

ASSEMBLY, No. 1355

STATE OF NEW JERSEY 213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

Sponsored by:

Assemblyman VINCENT PRIETO

District 32 (Bergen and Hudson)

Assemblyman PAUL D. MORIARTY

District 4 (Camden and Gloucester)

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



A1355 PRIETO, MORIARTY

2

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 the
13 purpose of sale or who builds any structure intended for public use
14 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 comprising
37 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 (C.
30 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 R.S.45:3
4 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 of
46 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 it;

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

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

19 f. Establish standards for continuing education; and

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

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

30 a. general building contractor;

31 b. residential and small commercial contractor;

32 c. swimming pool contractor;

33 d. roofing contractor;

34 e. sheet metal contractor; and

35 f. underground utility and excavation contractor.
36

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

46 b. A person, firm, partnership, corporation or other legal entity
47 shall not engage in the business of contracting or advertise in any

- 1 manner as a contractor or use the title or designation of "licensed
2 contractor" unless authorized to act as a contractor in one of the
3 construction trades listed in section 7 of P.L. , c. (C.)
4 (pending before the Legislature as this bill) or other duly licensed
5 trade.
- 6 c. A license issued pursuant to P.L. , c. (C.) (pending
7 before the Legislature as this bill) shall not be transferable.
8
- 9 9. (New section) A contractor shall subcontract all electrical,
10 mechanical, plumbing, roofing, sheet metal, swimming pool, and air
11 conditioning work, unless the contractor holds a construction
12 contractor's license in the respective trade category, however:
- 13 a. A general building contractor, or residential and small
14 commercial contractor, except as otherwise provided in this part,
15 shall be responsible for any construction or alteration of a structural
16 component of a building or structure, and any general building
17 contractor or certified underground utility and excavation contractor
18 may perform clearing and grubbing, grading, excavation, and other
19 site work for any construction project in the State. Any licensed
20 general building contractor may perform clearing and grubbing,
21 grading, excavation, and other site work for any construction
22 project in this State, limited to the lot on which any specific
23 building is located.
- 24 b. A general building contractor or residential and small
25 commercial contractor shall not be required to subcontract the
26 installation, or repair made under warranty, of wood shingles, wood
27 shakes, or asphalt or fiberglass shingle roofing materials on a new
28 building of his or her own construction.
- 29 c. A general building contractor shall not be required to
30 subcontract structural swimming pool work. All other swimming
31 pool work shall be subcontracted to an appropriately licensed
32 swimming pool contractor.
- 33 d. A general building contractor shall not be required to
34 subcontract the construction of a main sanitary sewer collection
35 system, storm collection system, or water distribution system, not
36 including the continuation of utility lines from the mains to the
37 buildings, and may perform any of the services, on public or private
38 property, for which a license as an underground utility and
39 excavation contractor is required under this part.
- 40 e. A general building contractor shall not be required to
41 subcontract the continuation of utility lines from the mains in
42 mobile home parks, and such continuations are to be considered a
43 part of the main sewer collection and main water distribution
44 systems.
- 45 f. No licensed general building contractor, or residential and
46 small commercial contractor shall act as, hold himself or herself out
47 to be, or advertise himself or herself to be a roofing contractor

1 unless he or she is licensed as a roofing contractor.

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

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

14

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

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

29

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

39

40 12. (New section) The provisions of P.L. , c. (C.)
41 (pending before the Legislature as this bill) shall not deny to any
42 municipality the power to inspect construction work or equipment
43 or the power to enforce the standards and manner in which
44 construction work shall be done, but no municipality, local board of
45 health or other agency shall require any contractor licensed under
46 this act to obtain any additional license, apply for or take any
47 examination, or pay any licensing fee.

