

**SENATE, No. 1919**

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**STATE OF NEW JERSEY**

**214th LEGISLATURE**

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INTRODUCED MAY 13, 2010

**Sponsored by:**

**Senator GERALD CARDINALE**

**District 39 (Bergen)**

**SYNOPSIS**

Eliminates awards of punitive damages against public entities, and against public officers, employees and servants acting within the scope or under color of their office, employment or agency.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning punitive damages and amending various parts  
2 of the statutory law.

3  
4 BE IT ENACTED *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6  
7 1. Section 2 of P.L.1995, c.142 (C.2A:15-5.10) is amended to  
8 read as follows:

9 2. As used in this act:

10 "Actual malice" means an intentional wrongdoing in the sense of  
11 an evil-minded act.

12 "Clear and convincing evidence" means that standard of  
13 evidence which leaves no serious or substantial doubt about the  
14 correctness of the conclusions drawn from the evidence. It is a  
15 standard which requires more than a **[preponderance]**  
16 preponderance of evidence, but less than beyond a reasonable  
17 doubt, to draw a conclusion.

18 "Compensatory damages" means damages intended to make  
19 good the loss of an injured party, and no more. The term includes  
20 general and special damages and does not include nominal,  
21 exemplary or punitive damages.

22 "Defendant" means any party against whom punitive damages  
23 are sought.

24 "Nominal damages" are damages that are not designed to  
25 compensate a plaintiff and are less than \$500.

26 "Plaintiff" means any party claiming punitive damages.

27 "Public employee" means an officer, employee, or servant of a  
28 public entity, whether or not compensated or part-time, who is  
29 authorized to perform any act or service, and includes: a person  
30 participating, under the supervision of the Palisades Interstate Park  
31 Commission, in a volunteer program in that part of the Palisades  
32 Interstate Park located in New Jersey; a volunteer doing work for  
33 the Division of Parks and Forestry, the Division of Fish, Game and  
34 Wildlife, or the New Jersey Natural Lands Trust, as authorized by  
35 the Commissioner of Environmental Protection; a volunteer doing  
36 work for the New Jersey Historic Trust; and any person retained by  
37 the public defender to serve as an arbitrator, mediator, or in such  
38 similar capacity. The term "public employee" does not include an  
39 independent contractor.

40 "Public entity" means the State, and any county, municipality,  
41 district, public authority, public agency, and any other political  
42 subdivision or public body in the State.

43 "Punitive damages" includes exemplary damages and means  
44 damages awarded against a party , other than a public entity or a  
45 public employee acting within the scope or under color of his

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 office, employment or agency, in a civil action because of  
2 aggravating circumstances in order to penalize and to provide  
3 additional deterrence against a defendant to discourage similar  
4 conduct in the future. Punitive damages do not include  
5 compensatory damages or nominal damages.

6 "Wanton and willful disregard" means a deliberate act or  
7 omission with knowledge of a high degree of probability of harm to  
8 another and reckless indifference to the consequences of such act or  
9 omission.

10 (cf: P.L.1995, c.142, s.2)

11  
12 2. Section 4 of P.L.1995, c.142 (C.2A:15-5.12) is amended to  
13 read as follows:

14 4. a. Punitive damages may be awarded to the plaintiff **[only if**  
15 **the plaintiff proves]** in any action, other than an action against a  
16 public entity or a public employee acting within the scope or under  
17 color of his office, employment or agency. The plaintiff shall  
18 prove, by clear and convincing evidence, that the harm suffered was  
19 the result of the defendant's acts or omissions, and such acts or  
20 omissions were actuated by actual malice or accompanied by a  
21 wanton and willful disregard of persons who foreseeably might be  
22 harmed by those acts or omissions. This burden of proof may not  
23 be satisfied by proof of any degree of negligence including gross  
24 negligence.

25 b. In determining whether punitive damages are to be awarded,  
26 the trier of fact shall consider all relevant evidence, including but  
27 not limited to, the following:

28 (1) The likelihood, at the relevant time, that serious harm would  
29 arise from the defendant's conduct;

30 (2) The defendant's awareness of reckless disregard of the  
31 likelihood that the serious harm at issue would arise from the  
32 defendant's conduct;

33 (3) The conduct of the defendant upon learning that its initial  
34 conduct would likely cause harm; and

35 (4) The duration of the conduct or any concealment of it by the  
36 defendant.

37 c. If the trier of fact determines that punitive damages should  
38 be awarded, the trier of fact shall then determine the amount of  
39 those damages. In making that determination, the trier of fact shall  
40 consider all relevant evidence, including, but not limited to, the  
41 following:

42 (1) All relevant evidence relating to the factors set forth in  
43 subsection b. of this section;

44 (2) The profitability of the misconduct to the defendant;

45 (3) When the misconduct was terminated; and

46 (4) The financial condition of the defendant.

47 (cf: P.L.1995, c.142, s.4)

1       3. Section 6 of P.L.1995, c.142 (C.2A:15-5.14) is amended to  
2 read as follows:

3       6. a. Before entering judgment for an award of punitive  
4 damages, the trial judge shall ascertain that the award is reasonable  
5 in its amount and justified in the circumstances of the case, in light  
6 of the purpose to punish the defendant and to deter that defendant  
7 from repeating such conduct. If necessary to satisfy the  
8 requirements of this section, the judge may reduce the amount of or  
9 eliminate the award of punitive damages.

10       b. No defendant shall be liable for punitive damages in any  
11 action in an amount in excess of five times the liability of that  
12 defendant for compensatory damages or \$350,000, whichever is  
13 greater.

14       c. The provisions of subsection b. of this section shall not  
15 apply to causes of action brought pursuant to P.L.1993, c.137  
16 (C.2A:53A-21 et seq.), P.L.1945, c.169 (C.10:5-1 et seq.),  
17 P.L.1989, c.303 (C.26:5C-5 et seq.) or P.L.1992, c.109 (C.2A:61B-  
18 1), or in cases in which a defendant has been convicted pursuant to  
19 R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a).

20       d. Notwithstanding the provisions of subsections b. and c. of  
21 this section, a public entity or a public employee acting within the  
22 scope or under color of his office, employment or agency shall not  
23 be liable for punitive damages in any action.

24 (cf: P.L.2005, c.329, s.3)  
25

26       4. Section 3 of P.L.1979, c.488 (C.2A:84A-21.11) is amended  
27 to read as follows:

28       3. a. A person, corporation, partnership, proprietorship or  
29 other entity aggrieved by a search for or seizure of materials in  
30 violation of this act shall have a civil cause of action for damages  
31 for such search or seizure:

32       (1) Against the State of New Jersey, or against any other  
33 governmental unit, all of which shall be liable for violations of this  
34 act by their officers, employees or agents while acting within the  
35 scope or under color of their office, employment or agency.

36       (2) Against an officer, employee or agent of the State of New  
37 Jersey or any other governmental unit who has violated this act  
38 while acting other than within the scope or under color of his office,  
39 employment or agency. It shall be a complete defense to a civil  
40 action brought under this paragraph that the officer, employee or  
41 agent had a reasonable good faith belief in the lawfulness of his  
42 conduct unless his error is due to an ignorance of an official  
43 statement of the law.

44       b. The State of New Jersey or any other governmental unit,  
45 liable for violations of this act under paragraph [3 a. (1)] (1) of  
46 subsection a. of this section, may not assert as a defense to a claim  
47 arising under this act the immunity of the officer, employee or agent  
48 whose violation is complained of or his reasonable good faith belief

1 in the lawfulness of his conduct, except that such a defense may be  
2 asserted if the violation complained of is that of a judge.

3 c. The remedy provided by paragraph **[3 a. (1)]** (1) of  
4 subsection a. of this section against the State of New Jersey or any  
5 other governmental unit is exclusive of any other civil action or  
6 proceeding for conduct constituting a violation of this act, against  
7 the officer, employee or agent whose violation gave rise to the  
8 claim, or against the estate of such officer, employee or agent.

9 d. A person, corporation, partnership, proprietorship or other  
10 entity having a cause of action under this section shall be entitled to  
11 recover actual damages but not less than liquidated damages of  
12 \$1,000.00, such punitive damages as may be warranted if the cause  
13 of action involves a violation of paragraph (2) of subsection a. of  
14 this section, and such reasonable attorney's fee and other litigation  
15 costs reasonably incurred as the court, in its discretion, may award;  
16 provided, however, that the State of New Jersey or any other  
17 governmental unit shall not be liable for interest prior to judgment.

18 e. The Attorney General is authorized to settle a claim for  
19 damages brought against the State of New Jersey under this section  
20 and shall promulgate regulations to provide for the commencement  
21 of an administrative inquiry following a determination of a  
22 violation of this act by an officer, employee or agent of the State of  
23 New Jersey or any other governmental unit and for the imposition  
24 of administrative sanctions against such officer, employee or agent  
25 if warranted.

26 f. A county prosecutor may settle a claim for damages brought  
27 against the county of his jurisdiction or any other governmental unit  
28 under this section.

29 (cf: P.L.1979, c.488, s.3)

30  
31 5. Section 24 of P.L.1968, c.409 (C.2A:156A-24) is amended  
32 to read as follows:

33 24. Any person whose wire, electronic or oral communication is  
34 intercepted, disclosed or used in violation of this act shall have a  
35 civil cause of action against any person who intercepts, discloses or  
36 uses or procures any other person to intercept, disclose or use, such  
37 communication; and shall be entitled to recover from any such  
38 person:

39 a. Actual damages, but not less than liquidated damages  
40 computed at the rate of \$100.00 a day for each day of violation, or  
41 \$1,000.00, whichever is higher;

42 b. Punitive damages , except in an action against an officer,  
43 including an investigative or law enforcement officer, or employee  
44 of the State or of any political subdivision thereof acting within the  
45 scope or under color of his office, employment or agency; and

46 c. A reasonable attorney's fee and other litigation costs  
47 reasonably incurred.

