

SENATE, No. 2549

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED OCTOBER 27, 2014

Sponsored by:

Senator DONALD NORCROSS

District 5 (Camden and Gloucester)

Senator JAMES BEACH

District 6 (Burlington and Camden)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/28/2014)

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

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

8
9 1. (New section) Sections 1 through 18, 24 through 30, 40 and
10 49 of this act shall be known and may be cited as the "Construction
11 Trades License Law."

12
13 2. (New section) The Legislature finds and declares that:

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

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

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

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

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

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

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

40 h. In order to remedy the faults uncovered in the new home
41 construction industry and in the State regulation thereof, it is
42 necessary to develop a consolidated approach which will strengthen
43 the expertise and competency of those individuals working in the
44 construction trades. A licensing system will provide the best
45 method to ensure that adequate training and education are possessed
46 by those operating in the trades, and that safe and defect-free
47 residential housing is the standard for construction in New Jersey;

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

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

22
23 3. (New section) As used in the "Construction Trades License
24 Law":

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

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

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

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

39 "Construction trades" means those trades for which licensure is
40 required under this act.

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

1 individual, partnership, corporation, trust, or other legal entity that
2 offers to sell or sells completed residences on property on which the
3 individual or business entity has any legal or equitable interest, if
4 the services of a licensed contractor have been or will be retained
5 for the purpose of constructing such residences.

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

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

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

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

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

22 e. a construction manager who performs management and
23 counseling services on a construction project for a fee.

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

25 "Director" means the Director of the Division of Consumer
26 Affairs in the Department of Law and Public Safety.

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

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

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

43 "Individual" means a natural person.

44 "Primary project supervisor" means a person who possesses the
45 requisite skill, knowledge, and experience, is licensed in at least one
46 of the construction trades, and has the responsibility to supervise,
47 direct, manage, and control the contracting activities of a business
48 organization with which he or she is connected or has the

1 responsibility to supervise, direct, manage, and control construction
2 activities for which he or she has obtained the building permit.

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

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

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

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

33 "Swimming pool contractor" means a contractor whose scope of
34 work involves, but is not limited to, the construction, repair, and
35 servicing of any swimming pool, or hot tub or spa, whether public,
36 private, or otherwise, regardless of use. The scope of work includes
37 the installation, repair, or replacement of existing equipment, any
38 cleaning or equipment sanitizing which requires at least a partial
39 disassembling, excluding filter changes, and the installation of new
40 pool or spa equipment, interior finishes, the installation of package
41 pool heaters, the installation of all perimeter piping and filter
42 piping, and the construction of equipment rooms or housing for
43 pool or spa equipment, and also includes the scope of work of a
44 swimming pool or spa servicing contractor. The scope of such work
45 shall not include direct connections to a sanitary sewer system or to
46 potable water lines. The installation, construction, modification, or
47 replacement of equipment permanently attached to and associated
48 with the pool or spa for the purpose of water treatment or cleaning

1 of the pool or spa requires licensure; however, the usage of such
2 equipment for the purposes of water treatment or cleaning shall not
3 require licensure unless the usage involves construction,
4 modification, or replacement of such equipment. Water treatment
5 that does not require such equipment does not require a license. In
6 addition, a license shall not be required for the cleaning of the pool
7 or spa in any way that does not affect the structural integrity of the
8 pool or spa or its associated equipment.

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

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

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

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

39 "Underground utility and excavation contractor" means a
40 contractor whose services are limited to the construction,
41 installation, and repair, on public or private property, whether
42 accomplished through open excavations or through other means,
43 including, but not limited to, directional drilling, auger boring,
44 jacking and boring, (other than drilling, boring, coring, driving,
45 jetting, digging, sealing or other construction related to wells),
46 trenchless technologies, wet and dry taps, grouting, and slip lining,
47 of main sanitary sewer collection systems, main water distribution
48 systems, storm sewer collection systems, and the continuation of

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

21
22 4. (New section) There is hereby created the "Construction
23 Trades Services Commission." For the purpose of complying with
24 Article V, section IV, paragraph 1 of the New Jersey Constitution,
25 the commission is allocated within the Department of Law and
26 Public Safety but, notwithstanding this allocation, the commission
27 shall be independent of any supervision or control by the
28 department or the Attorney General, except as otherwise provided
29 in P.L. , c. (C.) (pending before the Legislature as this
30 bill).