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

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

20 The qualifications for a contractor's license under this act shall
21 be as follows: The person shall be 21 or more years of age and a
22 citizen or legal resident of the United States, and shall have been
23 employed in the contracting business, extensively in the area of
24 concentration for the specific license sought, for a period of five
25 years next preceding the date of his application for a license. Three
26 or more of the five years shall have been spent while engaged or
27 employed as a journeyman tradesperson. At least two years of the
28 five years shall have been spent in an apprenticeship or other
29 training program approved by the Department of Education, with
30 proof of passage and successful completion of this program while
31 actively engaged or employed as an apprentice as determined by the
32 board. In lieu of the above requirements a person shall have been
33 awarded a bachelor's degree from an accredited college or
34 university in the United States which the board finds acceptable
35 and, in addition, shall have been engaged or employed in the
36 practical work of the relevant construction subtrade for three years.
37 The applicant, if registered as a builder with the department, shall
38 not be in any negative standing on the registration list. An
39 applicant shall be afforded an opportunity to correct a negative
40 standing, either by remedial action or by reporting any inaccuracies
41 for correction.

42 Proof of compliance with the qualifications or those in lieu
43 thereof shall be submitted to the board in writing, sworn to by the
44 applicant, and accompanied by two recent passport size
45 photographs of the applicant.

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

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

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

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

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

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

42
43 16. (New section) The board may in its discretion grant licenses
44 without examination to applicants so licensed by other states;
45 provided that equal reciprocity is provided for New Jersey licensed
46 contractors by the law of the applicant's domiciliary state and

1 provided further that the domiciliary state's standards are equal to or
2 comparable to those of this State.

3

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

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

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

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

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

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

23

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

38

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

41 1. The provisions of this act shall apply to the following boards
42 and commissions: the New Jersey State Board of Accountancy, the
43 New Jersey State Board of Architects, the New Jersey State Board
44 of Cosmetology and Hairstyling, the Board of Examiners of
45 Electrical Contractors, the New Jersey State Board of Dentistry, the
46 State Board of Mortuary Science of New Jersey, the State Board of
47 Professional Engineers and Land Surveyors, the State Board of

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

21

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

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

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

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

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

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

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

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

46 d. A majority of the voting members of such boards or
47 commissions shall constitute a quorum thereof and no action of any

1 such board or commission shall be taken except upon the
2 affirmative vote of a majority of the members of the entire board or
3 commission.

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

5

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

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

33 (cf: P.L.2005, c.308, s.10)

34

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

37 2. Any contractor licensed by the State shall indicate his license
38 or certificate number on all contracts, subcontracts, bids,
39 construction permits, and all forms of advertising as a contractor.

40 (cf: P.L.1973, c. 254, s. 2)

41

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

44 2. The provisions of this act shall apply to the following boards
45 and all professions or occupations regulated by, through or with the
46 advice of those boards: the New Jersey State Board of
47 Accountancy, the New Jersey State Board of Architects, the New

1 Jersey State Board of Cosmetology and Hairstyling, the Board of
2 Examiners of Electrical Contractors, the New Jersey State Board of
3 Dentistry, the State Board of Mortuary Science of New Jersey, the
4 State Board of Professional Engineers and Land Surveyors, the
5 State Board of Marriage and Family Therapy Examiners, the State
6 Board of Medical Examiners, the New Jersey Board of Nursing, the
7 New Jersey State Board of Optometrists, the State Board of
8 Examiners of Ophthalmic Dispensers and Ophthalmic Technicians,
9 the Board of Pharmacy, the State Board of Professional Planners,
10 the State Board of Psychological Examiners, the State Board of
11 Examiners of Master Plumbers, the State Board of Court Reporting,
12 the State Board of Veterinary Medical Examiners, the State Board
13 of Chiropractic Examiners, the State Board of Respiratory Care, the
14 State Real Estate Appraiser Board, the State Board of Social Work
15 Examiners, the State Board of Examiners of Heating, Ventilation,
16 Air Conditioning and Refrigeration Contractors, the Construction
17 Trades Licensing Board, the State Board of Physical Therapy
18 Examiners, the State Board of Polysomnography, the Professional
19 Counselor Examiners Committee, the New Jersey Cemetery Board,
20 the Orthotics and Prosthetics Board of Examiners, the Occupational
21 Therapy Advisory Council, the Electrologists Advisory Committee,
22 the Acupuncture Advisory Committee, the Alcohol and Drug
23 Counselor Committee, the Athletic Training Advisory Committee,
24 the Certified Psychoanalysts Advisory Committee, the Fire Alarm,
25 Burglar Alarm, and Locksmith Advisory Committee, the Home
26 Inspection Advisory Committee, the Interior Design Examination
27 and Evaluation Committee, the Hearing Aid Dispensers Examining
28 Committee, the Landscape Architect Examination and Evaluation
29 Committee, the Massage, Bodywork and Somatic Therapy
30 Examining Committee, the Perfusionists Advisory Committee, the
31 Physician Assistant Advisory Committee, and the Audiology and
32 Speech-Language Pathology Advisory Committee and any other
33 entity hereafter created under Title 45 to license or otherwise
34 regulate a profession or occupation.
35 (cf: P.L.2005, c.308, s.11)

