state seeking issuance of an  
2 injunction or a writ of mandamus against any person who violates  
3 any provision of such order.

4 The division may refuse to issue a license to an applicant; refuse  
5 to renew the license of a licensee; revoke, suspend, restrict, or place  
6 on probation the license of a licensee; issue a public or private  
7 reprimand to a licensee; and issue a cease and desist order to a  
8 licensee or any person claiming to hold a license.

9 b. Any business organization engaging in residential  
10 contracting shall provide the Department of Law and Public Safety  
11 pursuant to the "New Home Warranty and Builders' Registration  
12 Act," P.L.1977, c.467 (C.46:3B-1 et seq.) the name and license  
13 number of each licensed contractor employed by the business  
14 organization to supervise its contracting activities. All registration  
15 records maintained by the department shall be subject to disclosure  
16 to construction code enforcement agents.

17 c. A registered contractor employed by a business organization  
18 to supervise its contracting activities under this section shall not be  
19 required to post a bond or otherwise evidence any personal financial  
20 or credit information so long as the individual performs contracting  
21 activities exclusively on behalf of a business organization meeting  
22 all of the requirements of the "New Home Warranty and Builders'  
23 Registration Act," P.L.1977, c.467 (C.46:3B 1 et seq.).

24 A primary qualifying agent for a business organization shall be  
25 designated by that organization and shall be responsible for  
26 supervision of all operations of the business organization; for all  
27 field work at all sites; and for financial matters, both for the  
28 organization in general and for each specific job. A primary  
29 qualifying agent shall be deemed to be the primary project  
30 supervisor, unless that position is specifically delegated by the  
31 primary qualifying agent to a qualified licensed contractor, or such  
32 duties are assumed by a secondary qualified agent.

33 Upon approval by the director, a business organization may  
34 designate a financially responsible officer for purposes of  
35 registration. A financially responsible officer shall be responsible  
36 for all financial aspects of the business organization and may not be  
37 designated as the primary qualifying agent. The designated  
38 financially responsible officer shall furnish evidence of the  
39 financial responsibility, credit, and business reputation of either the  
40 officer or the business organization.

41 Whenever a business organization has a registered financially  
42 responsible officer, the primary qualifying agent shall be  
43 responsible for all construction activities of the business  
44 organization, both in general and for each specific job.

45 The director shall adopt rules prescribing the qualifications for  
46 financially responsible officers, including net worth, cash, and  
47 bonding requirements. These qualifications must be at least as

1 extensive as the requirements for the financial responsibility of  
2 qualifying agents.

3 If an organization has more than one qualifying agents for a  
4 business organization that has more than one qualifying agent, one  
5 agent may be designated as the sole primary qualifying agent for the  
6 business organization by a joint agreement that is executed, on a  
7 form provided by the board, by all qualifying agents for the  
8 business organization. The joint agreement shall be submitted to  
9 the director for approval. If the director determines that the joint  
10 agreement is in good order, the director shall approve the  
11 designation and immediately notify the qualifying agents of such  
12 approval. The designation made by the joint agreement is effective  
13 upon receipt of the notice by the qualifying agents.

14 The qualifying agent designated for a business organization by a  
15 joint agreement shall be the sole primary qualifying agent for the  
16 business organization, and all other qualifying agents for the  
17 business organization shall be secondary qualifying agents.

18 A designated sole primary qualifying agent shall have all the  
19 responsibilities and duties of a primary qualifying agent,  
20 notwithstanding that there are secondary qualifying agents for  
21 specified jobs. The designated sole primary qualifying agent is  
22 jointly and equally responsible with secondary qualifying agents for  
23 field work supervision.

24 A secondary qualifying agent is responsible only for:

25 The supervision of field work at sites where his or her license  
26 was used to obtain the building permit; and

27 Any other work for which he or she accepts responsibility.

28 A secondary qualifying agent shall not be responsible for  
29 supervision of financial matters.

30 A qualifying agent who has been designated by a joint agreement  
31 as the sole primary qualifying agent for a business organization may  
32 terminate this status as such by giving actual notice to the business  
33 organization, to the director, and to all secondary qualifying agents  
34 of his or her intention to terminate this status. The notice to the  
35 director must include proof satisfactory to the director that the agent  
36 has given the notice required in this paragraph.

37 The status of the qualifying agent shall cease upon the  
38 designation of a new primary qualifying agent or 60 days after  
39 satisfactory notice of termination has been provided to the director,  
40 whichever first occurs.

41 If no new primary qualifying agent has been designated within  
42 60 days, all secondary qualifying agents for the business  
43 organization shall become primary qualifying agents unless the  
44 joint agreement specifies that one or more of them shall become  
45 sole qualifying agents under such circumstances, in which case only  
46 they shall become sole qualifying agents.

1 Any change in the status of a qualifying agent is prospective  
2 only. A qualifying agent is not responsible for his or her  
3 predecessor's actions but is responsible, even after a change in  
4 status, for matters for which he or she was responsible while in a  
5 particular status.

6  
7 25. (New section) If an incomplete contract exists at the time of  
8 death of a licensed contractor, the contract may be completed by  
9 any person even though not registered. Such person shall notify the  
10 director, within 30 days after the death of the contractor, of the  
11 contractor's name and address, knowledge of the contract, and  
12 ability to complete it. If the director approves, the contract may be  
13 completed. For purposes of this section, an incomplete contract is  
14 one which has been awarded to, or entered into by, the contractor  
15 before his or her death, or on which he or she was the low bidder  
16 and the contract is subsequently awarded to him or her, regardless  
17 of whether any actual work has commenced under the contract  
18 before the contractor's death.

19  
20 26. (New section) a. All contractors who are registered  
21 pursuant to P.L. , c. (C. ) (pending before the Legislature  
22 as this bill) shall maintain complete financial and business records  
23 for the immediately preceding three years. The business and  
24 financial records to be maintained shall include minutes of  
25 corporate meetings, business contacts, telephone records, insurance  
26 policies, letters of complaint, notices received from government  
27 entities, bank statements, canceled checks, records of accounts  
28 receivable and payable, financial statements, loan documents, tax  
29 returns, and all other business and financial records the contractor  
30 maintains in the regular course of business.

31 b. Each registrant of the department shall be solely responsible  
32 for notifying the department in writing of the registrant's current  
33 mailing address and phone number. If the mailing address is not the  
34 registrant's physical address, the registrant shall also supply the  
35 physical address.

36 c. A registrant's failure to notify the department of a change of  
37 address or phone number shall constitute a violation of this section.

38 d. The registrant shall be responsible for retaining proof that  
39 the registrant has notified the department of the registrant's current  
40 address of record.

41 e. Notwithstanding any other provision of law, service by  
42 regular mail to a registrant's address of record shall constitute  
43 adequate and sufficient notice to the registrant for any official  
44 communication to the registrant by the office or the department,  
45 except when other service is required pursuant to law.

46 f. Any unlicensed person who violates any of the provisions of  
47 section commits a disorderly persons offense.

1 g. Any unlicensed person who commits a violation of this  
2 section after having been previously found guilty of such a violation  
3 commits a crime of the third degree.

4 h. A registered contractor may not enter into an agreement, oral  
5 or written, whereby his or her registration number is used, or to be  
6 used, by a person who is not registered as provided for under  
7 P.L. , c. (C. ) (pending before the Legislature as this bill)  
8 or P.L.1977, c. 467 (C.46:3B-1 et seq.), or used, or to be used, by a  
9 business organization that is not duly qualified as provided for  
10 pursuant to P.L. , c. (C. ) (pending before the Legislature as  
11 this bill) to engage in the business, or act in the capacity, of a  
12 contractor.

13 i. A code enforcement officer may issue a citation for any  
14 violation of this subsection whenever, based upon personal  
15 investigation, the code enforcement officer has reasonable and  
16 probable grounds to believe that such a violation has occurred.

17  
18 27. (New section) As a matter of public policy, contracts  
19 entered into on or after the effective date of P.L. , c. (C. )  
20 (pending before the Legislature as this bill) by an unlicensed  
21 contractor shall be unenforceable in law or in equity by the  
22 unlicensed contractor.