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

35 (1) To provide general guidance to all boards regulating the
36 trades and professions which provide services to the construction
37 industry;

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

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

43 (4) To establish model standards of conduct for various
44 licensees;

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

- 1 (6) To advise the director on the administration and enforcement
2 of any matters affecting the division and the construction industry
3 in general;
- 4 (7) To advise the director on matters affecting the division
5 budget;
- 6 (8) To advise and assist trade associations in conducting
7 construction trade seminars and industry education and promotion;
8 and
- 9 (9) To perform other duties as provided by this act.
- 10 The commission may adopt and amend regulations not
11 inconsistent with the Constitution and the laws of New Jersey
12 which may be reasonable necessary for the performance of its
13 duties, including the employment of such persons it deems
14 necessary
- 15 b. Initially, the commission shall be comprised of the following
16 10 members:
- 17 (1) Five members of the Construction Trades Licensing Board
18 established pursuant to section 5 of P.L. , c. (C.) (pending
19 before the Legislature as this bill); and
- 20 (2) One member of the Board of Examiners of Electrical
21 Contractors, established pursuant to section 3 of P.L.1962,
22 c.162 (C.45:5A-3);
- 23 (3) One member of the State Board of Examiners of Master
24 Plumbers established pursuant to section 3 of P.L.1968,
25 c.362 (C.45:14C-3);
- 26 (4) One member of the State Board of Examiners of Heating,
27 Ventilating, Air Conditioning and Refrigeration Contractors
28 established pursuant to section 3 of P.L.2007, c.211 (C.45:16A-3);
- 29 (5) One member of the "State Well Drillers and Pump Installers
30 Examining and Advisory Board," established pursuant to P.L.1947,
31 c.377 (C.58:4A-5 et seq.); and
- 32 (6) One member of the "Fire Protection Equipment Advisory
33 Committee," established pursuant to section 2 of P.L.2001,
34 c.289, (C.52:27D-25o).
- 35 The terms of office of the commission members who are serving on
36 the Construction Trades Licensing Board shall continue as they
37 serve on the commission.
- 38 c. Beginning on January 1, 2015, the commission shall be
39 comprised of twelve members appointed by the director with the
40 approval of the Governor from the following groups:
- 41 (1) one member shall be a professional engineer licensed
42 pursuant to P.L.1938, c.342 (C.45:8-27 et seq.);
- 43 (2) one member shall be a licensed architect pursuant to
44 R.S.45:3-1 et seq.;
- 45 (3) one member shall be a licensed general building contractor;
- 46 (4) two members shall be licensed residential and small
47 commercial contractors;

1 (5) five members shall be the five chairpersons from the
2 following: The Board of Examiners of Electrical Contractors, the
3 State Board of Examiners of Master Plumbers, the State Board of
4 Examiners of Heating, Ventilating, Air Conditioning and
5 Refrigeration Contractors, the State Well Drillers and Pump
6 Installers Examining and Advisory Board, and the Fire Protection
7 Equipment Advisory Committee;

8 (6) two members shall be from the general public, provided,
9 however that the certified public accountant on the Construction
10 Trades Licensing Board will continue to serve until the current term
11 expires, after which both members under this subparagraph shall be
12 appointed from the general public.

13 d. (1) Except as required by subparagraph (2), as terms of
14 current commission members expire, the director, with the approval
15 of the Governor, shall appoint each new member or reappointed
16 member to a four year term ending June 30.

17 (2) Notwithstanding the requirements of subparagraph (a) of this
18 subsection, the director with the approval of the Governor shall, at
19 the time of appointment or reappointment, adjust the length of terms
20 to stagger the terms of commission members so that approximately
21 1/2 of the commission members are appointed every two years.

22 (3) A commission member may not serve more than two
23 consecutive terms.

24 (4) The commission shall elect annually one of its members as
25 chair, for a term of one year.

26 (5) When a vacancy occurs in the membership for any reason,
27 the replacement shall be appointed for the unexpired term.

28 (6) (a) Members of the commission shall serve without
29 compensation, but are entitled to receive reasonable per diem and
30 travel expenses while on official business.

31 (b) Members may decline to receive per diem and expenses for
32 their service.

33 e. The commission shall meet at least monthly unless the
34 director determines otherwise.

35 (1) The director may call additional meetings at the director's
36 discretion, upon the request of the chair, or upon the written request
37 of four or more commission members.

38 (2) Five members shall constitute a quorum for the transaction
39 of business.