36
37 24. (New section) a. The Division of Consumer Affairs in the
38 Department of Law and Public Safety shall issue a cease and desist
39 order to prohibit any person from engaging in the business of
40 contracting who does not hold the required license or who has failed
41 to properly register under the "New Home Warranty and Builders'
42 Registration Act," P.L.1977, c.467 (C.46:3B 1 et seq.). For the
43 purpose of enforcing a cease and desist order, the department may
44 file a proceeding in the name of the state seeking issuance of an
45 injunction or a writ of mandamus against any person who violates
46 any provision of such order.

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

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

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

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

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

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

42 The director shall adopt rules prescribing the qualifications for
43 financially responsible officers, including net worth, cash, and
44 bonding requirements. These qualifications must be at least as
45 extensive as the requirements for the financial responsibility of
46 qualifying agents.

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

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

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

22 A secondary qualifying agent is responsible only for:

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

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

26 A secondary qualifying agent shall not be responsible for
27 supervision of financial matters.

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

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

39 If no new primary qualifying agent has been designated within
40 60 days, all secondary qualifying agents for the business
41 organization shall become primary qualifying agents unless the
42 joint agreement specifies that one or more of them shall become
43 sole qualifying agents under such circumstances, in which case only
44 they shall become sole qualifying agents.

45 Any change in the status of a qualifying agent is prospective
46 only. A qualifying agent is not responsible for his or her
47 predecessor's actions but is responsible, even after a change in

1 status, for matters for which he or she was responsible while in a
2 particular status.

3
4 25. (New section) If an incomplete contract exists at the time of
5 death of a licensed contractor, the contract may be completed by
6 any person even though not registered. Such person shall notify the
7 director, within 30 days after the death of the contractor, of the
8 contractor's name and address, knowledge of the contract, and
9 ability to complete it. If the director approves, the contract may be
10 completed. For purposes of this section, an incomplete contract is
11 one which has been awarded to, or entered into by, the contractor
12 before his or her death, or on which he or she was the low bidder
13 and the contract is subsequently awarded to him or her, regardless
14 of whether any actual work has commenced under the contract
15 before the contractor's death.

16
17 26. (New section) a. All contractors who are registered
18 pursuant to P.L. , c. (C.) (pending before the Legislature
19 as this bill) shall maintain complete financial and business records
20 for the immediately preceding three years. The business and
21 financial records to be maintained shall include minutes of
22 corporate meetings, business contacts, telephone records, insurance
23 policies, letters of complaint, notices received from government
24 entities, bank statements, canceled checks, records of accounts
25 receivable and payable, financial statements, loan documents, tax
26 returns, and all other business and financial records the contractor
27 maintains in the regular course of business.

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

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

35 d. The registrant shall be responsible for retaining proof that the
36 registrant has notified the department of the registrant's current
37 address of record.

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

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

45 g. Any unlicensed person who commits a violation of this
46 section after having been previously found guilty of such a violation
47 commits a crime of the third degree.

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

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

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

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

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

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

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

42 (1) Any local governing body that forwards information to the
43 office relating to any person who is an unlicensed contractor shall
44 collect 30 percent of the fine collected, after deduction of the
45 investigative and legal costs of prosecution.

46 (2) The balance of any fines collected under this section shall be
47 used to maintain the department's unlicensed contractor website

1 page, as established pursuant to section 30 of this act, and to
2 supplement the new home warranty security fund established
3 pursuant to section 7 of P.L. 1977, c. 467 (C.46:3B-7). Nothing in
4 this paragraph shall be construed to permit recovery from the new
5 home warranty security fund if a contractor is unlicensed.