23 a. For purposes of this section, an individual is unlicensed if  
24 the individual does not have a license required by P.L. ,  
25 c. (C. ) (pending before the Legislature as this bill)  
26 concerning the scope of the work to be performed under the  
27 contract. A business organization is unlicensed if the business  
28 organization does not have a primary or secondary qualifying agent  
29 in accordance with this part concerning the scope of the work to be  
30 performed under the contract.

31 (1) Notwithstanding any other provision of law to the contrary,  
32 if a contract is rendered unenforceable under this section, no lien or  
33 bond claim shall exist in favor of the unlicensed contractor for any  
34 labor, services, or materials provided under the contract or any  
35 amendment thereto.

36 (2) This section shall not affect the rights of parties other than  
37 the unlicensed contractor to enforce contract, lien, or bond  
38 remedies. This section shall not affect the obligations of a surety  
39 that has provided a bond on behalf of an unlicensed contractor. It  
40 shall not be a defense to any claim on a bond or indemnity  
41 agreement that the principal or indemnitor is unlicensed for  
42 purposes of this section.

43 b. Any fines collected under this section shall be first used to  
44 cover the investigative and legal costs of prosecution.

45 (1) Any local governing body that forwards information to the  
46 office relating to any person who is an unlicensed contractor shall



1 collect 30 percent of the fine collected, after deduction of the  
2 investigative and legal costs of prosecution.

3 (2) The balance of any fines collected under this section shall be  
4 used to maintain the department's unlicensed contractor website  
5 page, as established pursuant to section 30 of this act, and to  
6 supplement the new home warranty security fund established  
7 pursuant to section 7 of P.L.1977, c.467 (C.46:3B-7). Nothing in  
8 this paragraph shall be construed to permit recovery from the new  
9 home warranty security fund if a contractor is unlicensed.

10

11 28. (New section) a. No unlicensed or unregistered person  
12 associated with a contracting firm qualified by the licensee under  
13 P.L. , c. (C. ) (pending before the Legislature as this bill)  
14 shall:

15 (1) Conceal or cause to be concealed, or assist in concealing,  
16 from the primary qualifying agent, any material activities or  
17 information about the contracting firm;

18 (2) Exclude or facilitate the exclusion of any aspect of the  
19 contracting firm's financial or other business activities from the  
20 primary qualifying agent;

21 (3) Knowingly cause any part of the contracting firm's activities,  
22 financial or otherwise, to be conducted without the primary  
23 qualifying agent's supervision; or

24 (4) Assist or participate with any registrant in the violation of  
25 any provision of this chapter.

26 b. The department shall cause an investigation of any incident  
27 where it appears that any unregistered person associated with a  
28 contracting firm is in violation of this section. When, after  
29 investigation, the department finds there is probable cause to  
30 believe this section has been violated, the department shall prepare  
31 and file an administrative complaint which shall be served on the  
32 unlicensed or unregistered person. The department shall prosecute  
33 the complaint pursuant to this section.

34 c. (1) Upon a finding of a violation of this section, the  
35 department is authorized to impose a fine of not more than \$5,000  
36 and assess reasonable investigative and legal costs for the  
37 prosecution of the violation against the violator. Any such fine and  
38 assessments shall be paid within 30 days of the filing of the final  
39 order with the department. In the event of an appeal, the time for  
40 payment of any fine and assessments shall be stayed until a final  
41 order is rendered upholding the department decision.

42 (2) In the event any fine and assessments imposed by the  
43 department are not paid within the time provided for payment, the  
44 department may bring an action pursuant to the "Penalty  
45 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.) in  
46 Superior Court.

1 (3) The department may suspend, revoke, or deny issuance or  
2 renewal of a registration, or certificate of authority for any  
3 individual or business organization that associates a person as an  
4 officer, director, or partner, or in a managerial or supervisory  
5 capacity, after such person has been found under a final order to  
6 have violated this section or was an officer, director, partner,  
7 trustee, or manager of a business organization disciplined by the  
8 board by revocation, suspension, or fine in excess of \$2,500, upon  
9 finding reasonable cause that such person knew or reasonably  
10 should have known of the conduct leading to the discipline.

11

12 29. (New section) a. No building permit shall be issued to any  
13 contractor, or to any person representing himself or herself as a  
14 contractor, who has not complied with the registration requirements  
15 of P.L.1977, c.467 (C.46:3B-1 et seq.) or P.L. , c. (C. )  
16 (pending before the Legislature as this bill).

17 b. In addition to any penalties issued pursuant to the "Uniform  
18 Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.),  
19 the failure of a licensee to take corrective action concerning a  
20 construction code violation upon the order of a code enforcement  
21 agent may subject the licensee to disciplinary proceedings by the  
22 Construction Trades Licensing Board.

23

24 30. (New section) The Division of Homeowners' Protection  
25 shall create a web page, accessible through an Internet website,  
26 dedicated solely to listing any known information concerning  
27 unlicensed construction contractors or unlicensed contracting  
28 businesses. The information shall be provided in such a way that  
29 any person with computer on line capabilities can access  
30 information concerning unlicensed contractors by name or by  
31 county. The office shall recognize that persons found guilty of  
32 unlicensed contracting do not have the same rights and privileges as  
33 licensees, and the department shall not restrict the quality or  
34 quantity of information on the web page required by this subsection,  
35 unless otherwise required by law.

36 The remedies set forth in this section are not exclusive and may  
37 be imposed in addition to any remedies set forth in P.L.1977, c.467  
38 (C.46:3B-1 et seq.) or P.L. , c. (C. ) (pending before the  
39 Legislature as this bill).

40 The Department of Law and Public Safety may investigate any  
41 complaint which is made with the department. Upon a  
42 recommendation by the department, the Construction Trades  
43 Services Commission may take such action for suspension or  
44 revocation of a license, or refer the matter to the Construction  
45 Trades Licensing Board for such disciplinary action as it may deem  
46 warranted.

1 Unless specifically provided, the provisions of this section shall  
2 not be construed to create a civil cause of action.

3  
4 31. Section 23 of P.L.1977, c.419 (C.45:22A-23) is amended to  
5 read as follows:

6 3. As used in this act unless the context clearly indicates  
7 otherwise:

8 a. "Disposition" means any sales, contract, lease, assignment,  
9 or other transaction concerning a planned real estate development.

10 b. "Developer" or "subdivider" means any person who disposes  
11 or offers to dispose of any lot, parcel, unit, or interest in a planned  
12 real estate development.

13 c. "Offer" means any inducement, solicitation, advertisement,  
14 or attempt to encourage a person to acquire a unit, parcel, lot, or  
15 interest in a planned real estate development.

16 d. "Purchaser" or "owner" means any person or persons who  
17 acquires a legal or equitable interest in a unit, lot, or parcel in a  
18 planned real estate development, and shall be deemed to include a  
19 prospective purchaser or owner.

20 e. "State" means the State of New Jersey.

21 f. **["Commissioner" means the Commissioner of Community**  
22 **Affairs.] (Deleted by amendment, P.L. \_\_\_\_\_, c. .) (pending before**  
23 **the Legislature as this bill)**

24 g. "Person" shall be defined as in R.S.1:1-2.

25 h. "Planned real estate development" or "development" means  
26 any real property situated within the State, whether contiguous or  
27 not, which consists of or will consist of, separately owned areas,  
28 irrespective of form, be it lots, parcels, units, or interest, and which  
29 are offered or disposed of pursuant to a common promotional plan,  
30 and providing for common or shared elements or interests in real  
31 property.

32 This definition shall specifically include, but shall not be limited  
33 to, property subject to the "Condominium Act," P.L.1969, c.257  
34 (C.46:8B-1 et seq.), any form of homeowners' association, any  
35 housing cooperative or to any community trust or other trust device.

36 This definition shall be construed liberally to effectuate the  
37 purposes of this act.

38 i. "Common promotional plan" means any offer for the  
39 disposition of lots, parcels, units or interests of real property by a  
40 single person or group of persons acting in concert, where such lots,  
41 parcels, units or interests are contiguous, or are known, designated  
42 or advertised as a common entity or by a common name.