48 (cf: P.L.1993, c.29, s.20)

1       6. N.J.S.2B:21-10 is amended to read as follows:

2       2B:21-10. a. Any person who, with the intent to injure another,  
3 purposely discloses any information concerning the proceedings of  
4 a grand jury, other than as authorized or required by law, commits a  
5 crime of the fourth degree. A public officer or employee who is  
6 convicted of a violation of this subsection shall be dismissed from  
7 public office or employment.

8       b. A person injured as a result of a violation of subsection a. of  
9 this section may bring a civil action against the person convicted of  
10 the violation. The person convicted shall be liable to the person  
11 injured for actual damages, punitive damages of not less than  
12 \$1,000.00 or more than \$100,000.00, reasonable litigation costs and  
13 reasonable attorney fees ; except that a public officer or employee  
14 acting within the scope or under color of his office, employment or  
15 agency shall not be liable for punitive damages.

16 (cf: N.J.S.2B:21-10)

17

18       7. Section 1 of P.L.2001, c.385 (C.10:5-12.6) is amended to  
19 read as follows:

20       1. No employer, public or private, shall discharge or  
21 discriminate against an employee in compensation or in terms,  
22 conditions or privileges of employment for displaying the American  
23 flag on the employee's person or work station, provided the display  
24 does not substantially and materially interfere with the employee's  
25 job duties. An employer who discharges or discriminates against an  
26 employee as described in this section shall be liable to the employee  
27 for damages caused by the discharge or discrimination, including  
28 punitive damages if a private employer, and for reasonable  
29 attorney's fees as part of the costs of any action for damages. A  
30 public employer, or an officer, employee or a servant thereof acting  
31 within the scope or under color of his office, employment or  
32 agency, shall not be liable to the aggrieved employee for punitive  
33 damages. If the court determines that the action for damages was  
34 brought without substantial justification, the court may award costs  
35 and reasonable attorney's fees to the employer.

36 (cf: P.L.2001, c.385, s.1)

37

38       8. Section 6 of P.L.1983, c.466 (C.17:16K-6) is amended to  
39 read as follows:

40       6. If a court of competent jurisdiction determines that a  
41 financial institution or a government agency acted negligently,  
42 willfully, or recklessly in violating this act, the financial institution  
43 or government agency shall be liable to the aggrieved person for  
44 actual damages sustained by him; reasonable litigation costs;  
45 reasonable attorneys' fees; and only in cases where a financial  
46 institution **【or government agency】** acted willfully or recklessly, a

1 court of competent jurisdiction may award punitive damages where  
2 appropriate.

3 (cf: P.L.1983, c.466, s.6)

4  
5 9. Section 19 of P.L.1983, c.65 (C.17:30E-7) is amended to  
6 read as follows:

7 19. Pursuant to the plan of operation, the association shall have  
8 the power and duty to:

9 a. Enter into contracts as are necessary or proper to carry out  
10 the provisions and purposes of this act;

11 b. Sue or be sued in the name of the association, including  
12 taking any legal actions necessary or proper for recovery of any  
13 assessments for, on behalf of, or against members. A judgment  
14 against the association shall not create any direct liability against  
15 the servicing carrier, board of directors or the individual members,  
16 or the individual participating members of the association;

17 c. Indemnify its directors and employees for any and all  
18 claims, suits, costs of investigations, costs of defense, settlements  
19 or judgments against them on account of an act or omission in the  
20 scope of a director's duties or employee's employment. The  
21 association shall refuse to indemnify if it determines that the act or  
22 failure to act was because of actual fraud, willful misconduct or  
23 actual malice, or for claims for exemplary or punitive damages;

24 d. Take such action as is necessary to prevent and avoid the  
25 payment of improper claims against the association or the coverage  
26 provided by or through the association;

27 e. Arrange for the issuance of automobile insurance to any  
28 qualified applicant through servicing carriers. Each servicing  
29 carrier shall issue policies in the name of the servicing carrier, on  
30 behalf of the association, to the extent the plan of operation  
31 provides. Servicing carriers, as agents of the association, shall have  
32 no individual liability for claims or policies written by the  
33 association. However, notwithstanding the above, or any other  
34 provision of law to the contrary, the association shall not arrange  
35 for the issuance or renewal of any automobile insurance policy,  
36 either through a servicing carrier or on its own behalf, on or after  
37 October 1, 1990;

38 f. Appoint from among its members appropriate legal,  
39 actuarial, claims, investment and other committees as necessary to  
40 provide technical assistance in the operation of the association,  
41 policy and other contract design, and any other function within the  
42 authority of the association;

43 g. Establish standards for, and review operating practices of,  
44 servicing carriers and producers to determine whether such  
45 practices are adequate to properly service association business, and  
46 to take appropriate action to eliminate inadequate operating  
47 practices and develop adequate operating practices, and to appoint  
48 an audit committee to review operating practices. The audit

- 1 committee shall be composed of servicing carriers, producers, and  
2 member companies who are not servicing carriers;
- 3 h. Develop criteria and establish a monitoring system to ensure  
4 that: (1) servicing carriers do not obtain an unfair advantage,  
5 because of their servicing carrier relationship with producers over  
6 other member companies which are not servicing carriers; and (2)  
7 member companies do not obtain an unfair advantage over  
8 producers of record without a contractual relationship with a  
9 voluntary market company, as a result of an offer of voluntary  
10 market coverage to an insured of the association;
- 11 i. Order the reporting of such statistics by the members of the  
12 association as it deems necessary;
- 13 j. Reimburse servicing carriers from association funds;
- 14 k. Adopt bylaws for the regulation of its internal affairs;
- 15 l. Employ a general manager, who shall serve at its pleasure  
16 and be responsible for the conduct of the administrative affairs of  
17 the association. The board may employ other necessary personnel  
18 and may delegate to the general manager and other personnel such  
19 authority as it deems necessary to assure proper administration and  
20 operation of the association consistent with the plan of operation.  
21 The board shall arrange and contract if necessary for suitable  
22 quarters within the State of New Jersey for operations of the  
23 association; for such equipment, goods and services; and incur such  
24 expenses as it deems necessary to assure efficient administration of  
25 the association consistent with the plan of operation. If required by  
26 the plan of operation, the board may establish service centers in  
27 underserved areas, which service centers shall provide for the  
28 dissemination of full information on the coverages available under  
29 this act and for referrals to appropriate outlets for the acquisition of  
30 such coverage;
- 31 m. Hear and determine complaints of any member or producer  
32 concerning the operation of the association in accordance with  
33 procedures prescribed in section 28 of this act;
- 34 n. Annually report to the commissioner on the operation of the  
35 association;
- 36 o. Record and investigate complaints involving the conduct of  
37 producers and to take appropriate corrective action or to  
38 recommend to the commissioner appropriate disciplinary action,  
39 including suspension or revocation of authority to write association  
40 business;
- 41 p. Review servicing practices of servicing carriers to determine  
42 whether such practices are adequate to properly service the risks  
43 written by the association; and upon finding that the practices of  
44 any servicing carrier are inadequate, establish a program for that  
45 member which will assist the servicing carrier in the performance of  
46 its duties and charge that servicing carrier a reasonable fee for  
47 establishing and operating such a program;
- 48 q. Audit the operations of members for the purpose of



1 determining compliance with this act;

2 r. Develop methods and standards for the establishment of  
3 adequate, actuarially sound reserves for unpaid losses and loss  
4 adjustment expenses, including provision for incurred but not  
5 reported losses; and

6 s. Take such other action as is necessary to effectuate the  
7 purposes of this act.

8 (cf: P.L.1990, c.8, s.16)

9

10 10. N.J.S.18A:12-20 is amended to read as follows:

11 18A:12-20. Whenever a civil, administrative, criminal or quasi-  
12 criminal action or other legal proceeding has been or shall be  
13 brought against any person for any act or omission arising out of  
14 and in the course of the performance of his duties as a member of a  
15 board of education, and in the case of a criminal or quasi-criminal  
16 action such action results in final disposition in favor of such  
17 person, the board of education shall defray all costs of defending  
18 such action, including reasonable counsel fees and expenses,  
19 together with costs of appeal, if any, and shall save harmless and  
20 protect such person from any financial loss resulting therefrom.  
21 **【Indemnification for exemplary or punitive damages shall not be**  
22 **mandated and shall be governed by the standards and procedures set**  
23 **forth in N.J.S.59:10-4.】** Any board of education may arrange for  
24 and maintain appropriate insurance to cover all such damages,  
25 losses and expenses.

26 (cf: P.L.2001, c.178, s.1)

27

28 11. N.J.S.18A:16-6 is amended to read as follows:

29 18A:16-6. Whenever any civil or administrative action or other  
30 legal proceeding has been or shall be brought against any person  
31 holding any office, position or employment under the jurisdiction of  
32 any board of education, including any student teacher or person  
33 assigned to other professional pre-teaching field experience, for any  
34 act or omission arising out of and in the course of the performance  
35 of the duties of such office, position, employment or student  
36 teaching or other assignment to professional field experience, the  
37 board shall defray all costs of defending such action, including  
38 reasonable counsel fees and expenses, together with costs of appeal,  
39 if any, and shall save harmless and protect such person from any  
40 financial loss resulting therefrom; provided that such person

41 a. **【no employee】** shall not be entitled to be held harmless or  
42 have his defense costs defrayed in a disciplinary proceeding  
43 instituted against him by the board or when **【the employee is】**  
44 appealing an action taken by the board**【; and】** .

45 b. **【indemnification for exemplary or punitive damages shall not**  
46 **be mandated and shall be governed by the standards and procedures**  
47 **set forth in N.J.S.59:10-4.】** (Deleted by amendment P.L. , c. (C. )

1 (now pending before the Legislature as this bill).

2 Any board of education may arrange for and maintain  
3 appropriate insurance to cover all such damages, losses and  
4 expenses.