40 f. The commission shall promulgate all the rules necessary to
41 effectuate its purposes under P.L. , c. (C.) (pending before
42 the Legislature as this bill) in accordance with the "Administrative
43 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).
44

45 5. (New section) There is created within the Division of
46 Consumer Affairs in the Department of Law and Public Safety the
47 Construction Trades Licensing Board. Members of the board shall
48 be appointed by the Governor. The board shall consist of 16

1 members who are residents of the State of New Jersey. In addition
2 to the two public members appointed to represent the interests of
3 the public pursuant to the provisions of subsection b. of section 2 of
4 P.L.1971, c.60 (C.45:1-2.2), one member shall be from a
5 department in the Executive Branch of State Government who shall
6 serve without compensation at the pleasure of the Governor and the
7 remaining 13 members shall consist of the following:

8 Three individuals who are primarily engaged in business as
9 general building contractors;

10 Three individuals who are residential and small commercial
11 contractors;

12 One individual who is primarily engaged in business as a roofing
13 contractor;

14 One individual who is primarily engaged in business as a sheet
15 metal contractor;

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

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

20 Two individuals who are code enforcement officials; and

21 One individual who is primarily engaged in business as a
22 certified public accountant.

23 The Governor shall appoint each member, other than the State
24 executive department member, for terms of four years, except that
25 of the members first appointed, other than the State executive
26 department member, four shall serve for a term of four years, four
27 shall serve for a term of three years, four shall serve for a term of
28 two years, and three shall serve for terms of one year, as determined
29 by the Governor. Any vacancy in the membership shall be filled for
30 the unexpired term in the manner provided for the original
31 appointment. No member of the board may serve more than two
32 successive terms in addition to any unexpired term to which he has
33 been appointed. The Governor may remove any member of the
34 board, other than the State executive department member, for cause.

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

38 The board shall meet at such times as the board deems necessary,
39 and may form such committees as is deemed necessary, for the
40 purpose of conducting disciplinary proceedings, or otherwise.

41

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

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

47 b. Examine, evaluate and supervise all examinations and
48 procedures;

- 1 c. Adopt a seal which shall be affixed to all licenses issued by
2 it;
- 3 d. Adopt rules and regulations pursuant to the "Administrative
4 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as it may
5 deem necessary to enable it to perform its duties under and to
6 enforce the provisions of this act;
- 7 e. Annually publish a list of the names and addresses of all
8 persons who are licensed under this act;
- 9 f. Establish standards for continuing education; and
- 10 g. Prescribe or change the charges for examinations, licensures,
11 renewals and other services performed pursuant to P.L.1974,
12 c.46 (C.45:1-3.1 et seq.).
- 13
- 14 7. (New section) Any person desiring to obtain a State
15 contractor's license for the following professions shall make
16 application for licensure to the Construction Trades Licensing
17 Board, pay all the fees required in connection with the application,
18 and be examined as required by section 13 of P.L. , c. (C.)
19 (pending before the Legislature as this bill):
- 20 a. general building contractor;
- 21 b. residential and small commercial contractor;
- 22 c. swimming pool contractor;
- 23 d. roofing contractor;
- 24 e. sheet metal contractor; and
- 25 f. underground utility and excavation contractor.
- 26
- 27 8. (New section) a. A person shall not work as a building or
28 construction contractor or use the title or designation of "licensed"
29 in any manner concerning the construction trades listed in section 7
30 of P.L.2007, c.211 (C.45:16A-1 et al), or concerning the trade of
31 heating, ventilating, air conditioning and refrigeration unless
32 licensed pursuant to the provisions of this act, or P.L.2007,
33 c.211 (C.45:16A-1 et al), or working under the supervision of a
34 person so licensed.
- 35 b. A person, firm, partnership, corporation or other legal entity
36 shall not engage in the business of contracting or advertise in any
37 manner as a contractor or use the title or designation of "licensed
38 contractor" unless authorized to act as a contractor in one of the
39 construction trades listed in section 7 of P.L. , c. (C.)
40 (pending before the Legislature as this bill) or other duly licensed
41 trade.
- 42 c. A license issued pursuant to P.L. , c. (C.) (pending
43 before the Legislature as this bill) shall not be transferable.
- 44
- 45 9. (New section) A contractor shall subcontract all electrical,
46 mechanical, plumbing, roofing, sheet metal, swimming pool, and air
47 conditioning work, unless the contractor holds a construction
48 contractor's license in the respective trade category, however:

1 a. A general building contractor, or residential and small
2 commercial contractor, except as otherwise provided in this part,
3 shall be responsible for any construction or alteration of a structural
4 component of a building or structure, and any general building
5 contractor or certified underground utility and excavation contractor
6 may perform clearing and grubbing, grading, excavation, and other
7 site work for any construction project in the State. Any licensed
8 general building contractor may perform clearing and grubbing,
9 grading, excavation, and other site work for any construction
10 project in this State, limited to the lot on which any specific
11 building is located.