43 j. "Advertising" means and includes the publication or causing  
44 to be published of any information offering for disposition or for  
45 the purpose of causing or inducing any other person to purchase an  
46 interest in a planned real estate development, including the land  
47 sales contract to be used and any photographs or drawings or artist's

1 representations of physical conditions or facilities on the property  
2 existing or to exist by means of any:

- 3 (1) Newspaper or periodical;
- 4 (2) Radio or television broadcast;
- 5 (3) Written or printed or photographic matter;
- 6 (4) Billboards or signs;
- 7 (5) Display of model houses or units;
- 8 (6) Material used in connection with the disposition or offer of  
9 the development by radio, television, telephone or any other  
10 electronic means; or

11 (7) Material used by developers or their agents to induce  
12 prospective purchasers to visit the development, particularly  
13 vacation certificates which require the holders of such certificates to  
14 attend or submit to a sales presentation by a developer or his agents.

15 "Advertising" does not mean and shall not be deemed to include:  
16 Stockholder communications such as annual reports and interim  
17 financial reports, proxy materials, registration statements, securities  
18 prospectuses, applications for listing securities on stock exchanges,  
19 and the like; all communications addressed to and relating to the  
20 account of any person who has previously executed a contract for  
21 the purchase of the subdivider's lands except when directed to the  
22 sale of additional lands.

23 k. "Nonbinding reservation agreement" means an agreement  
24 between the developer and a purchaser and which may be cancelled  
25 without penalty by either party upon written notice at any time prior  
26 to the formation of a contract for the disposition of any lot, parcel,  
27 unit or interest in a planned real estate development.

28 l. "Blanket encumbrance" means a trust deed, mortgage,  
29 judgment, or any other lien or encumbrance, including an option or  
30 contract to sell or a trust agreement, affecting a development or  
31 affecting more than one lot, unit, parcel, or interest therein, but does  
32 not include any lien or other encumbrance arising as the result of  
33 the imposition of any tax assessment by any public authority.

34 m. "Conversion" means any change with respect to a real estate  
35 development or subdivision, apartment complex or other entity  
36 concerned with the ownership, use or management of real property  
37 which would make such entity a planned real estate development.

38 n. "Association" means an association for the management of  
39 common elements and facilities, organized pursuant to section 1 of  
40 P.L.1993, c.30 (C.45:22A-43).

41 o. "Executive board" means the executive board of an  
42 association, as provided for in section 3 of P.L.1993, c.30  
43 (C.45:22A-45).

44 p. "Unit" means any lot, parcel, unit or interest in a planned  
45 real estate development that is, or is intended to be, a separately  
46 owned area thereof.

47 (cf: P.L.1993, c.30, s.7)

1       32. Section 4 of P.L.1977, c.419 (C.45:22A-24) is amended to  
2 read as follows:

3       4. This act shall be administered by the Division of **【Housing**  
4 and Development**】** Homeowners' Protection in the State  
5 Department of **【Community Affairs】** Law and Public Safety,  
6 hereinafter referred to as the "agency."  
7 (cf: P.L.1993, c.258, s.9)  
8

9       33. Section 7 of P.L.1977, c.419 (C.45:22A-27) is amended to  
10 read as follows:

11       7. a. The application for registration of the development shall  
12 be filed as prescribed by the agency's rules and shall contain the  
13 following documents and information:

14       (1) An irrevocable appointment of the agency to receive service  
15 of any lawful process in any noncriminal proceeding arising under  
16 this act against the developer or his agents;

17       (2) The states or other jurisdictions, including the federal  
18 government, in which an application for registration or similar  
19 documents have been filed, and any adverse order, judgment or  
20 decree entered in connection with the development by the  
21 regulatory authorities in each jurisdiction or by any court;

22       (3) The name, address, and principal occupation for the past five  
23 years of every officer of the applicant or person occupying a similar  
24 status, or performing similar management functions; the extent and  
25 nature of his interest in the applicant or the development as of a  
26 specified date within 30 days of the filing of the application;

27       (4) Copies of its articles of incorporation, with all amendments  
28 thereto, if the developer is a corporation; copies of all instruments  
29 by which the trust is created or declared, if the developer is a trust;  
30 copies of its articles of partnership or association and all other  
31 papers pertaining to its organization, if the developer is a  
32 partnership, unincorporated association, joint stock company, or  
33 any other form of organization; and if the purported holder of legal  
34 title is a person other than the developer, copies of the above  
35 documents from such person;

36       (5) A legal description of the lands offered for registration,  
37 together with a map showing the subdivision proposed or made, and  
38 the dimensions of the lots, parcels, units, or interests, as available,  
39 and the relation of such lands to existing streets, roads, and other  
40 improvements;

41       (6) Copies of the deed or other instrument establishing title to  
42 the subdivision in the developer, and a statement in a form  
43 acceptable to the agency of the condition of the title to the land  
44 comprising the development, including encumbrances as of a  
45 specified date within 30 days of the date of application by a title  
46 opinion of a licensed attorney, or by other evidence of title  
47 acceptable to the agency;

- 1 (7) Copies of the instrument which will be delivered to a  
2 purchaser to evidence his interest in the development, and of the  
3 contracts and other agreements which a purchaser will be required  
4 to agree to or sign;
- 5 (8) Copies of any management agreements, service contracts, or  
6 other contracts or agreements affecting the use, maintenance or  
7 access of all or a part of the development;
- 8 (9) A statement of the zoning and other government regulations  
9 affecting the use of the development including the site plans and  
10 building permits and their status, and also of any existing tax and  
11 existing or proposed special taxes or assessments which affect the  
12 development; and a statement of the existing use of adjoining lands;
- 13 (10) A statement that the lots, parcels, units or interests in the  
14 development will be offered to the public, and that responses to  
15 applications will be made without regard to marital status, sex, race,  
16 creed, or national origin;
- 17 (11) A statement of the present condition of access to the  
18 development, the existence of any unusual conditions relating to  
19 noise or safety, which affect the development and are known to the  
20 developer, the availability of sewage disposal facilities and other  
21 public utilities including water, electricity, gas, and telephone  
22 facilities in the development to nearby municipalities, and the  
23 nature of any improvements to be installed by the developer and his  
24 estimated schedule for completion;
- 25 (12) In the case of any conversion an engineering survey shall  
26 be required, which shall include mechanical, structural, electrical  
27 and engineering reports to disclose the condition of the building;
- 28 (13) In the case of any development or portion thereof against  
29 which there exists a blanket encumbrance, a statement of the  
30 consequences for an individual purchaser of a failure, by the person  
31 or persons bound, to fulfill obligations under the instrument or  
32 instruments creating such encumbrances and the steps, if any, taken  
33 to protect the purchaser in such eventuality;
- 34 (14) A narrative description of the promotional plan for the  
35 disposition of the lots, parcels, units or interests in the development,  
36 together with copies of all advertising material which has been  
37 prepared for public distribution, and an indication of their means of  
38 communication;
- 39 (15) The proposed public offering statement;
- 40 (16) A current financial statement, which shall include such  
41 information concerning the developer as the agency deems to be  
42 pertinent, including but not limited to, a profit and loss statement  
43 certified by an independent public accountant and information  
44 concerning any adjudication of bankruptcy during the last five years  
45 against the developer, or any principal owning more than 10% of  
46 the interest in the development at the time of filing, provided,