6
7 28. (New section) a. No unlicensed or unregistered person
8 associated with a contracting firm qualified by the licensee under
9 P.L. , c. (C.) (pending before the Legislature as this
10 bill) shall:

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

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

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

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

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

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

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

43 (3) The department may suspend, revoke, or deny issuance or
44 renewal of a registration, or certificate of authority for any
45 individual or business organization that associates a person as an
46 officer, director, or partner, or in a managerial or supervisory
47 capacity, after such person has been found under a final order to

1 have violated this section or was an officer, director, partner,
2 trustee, or manager of a business organization disciplined by the
3 board by revocation, suspension, or fine in excess of \$2,500, upon
4 finding reasonable cause that such person knew or reasonably
5 should have known of the conduct leading to the discipline.

6
7 29. (New section) a. No building permit shall be issued to any
8 contractor, or to any person representing himself or herself as a
9 contractor, who has not complied with the registration requirements
10 of P.L.1977, c.467 (C.46:3B-1 et seq.) or P.L. , c. (C.)
11 (pending before the Legislature as this bill).

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

18
19 30. (New section) The Division of Homeowners' Protection
20 shall create a web page, accessible through an Internet website,
21 dedicated solely to listing any known information concerning
22 unlicensed construction contractors or unlicensed contracting
23 businesses. The information shall be provided in such a way that
24 any person with computer on line capabilities can access
25 information concerning unlicensed contractors by name or by
26 county. The office shall recognize that persons found guilty of
27 unlicensed contracting do not have the same rights and privileges as
28 licensees, and the department shall not restrict the quality or
29 quantity of information on the web page required by this subsection,
30 unless otherwise required by law.

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

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

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

44
45 31. Section 23 of P.L.1977, c.419 (C.45:22A-23) is amended to
46 read as follows:

1 3. As used in this act unless the context clearly indicates
2 otherwise:

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

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

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

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

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

16 f. **["Commissioner" means the Commissioner of Community**
17 **Affairs.] (Deleted by amendment, P.L. _____, c. .) (pending before**
18 **the Legislature as this bill)**

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

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

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

31 This definition shall be construed liberally to effectuate the
32 purposes of this act.

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

38 j. "Advertising" means and includes the publication or causing
39 to be published of any information offering for disposition or for
40 the purpose of causing or inducing any other person to purchase an
41 interest in a planned real estate development, including the land
42 sales contract to be used and any photographs or drawings or artist's
43 representations of physical conditions or facilities on the property
44 existing or to exist by means of any:

- 45 (1) Newspaper or periodical;
46 (2) Radio or television broadcast;
47 (3) Written or printed or photographic matter;

1 (4) Billboards or signs;

2 (5) Display of model houses or units;

3 (6) Material used in connection with the disposition or offer of
4 the development by radio, television, telephone or any other
5 electronic means; or

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

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

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

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

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

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

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

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

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

43

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

46 4. This act shall be administered by the Division of [Housing
47 and Development] Homeowners' Protection in the State

1 Department of [Community Affairs] Law and Public Safety,
2 hereinafter referred to as the "agency."
3 (cf: P.L1993, c.258, s.9)

4
5 33. Section 7 of P.L.1977, c.419 (C.45:22A-27) is amended to
6 read as follows:

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

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

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

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

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

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

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

44 (7) Copies of the instrument which will be delivered to a
45 purchaser to evidence his interest in the development, and of the
46 contracts and other agreements which a purchaser will be required
47 to agree to or sign;

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

1 (18) A statement of the status of compliance with the
2 requirements of all laws, ordinances, regulations, and other
3 requirements of governmental agencies having jurisdiction over the
4 premises;

5 (19) Such other information, documentation, or certification as
6 the agency deems necessary in furtherance of the protective
7 purposes of this act, including such information as may be required
8 pursuant to P.L. , c. (C.) (pending before the Legislature
9 as this bill).

10 b. The information contained in any application for registration
11 and copies thereof, shall be made available to interested parties at a
12 reasonable charge and under such regulations as the agency may
13 prescribe.