5 (cf: P.L.2001, c.178, s.2)

6

7 12. Section 3 of P.L.1993, c.282 (C.26:2H-14.7) is amended to  
8 read as follows:

9 3. A person shall have a cause of action against the residential  
10 health care facility for any violation of this act. The Department of  
11 Health and Senior Services may maintain an action in the name of  
12 the State to enforce the provisions of this act and any rules and  
13 regulations promulgated pursuant to this act. The action to recover  
14 actual damages and, if the cause of action is against a private  
15 residential health care facility, punitive damages , shall be brought  
16 in a court of competent jurisdiction. A plaintiff shall not be entitled  
17 to recover punitive damages in any action against a public  
18 residential health care facility, or against an officer, employee, or a  
19 servant thereof acting within the scope or under color of his office,  
20 employment or agency. A plaintiff who prevails in an action shall  
21 be entitled to recover reasonable attorney's fees and costs of the  
22 action.

23 (cf: P.L.1993, c.282, s.3)

24

25 13. Section 13 of P.L.1997, c.192 (C.26:2S-13) is amended to  
26 read as follows:

27 13. a. An employee of the department who participates in the  
28 Independent Health Care Appeals Program shall not be liable in any  
29 action for damages to any person for any action taken within the  
30 scope of his function in the Independent Health Care Appeals  
31 Program. The Attorney General shall defend the person in any civil  
32 suit and the State shall provide indemnification for any damages  
33 awarded pursuant to the "New Jersey Tort Claims Act," N.J.S.59:1-  
34 1 et seq.

35 b. The carrier that is the subject of a review shall not be liable in  
36 any action for damages to any person for any action taken to  
37 implement a recommendation of the independent utilization review  
38 organization pursuant to this act.

39 (cf: P.L.1997, c.192, s.13)

40

41 14. Section 10 of P.L.1989, c.303 (C.26:5C-14) is amended to  
42 read as follows:

43 10. a. A person who has or is suspected of having AIDS or HIV  
44 infection who is aggrieved as a result of a violation of this act may  
45 commence a civil action against the individual or institution who  
46 committed the violation to obtain appropriate relief, including  
47 actual damages, equitable relief and reasonable attorney's fees and  
48 court costs. Punitive damages may be awarded against any

1 individual or institution, other than the department, a local health  
2 department, or a health care facility operated at the direction of or  
3 under the management of the State or a political subdivision  
4 thereof, or against any other public entity, or against an officer,  
5 employee, or a servant of the department, or the local health  
6 department, or the provider of health care for, or health care facility  
7 operated or managed by, the State or political subdivision thereof,  
8 or any other public entity, while acting within the scope or under  
9 color of his office, employment or agency, when the violation  
10 evidences wantonly reckless or intentionally malicious conduct by  
11 the person or institution who committed the violation.

12 b. Each disclosure made in violation of this act is a separate and  
13 actionable offense.

14 (cf: P.L.1989, c.303, s.10)

15  
16 15. Section 5 of P.L.1948, c.454 (C.27:23-5) is amended to read  
17 as follows:

18 5. General grant of powers. The authority shall be a body  
19 corporate and politic and shall have perpetual succession and shall  
20 have the following powers:

21 (a) To adopt bylaws for the regulation of its affairs and the  
22 conduct of its business;

23 (b) To adopt an official seal and alter the same at pleasure;

24 (c) To maintain an office at such place or places within the State  
25 as it may designate and to organize itself into such sub-departments,  
26 operating divisions or units as it deems appropriate;

27 (d) To sue and be sued in its own name;

28 (e) To acquire, improve, construct, maintain, repair, manage, and  
29 operate transportation projects or any part thereof at such locations  
30 as shall be established by law or by the authority;

31 (f) To borrow money and issue negotiable bonds for any of its  
32 corporate purposes, and to secure the same through the pledging of  
33 tolls and other revenues and proceeds of such bonds, or other  
34 available sources, and to refund its bonds, and to enter into any  
35 credit agreement, all as provided in this act;

36 (g) In the exercise of any of its powers, by resolution to fix and  
37 revise from time to time and charge and collect tolls, fees, licenses,  
38 rents, concession charges and other charges for each transportation  
39 project or any part thereof constructed or acquired by it. No toll  
40 revenues derived from the New Jersey Turnpike or the Garden State  
41 Parkway shall be used or available for any transportation project  
42 other than a highway project and all transportation projects other  
43 than highway projects shall be self-sustaining; provided however  
44 that such toll revenues may be used to finance or support the costs  
45 of non-highway transportation projects on an interim basis  
46 according to such terms, with or without interest, as the authority  
47 shall establish;

48 (h) To establish rules and regulations for the use of any project

1 including restrictions on the type, weight and size of vehicles  
2 utilizing transportation projects, and also including the power to  
3 exclude from any part of a highway project any traffic other than  
4 passenger automobiles if the authority finds that such part is not  
5 suitable or sufficient as a highway to carry mixed traffic;

6 (i) To acquire, hold and dispose of real and personal property in  
7 the exercise of its powers and the performance of its duties under  
8 this act;

9 (j) To acquire in the name of the authority by purchase or  
10 otherwise, on such terms and conditions and in such manner as it  
11 may deem proper, or by the exercise of the power of eminent  
12 domain, except as against the State of New Jersey, any land and  
13 other property, which it may determine is reasonably necessary for  
14 any transportation project or feeder road or for the relocation or  
15 reconstruction of any highway by the authority under the provisions  
16 of this act and any and all rights, title and interest in such land and  
17 other property, including public lands, parks, playgrounds,  
18 reservations, highways or parkways, owned by or in which the State  
19 of New Jersey or any county, city, borough, town, township,  
20 village, or other political subdivision of the State of New Jersey has  
21 any right, title or interest, or parts thereof or rights therein and any  
22 fee simple absolute or any lesser interest in private property, and  
23 any fee simple absolute in, easements upon, or the benefit of  
24 restrictions upon, abutting property to preserve and protect  
25 transportation projects.

26 Upon the exercise of the power of eminent domain, the  
27 compensation to be paid thereunder shall be ascertained and paid in  
28 the manner provided in the "Eminent Domain Act of 1971,"  
29 P.L.1971, c.361 (C.20:3-1 et seq.), insofar as the provisions thereof  
30 are applicable and not inconsistent with the provisions contained in  
31 this act. The authority may join in separate subdivisions in one  
32 petition or complaint the descriptions of any number of tracts or  
33 parcels of land or property to be condemned and the names of any  
34 number of owners and other parties who may have an interest  
35 therein and all such land or property included in said petition or  
36 complaint may be condemned in a single proceeding; provided,  
37 however, that separate awards be made for each tract or parcel of  
38 land or property; and provided, further, that each of said tracts or  
39 parcels of land or property lies wholly in or has a substantial part of  
40 its value lying wholly within the same county.

41 Upon the filing of such petition or complaint or at any time  
42 thereafter the authority may file with the clerk of the county in  
43 which such property is located and also with the Clerk of the  
44 Superior Court a declaration of taking, signed by the authority,  
45 declaring that possession of one or more of the tracts or parcels of  
46 land or property described in the petition or complaint is thereby  
47 being taken by and for the use of the authority. The said declaration  
48 of taking shall be sufficient if it sets forth: (1) a description of each

1 tract or parcel of land or property to be so taken sufficient for the  
2 identification thereof, to which there may or may not be attached a  
3 plan or map thereof; (2) a statement of the estate or interest in the  
4 said land or property being taken; and (3) a statement of the sum of  
5 money estimated by the authority by resolution to be just  
6 compensation for the taking of the estate or interest in each tract or  
7 parcel of land or property described in said declaration.

8 Upon the filing of the said declaration, the authority shall deposit  
9 with the Clerk of the Superior Court the amount of the estimated  
10 compensation stated in said declaration.

11 Upon the filing of the said declaration as aforesaid and  
12 depositing with the Clerk of the Superior Court the amount of the  
13 estimated compensation stated in said declaration, the authority,  
14 without other process or proceedings, shall be entitled to the  
15 exclusive possession and use of each tract of land or property  
16 described in said declaration and may forthwith enter into and take  
17 possession of said land or property, it being the intent of this  
18 provision that the proceedings for compensation or any other  
19 proceedings relating to the taking of said land or interest therein or  
20 other property shall not delay the taking of possession thereof and  
21 the use thereof by the authority for the purpose or purposes for  
22 which the authority is authorized by law to acquire or condemn  
23 such land or other property or interest therein.

24 The authority shall cause notice of the filing of said declaration  
25 and the making of said deposit to be served upon each party in  
26 interest named in the petition residing in this State, either personally  
27 or by leaving a copy thereof at his residence, if known, and upon  
28 each party in interest residing out of the State, by mailing a copy  
29 thereof to him at his residence, if known. In the event that the  
30 residence of any such party or the name of such party is unknown,  
31 such notice shall be published at least once in a newspaper  
32 published or circulating in the county or counties in which the land  
33 is located. Upon the application of any party in interest and after  
34 notice to other parties in interest, including the authority, any judge  
35 of the Superior Court assigned to sit for said county may order that  
36 the money deposited with the Clerk of the Superior Court or any  
37 part thereof be paid forthwith to the person or persons entitled  
38 thereto for or on account of the just compensation to be awarded in  
39 said proceeding; provided, that each such person shall have filed  
40 with the Clerk of the Superior Court a consent in writing that, in the  
41 event the award in the condemnation proceeding shall be less than  
42 the amount deposited, the court, after notice as herein provided and  
43 hearing, may determine his liability, if any, for the return of such  
44 difference or any part thereof and enter judgment therefor. If the  
45 amount of the award as finally determined shall exceed the amount  
46 so deposited, the person or persons to whom the award is payable  
47 shall be entitled to recover from the authority the difference  
48 between the amount of the deposit and the amount of the award,

1 with interest at the rate of six per centum (6%) per annum thereon  
2 from the date of making the deposit. If the amount of the award  
3 shall be less than the amount so deposited, the Clerk of the Superior  
4 Court shall return the difference between the amount of the award  
5 and the deposit to the authority, unless the amount of the deposit or  
6 any part thereof shall have theretofore been distributed, in which  
7 event the court, on petition of the authority and notice to all persons  
8 interested in the award and affording them an opportunity to be  
9 heard, shall enter judgment in favor of the authority for such  
10 difference against the party or parties liable for the return thereof.  
11 The authority shall cause notice of the date fixed for such hearing to  
12 be served upon each party thereto residing in this State, either  
13 personally or by leaving a copy thereof at his residence, if known,  
14 and upon each party residing out of the State, by mailing a copy to  
15 him at his residence, if known. In the event that the residence of  
16 any party or the name of such party is unknown, such notice shall  
17 be published at least once in a newspaper published or circulating in  
18 the county or counties in which the land is located. Such service,  
19 mailing or publication shall be made at least 10 days before the date  
20 fixed for such hearing.