- 1 however, that this shall not extend to limited partners, or others  
2 whose interests are solely those of investors;
- 3 (17) Copies of instruments creating easements or other  
4 restrictions;
- 5 (18) A statement of the status of compliance with the  
6 requirements of all laws, ordinances, regulations, and other  
7 requirements of governmental agencies having jurisdiction over the  
8 premises;
- 9 (19) Such other information, documentation, or certification as  
10 the agency deems necessary in furtherance of the protective  
11 purposes of this act, including such information as may be required  
12 pursuant to P.L. , c. (C. ) (pending before the Legislature  
13 as this bill).
- 14 b. The information contained in any application for registration  
15 and copies thereof, shall be made available to interested parties at a  
16 reasonable charge and under such regulations as the agency may  
17 prescribe.
- 18 c. A developer may register additional property pursuant to the  
19 same common promotional plan as those previously registered by  
20 submitting another application, providing such additional  
21 information as may be necessary to register the additional lots,  
22 parcels, units or interests, which shall be known as a consolidated  
23 filing.
- 24 d. The developer shall immediately report any material changes  
25 in the information contained in an application for registration. The  
26 term "material changes" shall be further defined by the agency in its  
27 regulations.
- 28 e. The application shall be accompanied by a fee in an amount  
29 equal to \$500.00 plus \$35.00 per lot, parcel, unit, or interest  
30 contained in the application, which fees may be used by the agency  
31 to partially defray the cost of rendering services under the act. If  
32 the fees are insufficient to defray the cost of rendering services  
33 under P.L.1977, c.419 (C.45:22A-21 et seq.), the agency shall, by  
34 regulation, establish a revised fee schedule. The revised fee  
35 schedule shall assure that the fees collected reasonably cover but do  
36 not exceed the expenses and administration of implementing  
37 P.L.1977, c.419 (C.45:22A-21 et seq.).
- 38 f. (1) An engineering study required pursuant to paragraph (12)  
39 of subsection a. of this section shall be conducted, and the results  
40 thereof certified, by a person licensed in this State as a professional  
41 engineer pursuant to P.L.1938, c.342 (C.45:8-27 et seq.).
- 42 (2) The engineer who prepares the survey shall certify to the  
43 agency whether, in his judgment, the building is in compliance with  
44 the code standards adopted under the "Hotel and Multiple Dwelling  
45 Law," P.L.1967, c.76 (C.55:13A-1 et seq.) and the "Uniform Fire  
46 Safety Act," P.L.1983, c.383 (C.52:27D-192 et seq.) and shall list  
47 all outstanding violations then existing in accordance with his

1 observation and judgment. The engineer shall be immune from tort  
2 liability with regard to such certification and list in the same  
3 manner and to the same extent as if he were a public employee  
4 protected by the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq.

5 (3) If the agency finds there is a significant discrepancy between  
6 the engineering survey submitted by the applicant and an  
7 engineering survey submitted by any tenant or tenants currently  
8 residing in the building, the agency shall investigate the matter in  
9 order to determine the true state of facts prior to approving the  
10 application. The agency may use its own staff or contract with  
11 independent professionals, and may conduct hearings in accordance  
12 with the "Administrative Procedure Act," P.L.1968, c.410  
13 (C.52:14B-1 et seq.). Any cost to the agency of hiring independent  
14 professionals shall be borne by the applicant developer at the  
15 discretion of the agency.

16 (cf: P.L. 1991, c.509, s.21)

17  
18 34. Section 8 of P.L.1977, c.419 (C.45:22A-28) is amended to  
19 read as follows:

20 8. a. A public offering statement shall disclose fully and  
21 accurately the characteristics of the development and the lots,  
22 parcels, units, or interests therein offered, and shall make known to  
23 prospective purchasers all unusual or material circumstances or  
24 features affecting the development. The proposed public offering  
25 statement submitted to the agency shall be in a form prescribed by  
26 its rules and regulations and shall include the following:

27 (1) The name and principal address of the developer;

28 (2) A general narrative description of the development stating  
29 the total number of lots, units, parcels, or interests in the offering,  
30 and the total number of such interests planned to be sold, leased or  
31 otherwise transferred;

32 (3) Copies of any management contract, lease of recreational  
33 areas, or similar contract or agreement affecting the use,  
34 maintenance, or access of all or any part of the development, with a  
35 brief and simple narrative statement of the effect of each such  
36 agreement upon a purchaser, and a statement of the relationship, if  
37 any, between the developer and the managing agent or firm;

38 (4) (a) The significant terms of any encumbrances, easements,  
39 liens, and restrictions, including zoning and other regulations,  
40 affecting such lands and each unit, lot, parcel, or interest, and a  
41 statement of all existing taxes and existing or proposed special taxes  
42 or assessments which affect such lands; and

43 (b) In the case of a conversion subject to the provisions of the  
44 "Tenant Protection Act of 1992," P.L.1991, c.509 (C.2A:18-61.40 et  
45 al.), the information required pursuant to section 14 of P.L.1991,  
46 c.509 (C.2A:18-61.53);



1 (5) (a) Relevant community information, including hospitals,  
2 health and recreational facilities of any kind, streets, water supply,  
3 levees, drainage control systems, irrigation systems, sewage  
4 disposal facilities and customary utilities; and

5 (b) The estimated cost, size, date of completion, and  
6 responsibility for construction and maintenance of existing and  
7 proposed amenities which are referred to in connection with the  
8 offering or disposition of any interest in the subdivision or  
9 subdivided lands;

10 (6) A copy of the proposed budget for the operation and  
11 maintenance of the common or shared elements or interests;

12 (7) Additional information required by the agency to assure full  
13 and fair disclosure to prospective purchasers.

14 b. The public offering statement shall not be used for any  
15 promotional purposes before registration of the development and  
16 afterwards only if it is used in its entirety. No person may advertise  
17 or represent that the agency approves or recommends the  
18 development or dispositions therein. No portion of the public  
19 offering statement may be underscored, italicized, or printed in  
20 larger or heavier or different color type than the remainder of the  
21 statement, unless the agency requires or permits it.

22 c. The agency may require the developer to alter or amend the  
23 proposed public offering statement in order to assure full and fair  
24 disclosure to prospective purchasers, and no change in the  
25 substance of the promotional plan or plan of disposition or  
26 development of a planned real estate development may be made  
27 after registration without the approval of the agency. A public  
28 offering statement shall not be current unless all amendments have  
29 been incorporated.

30 d. The public offering statement shall, to the extent possible,  
31 combine simplicity and accuracy of information, in order to  
32 facilitate purchaser understanding of the totality of rights,  
33 privileges, obligations and restrictions, comprehended under the  
34 proposed plan of development. Under no circumstances shall a  
35 developer be permitted to create a loan to himself from the  
36 homeowners' association required to be formed, or fail to  
37 accurately disclose the true costs of the sale. In reviewing such  
38 public offering statement, the agency shall pay close attention to the  
39 requirements of this subsection, and shall use its discretion to  
40 require revision of a public offering statement which is  
41 unnecessarily complex, confusing, or is illegible by reason of type  
42 size or otherwise.

43 (cf: P.L.1991, c.509, s.22)

44  
45 35. Section 18 of P.L.1977, c.419 (C.45:22A-38) is amended to  
46 read as follows:

1       a. Any person who violates any provision of this act or of a  
2 rule adopted under it or any person who in an application for  
3 registration filed for registration makes any untrue statement of a  
4 material fact or omits to state a material fact shall be fined not less  
5 than \$250.00, nor more than \$50,000.00 per violation.

6       b. The **【commissioner】** director, through the agency, may levy  
7 and collect the penalties set forth in subsection a. hereof after  
8 affording the person alleged to be in violation of this act an  
9 opportunity to appear before the commissioner or his designee and  
10 to be heard personally or through counsel on the alleged violations  
11 and a finding by the commissioner that said person is guilty of the  
12 violation. When a penalty so levied by the commissioner has not  
13 been satisfied within 30 days of the levy, the penalty may be sued  
14 for and recovered by and in the name of the **【commissioner】**  
15 director in a summary proceeding pursuant to the **【Penalty**  
16 **Enforcement Law (N.J.S.2A:58-1 et seq.)】** "Penalty Enforcement  
17 Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

18       c. The agency may in the interest of justice compromise any  
19 civil penalty, if in its determination the gravity of the offense or  
20 offenses does not warrant the assessment of the full fine.