14 c. A developer may register additional property pursuant to the
15 same common promotional plan as those previously registered by
16 submitting another application, providing such additional
17 information as may be necessary to register the additional lots,
18 parcels, units or interests, which shall be known as a consolidated
19 filing.

20 d. The developer shall immediately report any material changes
21 in the information contained in an application for registration. The
22 term "material changes" shall be further defined by the agency in its
23 regulations.

24 e. The application shall be accompanied by a fee in an amount
25 equal to \$500.00 plus \$35.00 per lot, parcel, unit, or interest
26 contained in the application, which fees may be used by the agency
27 to partially defray the cost of rendering services under the act. If
28 the fees are insufficient to defray the cost of rendering services
29 under P.L.1977, c.419 (C.45:22A-21 et seq.), the agency shall, by
30 regulation, establish a revised fee schedule. The revised fee
31 schedule shall assure that the fees collected reasonably cover but do
32 not exceed the expenses and administration of implementing
33 P.L.1977, c.419 (C.45:22A-21 et seq.).

34 f. (1) An engineering study required pursuant to paragraph (12)
35 of subsection a. of this section shall be conducted, and the results
36 thereof certified, by a person licensed in this State as a professional
37 engineer pursuant to P.L.1938, c.342 (C.45:8-27 et seq.).

38 (2) The engineer who prepares the survey shall certify to the
39 agency whether, in his judgment, the building is in compliance with
40 the code standards adopted under the "Hotel and Multiple Dwelling
41 Law," P.L.1967, c.76 (C.55:13A-1 et seq.) and the "Uniform Fire
42 Safety Act," P.L.1983, c.383 (C.52:27D-192 et seq.) and shall list
43 all outstanding violations then existing in accordance with his
44 observation and judgment. The engineer shall be immune from tort
45 liability with regard to such certification and list in the same
46 manner and to the same extent as if he were a public employee
47 protected by the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq.

1 (3) If the agency finds there is a significant discrepancy between
2 the engineering survey submitted by the applicant and an
3 engineering survey submitted by any tenant or tenants currently
4 residing in the building, the agency shall investigate the matter in
5 order to determine the true state of facts prior to approving the
6 application. The agency may use its own staff or contract with
7 independent professionals, and may conduct hearings in accordance
8 with the "Administrative Procedure Act," P.L.1968, c.410
9 (C.52:14B-1 et seq.). Any cost to the agency of hiring independent
10 professionals shall be borne by the applicant developer at the
11 discretion of the agency.
12 (cf: P.L. 1991, c.509, s.21)

13

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

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

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

24 (2) A general narrative description of the development stating the
25 total number of lots, units, parcels, or interests in the offering, and
26 the total number of such interests planned to be sold, leased or
27 otherwise transferred;

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

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

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

43 (5) (a) Relevant community information, including hospitals,
44 health and recreational facilities of any kind, streets, water supply,
45 levees, drainage control systems, irrigation systems, sewage
46 disposal facilities and customary utilities; and

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

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

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

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

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

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

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

40

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

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

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

13 c. The agency may in the interest of justice compromise any
14 civil penalty, if in its determination the gravity of the offense or
15 offenses does not warrant the assessment of the full fine.
16 (cf: P.L.1977, c.419, s.18)

17

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

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

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

36

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

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

40 "Agency" means the Division of **[Housing and Development in**
41 **the Department of Community Affairs]** Homeowner Protection in
42 the Department of Law and Public Safety.

43 "Proprietary campground facility" means any real property
44 designed and used for the purpose of camping and associated
45 recreational uses under a condominium or cooperative form of
46 ownership.

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

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

3 6. Any person aggrieved by any order issued by the agency
4 under this act shall be entitled to a hearing before the
5 **【Commissioner of Community Affairs】** Attorney General pursuant
6 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
7 1 et seq.). The application for such hearing must be filed with the
8 agency within 10 business days of the receipt by the applicant of
9 notice of the order complained of.
10 (cf: P.L.1993, c.258, s.6)

11
12 39. Section 2 of P.L.1977, c. 467 (C.46:3B-2) is amended to
13 read as follows:

14 2. As used in this act:

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

16 b. "Commissioner" means the Commissioner of Community
17 Affairs.