21 Whenever under the "Eminent Domain Act of 1971" the amount  
22 of the award may be paid into court, payment may be made into the  
23 Superior Court and may be distributed according to law;

24 (k) To designate the locations, and establish, limit and control  
25 such points of ingress to and egress from each highway or  
26 transportation project as may be necessary or desirable in the  
27 judgment of the authority to insure the proper operation and  
28 maintenance of such project, and to prohibit entrance to such  
29 project from any point or points not so designated;

30 (l) To make and enter into all contracts and agreements necessary  
31 or incidental to the performance of its duties and the execution of  
32 its powers under this act and to enter into contracts with federal,  
33 State and local governments and private entities for the financing,  
34 administration, operation, management and construction of  
35 transportation projects;

36 (m) To appoint such additional officers, who need not be  
37 members of the authority, as the authority deems advisable, and to  
38 employ consulting engineers, attorneys, accountants, construction  
39 and financial experts, superintendents, managers, and such other  
40 similarly situated employees and agents as may be necessary in its  
41 judgment; to fix their compensation; and to promote and discharge  
42 such officers, employees and agents, all without regard to the  
43 provisions of Title 11A of the New Jersey Statutes;

44 (n) To receive and accept from any federal agency, subject to the  
45 approval of the Governor, grants for or in aid of the acquisition or  
46 construction of any transportation project or any part thereof, and to  
47 receive and accept aid or contributions, from any source, of either  
48 money, property, labor or other things of value, to be held, used and

1 applied only for the purposes for which such grants and  
2 contributions may be made;

3 (o) To do all acts and things necessary or convenient to carry out  
4 the powers expressly or impliedly granted in this act;

5 (p) Subject to any agreement with the bondholders, to invest  
6 moneys of the authority not required for immediate use, including  
7 proceeds from the sale of any bonds, in such obligations, securities  
8 and other investments as the authority shall deem prudent;

9 (q) To apply for, receive and accept from any federal agency,  
10 any bistate agency, or the State and any subdivision thereof, grants  
11 for or in aid of the planning, acquisition, management, maintenance,  
12 operation or construction of any project, and to receive and accept  
13 aid or contributions from any other public or private source, of  
14 either money, property, labor or other things of value, to be held,  
15 used and applied only for the purposes for which those grants and  
16 contributions may be made;

17 (r) To procure and enter into contracts for any type of insurance  
18 and to indemnify against loss or damage to property from any  
19 cause, including the loss of use and occupancy and business  
20 interruption, death or injury of any person, employee liability, any  
21 act of any member, officer, employee or servant of the authority,  
22 whether part-time, compensated or uncompensated, in the  
23 performance of the duties of office or employment or any other  
24 insurable risk or any other losses in connection with property,  
25 operations, assets or obligations in any amounts and from any  
26 insurers as are deemed desirable. The authority shall not indemnify  
27 any member, officer, employee or servant for claims for exemplary  
28 or punitive damages. In addition, the authority may carry its own  
29 liability insurance;

30 (s) To adopt regulations, pursuant to the "Administrative  
31 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to provide  
32 open and competitive procedures for awarding contracts for towing  
33 and storage services. Towing and storage services on a highway  
34 project may be provided on a rotating basis, provided that the  
35 authority determines that there would be no additional cost to the  
36 authority, excepting administrative costs, as a result of those  
37 services being provided on a rotating basis. The regulations shall  
38 fix maximum towing and storage fees, and establish objective  
39 criteria to be considered in awarding a contract for towing and  
40 storage services which shall include, but shall not be limited to,  
41 reliability, experience, response time, acceptance of credit cards and  
42 prepaid towing contracts, adequate equipment to safely handle a  
43 sufficient volume of common vehicle types under a variety of  
44 traffic and weather conditions, location of storage and repair  
45 facilities, security of vehicles towed or stored, financial return to  
46 the authority, maintenance of adequate liability insurance and  
47 appropriate safeguards to protect the personal safety of customers,  
48 including considerations related to the criminal background of

1 employees. The Division of Consumer Affairs in the Department of  
2 Law and Public Safety shall provide, at the authority's request, a  
3 report to the authority on any prospective contractor for which the  
4 division has information relevant to the prospective contractor's  
5 service record, subject to the provisions of the New Jersey  
6 consumer fraud act, P.L.1960, c.39 (C.56:8-1 et seq.). The Division  
7 of Insurance Fraud Prevention in the Department of Banking and  
8 Insurance also shall provide, at the authority's request, a report to  
9 the authority on any prospective contractor for which the division  
10 has information relevant to the prospective contractor's service  
11 record, subject to the "New Jersey Insurance Fraud Prevention Act,"  
12 P.L.1983, c.320 (C.17:33A-1 et seq.);

13 (t) To adopt, prior to the Transfer Date and notwithstanding any  
14 other provision of law to the contrary, a resolution authorizing the  
15 issuance of bonds, notes or other obligations on such terms as  
16 otherwise provided for in this act for the retirement by defeasance,  
17 redemption, secondary market purchase, tender payment at maturity  
18 or otherwise, of all of the New Jersey Highway Authority's  
19 outstanding bonds, notes or other obligations, as if the Transfer  
20 Date transferring to the authority the rights, duties and obligations  
21 to operate, maintain and manage the Garden State Parkway had  
22 already occurred; and

23 (u) To transfer, sell, dispose of, or otherwise relinquish all right,  
24 title, or interest in the Garden State Arts Center, and any related or  
25 auxiliary facilities, to the New Jersey Sports and Exposition  
26 Authority, established by P.L.1971, c.137 (C.5:10-1 et seq.), or to  
27 any other entity, according to such terms and process as the  
28 authority may establish in its discretion.

29 (cf: P.L.2003, c.79, s.9)

30

31 16. Section 5 of P.L.1979, c.150 (C.27:25-5) is amended to read  
32 as follows:

33 5. In addition to the powers and duties conferred upon it  
34 elsewhere in this act, the corporation may do all acts necessary and  
35 reasonably incident to carrying out the objectives of this act,  
36 including but not in limitation thereof the following:

37 a. Sue and be sued;

38 b. Have an official seal and alter the same at pleasure;

39 c. Make and alter bylaws for its organization and internal  
40 management and for the conduct of its affairs and business;

41 d. Maintain an office at such place or places within the State as  
42 it may determine;

43 e. Adopt, amend and repeal such rules and regulations as it  
44 may deem necessary to effectuate the purposes of this act, which  
45 shall have the force and effect of law; it shall publish the same and  
46 file them in accordance with the "Administrative Procedure Act,"  
47 P.L.1968, c.410 (C.52:14B-1 et seq.) with the Director of the Office  
48 of Administrative Law;



- 1       f. Call to its assistance and avail itself of the service of such  
2 employees of any federal, State, county or municipal department or  
3 agency as it may require and as may be available to it for said  
4 purpose;
- 5       g. Apply for, accept and expend money from any federal, State,  
6 county or municipal agency or instrumentality and from any private  
7 source; comply with federal statutes, rules and regulations, and  
8 qualify for and receive all forms of financial assistance available  
9 under federal law to assure the continuance of, or for the support or  
10 improvement of public transportation and as may be necessary for  
11 that purpose to enter into agreements, including federally required  
12 labor protective agreements;
- 13       h. Plan, design, construct, equip, operate, improve and  
14 maintain, either directly or by contract with any public or private  
15 entity, public transportation services, capital equipment and  
16 facilities or any parts or functions thereof, and other transportation  
17 projects, or any parts or functions thereof, which may be funded  
18 under section 3 of the federal Urban Mass Transportation Act of  
19 1964, Pub.L.88-365 (49 U.S.C. s.1602), or any successor or  
20 additional federal act having substantially the same or similar  
21 purposes or functions; the operation of the facilities of the  
22 corporation, by the corporation or any public or private entity, may  
23 include appropriate and reasonable limitations on competition in  
24 order that maximum service may be provided most efficiently to the  
25 public;
- 26       i. Apply for and accept, from appropriate regulatory bodies,  
27 authority to operate public transportation services where necessary;
- 28       j. Purchase, lease as lessee, or otherwise acquire, own, hold,  
29 improve, use and otherwise deal in and with real or personal  
30 property, or any interest therein, from any public or private entity,  
31 wherever situated;
- 32       k. Lease as lessor, sell or otherwise dispose of on terms which  
33 the corporation may prescribe, real and personal property, including  
34 tangible or intangible property and consumable goods, or any  
35 interest therein, to any public or private entity, in the exercise of its  
36 powers and the performance of its duties under this act. In order to  
37 provide or encourage adequate and efficient public transportation  
38 service, the corporation may lease or otherwise permit the use or  
39 occupancy of property without cost or at a nominal rental;
- 40       l. Restrict the rights of persons to enter upon or construct any  
41 works in or upon any property owned or leased by the corporation,  
42 except under such terms as the corporation may prescribe; perform  
43 or contract for the performance of all acts necessary for the  
44 management, maintenance and repair of real or personal property  
45 leased or otherwise used or occupied pursuant to this act;
- 46       m. Establish one or more operating divisions as deemed  
47 necessary. Upon the establishment of an operating division, there  
48 shall be established a geographically coincident advisory committee