21 (cf: P.L.1977, c.419, s.18)

22  
23       36. Section 6 of P.L.1993, c. 30 (C.45:22A-48) is amended to  
24 read as follows:

25       6. The **【Commissioner of Community Affairs】** Director of the  
26 Division of Homeowner Protection shall cause to be prepared and  
27 distributed, for the use and guidance of associations, executive  
28 boards and administrators, explanatory materials and guidelines to  
29 assist them in achieving proper and timely compliance with the  
30 requirements of P.L.1993, c.30 (C.45:22A-43 et al.) and the  
31 "Condominium Act,". P.L.1969, c.257 (C.46:8B-1 et seq.). Such  
32 guidelines **【may】** shall include the text of model bylaw provisions  
33 that are required by statute, regulation or court decision, and may  
34 include model bylaws suggested or recommended for adoption.  
35 Failure or refusal of an association or executive board to make  
36 proper amendment or supplementation of its bylaws prior to the  
37 effective date of P.L.1993, c.30 (C.45:22A-43 et al.) shall not,  
38 however, affect their obligation of compliance therewith on and  
39 after that effective date.

40 (cf: P.L.1993, c.30, s.6)

41  
42       37. Section 1 of P.L.1993, c.258 (C.45:22A-49) is amended to  
43 read as follows:

44       1. As used in sections 2 through 8 of this act:

45       "Agency" means the Division of **【Housing and Development in**  
46 **the Department of Community Affairs】** Homeowner Protection in  
47 the Department of Law and Public Safety.

1 "Proprietary campground facility" means any real property  
2 designed and used for the purpose of camping and associated  
3 recreational uses under a condominium or cooperative form of  
4 ownership.

5 (cf: P.L.1993, c.258, s.1)

6  
7 38. Section 6 of P.L.1993, c.258 (C.45:22A-54) is amended to  
8 read as follows:

9 6. Any person aggrieved by any order issued by the agency  
10 under this act shall be entitled to a hearing before the  
11 **【Commissioner of Community Affairs】** Attorney General pursuant  
12 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-  
13 1 et seq.). The application for such hearing must be filed with the  
14 agency within 10 business days of the receipt by the applicant of  
15 notice of the order complained of.

16 (cf: P.L.1993, c.258, s.6)

17  
18 39. Section 2 of P.L.1977, c.467 (C.46:3B-2) is amended to read  
19 as follows:

20 2. As used in this act:

21 a. "Department" means the Department of Community Affairs.

22 b. "Commissioner" means the Commissioner of Community  
23 Affairs.

24 c. "Warranty" means the warranty prescribed by the  
25 commissioner pursuant to P.L.1977, c.467 (C.46:3B-1 et seq.).

26 d. "New home" means any dwelling unit not previously  
27 occupied, excluding dwelling units constructed solely for lease.

28 e. "Owner" means any person for whom the new home is built  
29 or to whom the home is sold for occupation by him or his family as  
30 a home and his successors in title to the home or mortgagee in  
31 possession. Owner does not mean any development company,  
32 association or subsidiary company of the builder or any person or  
33 organization to whom the home may be sold or otherwise conveyed  
34 by the builder for subsequent resale, letting or other purpose.

35 f. "Builder" means any individual corporation, partnership or  
36 other business organizations engaged in the construction of new  
37 homes.

38 g. "Major construction defect" means any actual damage to the  
39 load bearing portion of the home including damage due to  
40 subsidence, expansion or lateral movement of the soil (excluding  
41 movement caused by flood or earthquake) which affects its load  
42 bearing function and which vitally affects or is imminently likely to  
43 vitally affect use of the home for residential purposes.

44 h. "Warranty date" means the first occupation or settlement  
45 date, whichever is sooner.

46 i. "Approved claim" means, for the purposes of P.L.1991,  
47 c.202 (C.46:3B-13 et al.), a claim examined and approved by the

1 commissioner in accordance with section 3 of P.L.1991, c.202  
2 (C.46:3B-15).

3 j. "Approved method" means, for the purposes of P.L.1991,  
4 c.202 (C.46:3B-13 et al.), a method of remediation approved by the  
5 commissioner in accordance with section 3 of P.L.1991, c.202  
6 (C.46:3B-15).

7 k. "Fund" means the new home warranty security fund  
8 established in the department pursuant to section 7 of P.L.1977,  
9 c.467 (C.46:3B-7).

10 l. "Warranty guarantor" means, for the purposes of P.L.1991,  
11 c.202 (C.46:3B-13 et al.), (1) the new home warranty program  
12 established in the department pursuant to P.L.1977, c.467 (C.46:3B-  
13 1 et seq.) or (2) any alternate new home warranty security program  
14 approved pursuant to section 8 of P.L.1977, c.467 (C.46:3B-8).

15 m. "Board" means the Board of Trustees established pursuant  
16 to section 2 of P.L.2001, c.147 (C.46:3B-7.2).

17 n. "Pervasive construction defect" means any defect or defects  
18 including items of extremely shoddy or negligent workmanship, or  
19 uncorrected construction code violations, and which, taken as a  
20 whole, encompass more than 40 percent of the structure, or which  
21 exist in any areas that expose parts of the structure to water, air or  
22 extreme temperatures.

23 o. "Director" means the Director of the Division of Homeowner  
24 Protection in the Department of Law and Public Safety, unless  
25 otherwise specified.

26 p. "Division" means the Division of Homeowner Protection in  
27 the Department of Law and Public Safety.

28 (cf: P.L.2001, c.147, s.4)

29

30 40. (New section) a. There is created within the Department of  
31 Law and Public Safety, a Division of Homeowners' Protection.  
32 Upon the effective date of P.L. , c. (C. ) (pending before the  
33 Legislature as this bill), all responsibilities, duties and powers  
34 concerning the program for registration of builders, except such  
35 registration as deemed necessary by the Department of Community  
36 Affairs in administering the "New Home Warranty Program," P.L.  
37 1977, c. 419 (C.46:3B-1 et seq.), and the State duties under "The  
38 Planned Real Estate Development Full Disclosure Act," P.L.1977,  
39 c.419 (C.45:22A-21 et seq.) shall be transferred from the  
40 Department of Community Affairs to the Division of Homeowner  
41 Protection in the Department of Law and Public Safety. All  
42 contractors for home improvements and new residential  
43 construction shall thereafter register with that office.

44 b. The Director of the Division of Homeowners' Protection  
45 shall promulgate such rules and regulations as may be necessary to  
46 effectuate this section pursuant to the "Administrative Procedure  
47 Act," P.L.1968, c.410 (C.52:14B-1 et seq.). All regulations adopted

1 by the Commissioner of Community Affairs concerning the  
2 registration of builders shall remain in force, but may be modified  
3 as necessary by the director, in accordance with P.L. ,  
4 c. (C. ) (pending before the Legislature as this bill).

5  
6 41. Section 3 of P.L.1977, c. 467 (C.46:3B-3) is amended to  
7 read as follows:

8 3. a. The commissioner is hereby authorized and directed to  
9 prescribe by rule or regulation a new home warranty and procedures  
10 for the implementation and processing of claims against the new  
11 home warranty security fund as provided for in **【section 7a】**  
12 subsection a. of section 7 of 【this act】 P.L.1977, c. 467 (C.46:3B  
13 3). Such warranty shall include standards for construction and of  
14 quality for the structural elements and components of a new home,  
15 including the lot improvements surrounding a new home, with an  
16 indication, where appropriate, of what degree of noncompliance  
17 with such standards shall constitute a defect.

18 Such rule or regulation shall be adopted, and may be  
19 supplemented, amended or repealed in accordance with the  
20 Administrative Procedures Act (P.L.1968, c. 410, C. 52:14B 1 et  
21 seq.), provided, however, that a hearing shall be required prior to  
22 the adoption, supplement, amendment or repeal of such rule or  
23 regulation.

24 b. The time periods of warranties established pursuant to this  
25 act are as follows:

26 (1) **【One year】** Two years from and after the warranty date the  
27 dwelling shall be free from defects caused by faulty workmanship  
28 and defective materials due to noncompliance with the building  
29 standards as approved by the commissioner pursuant to **【paragraph**  
30 **3a. of this act】** subsection a. of this section, except as set forth in  
31 **【section 3b. (2) and (3)】** paragraphs (2) and (3) of this subsection.

32 (2) **【Two】** Four years from and after the warranty date the  
33 dwelling shall be free from defects caused by faulty installation of  
34 plumbing, electrical, heating and cooling delivery systems;  
35 however, in the case of appliances, no warranty shall exceed the  
36 length and scope of the warranty offered by the manufacturer.