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

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

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

29 f. "Builder" means any individual corporation, partnership or
30 other business organizations engaged in the construction of new
31 homes.

32 g. "Major construction defect" means any actual damage to the
33 load bearing portion of the home including damage due to
34 subsidence, expansion or lateral movement of the soil (excluding
35 movement caused by flood or earthquake) which affects its load
36 bearing function and which vitally affects or is imminently likely to
37 vitally affect use of the home for residential purposes.

38 h. "Warranty date" means the first occupation or settlement
39 date, whichever is sooner.

40 i. "Approved claim" means, for the purposes of P.L.1991,
41 c.202 (C.46:3B-13 et al.), a claim examined and approved by the
42 commissioner in accordance with section 3 of P.L.1991, c.202
43 (C.46:3B-15).

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

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

4 l. "Warranty guarantor" means, for the purposes of P.L.1991,
5 c.202 (C.46:3B-13 et al.), (1) the new home warranty program
6 established in the department pursuant to P.L.1977, c.467 (C.46:3B-
7 1 et seq.) or (2) any alternate new home warranty security program
8 approved pursuant to section 8 of P.L.1977, c.467 (C.46:3B-8).

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

11 n. "Pervasive construction defect" means any defect or defects
12 including items of extremely shoddy or negligent workmanship, or
13 uncorrected construction code violations, and which, taken as a
14 whole, encompass more than 40 percent of the structure, or which
15 exist in any areas that expose parts of the structure to water, air or
16 extreme temperatures.

17 o. "Director" means the Director of the Division of Homeowner
18 Protection in the Department of Law and Public Safety, unless
19 otherwise specified.

20 p. "Division" means the Division of Homeowner Protection in
21 the Department of Law and Public Safety.

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

23
24 40. (New section) a. There is created within the Department of
25 Law and Public Safety, a Division of Homeowners' Protection.
26 Upon the effective date of P.L. , c. (C.) (pending before the
27 Legislature as this bill), all responsibilities, duties and powers
28 concerning the program for registration of builders, except such
29 registration as deemed necessary by the Department of Community
30 Affairs in administering the "New Home Warranty Program," P.L.
31 1977, c. 419 (C.46:3B-1 et seq.), and the State duties under "The
32 Planned Real Estate Development Full Disclosure Act," P.L.1977,
33 c.419 (C.45:22A-21 et seq.) shall be transferred from the
34 Department of Community Affairs to the Division of Homeowner
35 Protection in the Department of Law and Public Safety. All
36 contractors for home improvements and new residential
37 construction shall thereafter register with that office.

38 b. The Director of the Division of Homeowners' Protection shall
39 promulgate such rules and regulations as may be necessary to
40 effectuate this section pursuant to the "Administrative Procedure
41 Act," P.L.1968, c.410 (C.52:14B-1 et seq.). All regulations adopted
42 by the Commissioner of Community Affairs concerning the
43 registration of builders shall remain in force, but may be modified
44 as necessary by the director, in accordance with P.L. ,
45 c. (C.) (pending before the Legislature as this bill).

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

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

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

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

21 (1) **One year]** Two years from and after the warranty date the
22 dwelling shall be free from defects caused by faulty workmanship
23 and defective materials due to noncompliance with the building
24 standards as approved by the commissioner pursuant to **paragraph**
25 **3a. of this act]** subsection a. of this section, except as set forth in
26 **[section 3b. (2) and (3)]** paragraphs (2) and (3) of this subsection.

27 (2) **Two]** Four years from and after the warranty date the
28 dwelling shall be free from defects caused by faulty installation of
29 plumbing, electrical, heating and cooling delivery systems;
30 however, in the case of appliances, no warranty shall exceed the
31 length and scope of the warranty offered by the manufacturer.