1 to be appointed by the Governor with the advice and consent of the  
2 Senate. The committee shall consist of county and municipal  
3 government representatives and concerned citizens, in the number  
4 and for such terms as may be fixed by the corporation, and shall  
5 advise the corporation as to the public transportation service  
6 provided in the operating division. At least two members of each  
7 advisory committee shall be public transportation riders, including  
8 but not limited to urban transit users and suburban commuters as  
9 appropriate. One public member from the board of the corporation  
10 shall serve as a liaison to each advisory committee;

11 n. Set and collect fares and determine levels of service for  
12 service provided by the corporation either directly or by contract  
13 including, but not limited to, such reduced fare programs as deemed  
14 appropriate by the corporation; revenues derived from such service  
15 may be collected by the corporation and shall be available to the  
16 corporation for use in furtherance of any of the purposes of this act;

17 o. Set and collect rentals, fees, charges or other payments from  
18 the lease, use, occupancy or disposition of properties owned or  
19 leased by the corporation; such revenues shall be available to the  
20 corporation for use in furtherance of any of the purposes of this act;

21 p. Deposit corporate revenues in interest bearing accounts or in  
22 the State of New Jersey Cash Management Fund established  
23 pursuant to section 1 of P.L.1977, c.281 (C.52:18A-90.4);

24 q. Delegate to subordinate officers of the corporation such  
25 powers and duties as the corporation shall deem necessary and  
26 proper to carry out the purposes of this act;

27 r. Procure and enter into contracts for any type of insurance  
28 and indemnify against loss or damage to property from any cause,  
29 including loss of use and occupancy, against death or injury of any  
30 person, against employees' liability, against any act of any member,  
31 officer, employee or servant of the corporation, whether part-time,  
32 full-time, compensated or noncompensated, in the performance of  
33 the duties of his office or employment or any other insurable risk.

34 The corporation shall not indemnify any member, officer, employee  
35 or servant for claims for exemplary or punitive damages. In  
36 addition, the corporation may carry its own liability insurance and  
37 may also establish and utilize a wholly-owned insurance subsidiary  
38 or captive provided the subsidiary or captive is domiciled in the  
39 United States in a state which is accredited by the National  
40 Association of Insurance Commissioners and which licenses and  
41 regulates wholly-owned insurance subsidiaries or captives;

42 s. Promote the use of public transportation services, coordinate  
43 ticket sales and passenger information and sell, lease or otherwise  
44 contract for advertising in or on the equipment or facilities of the  
45 corporation;

46 t. Adopt and maintain employee benefit programs for  
47 employees of the corporation including, but not limited to, pension,  
48 deferred compensation, medical disability, and death benefits, and

1 which programs may utilize insurance contracts, trust funds, and  
2 any other appropriate means of providing the stipulated benefits,  
3 and may involve new plans or the continuation of plans previously  
4 established by entities acquired by the corporation;

5 u. Own, vote, and exercise all other rights incidental to the  
6 ownership of shares of the capital stock of any incorporated entity  
7 acquired by the corporation pursuant to the powers granted by this  
8 act;

9 v. Enter into any and all agreements or contracts, execute any  
10 and all instruments, and do and perform any and all acts or things  
11 necessary, convenient or desirable for the purposes of the  
12 corporation, or to carry out any power expressly or implicitly given  
13 in this act;

14 w. Notwithstanding the provisions of section 17 of P.L.1979,  
15 c.150 (C.27:25-17) or any other law to the contrary, (1) issue  
16 operating grant anticipation notes which shall be secured and retired  
17 from operating assistance grants authorized under section 9 of the  
18 federal Urban Mass Transportation Act of 1964, Pub.L.88-365 (49  
19 U.S.C. s.1602), or any successor or additional federal act having  
20 substantially the same or similar purposes or functions and (2) issue  
21 capital grant anticipation notes which shall be secured and retired  
22 from capital assistance grants authorized under section 3 or section  
23 9 of the federal Urban Mass Transportation Act of 1964, Pub.L.88-  
24 365 (49U.S.C. s.1602), or any successor or additional federal act  
25 having substantially the same or similar purposes or functions. As  
26 used in this subsection, "operating grant anticipation notes" or  
27 "capital grant anticipation notes" (hereinafter referred to as "notes")  
28 means credit obligations issued in anticipation of these grants. The  
29 notes shall be authorized by a resolution or resolutions of the  
30 corporation, and may be issued in one or more series and shall bear  
31 the date, or dates, bear interest at the rate or rates of interest per  
32 annum, be in the denomination or denominations, be in the form,  
33 carry the conversion or registration privileges, have the rank or  
34 priority, be executed in such manner as the resolution or resolutions  
35 require. The notes may be sold at public or private sale at the price  
36 or prices and in the manner that the corporation determines. The  
37 notes of the corporation, the sale or transfer thereof, and the income  
38 derived therefrom by the purchasers of the notes, shall, at all times,  
39 be free from taxation for State or local purposes, under any law of  
40 the State or any political subdivision thereof. Notes may be issued  
41 under the provisions of P.L.1979, c.150 (C.27:25-1 et seq.) without  
42 obtaining the consent of any department, division, commission,  
43 board, bureau or agency of the State, and without any other  
44 proceedings, conditions, or things which are specifically required  
45 by P.L.1979, c.150 (C.27:25-1 et seq.). The notes issued pursuant  
46 to P.L.1979, c.150 (C.27:25-1 et seq.) shall not in any way create or  
47 constitute any indebtedness, liability or obligation of the State or of  
48 any political subdivision thereof or of the corporation, except as

1 provided herein.

2 The notes shall be payable solely from (1) note proceeds, to the  
3 extent not disbursed to the corporation, (2) grant payments if, as,  
4 and when received from the federal government, and (3) investment  
5 earnings on note proceeds, to the extent not disbursed to the  
6 corporation. Each note shall contain on its face a statement to the  
7 effect that the corporation is obligated to pay the principal thereof  
8 or the interest thereon only from these grants to the corporation and  
9 from the proceeds of the notes and investment earnings on the  
10 proceeds of the notes, to the extent not disbursed to the corporation,  
11 and that neither the faith and credit nor the taxing power of the  
12 State or of any political subdivision thereof or of the corporation is  
13 pledged to the payment of the principal and interest on these notes.  
14 Neither the members of the corporation's board nor any person  
15 executing the transactions are personally liable on those notes nor  
16 are they otherwise liable for their actions; and

17 x. Enter into agreements with a public or private entity or  
18 consortia thereof to provide for the development of demonstration  
19 projects through the use of public-private partnerships pursuant to  
20 sections 1 through 9 of P.L.1997, c.136 (C.27:1D-1 through  
21 C.27:1D-9).

22 (cf: P.L.2004, c.1, s.1)

23

24 17. Section 7 of P.L.1991, c.252 (C.27:25A-7) is amended to  
25 read as follows:

26 7. The authority shall have the following powers:

27 a. To adopt bylaws for the regulation of its affairs and the  
28 conduct of its business;

29 b. To adopt an official common seal and alter it at its pleasure;

30 c. To maintain an office at a place or places within the State as  
31 it may designate;

32 d. To sue and be sued in its own name;

33 e. To acquire, construct, maintain, operate and support  
34 projects;

35 f. To assist in planning for the development of the  
36 transportation system in South Jersey, in conjunction with federal,  
37 State, local, and other public entities, as appropriate;

38 g. To acquire, construct, maintain, and operate feeder roads;

39 h. To issue bonds or notes of the authority for the purposes of  
40 this act and to provide for the rights of the holders thereof as  
41 provided in this act;

42 i. In the exercise of any of its powers, to fix and revise from  
43 time to time and charge and collect tolls, fares, passenger facility  
44 charges or other charges for transit over or use of any project of the  
45 authority, including but not limited to any reduced fare or charge  
46 programs as deemed appropriate by the authority; and to determine  
47 levels of service to be provided by the authority either directly or by  
48 contract. Any revenues collected shall be available to the authority

- 1 for use in furtherance of any of the purposes of this act;
- 2 j. To set and collect rents, fees, charges or other payments for  
3 the lease, use, occupancy or disposition of properties owned or  
4 leased by the authority. Any revenues collected shall be available  
5 to the authority for use in furtherance of any of the purposes of this  
6 act;
- 7 k. To enter into contracts with any public or private entity to  
8 operate motorbus regular route service, motorbus charter service,  
9 marine passenger service, rail passenger service, and air passenger  
10 service or portions or functions thereof; however, these contracts  
11 shall not supplant any services operated pursuant to the "New  
12 Jersey Public Transportation Act of 1979," P.L.1979, c.150  
13 (C.27:25-1 et seq.);
- 14 l. To acquire, lease as lessee or lessor, own, rent, use, hold and  
15 dispose of real property and personal property or any interest  
16 therein, in the exercise of its powers and the performance of its  
17 duties under this act;
- 18 m. To acquire in the name of the authority by purchase, gift or  
19 otherwise, on terms and conditions and in a manner as the authority  
20 may deem proper, or by the exercise of the power of eminent  
21 domain except as against the State of New Jersey, any land and  
22 other property which the authority may determine is necessary for  
23 any project or for the relocation or reconstruction of any public  
24 highway by the authority under the provisions of this act or the  
25 construction of any feeder road which the authority is or may be  
26 authorized to construct and any and all rights, title and interest in  
27 that land and other property, including public lands, parks,  
28 playgrounds, reservations, highways or parkways owned by or in  
29 which the State of New Jersey or any county, municipality or other  
30 governmental subdivision of South Jersey or any other federal,  
31 State or local government entity has any right, title or interest, or  
32 parts thereof or rights therein, and any fee simple absolute or any  
33 lesser interest in private property, and any fee simple absolute in,  
34 easements upon, or the benefit of restrictions upon abutting  
35 property to preserve and protect projects;
- 36 n. To grant by franchise, lease or otherwise, the use of any  
37 project, facility or property owned and controlled by the authority  
38 to any person for the consideration and for the period or periods of  
39 time and upon terms and conditions as are agreed upon, including  
40 but not limited to, the condition that the lessee may construct or  
41 provide any buildings or structures for the project facility or  
42 property or portions thereof;
- 43 o. To locate and designate, and to establish, limit and control  
44 points of ingress to and egress from each project as may be  
45 necessary or desirable in the judgment of the authority to insure the  
46 proper operation and maintenance of that project and to prohibit  
47 entrance to a project from any point or points not so designated;
- 48 p. Subject to the limitations of this act, to acquire, construct,