37 (3) Ten years from and after the warranty date for major  
38 construction defects as defined in this act and six years from and  
39 after the warranty date for pervasive contraction defects.

40 In the event that pervasive construction defects are found to  
41 exist, the program administrator shall provide the homeowner with  
42 an option to repair all defects with a licensed contractor of the  
43 homeowners' choice, or, if the severity of the defects warrants it,  
44 the program administrator shall purchase the home from the  
45 homeowner. The program administrator shall thereafter institute a  
46 legal action against the builder or builders of the new construction  
47 for recovery of costs. Successful warranty program claimants

1 against a builder of new construction found to have constructed a  
2 new home with pervasive construction defects shall be entitled to  
3 reasonable costs and, in the court's discretion, treble damages.  
4 Amounts recovered under this section shall be deposited into the  
5 appropriate warranty fund.

6 (4) However, any alternate program as provided for in section 8  
7 of this act submitted for approval, subsequent to the effective date  
8 of this act, may contain warranties and time periods greater than  
9 provided for in [section 3b.] paragraphs (1), (2), and (3) of this  
10 [act] subsection.

11 c. The issuance of a temporary certificate of occupancy by a  
12 construction code official shall not affect the issuance or validity of  
13 any warranty under this section.

14 d. The withholding of funds by a purchaser of new construction  
15 into an escrow account for security in ensuring the completion of  
16 items of construction by a builder shall not affect the warranties  
17 granted under P.L.1977, c.467 (C.46:3B-1 et seq.).  
18 (cf: P.L.1977, c.467, s.3)

19  
20 42. Section 5 of P.L.1977, c.467 (C.46:3B-5) is amended to read  
21 as follows:

22 5. No builder shall engage in the business of constructing new  
23 homes unless he is registered with the department and the division.  
24 The department and the division shall provide application forms for  
25 such registration and shall prescribe the information to be included  
26 therein. Each application shall be accompanied by a reasonable fee,  
27 prescribed by the commissioner and the Director of the Division of  
28 Homeowners' Protection, and proof, satisfactory to the  
29 commissioner and director, of participation in the new home  
30 warranty security fund or an approved alternate new home warranty  
31 security program. Upon receipt of the above, the department shall  
32 issue a certificate of registration.

33 Each certificate of registration shall be valid for a period of 2  
34 years from the date of issue and may be renewed for additional 2  
35 year periods.

36 As a condition for the registration, a builder shall be required to  
37 participate in the new home warranty security fund or an approved  
38 alternate new home warranty security program.

39 No corporation, partnership or other business organization shall  
40 be entitled to registration hereunder, nor shall they engage in the  
41 construction of new homes unless a stockholder, director, officer,  
42 partner, or employee thereof, as the case may be, shall be a  
43 registered builder.

44 In addition to registering as a builder, registration shall also be  
45 made with the Division of Homeowners' Protection each time a  
46 residential building project is begun by a builder, if registration is  
47 not required for the project pursuant to "The Planned Real Estate

1 Development Full Disclosure Act,” P.L.1977, c.419 (C.45:22A-21  
2 et seq.). The builder shall indicate the primary qualifying agent,  
3 and the primary project supervisor on such forms as shall be  
4 established by the director. This information shall be made  
5 available by the director to a code enforcement official upon the  
6 request of the official.

7 In addition to the requirements of P.L.1977, c.467 (46:3B-1 et  
8 seq.) a builder shall comply with any additional registration and  
9 licensing requirements of P.L. , c. (C. ) (pending before the  
10 Legislature as this bill).

11 (cf: P.L.1977, c.467, s.5)

12  
13 43. Section 6 of P.L.1977, c.467 (C.46:3B-6) is amended to read  
14 as follows:

15 6. a. The commissioner, upon the complaint of an aggrieved  
16 person, may conduct investigations into the allegations made  
17 against any builder required to be registered under this act. In  
18 pursuit of such investigations, the commissioner shall be authorized  
19 to hold hearings in accordance with the provisions of the  
20 Administrative Procedures Act (P.L.1968, c.410, C.52:14B-1 et  
21 seq.) applicable to contested cases, to **【subpena】 subpoena**  
22 witnesses and compel their attendance, to require the production of  
23 papers, records or documents, administer oaths or affirmations to  
24 witnesses, to inspect such relevant books, papers, records or  
25 documents of such builder at his place of business during business  
26 hours, and to conduct inspections of new home construction sites  
27 owned by a builder or in which a builder has an ownership interest.

28 b. The commissioner may forward to the director a  
29 recommendation to deny, suspend or revoke any certificate of  
30 registration, or may refer a builder to the appropriate licensing  
31 board for disciplinary action, after affording the registrant or  
32 applicant the opportunity for a hearing in accordance with the  
33 provisions of the Administrative Procedures Act (P.L.1968, c.410,  
34 C.52:14B-1 et seq.) applicable to contested cases, if the registrant  
35 or applicant has:

36 (1) Willfully made a misstatement of a material fact in his  
37 application for registration or renewal;

38 (2) Willfully committed fraud in the practice of his occupation;

39 (3) Practiced his occupation in a grossly negligent manner;

40 (4) Willfully violated any applicable building code to a  
41 substantial degree;

42 (5) Failed to continue his participation in the new home  
43 warranty security fund or an approved alternate new home warranty  
44 security program after proper notice from the commissioner in  
45 writing by certified mail; or

1 (6) Violated any provision of this act or any rule or regulation  
2 adopted pursuant thereto, after proper notice from the commissioner  
3 in writing by certified mail.  
4 (cf: P.L.1977, c.467, s.6)

5  
6 44. Section 7 of P.L.1977, c.467 (C.46:3B-7) is amended to read  
7 as follows:

8 7. a. There is hereby established a new home warranty security  
9 fund to be maintained by the State Treasurer in a trust account,  
10 separate and apart from other funds and administered by the  
11 commissioner. The purpose of the fund is (1) to provide moneys  
12 sufficient to pay claims by owners against builders participating in  
13 the fund for defects in new homes covered by the new home  
14 warranty; and (2) to pay the costs of administering the new home  
15 warranty program established in the department, including the costs  
16 of obtaining sufficient reinsurance to prudently protect the fund  
17 against unanticipated risks and costs incurred by the board in the  
18 discharge of its duties. The amounts payable by participating  
19 builders shall be established and may be changed from time to time,  
20 as the experience of the fund shall require, by the commissioner,  
21 and shall be sufficient to cover anticipated claims, to provide a  
22 reasonable reserve and to cover the costs of administering the fund.  
23 Amounts paid by participating builders shall be forwarded to the  
24 State Treasurer and shall be accounted for and credited by him to  
25 the new home warranty security fund.

26 b. The State Treasurer shall hold, manage and, through the  
27 Division of Investment, invest and reinvest moneys in the fund and  
28 credit all income earned thereon to the fund in the same manner as  
29 provided by law for the investment of pension and retirement funds  
30 administered by the State. The department shall keep the State  
31 Treasurer and the board advised of anticipated cash demands for  
32 payment of claims against the fund. No funds shall be spent,  
33 appropriated or transferred from the fund other than for the express  
34 purposes of paying claims or costs related to administering the  
35 program or the fund as enumerated in subsection a, c, or e of this  
36 section. In the event funds are spent, appropriated or transferred  
37 from the fund for other purposes in violation of this subsection, the  
38 obligation of participating builders to contribute to the fund shall  
39 be suspended until such time as the funds are replenished, and if the  
40 amount in the fund shall become insufficient thereafter to pay  
41 claims or make awards, the payment of claims and making of  
42 awards shall be made from the General Fund. The Joint Budget  
43 Oversight Committee, or its successor, shall have the authority to  
44 investigate complaints of violative fund transfers under this section,  
45 and shall order the Commissioner of Community Affairs to suspend  
46 collection from participating builders if it determines that the  
47 provisions of this subsection have been violated.