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

35 In the event that pervasive construction defects are found to
36 exist, the program administrator shall provide the homeowner with
37 an option to repair all defects with a licensed contractor of the
38 homeowners' choice, or, if the severity of the defects warrants it,
39 the program administrator shall purchase the home from the
40 homeowner. The program administrator shall thereafter institute a
41 legal action against the builder or builders of the new construction
42 for recovery of costs. Successful warranty program claimants
43 against a builder of new construction found to have constructed a
44 new home with pervasive construction defects shall be entitled to
45 reasonable costs and, in the court's discretion, treble damages.
46 Amounts recovered under this section shall be deposited into the
47 appropriate warranty fund.

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

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

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

13 (cf: P.L.1977, c.467, s.3)

14
15 42. Section 5 of P.L.1977, c.467 (C.46:3B-5) is amended to read
16 as follows:

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

28 Each certificate of registration shall be valid for a period of 2
29 years from the date of issue and may be renewed for additional 2
30 year periods.

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

34 No corporation, partnership or other business organization shall
35 be entitled to registration hereunder, nor shall they engage in the
36 construction of new homes unless a stockholder, director, officer,
37 partner, or employee thereof, as the case may be, shall be a
38 registered builder.

39 In addition to registering as a builder, registration shall also be
40 made with the Division of Homeowners' Protection each time a
41 residential building project is begun by a builder, if registration is
42 not required for the project pursuant to "The Planned Real Estate
43 Development Full Disclosure Act," P.L.1977, c.419 (C.45:22A-21
44 et seq.). The builder shall indicate the primary qualifying agent,
45 and the primary project supervisor on such forms as shall be
46 established by the director. This information shall be made

1 available by the director to a code enforcement official upon the
2 request of the official.

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

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

8

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

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

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

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

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

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

36 (4) Willfully violated any applicable building code to a
37 substantial degree;

38 (5) Failed to continue his participation in the new home warranty
39 security fund or an approved alternate new home warranty security
40 program after proper notice from the commissioner in writing by
41 certified mail; or

42 (6) Violated any provision of this act or any rule or regulation
43 adopted pursuant thereto, after proper notice from the commissioner
44 in writing by certified mail.

45 (cf: P.L.1977, c.467, s.6)

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

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

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

43 c. Prior to making a claim against the fund for defects covered
44 by the warranty, an owner shall notify the builder of such defects
45 and allow a reasonable time period for their repair. If the repairs
46 are not made within a reasonable time or are not satisfactory to the
47 owner, he may file a claim against the fund in the form and manner

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

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

29 e. If the board determines that fund reserves and reinsurance
30 may be insufficient to cover anticipated claims, the board shall
31 recommend steps to the commissioner to restore fund resources to
32 sufficiency, which may include increases in premiums and fees,
33 expanded reinsurance and changes in standards and claims
34 adjudication procedures.

35 f. The commissioner may provide for surcharges against those
36 builders who are responsible for a significant number of awards
37 against the fund and may discontinue the participation in the fund
38 of any builder who is responsible for an excessive number of
39 awards against the fund after a hearing in accordance with the
40 provisions of the "Administrative Procedure Act," P.L.1968, c. 410
41 (C.52:14B 1 et seq.) applicable to contested cases. In addition, the
42 commissioner may refer any builder who appears to have violated
43 the provisions of P.L.1977, c.467 or P.L. , c. (C.) (pending
44 before the Legislature as this bill) to the Construction Trades
45 Licensing Board for disciplinary action. At no time shall the State
46 be required to contribute any moneys to the fund, nor shall the State
47 have any liability to any person having any right to or claim against

1 the fund over and above the amount therein except in those
2 instances where it is determined by the Joint Budget Oversight
3 Committee that the provisions of subsection b. of this section have
4 been violated concerning amounts spent, appropriated or transferred
5 from the fund.