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

17 c. A general building contractor shall not be required to
18 subcontract structural swimming pool work. All other swimming
19 pool work shall be subcontracted to an appropriately licensed
20 swimming pool contractor.

21 d. A general building contractor shall not be required to
22 subcontract the construction of a main sanitary sewer collection
23 system, storm collection system, or water distribution system, not
24 including the continuation of utility lines from the mains to the
25 buildings, and may perform any of the services, on public or private
26 property, for which a license as an underground utility and
27 excavation contractor is required under this part.

28 e. A general building contractor shall not be required to
29 subcontract the continuation of utility lines from the mains in
30 mobile home parks, and such continuations are to be considered a
31 part of the main sewer collection and main water distribution
32 systems.

33 f. No licensed general building contractor, or residential and
34 small commercial contractor shall act as, hold himself or herself out
35 to be, or advertise himself or herself to be a roofing contractor
36 unless he or she is licensed as a roofing contractor.

37 Nothing in this section shall be construed to prevent any
38 contractor from acting as a prime contractor where the majority of
39 the work to be performed under the contract is within the scope of
40 his or her license and from subcontracting to other licensed
41 contractors that remaining work which is part of the project
42 contracted.

43 The division may by rule exclude general building contractors
44 from engaging in the performance of other construction trade
45 specialties in which there is represented a substantial risk to the
46 public health, safety, and welfare, and for which a license is
47 required unless that general building contractor holds a valid license
48 in that specialty trade classification.

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

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

15
16 11. (New section) The provisions of P.L. , c. (C.)
17 (pending before the Legislature as this bill) shall not apply to any
18 public utility company regulated by the Board of Public Utilities
19 pursuant to Title 48 of the Revised Statutes that performs
20 emergency repair services to prevent an imminent threat to the
21 health and safety of life or property, which repair services include,
22 but are not limited to, turning off, disconnecting, shutting down or
23 disabling any equipment or condition or the provision of any
24 products.

25
26 12. (New section) The provisions of P.L. , c. (C.)
27 (pending before the Legislature as this bill) shall not deny to any
28 municipality the power to inspect construction work or equipment
29 or the power to enforce the standards and manner in which
30 construction work shall be done, but no municipality, local board of
31 health or other agency shall require any contractor licensed under
32 this act to obtain any additional license, apply for or take any
33 examination, or pay any licensing fee.

34
35 13. (New section) a. On or after January 1, 2007, no person
36 shall advertise, enter into contracts or engage in work as a
37 contractor in the construction trades set forth in section 7 of
38 P.L. , c. (C.) (pending before the Legislature as this
39 bill) unless that person has first obtained a license from the
40 Construction Trades Licensing Board in accordance with P.L. ,
41 c. (C.) (pending before the Legislature as this bill).

42 b. Not less than 30 days and not more than 60 days prior to the
43 date set for the examination for a contractor's license for a
44 construction trade set forth in section 7 P.L. , c. (C.)
45 (pending before the Legislature as this bill), every person, except as
46 provided in this act, desiring to apply for a license, who meets the
47 qualifications as set forth in this act, shall deliver to the board,
48 personally or by certified mail, return receipt requested, postage

1 prepaid, a certified check or money order payable to the Treasurer
2 of the State of New Jersey in the required amount, together with a
3 written application required by the board, completed as described in
4 the application, and together with proof that the applicant qualifies
5 in accordance with this act.

6 The qualifications for a contractor's license under this act shall
7 be as follows: The person shall be 21 or more years of age and a
8 citizen or legal resident of the United States, and shall have been
9 employed in the contracting business, extensively in the area of
10 concentration for the specific license sought, for a period of five
11 years next preceding the date of his application for a license. Three
12 or more of the five years shall have been spent while engaged or
13 employed as a journeyman tradesperson. At least two years of the
14 five years shall have been spent in an apprenticeship or other
15 training program approved by the Department of Education, with
16 proof of passage and successful completion of this program while
17 actively engaged or employed as an apprentice as determined by the
18 board. In lieu of the above requirements a person shall have been
19 awarded a bachelor's degree from an accredited college or
20 university in the United States which the board finds acceptable
21 and, in addition, shall have been engaged or employed in the
22 practical work of the relevant construction subtrade for three years.