1 c. Prior to making a claim against the fund for defects covered  
2 by the warranty, an owner shall notify the builder of such defects  
3 and allow a reasonable time period for their repair. If the repairs  
4 are not made within a reasonable time or are not satisfactory to the  
5 owner, he may file a claim against the fund in the form and manner  
6 prescribed by the commissioner. The commissioner shall  
7 investigate each claim to determine the validity thereof, and the  
8 amount of the award that shall be made thereon, and shall hold a  
9 hearing if requested by either party, in accordance with the  
10 provisions of the "Administrative Procedure Act," P.L.1968, c.410  
11 (C.52:14B-1 et seq.) applicable to contested cases. Reasonable  
12 hearing fees shall be assessed against the unsuccessful party. The  
13 amount of the award shall be sufficient to cover the reasonable  
14 costs necessary to correct any defect or defects covered under the  
15 warranty, but the total amount of awards from the fund for any new  
16 home shall not exceed the purchase price of the home in the first  
17 good faith sale thereof or the fair market value on the home on its  
18 completion date if there is no good faith sale. All claims submitted  
19 by an owner shall first be reviewed through **[a conciliation or]** an  
20 arbitration procedure by the [department] Division of  
21 Homeowners' Protection in accordance with P.L.2003, c.95  
22 (C.2A:23B-1 et seq.), and in the event that the claim of the owner is  
23 found to be **[in the right]** substantiated, then the builder shall be  
24 required to correct such claims as determined through the  
25 conciliation or arbitration procedure. If a builder is unable or  
26 willfully refuses to correct such deficiency, then an amount  
27 sufficient to cure the problem shall be paid from the fund to the  
28 owner. In such cases, the commissioner may then proceed against  
29 the builder in accordance with subsection b. of section 6 of  
30 P.L.1977, c.467 (C.46:3B-6). Upon certification from the  
31 commissioner of the amount of an award, the State Treasurer shall  
32 make payment to the claimant from the fund.

33 d. (Deleted by amendment, P.L.2001, c.147).

34 e. If the board determines that fund reserves and reinsurance  
35 may be insufficient to cover anticipated claims, the board shall  
36 recommend steps to the commissioner to restore fund resources to  
37 sufficiency, which may include increases in premiums and fees,  
38 expanded reinsurance and changes in standards and claims  
39 adjudication procedures.

40 f. The commissioner may provide for surcharges against those  
41 builders who are responsible for a significant number of awards  
42 against the fund and may discontinue the participation in the fund  
43 of any builder who is responsible for an excessive number of  
44 awards against the fund after a hearing in accordance with the  
45 provisions of the "Administrative Procedure Act," P.L.1968, c.410  
46 (C.52:14B 1 et seq.) applicable to contested cases. In addition, the  
47 commissioner may refer any builder who appears to have violated

1 the provisions of P.L.1977, c.467 or P.L. , c. (C. ) (pending  
2 before the Legislature as this bill) to the Construction Trades  
3 Licensing Board for disciplinary action. At no time shall the State  
4 be required to contribute any moneys to the fund, nor shall the State  
5 have any liability to any person having any right to or claim against  
6 the fund over and above the amount therein except in those  
7 instances where it is determined by the Joint Budget Oversight  
8 Committee that the provisions of subsection b. of this section have  
9 been violated concerning amounts spent, appropriated or transferred  
10 from the fund.

11 g. The commissioner may order the return of funds to owners  
12 of enrolled homes as may be recommended by the board pursuant to  
13 section 3 of P.L.2001, c.147 (C.46:3B-7.3).  
14 (cf: P.L.2001, c.147, s.5)

15  
16 45. Section 1 of P.L.1992, c.56 (C.46:3B-8.1) is amended to  
17 read as follows:

18 1. Whenever a builder participating in an alternative new home  
19 warranty program approved by the commissioner pursuant to  
20 section 8 of P.L.1977, c.467 (C.46:3B-8) issues a warranty  
21 guaranteed by that plan, the warranty guarantor shall, before the  
22 15th day of the month next following the month in which the new  
23 home covered by the warranty is conveyed to the owner, file with  
24 the commissioner a statement listing: (1) the name of the approved  
25 program as listed with the department; (2) the name or names and  
26 **【Social Security】** identification number or numbers of the owner or  
27 owners to whom the warranty was issued, which identification  
28 number shall not be the social security number, the warranty date,  
29 and the enrollment number or other designation by which the  
30 warranty is identified in the records of the approved program; (3)  
31 the name, address and registration number of the registered builder  
32 by whom the warranty has been issued; (4) the sales price of the  
33 new home upon which the warranty was issued, its type and method  
34 of construction in accordance with categories established by the  
35 commissioner, and its location by street address or its block and lot  
36 number designation in the tax records of the municipality in which  
37 it is located; and (5) such other information as the commissioner  
38 may require in order to carry out the provisions and purposes of this  
39 act. Personal identification information of owners provided under  
40 this section shall not be considered a public record or subject to  
41 disclosure as such.

42 (cf: P.L.1992, c.56, s.1)

43  
44 46. Section 3 of P.L.1992, c.56 (C.46:3B-8.3) is amended to  
45 read as follows:

46 3. The files maintained pursuant to section 2 of this act, other  
47 than information specifically exempted, shall be subject to the

1 provisions of P.L.2001, c.404 (C.47:1A-5 et al.) and shall be open  
2 to inspection by the public at any time during regular business  
3 hours at the department's main office and at any other location at  
4 which the commissioner may direct duplicate files to be maintained.  
5 Copies of information derived from these files shall be available,  
6 upon payment of fees sufficient to defray the cost of preparing and  
7 distributing those copies, to any person requesting them.  
8 (cf: P.L.1992, c.56, s.3)

9  
10 47. Section 9 of P.L.1977, c.467 (C.46:3B-9) is amended to read  
11 as follows:

12 9. Nothing contained herein shall affect other rights and  
13 remedies available to the owner. The owner shall have the  
14 opportunity to pursue any remedy legally available to the owner.  
15 However, initiation of procedures under P.L.1977, c.467 to enforce  
16 a remedy shall constitute an election which shall bar the owner from  
17 all other remedies until a final judgment has been rendered pursuant  
18 to P.L.1977, c.467. Nothing contained herein shall be deemed to  
19 limit the owner's right to file a claim based on fraud under the  
20 consumer fraud act, P.L.1960, c.39 (C.56:8-1 et seq.), or maintain  
21 an action of appeal as applicable to the remedy elected.  
22 (cf: P.L.1977, c.467, s.9)

23  
24 48. Section 2 of P.L.1966, c.39 (C.56:8-14) is amended to read  
25 as follows:

26 2. The Superior Court and every municipal court shall have  
27 jurisdiction of proceedings for the collection and enforcement of a  
28 penalty imposed because of the violation, within the territorial  
29 jurisdiction of the court, of any provision of the act to which this act  
30 is a supplement. Except as otherwise provided in this act the penalty  
31 shall be collected and enforced in a summary proceeding pursuant  
32 to **["the penalty enforcement law" (N.J.S.2A:58-1 et seq.)]** the  
33 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10  
34 et seq.). Process shall be either in the nature of a summons or  
35 warrant and shall issue in the name of the State, upon the complaint  
36 of the Attorney General or any other person.

37 In any action brought pursuant to this section to enforce any  
38 order of the Attorney General or his designee the court may,  
39 without regard to jurisdictional limitations, restore to any person in  
40 interest any moneys or property, real or personal, which have been  
41 acquired by any means declared to be unlawful under this act,  
42 except that the court shall restore to any senior citizen twice the  
43 amount or value, as the case may be, of any moneys or property,  
44 real or personal, which have been acquired by any means declared  
45 to be unlawful under P.L.1960, c.39 (C.56:8-1 et seq.).

46 In the event that any person found to have violated any provision  
47 of this act fails to pay a civil penalty assessed by the court, the court

1 may issue, upon application by the Attorney General, a warrant for  
2 the arrest of such person for the purpose of bringing him before the  
3 court to satisfy the civil penalty imposed.

4 A person who fails to restore any moneys or property, real or  
5 personal, found to have been acquired unlawfully from a senior  
6 citizen shall be subject to punishment for criminal contempt  
7 pursuant to N.J.S.2C:29-9, which is a crime of the fourth degree.