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

10

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

13 1. Whenever a builder participating in an alternative new home
14 warranty program approved by the commissioner pursuant to
15 section 8 of P.L.1977, c.467 (C.46:3B-8) issues a warranty
16 guaranteed by that plan, the warranty guarantor shall, before the
17 15th day of the month next following the month in which the new
18 home covered by the warranty is conveyed to the owner, file with
19 the commissioner a statement listing: (1) the name of the approved
20 program as listed with the department; (2) the name or names and
21 **[Social Security]** identification number or numbers of the owner or
22 owners to whom the warranty was issued, which identification
23 number shall not be the social security number, the warranty date,
24 and the enrollment number or other designation by which the
25 warranty is identified in the records of the approved program; (3)
26 the name, address and registration number of the registered builder
27 by whom the warranty has been issued; (4) the sales price of the
28 new home upon which the warranty was issued, its type and method
29 of construction in accordance with categories established by the
30 commissioner, and its location by street address or its block and lot
31 number designation in the tax records of the municipality in which
32 it is located; and (5) such other information as the commissioner
33 may require in order to carry out the provisions and purposes of this
34 act. Personal identification information of owners provided under
35 this section shall not be considered a public record or subject to
36 disclosure as such.

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

38

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

41 3. The files maintained pursuant to section 2 of this act, other
42 than information specifically exempted, shall be subject to the
43 provisions of P.L.2001, c.404 (C.47:1A-5 et al.) and shall be open
44 to inspection by the public at any time during regular business
45 hours at the department's main office and at any other location at
46 which the commissioner may direct duplicate files to be maintained.
47 Copies of information derived from these files shall be available,

1 upon payment of fees sufficient to defray the cost of preparing and
2 distributing those copies, to any person requesting them.

3 (cf: P.L.1992, c.56, s.3)

4

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

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

17 (cf: P.L.1977, c.467, s.9)

18

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

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

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

41 In the event that any person found to have violated any provision
42 of this act fails to pay a civil penalty assessed by the court, the court
43 may issue, upon application by the Attorney General, a warrant for
44 the arrest of such person for the purpose of bringing him before the
45 court to satisfy the civil penalty imposed.

46 A person who fails to restore any moneys or property, real or
47 personal, found to have been acquired unlawfully from a senior

1 citizen shall be subject to punishment for criminal contempt
2 pursuant to N.J.S.2C:29-9, which is a crime of the fourth degree.

3 The court may reduce the amounts of an award to an individual
4 who received payments as a result of warranty claims pursuant to
5 P.L. 1977, c.457 (C.46:3B-1 et seq.) for identical items.
6 (cf: P.L.1999, c.298, s.4).
7

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

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

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

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

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

27
28 51. This act shall take effect on the first day of the third month
29 next following enactment, however the Department of Law and
30 Public Safety and the Department of Community Affairs may take
31 such anticipatory action as necessary to effectuate the provisions of
32 this act.
33
34

35 STATEMENT

36
37 This bill modifies and creates new laws concerning new home
38 construction to address the issues identified by the State
39 Commission of Investigation (SCI) in its report entitled "The Good,
40 the Bad and the Ugly: New Home Construction in New Jersey,"
41 dated March 2005.

42 The commission heard testimony from homebuyers which
43 spanned many months, and cited in its report serious construction
44 deficiencies in new homes built in New Jersey, including such
45 defects as improperly installed walls, beams, roof trusses and
46 foundations, as well as improperly installed vent systems and pipes.

47 The SCI report indicated that these deficiencies, and numerous
48 others identified in the report, were not isolated. The commission

1 attributed these deficiencies mainly to low-quality materials and
2 inferior construction practices and cited irresponsibility and lack of
3 skills on the part of builders as a major contributing factor. The
4 commission recommended specially trained and skilled experts be
5 present on the construction site at all times. The commission's
6 report also noted a system of weak code enforcement as overseen
7 by the State Department of Community Affairs and identified
8 conflicts of interests inherent in the process of processing new
9 home warranty claims.

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

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

42 The administration of the New Home Warranty program will
43 remain the responsibility of the Department of Community Affairs,
44 which will also continue its responsibilities for enforcement of the
45 "State Uniform Construction Code Act." The bill amends the
46 "Local Government Ethics Law" to specifically provide that
47 construction code officials are subject the ethics requirements of
48 that act. In addition, the law modifies some of the warranties to be

1 granted under the new home warranty program and requires that
2 arbitration of warranty issues be handled by the Division of
3 Homeowners' Protection in the Department of Law and Public
4 Safety, under rules to be promulgated by that office. This provision
5 is designed to avoid conflicts of interest for dispute resolvers which
6 were identified by the State Commission of Investigation in its
7 report.

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

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