1 maintain, or operate any public highway connecting with any one or  
2 more projects which in the opinion of the authority will increase the  
3 use of a project or projects, to take over for construction,  
4 maintenance or operation any existing public highway as a feeder  
5 road and to realign any existing public highway and build additional  
6 sections of road over new alignment in connection with that  
7 existing public highway;

8 q. To establish rules and regulations pursuant to the  
9 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
10 seq.) as are necessary for the management and regulation of its  
11 affairs, the use, maintenance and operation of the transportation  
12 system, any project, the properties of the authority and the provision  
13 of paratransit services to and from any transportation project and to  
14 establish a plan for the management, control and regulation of  
15 motorbus regular route and motorbus charter services, except for  
16 those services which are operated pursuant to the "New Jersey  
17 Public Transportation Act of 1979," P.L.1979, c.150 (C.27:25-1 et  
18 seq.);

19 r. To apply for, receive and accept from any federal agency, any  
20 bi-State agency, or the State and any subdivision thereof, subject to  
21 the approval of the commissioner, grants for or in aid of the  
22 planning, acquisition or construction of any project, and to receive  
23 and accept aid or contributions from any other public or private  
24 source, of either money, property, labor or other things of value, to  
25 be held, used and applied only for the purposes for which those  
26 grants and contributions may be made;

27 s. Subject to the limitations of this act, to determine the location,  
28 type and character of any project and all other matters in connection  
29 with the project;

30 t. Subject to the rights and security interests of the holders from  
31 time to time of bonds or notes issued by the authority, to enter into  
32 contracts with the State or the department or the Transportation  
33 Trust Fund Authority, providing for the payment from the revenues  
34 of the authority to the State or to the Transportation Trust Fund  
35 Authority of the amount or amounts of revenues that may be set  
36 forth in or determined in accordance with the contracts, provided,  
37 that the payments shall be used solely for financing projects in  
38 South Jersey, including the payment of principal and interest on any  
39 bonds, notes or other obligations issued or entered into by the  
40 Transportation Trust Fund Authority, the proceeds of which shall be  
41 allocated by the Transportation Trust Fund Authority to projects  
42 within South Jersey; any contracts authorized pursuant to this  
43 subsection may include conditions and covenants necessary and  
44 desirable to facilitate the issuance and sale of bonds, notes and  
45 other obligations of the Transportation Trust Fund Authority;

46 u. To enter into contracts or agreements with any entity for the  
47 entity to issue bonds or notes on behalf of the authority and to make  
48 payments to the entity to secure those bonds or notes;

1 v. To establish any reserves, funds or accounts as may be  
2 deemed necessary by the authority and to deposit authority revenues  
3 in interest bearing accounts or in the State of New Jersey Cash  
4 Management Fund established pursuant to section 1 of P.L.1977  
5 c.281 (C.52:18A-90.4);

6 w. To procure and enter into contracts for any type of insurance  
7 and indemnify against loss or damage to property from any cause,  
8 including the loss of use and occupancy and business interruption,  
9 death or injury of any person, employee liability, any act of any  
10 member, officer, employee or servant of the authority, whether part-  
11 time, compensated or uncompensated, in the performance of the  
12 duties of office or employment or any other insurable risk or any  
13 other losses in connection with property, operations, assets or  
14 obligations in any amounts and from any insurers as are deemed  
15 desirable. The authority shall not indemnify any member, officer,  
16 employee or servant for claims for exemplary or punitive damages.

17 In addition, the authority may carry its own liability insurance; and

18 x. To enter into any and all agreements or contracts, execute any  
19 and all instruments, and do and perform any and all acts or things  
20 necessary, convenient or desirable for the purposes of the authority  
21 or to carry out any power expressly given in this act.

22 (cf: P.L.1991, c.252, s.7)

23  
24 18. Section 2 of P.L.1991, c.262 (C.30:13-4.2) is amended to  
25 read as follows:

26 2. A person shall have a cause of action against the nursing  
27 home for any violation of this act. The Department of Health and  
28 Senior Services may maintain an action in the name of the State to  
29 enforce the provisions of this act and any rules and regulations  
30 promulgated pursuant to this act. The action to recover actual  
31 damages and, if the cause of action is against a private nursing  
32 home, punitive damages , shall be brought in a court of competent  
33 jurisdiction. A plaintiff shall not be entitled to recover punitive  
34 damages in any action against a public nursing home, or against an  
35 officer, employee, or a servant thereof acting within the scope or  
36 under color of his office, employment or agency. A plaintiff who  
37 prevails in an action shall be entitled to recover reasonable  
38 attorney's fees and costs of the action.

39 (cf: P.L.1991, c.262, s.2)

40  
41 19. Section 8 of P.L.1976, c.120 (C.30:13-8) is amended to read  
42 as follows:

43 8. a. Any person or resident whose rights as defined herein are  
44 violated shall have a cause of action against any person committing  
45 such violation. The Department of Health and Senior Services may  
46 maintain an action in the name of the State to enforce the provisions  
47 of this act and any rules or regulations promulgated pursuant to this  
48 act. The action may be brought in any court of competent

1 jurisdiction to enforce such rights and to recover actual damages  
2 and, if the cause of action is against a private nursing home,  
3 punitive damages , for their violation. A plaintiff shall not be  
4 entitled to recover punitive damages in any action against a public  
5 nursing home, or against an officer, employee, or servant thereof  
6 acting within the scope or under color of his office, employment or  
7 agency. Any plaintiff who prevails in [any such] an action shall be  
8 entitled to recover reasonable attorney's fees and costs of the action.

9 b. In addition to the provisions of subsection a. of this section,  
10 treble damages may be awarded to a resident or alleged third party  
11 guarantor of payment who prevails in any action to enforce the  
12 provisions of section 3 of P.L.1997, c.241 (C.30:13-3.1).  
13 (cf: P.L.1997, c.241, s.2)  
14

15 20. Section 4 of P.L.1985, c.386 (C.34:1B-50) is amended to  
16 read as follows:

17 4. The authority shall have the power:

18 a. To adopt bylaws for the regulation of its affairs and the  
19 conduct of its business, which shall include a code of ethics with  
20 respect to conflicts of interest;

21 b. To sue or be sued in the name of the authority, provided that  
22 a judgment against the authority shall not create any direct liability  
23 against its directors, employees, or its agents;

24 c. To indemnify its directors, employees and agents for any and  
25 all claims, suits, costs of investigations, costs of defense,  
26 settlements, or judgments against them on account of an act or  
27 omission in the scope of a director's duties, or an employee's or  
28 agent's employment, but the authority shall refuse to indemnify if it  
29 determines that the act or failure to act was because of actual fraud,  
30 willful misconduct, or actual malice, or for claims for exemplary or  
31 punitive damages;

32 d. To enter into any contracts as are necessary or proper to  
33 carry out the provisions and purposes of this act;

34 e. To establish and maintain any reserve or insurance funds as  
35 may be necessary to carry out the provisions of this act;

36 f. To sell, convey, lease, purchase, or otherwise acquire real or  
37 personal property to carry out its functions under the act;

38 g. To borrow money, to issue bonds, notes, or other debt  
39 instruments, which may be at a fixed rate of return or otherwise,  
40 commensurate with the risk, and to provide for the rights of holders  
41 thereof as provided in this act, which obligations shall be an eligible  
42 investment pursuant to the provisions of section 144 of P.L.1977,  
43 c.110 (C.5:12-144) and section 33 of P.L.1984, c.218 (C.5:12-181);

44 h. Subject to any agreements with bondholders or noteholders,  
45 to purchase bonds or notes of the authority out of any funds or  
46 money of the authority available therefor and to hold, cancel, or  
47 resell these bonds or notes;

48 i. To contract for and to accept any gifts, grants, loans of funds



- 1 or financial or other aid in any form from any person, including an  
2 individual, authority, partnership, or otherwise, or from the United  
3 States of America or any agency or instrumentality thereof, or from  
4 the State or any agency, instrumentality, or political subdivision  
5 thereof;
- 6 j. In connection with any application for financing or other  
7 assistance under this act, to require and collect any reasonable fees  
8 and charges, including commitment fees, as the authority may deem  
9 necessary for its services;
- 10 k. Subject to any agreement with bondholders or noteholders,  
11 to invest moneys of the authority not required for immediate use,  
12 including proceeds from the sale of bonds and notes, in any  
13 obligations, securities, and other investments which the authority  
14 deems prudent;
- 15 l. To appoint and employ any persons as may be necessary to  
16 carry out the purposes of this act, and to determine their  
17 qualifications, terms of office, duties and compensation without  
18 regard to the provisions of Title 11, Civil Service, of the Revised  
19 Statutes;
- 20 m. To extend credit, make long-term or short-term loans, loan  
21 guarantees, or provide other financial assistance, including letters of  
22 credit or guarantees of letters of credit;
- 23 n. To establish underwriting standards for eligibility for  
24 financial assistance, as provided in section 5 of this act;
- 25 o. To establish a financial and technical assistance investment  
26 policy which delineates the proposed allocation of assistance by the  
27 authority by type of business, which policy shall include a provision  
28 that no more than 50% of the total assistance made available by the  
29 authority be made available to small businesses, and no more than  
30 25% of the total assistance made available by the authority be made  
31 available to minorities and 25% of the total assistance made  
32 available by the authority be made available to women; except that  
33 notwithstanding the foregoing, and in addition to the funds  
34 otherwise allocated by the authority to minorities and women  
35 pursuant to this subsection, 100% of the funds made available  
36 pursuant to the provisions of section 33 of P.L.1984, c.218 (C.5:12-  
37 181), shall be made available to minorities and women, 50% of  
38 which shall be made available to women, and 50% of which shall be  
39 made available to minorities and shall be invested in accordance  
40 with the geographic restrictions established by that act; provided,  
41 however, that any repayment of principal and interest due to the  
42 Casino Reinvestment Development Authority with respect to  
43 obligations purchased or monies otherwise invested in the New  
44 Jersey Development Authority for Small Businesses, Minorities,  
45 and Women's Enterprises shall be the obligation of the New Jersey  
46 Development Authority for Small Businesses, Minorities', and  
47 Women's Enterprises;
- 48 p. To establish standards for providing a letter of credit or