23 The applicant, if registered as a builder with the department, shall
24 not be in any negative standing on the registration list. An
25 applicant shall be afforded an opportunity to correct a negative
26 standing, either by remedial action or by reporting any inaccuracies
27 for correction.

28 Proof of compliance with the qualifications or those in lieu
29 thereof shall be submitted to the board in writing, sworn to by the
30 applicant, and accompanied by two recent passport size
31 photographs of the applicant.

32
33 14. (New section) a. Every contractor's license examination
34 shall be substantially uniform and shall be designed so as to
35 establish the competence and qualifications of the applicant to
36 perform the type of work in the construction trade for which
37 licensure is sought. The examination may be theoretical or
38 practical in nature, or both.

39 b. The examination shall be held at least four times a year, at
40 Trenton or other place the board deems necessary. Public notice of
41 the time and place of the examination shall be given by the board in
42 accordance with the "Senator Byron M. Baer Open Public Meetings
43 Act," P.L.1975, c.231 (C.10:4-6 et seq.).

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

1 d. All applicants for construction contractor's licenses,
2 renewals or reexaminations shall pay a fee for each license issuance
3 or renewal, or reexamination as determined by the board.
4

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

20 Any license expiring while the holder is outside the continental
21 limits of the United States in connection with any project
22 undertaken by the government of the United States, or while in the
23 services of the Armed Forces of the United States, shall be renewed
24 without the holder being required to be reexamined, upon payment
25 of the prescribed fee at any time within four months after the
26 person's return to the United States or discharge from the armed
27 forces, whichever is later.
28

29 16. (New section) The board may in its discretion grant licenses
30 without examination to applicants so licensed by other states;
31 provided that equal reciprocity is provided for New Jersey licensed
32 contractors by the law of the applicant's domiciliary state and
33 provided further that the domiciliary state's standards are equal to or
34 comparable to those of this State.
35

36 17. (New section) Notwithstanding any other provision of this
37 act to the contrary, the board shall, upon application to it and
38 submission of satisfactory proof and the payment of the prescribed
39 fee within six months following the effective date of this act, issue a
40 construction license in one of the trades listed in section 7 of
41 P.L. , c. (C.) (pending before the Legislature as this bill)
42 without examination to any person who has been engaged as a
43 contractor in that trade for at least five years prior to his date of
44 application for a license, provided proof of the following is
45 provided:

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

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

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

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

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

9
10 18. (New section) In addition to any other bonds that may be
11 required pursuant to contract, no contractor licensed under this act
12 shall undertake to do any construction work in the State unless and
13 until he shall have first entered into a bond in favor of the State of
14 New Jersey in the sum of \$3,000 executed by a surety company
15 authorized to transact business in this State, approved by the
16 Department of Banking and Insurance and to be conditioned on the
17 faithful performance of the provisions of this act. No municipality
18 shall require any similar bond from any construction contractor
19 licensed under this act. The board shall by rule and regulation
20 provide who shall be eligible to receive the financial protection
21 afforded by the bond required to be filed by this section. The bond
22 shall be for the term of 12 months and shall be renewed at each
23 expiration for a similar period.

24
25 19. Section 1 of P.L.1971, c.60 (C.45:1-2.1) is amended to read
26 as follows:

27 1. The provisions of this act shall apply to the following boards
28 and commissions: the New Jersey State Board of Accountancy, the
29 New Jersey State Board of Architects, the New Jersey State Board
30 of Cosmetology and Hairstyling, the Board of Examiners of
31 Electrical Contractors, the New Jersey State Board of Dentistry, the
32 State Board of Mortuary Science of New Jersey, the State Board of
33 Professional Engineers and Land Surveyors, the State Board of
34 Marriage and Family Therapy Examiners, the State Board of
35 Medical Examiners, the New Jersey Board of Nursing, the New
36 Jersey State Board of Optometrists, the State Board of Examiners of
37 Ophthalmic Dispensers and Ophthalmic Technicians, the Board of
38 Pharmacy, the State Board of Professional Planners, the State Board
39 of Psychological Examiners, the State Board of Examiners of
40 Master Plumbers, the New Jersey Real Estate Commission, the
41 State Board of Court Reporting, the State Board of Veterinary
42 Medical Examiners, the Radiologic Technology Board of
43 Examiners, the Acupuncture Examining Board, the State Board of
44 Chiropractic Examiners, the State Board of Respiratory Care, the
45 State Real Estate Appraiser Board, the State Board of Social Work
46 Examiners, the Construction Trades Licensing Board, the State
47 Board of Examiners of Heating, Ventilating, Air Conditioning and
48 Refrigeration Contractors, the Elevator, Escalator, and Moving