8 The court may reduce the amounts of an award to an individual  
9 who received payments as a result of warranty claims pursuant to  
10 P.L. 1977, c.457 (C.46:3B-1 et seq.) for identical items.

11 (cf: P.L.1999, c.298, s.4).

12  
13 49. (New section) The following statement shall be provided by  
14 the local code enforcing agency office to an owner requesting a  
15 construction permit for work on their residence without the services  
16 of a licensed contractor.

17  
18 "State law requires construction to be done by  
19 licensed contractors. You have applied for a permit  
20 under an exemption to that law. The exemption  
21 allows you, as the owner of your property, to act as  
22 your own contractor with certain restrictions even  
23 though you do not have a license. You must provide  
24 direct, onsite supervision of the construction yourself.  
25 You may build or improve a one family residence.  
26 The building or residence must be for your own use  
27 or occupancy. It may not be built or substantially  
28 improved for sale or lease. If you sell or lease a  
29 building you have built or substantially improved  
30 yourself within one year after the construction is  
31 complete, the law will presume that you built or  
32 substantially improved it for sale or lease, which is a  
33 violation of this exemption. You may not hire an  
34 unlicensed person to act as your contractor or to  
35 supervise people working on your building. It is your  
36 responsibility to make sure that people employed by  
37 you have licenses required by State law and by  
38 county or municipal licensing ordinances. You may  
39 not delegate the responsibility for supervising work  
40 to a licensed contractor who is not licensed to  
41 perform the work being done. Any person working on  
42 your building who is not licensed must work under  
43 your direct supervision and must be employed by  
44 you, which means that you must deduct F.I.C.A. and  
45 withholding tax and provide workers' compensation  
46 for that employee, all as prescribed by law. Your

1 construction must comply with all applicable laws,  
2 ordinances, building codes, and zoning regulations."  
3

4 50. Section 4 of P.L.1991, c.29 (C.40A:9-22.4) is amended to  
5 read as follows:

6 4. The Local Finance Board in the Division of Local  
7 Government Services in the Department of Community Affairs  
8 shall have jurisdiction to govern and guide the conduct of local  
9 government officers or employees regarding violations of the  
10 provisions of this act who are not otherwise regulated by a county  
11 or municipal code of ethics promulgated by a county or municipal  
12 ethics board in accordance with the provisions of this act. The  
13 Local Finance Board shall have jurisdiction to govern and guide the  
14 conduct of construction code enforcement officials regardless of  
15 whether those officials are otherwise regulated by a county or  
16 municipal code of ethics. Local government officers or employees  
17 serving a local government agency created by more than one county  
18 or municipality and officers or employees of county colleges  
19 established pursuant to N.J.S.18A:64A-1 et seq. shall be under the  
20 jurisdiction of the board. The board in interpreting and applying the  
21 provisions of this act shall recognize that under the principles of  
22 democracy, public officers and employees cannot and should not be  
23 expected to be without any personal interest in the decisions and  
24 policies of government; that citizens who are government officers  
25 and employees have a right to private interests of a personal,  
26 financial and economic nature; and that standards of conduct shall  
27 distinguish between those conflicts of interest which are legitimate  
28 and unavoidable in a free society and those conflicts of interest  
29 which are prejudicial and material and are, therefore, corruptive of  
30 democracy and free society.

31 (cf: P.L.1995, c.21, s.1)  
32

33 51. This act shall take effect on the first day of the third month  
34 next following enactment, however the Department of Law and  
35 Public Safety and the Department of Community Affairs may take  
36 such anticipatory action as necessary to effectuate the provisions of  
37 this act.  
38  
39

#### 40 STATEMENT 41

42 This bill modifies and creates new laws concerning new home  
43 construction to address the issues identified by the State  
44 Commission of Investigation (SCI) in its report entitled "The Good,  
45 the Bad and the Ugly: New Home Construction in New Jersey,"  
46 dated March 2005.

47 The commission heard testimony from homebuyers which  
48 spanned many months, and cited in its report serious construction

1 deficiencies in new homes built in New Jersey, including such  
2 defects as improperly installed walls, beams, roof trusses and  
3 foundations, as well as improperly installed vent systems and pipes.

4 The SCI report indicated that these deficiencies, and numerous  
5 others identified in the report, were not isolated. The commission  
6 attributed these deficiencies mainly to low-quality materials and  
7 inferior construction practices and cited irresponsibility and lack of  
8 skills on the part of builders as a major contributing factor. The  
9 commission recommended specially trained and skilled experts be  
10 present on the construction site at all times. The commission's  
11 report also noted a system of weak code enforcement as overseen  
12 by the State Department of Community Affairs and identified  
13 conflicts of interests inherent in the process of processing new  
14 home warranty claims.

15 The approach taken under this bill is to address the root causes of  
16 these problems. The first prong of the approach recognizes the  
17 need to enhance the skills of those persons in the construction  
18 trades. The bill creates new licenses for certain construction trades,  
19 and a trade board to oversee these regulated professions. The  
20 licensing of construction trades will result in a labor force with  
21 enhanced skills, and lead to better compliance with construction  
22 codes. In addition to the trades licensing, the bill imposes new  
23 accountability and notice requirements upon builders, and requires  
24 that each builder designate a primary qualifying agent who must be  
25 a licensed contractor and who will be responsible for on-site  
26 supervision of all construction activities, or who will designate a  
27 primary project supervisor. These parties will be responsible for  
28 assisting the code enforcement official in all required inspections.

29 The second prong of the approach addresses the systemic failures  
30 to provide many of the consumer protections offered under existing  
31 laws, and to address the conflicts of interests inherent in a State  
32 system that regulates all aspects of construction through one  
33 department. The bill reorganizes the oversight of certain consumer  
34 protection programs into a State department which has significant  
35 experience in providing consumer protections. Home improvement  
36 contractors are currently required to be registered with the  
37 Department of Law and Public Safety. The bill reallocates the  
38 registration of all new home builders to that department. In  
39 addition to builder registration, the bill also requires all new home  
40 building projects to be registered with that department, if the  
41 projects are not registered under "The Planned Real Estate  
42 Development Full Disclosure Act," P.L.1977, c.419 (C.45:22A-21  
43 et seq.). The bill also reallocates the oversight for the latter act,  
44 which provides consumer protections in the sale of certain new  
45 construction with commonly-owned elements, to the Department of  
46 Law and Public Safety.

47 The administration of the New Home Warranty program will  
48 remain the responsibility of the Department of Community Affairs,

1    which will also continue its responsibilities for enforcement of the  
2    “State Uniform Construction Code Act.” The bill amends the  
3    “Local Government Ethics Law” to specifically provide that  
4    construction code officials are subject the ethics requirements of  
5    that act. In addition, the law modifies some of the warranties to be  
6    granted under the new home warranty program and requires that  
7    arbitration of warranty issues be handled by the Division of  
8    Homeowners’ Protection in the Department of Law and Public  
9    Safety, under rules to be promulgated by that office. This provision  
10   is designed to avoid conflicts of interest for dispute resolvers which  
11   were identified by the State Commission of Investigation in its  
12   report.

13    Finally, the bill modifies some of the terms of the new home  
14    warranty provided by statute. The bill defines pervasive  
15    construction defects to mean any defect or defects including items  
16    of extremely shoddy or negligent workmanship, or uncorrected  
17    construction code violations, and which, taken as a whole,  
18    encompass more than 40 percent of the structure, or which exist in  
19    any areas that expose parts of the structure to water, air or extreme  
20    temperatures. Under the bill, purchasers may choose to either have  
21    a new builder of their choice make repairs, which will be paid for  
22    under the warranty program, or have the program purchase the  
23    house from them. In the event of a house purchase, the warranty  
24    program will be permitted to seek recovery of its costs from the  
25    builder, and may be awarded treble damages in the court’s  
26    discretion.

27    The bill also clarifies that purchasers may make claims under the  
28    consumer fraud act for items covered under the warranty program,  
29    but will have any recovery offset by amounts paid under the  
30    warranty program for identical defective items.