1 other guarantee for businesses which are unable to secure  
2 performance bonds;

3 q. To take any security which it deems necessary in connection  
4 with any direct loan or any guaranteed loan or other extension of  
5 credit;

6 r. To purchase any loan or assistance package which is  
7 consistent with the underwriting standards established by the  
8 authority from any person, including any financial institution or  
9 subsidiary thereof, and to contract with any person to originate  
10 these loans;

11 s. To participate with financial institutions and other investors  
12 in providing financial assistance to eligible businesses, under  
13 underwriting standards established by the authority, by means of  
14 direct loan participations or loan guarantees;

15 t. To make any rules and regulations necessary to effectuate  
16 the purposes of this act;

17 u. To take any other actions which are reasonable and  
18 necessary to effectuate the provisions of this act.

19 (cf: P.L.1985, c.386, s.4)

20

21 21. Section 11 of P.L.1989, c.261 (C.34:11B-11) is amended to  
22 read as follows:

23 11. Any person may initiate suit in Superior Court or file a  
24 complaint with the division on either an individual or class basis.  
25 In addition to the remedies provided in section 16 of P.L.1945,  
26 c.169 (C.10:5-17), the aggrieved party, in any action other than an  
27 action against a public employer or against an officer, employee or  
28 a servant thereof acting within the scope or under color of his  
29 office, employment or agency, may be awarded punitive damages in  
30 an amount not greater than \$10,000.00 , except that in the case of a  
31 class action or a director's complaint the total amount of punitive  
32 damages shall not exceed \$500,000.00 or 1% of the net worth of the  
33 defendant, whichever is less. In determining the amount of punitive  
34 damages, the court or director shall consider, among other relevant  
35 factors, the amount of compensatory damages awarded, the amount  
36 of civil penalty to be paid by the employer, the frequency and  
37 persistence of the violation of this act by the employer, the  
38 resources of the employer, the number of persons adversely affected  
39 by the violation, and the extent to which the employer's failure to  
40 comply with this act was intentional.

41 (cf: P.L.1989, c.261, s.11)

42

43 22. Section 5 of P.L.1986, c.105 (C.34:19-5) is amended to read  
44 as follows:

45 5. Upon a violation of any of the provisions of this act, an  
46 aggrieved employee or former employee may, within one year,  
47 institute a civil action in a court of competent jurisdiction. Upon  
48 the application of any party, a jury trial shall be directed to try the

1 validity of any claim under this act specified in the suit. All  
2 remedies available in common law tort actions shall be available to  
3 prevailing plaintiffs. These remedies are in addition to any legal or  
4 equitable relief provided by this act or any other statute. The court  
5 shall also order, where appropriate and to the fullest extent possible:

6 a. An injunction to restrain any violation of this act which is  
7 continuing at the time that the court issues its order;

8 b. The reinstatement of the employee to the same position held  
9 before the retaliatory action, or to an equivalent position;

10 c. The reinstatement of full fringe benefits and seniority rights;

11 d. The compensation for all lost wages, benefits and other  
12 remuneration; [and]

13 e. The payment by the employer of reasonable costs, and  
14 attorney's fees.

15 In addition, the court or jury may order: the assessment of a civil  
16 fine of not more than \$10,000 for the first violation of the act and  
17 not more than \$20,000 for each subsequent violation, which shall be  
18 paid to the State Treasurer for deposit in the General Fund; punitive  
19 damages except in an action against a public employer, or an  
20 officer, employee or a servant thereof acting within the scope or  
21 under color of his office, employment or agency; or both a civil fine  
22 and punitive damages. In determining the amount of punitive  
23 damages, the court or jury shall consider not only the amount of  
24 compensatory damages awarded to the employee, but also the  
25 amount of all damages caused to shareholders, investors, clients,  
26 patients, customers, employees, former employees, retirees or  
27 pensioners of the employer, or to the public or any governmental  
28 entity, by the activities, policies or practices of the employer which  
29 the employee disclosed, threatened to disclose, provided testimony  
30 regarding, objected to, or refused to participate in.

31 (cf: P.L.2005, c.329, s.2)

32  
33 23. Section 21 of P.L.1992, c.165 (C.40:54D-21) is amended to  
34 read as follows:

35 21. The public purpose of an authority shall be to undertake a  
36 tourism project if it is necessary or useful to the economic  
37 development and public welfare of the residents and tourist industry  
38 of the creating municipalities, and to promote, advertise and  
39 enhance the attractiveness of the district to visitors and tourists;  
40 provided however, that such promotion, advertisement and  
41 enhancement shall not be undertaken by any authority with respect  
42 to the Wildwood convention center facility unless any such  
43 authority is expressly authorized by the sports authority to  
44 undertake such activities. Except as otherwise provided in, and  
45 subject to any limitations in P.L.1997, c.273 (C.40:54D-25.1 et al.),  
46 an authority shall have the following powers:

47 a. To adopt bylaws for the regulation of its affairs and the  
48 conduct of its business;

- 1       b. To adopt an official common seal and alter it at its pleasure;
- 2       c. To maintain an office at a place or places within the district
- 3       as it may designate;
- 4       d. To sue and be sued in its own name;
- 5       e. To acquire from any predecessor owner or operator, and to
- 6       construct, reconstruct, maintain, and operate a convention center
- 7       facility or other tourism project;
- 8       f. To issue bonds or notes of the authority for the purposes of
- 9       this act and to provide for the rights of the holders thereof all as
- 10      provided in the "Local Bond Law," N.J.S.40A:2-1 et seq.;
- 11      g. To set and collect rents, fees, charges or other payments for
- 12      the lease, use, occupancy or disposition of a convention center
- 13      facility or other tourism project acquired, constructed or
- 14      reconstructed by the authority pursuant to the provisions of
- 15      P.L.1992, c.165 (C.40:54D-1 et seq.). Any revenues collected shall
- 16      be available to the authority for use in furtherance of any of the
- 17      purposes of this act;
- 18      h. To acquire, lease as lessee or lessor, own, rent, use, hold and
- 19      dispose of real property and personal property or any interest
- 20      therein, in the exercise of its powers and the performance of its
- 21      duties under this act;
- 22      i. To acquire in the name of the authority by purchase, gift or
- 23      otherwise, on terms and conditions and in a manner as the authority
- 24      may deem proper, or by the exercise of the power of eminent
- 25      domain except as against the State of New Jersey, any land and
- 26      other property which the authority may determine is necessary for
- 27      the construction, reconstruction, maintenance, operation or support
- 28      of tourism projects pursuant to the provisions of this act, P.L.1992,
- 29      c.165 (C.40:54D-1 et seq.) or parts thereof or rights therein, and any
- 30      fee simple absolute or any lesser interest in private property, and
- 31      any fee simple absolute in, easements upon, or the benefit of
- 32      restrictions upon abutting property to preserve and protect same;
- 33      j. To grant by franchise, lease or otherwise, the use of any
- 34      property owned and controlled by the authority to any person for
- 35      the consideration and for the period or periods of time and upon
- 36      terms and conditions as are agreed upon;
- 37      k. To apply for, receive and accept from the United States of
- 38      America or any agency thereof, or the State and any subdivision
- 39      thereof, subject to the approval of the State Treasurer, grants for or
- 40      in aid of the planning, acquisition or construction of a convention
- 41      center facility or other tourism project, and to receive and accept
- 42      aid or contributions from any other public or private source, of
- 43      either money, property, labor or other things of value, to be held,
- 44      used and applied only for the purposes for which those grants and
- 45      contributions may be made;
- 46      l. Subject to the limitations of this act, to determine the location,
- 47      type and character of its tourism project and all other matters in
- 48      connection therewith;

1 m. To enter into contracts or agreements with any entity for the  
2 entity to issue bonds or notes on behalf of the authority and to make  
3 payments to the entity to secure those bonds or notes;

4 n. To procure and enter into contracts for any type of insurance  
5 and indemnify against loss or damage to property from any cause,  
6 including the loss of use and occupancy and business interruption,  
7 death or injury of any person, employee liability, any act of any  
8 member, officer, employee or servant of the authority, whether part-  
9 time, compensated or uncompensated, in the performance of the  
10 duties of office or employment or any other insurable risk or any  
11 other losses in connection with property, operations, assets or  
12 obligations in any amounts and from any insurers as are deemed  
13 desirable. The authority shall not indemnify any member, officer,  
14 employee or servant for claims for exemplary or punitive damages.  
15 In addition, the authority may carry its own liability insurance;

16 o. To promote and advertise the district and to promote the use  
17 of the tourism projects by tourists and visitors to the district; and

18 p. To enter into any and all agreements or contracts, execute any  
19 and all instruments, and do and perform any and all acts or things  
20 necessary, convenient or desirable for the purposes of the authority  
21 or to carry out any power expressly given in P.L.1992, c.165  
22 (C.40:54D-1 et seq.).  
23 (cf: P.L.1997, c.273, s.9)

24  
25 24. Section 11 of P.L.1989, c.300 (C.45:9-19.11) is amended to  
26 read as follows:

27 11. A member of the State Board of Medical Examiners or the  
28 Medical Practitioner Review Panel, the medical director to the State  
29 Board of Medical Examiners, the Attorney General, any medical  
30 consultant to the board or review panel and any employee of the  
31 board or review panel shall not be liable in any action for damages  
32 to any person for any action taken or recommendation made by him  
33 within the scope of his function as a member, consultant or  
34 employee, if the action or recommendation was taken or made  
35 without malice. The Attorney General shall defend the person in  
36 any civil suit and the State shall provide indemnification for any  
37 damages awarded pursuant to the "New Jersey Tort Claims Act,"  
38 N.J.S.59:1-1 et seq.  
39 (cf: P.L.1989, c.300, s.11)

40  
41 25. Section 10 of P.L.1988, c.121 (C.48:5A-63) is amended to  
42 read as follows:

43 10. a. Subject, where appropriate, to the "New Jersey Tort  
44 Claims Act" (N.J.S.59:1-1 et seq.), any person, State or local  
45 agency or other governmental or public entity which discloses  
46 personally identifiable information in violation of this act, or  
47 otherwise engages in negligent, willful or reckless conduct in  
48 violation of this act, shall be liable to the aggrieved subscriber for:

1 (1) Actual damages, but not less than liquidated damages  
2 computed at a rate of \$100.00 per day for each day of violation or a  
3 total of \$1,000.00 for all violations, whichever is greater;

4 (2) Such punitive damages as **【the court may allow】** provided by  
5 law, except that the State, or a local agency or other government or  
6 public entity, or an officer, employee, or a servant thereof acting  
7 within the scope or under color of his office, employment or  
8 agency, shall not be liable for punitive damages; and

9 (3) Attorney's fees and other litigation costs reasonably and  
10 actually incurred.

11 b. In determining the amount of punitive damages, if any, the  
12 court shall consider, among other relevant factors, the amount of  
13 any actual damages awarded, the nature and seriousness of any  
14 intangible harm suffered by the subscriber, the frequency and  
15 persistence of failures of compliance by the defendant, the  
16 resources of the defendant, the number of persons adversely  
17 affected, and the extent to which the failure of the defendant to  
18 comply was intentional.

19 (cf: P.L.1988, c.121, s.10)

20  
21 26. Section 5 of P.L.1979, c.500 (C.55:13B-21) is amended to  
22 read as follows:

23 5. Any person or resident whose rights as defined herein are  
24 violated shall have a cause of action against any person committing  
25 such violation. The action may be brought in any court of  
26 competent jurisdiction to enforce such rights and to recover actual  
27 damages and, if the cause of action is against a private boarding  
28 facility, punitive damages , for their violation. A plaintiff shall not  
29 be entitled to recover punitive damages in any action against a  
30 public boarding facility, or against an officer, employee, or a  
31 servant thereof acting within the scope or under color of his office,  
32 employment or agency. Any plaintiff who prevails in **【any such】**  
33 an action shall be entitled to recover reasonable attorney's fees and  
34 costs of the action.

35 (cf: P.L.1979, c.500, s.5)

36  
37 27. N.J.S.59:9-2 is amended to read as follows:

38 59:9-2. a. No interest shall accrue prior to the entry of judgment  
39 against a public entity or public employee.

40 b. No judgment shall be granted against a public entity or public  
41 employee on the basis of strict liability, implied warranty or  
42 products liability.

43 c. No punitive or exemplary damages shall be awarded against a  
44 public entity or a public employee acting within the scope or under  
45 color of his office, employment or agency.

46 d. No damages shall be awarded against a public entity or public  
47 employee for pain and suffering resulting from any injury;  
48 provided, however, that this limitation on the recovery of damages

1 for pain and suffering shall not apply in cases of permanent loss of  
2 a bodily function, permanent disfigurement or dismemberment  
3 where the medical treatment expenses are in excess of \$3,600.00.  
4 For purposes of this section medical treatment expenses are defined  
5 as the reasonable value of services rendered for necessary surgical,  
6 medical and dental treatment of the claimant for such injury,  
7 sickness or disease, including prosthetic devices and ambulance,  
8 hospital or professional nursing service.

9 e. If a claimant receives or is entitled to receive benefits for the  
10 injuries allegedly incurred from a policy or policies of insurance or  
11 any other source other than a joint tortfeasor, such benefits shall be  
12 disclosed to the court and the amount thereof which duplicates any  
13 benefit contained in the award shall be deducted from any award  
14 against a public entity or public employee recovered by such  
15 claimant; provided, however, that nothing in this provision shall be  
16 construed to limit the rights of a beneficiary under a life insurance  
17 policy. No insurer or other person shall be entitled to bring an  
18 action under a subrogation provision in an insurance contract  
19 against a public entity or public employee.

20 (cf: P.L.2000, c.126, s.32)

21  
22 28. N.J.S.59:10-1 is amended to read as follows:

23 59:10-1. Indemnification. If pursuant to the provisions of  
24 P.L.1972, c.48 (C.59:10A-1 et seq.) the Attorney General provides  
25 for the defense of an employee or former employee, the State shall  
26 provide indemnification for the State employee.

27 Nothing in this section requires the State to pay for punitive or  
28 exemplary damages , or for damages resulting from the commission  
29 of a crime. [The State may, however, indemnify a State employee  
30 for exemplary or punitive damages resulting from the employee's  
31 civil violation of State or federal law if, in the opinion of the  
32 Attorney General, the acts committed by the State employee upon  
33 which the damages are based did not constitute actual fraud, actual  
34 malice, willful misconduct, or an intentional wrong.]

35 (cf: P.L.1987, c.340, s.1)

36  
37 29. N.J.S.59:10-2 is amended to read as follows:

38 59:10-2. Refusal to defend--indemnification. If the Attorney  
39 General refuses to provide for the defense of a State employee as  
40 required by the provisions of P.L.1972, c.48 (C.59:10A-1 et seq.),  
41 the employee or former employee of the State shall be entitled to  
42 indemnification from the State if he establishes that the act or  
43 omission upon which the claim or judgment was based occurred  
44 within the scope of his employment as an employee of the State and  
45 the State fails to establish that he acted or failed to act because of  
46 actual fraud, actual malice or willful misconduct.

47 If the State employee establishes that he was entitled to a defense  
48 under the provisions of this chapter, the State shall pay or reimburse

1 him for any bona fide settlement agreements entered into by the  
2 employee, and shall pay or reimburse him for any judgments  
3 entered against the employee, and shall pay or reimburse him for all  
4 costs of defending the action, including reasonable counsel fees and  
5 expenses, together with costs of appeal, if any.

6 Nothing in this section requires the State to pay for punitive or  
7 exemplary damages , or for damages resulting from the commission  
8 of a crime. **【The State may indemnify a State employee for  
9 exemplary or punitive damages resulting from the employee's civil  
10 violation of State or federal law if, in the opinion of the Attorney  
11 General, the acts committed by the State employee upon which the  
12 damages are based did not constitute actual fraud, actual malice,  
13 willful misconduct, or an intentional wrong.】**

14 (cf: P.L.1987, c.340, s.2)

15  
16 30. N.J.S.59:10-4 is amended to read as follows:

17 59:10-4. Local public entities--authority to indemnify. Local  
18 public entities are hereby empowered to indemnify local public  
19 employees consistent with the provisions of this act. **【A local  
20 public entity may indemnify an employee of the local public entity  
21 for exemplary or punitive damages resulting from the employee's  
22 civil violation of State or federal law if, in the opinion of the  
23 governing body of the local public entity, the acts committed by the  
24 employee upon which the damages are based did not constitute  
25 actual fraud, actual malice, willful misconduct or an intentional  
26 wrong.】** Nothing in this section authorizes a local public entity to  
27 indemnify an employee of the local public entity for exemplary or  
28 punitive damages.

29 (cf: P.L.1987, c.340, s.3)

30  
31 31. This act shall take effect on the 60th day following its  
32 enactment, and only contracts entered into, or causes of action filed,  
33 on or after the effective date shall be governed by its provisions.

## 34 35 36 STATEMENT

37  
38 This bill would eliminate awards of punitive damages against all  
39 public entities and public employees acting within the scope or  
40 under color of their office, employment or agency. The provisions  
41 of the bill would clearly establish that public entities, including the  
42 State and all political subdivisions thereof, as well as all public  
43 officers, employees, and servants would not be liable in any civil  
44 action for punitive damages.

45 Since these officers, employees, and servants would no longer be  
46 liable for punitive damages while acting within the scope or under  
47 color of their office, employment or agency, the public entities  
48 would no longer need the authority to indemnify such individuals in



1    their official capacity. In order to properly reflect this point, the  
2    bill would also amend several statutory sections concerning the  
3    authority of public entities to indemnify these individuals.

4    The amendments within the bill changing the "Punitive Damages  
5    Act," N.J.S.A.2A:15-5.9 et seq., the "Conscientious Employee  
6    Protection Act," N.J.S.A.34:19-1 et seq., and the "Law Against  
7    Discrimination," N.J.S.A.10:5-1 et seq., as well as amendments to  
8    several other specific causes of action set forth throughout the  
9    statutory law, would create a consistent legislative framework  
10   prohibiting awards of punitive damages against public entities and  
11   public employees. This action would clarify the Legislature's  
12   position on the issue of punitive damages against public entities,  
13   and guide future court decisions when ruling on the availability of  
14   such awards. See Abbamont v. Piscataway Tp. Bd. of Educ., 138  
15   N.J. 405 (1994) (permitting punitive damages against government  
16   entities under the "Conscientious Employee Protection Act");  
17   Lockley v. N.J. Dep't of Corrections, 177 N.J. 413 (2003)  
18   (permitting punitive damages against public entity under the "Law  
19   Against Discrimination").