1 Walkway Mechanics Licensing Board, the State Board of Physical
2 Therapy Examiners, the Orthotics and Prosthetics Board of
3 Examiners, the New Jersey Cemetery Board, the State Board of
4 Polysomnography, the New Jersey Board of Massage and
5 Bodywork Therapy, the Genetic Counseling Advisory Committee
6 and any other entity hereafter created under Title 45 to license or
7 otherwise regulate a profession or occupation.

8 (cf: P.L. 2012, c.71, s.13)

9
10 20. Section 2 of P.L.1971, c.60 (C.45:1-2.2) is amended to read
11 as follows:

12 2. a. All members of the several professional boards and
13 commissions shall be appointed by the Governor in the manner
14 prescribed by law; except in appointing members other than those
15 appointed pursuant to subsection b. or subsection c., the Governor
16 shall give due consideration to, but shall not be bound by,
17 recommendations submitted by the appropriate professional
18 organizations of this State.

19 b. In addition to the membership otherwise prescribed by law,
20 the Governor shall appoint in the same manner as presently
21 prescribed by law for the appointment of members, two additional
22 members to represent the interests of the public, to be known as
23 public members, to each of the following boards and commissions:
24 the New Jersey State Board of Accountancy, the New Jersey State
25 Board of Architects, the New Jersey State Board of Cosmetology
26 and Hairstyling, the New Jersey State Board of Dentistry, the State
27 Board of Mortuary Science of New Jersey, the State Board of
28 Professional Engineers and Land Surveyors, the State Board of
29 Medical Examiners, the New Jersey Board of Nursing, the New
30 Jersey State Board of Optometrists, the State Board of Examiners of
31 Ophthalmic Dispensers and Ophthalmic Technicians, the Board of
32 Pharmacy, the State Board of Professional Planners, the State Board
33 of Psychological Examiners, the New Jersey Real Estate
34 Commission, the State Board of Court Reporting, the State Board of
35 Social Work Examiners, the State Board of Examiners of Heating,
36 Ventilating, Air Conditioning and Refrigeration Contractors, the
37 Construction Trades Licensing Board, the Elevator, Escalator, and
38 Moving Walkway Mechanics Licensing Board, and the State Board
39 of Veterinary Medical Examiners, and one additional public
40 member to each of the following boards: the Board of Examiners of
41 Electrical Contractors, the State Board of Marriage and Family
42 Therapy Examiners, the State Board of Examiners of Master
43 Plumbers, and the State Real Estate Appraiser Board. Each public
44 member shall be appointed for the term prescribed for the other
45 members of the board or commission and until the appointment of
46 his successor. Vacancies shall be filled for the unexpired term only.
47 The Governor may remove any such public member after hearing,

1 for misconduct, incompetency, neglect of duty or for any other
2 sufficient cause.

3 No public member appointed pursuant to this section shall have
4 any association or relationship with the profession or a member
5 thereof regulated by the board of which he is a member, where such
6 association or relationship would prevent such public member from
7 representing the interest of the public. Such a relationship includes
8 a relationship with members of one's immediate family; and such
9 association includes membership in the profession regulated by the
10 board. To receive services rendered in a customary client
11 relationship will not preclude a prospective public member from
12 appointment. This paragraph shall not apply to individuals who are
13 public members of boards on the effective date of this act.

14 It shall be the responsibility of the Attorney General to insure
15 that no person with the aforementioned association or relationship
16 or any other questionable or potential conflict of interest shall be
17 appointed to serve as a public member of any board regulated by
18 this section.

19 Where a board is required to examine the academic and
20 professional credentials of an applicant for licensure or to test such
21 applicant orally, no public member appointed pursuant to this
22 section shall participate in such examination process; provided,
23 however, that public members shall be given notice of and may be
24 present at all such examination processes and deliberations
25 concerning the results thereof, and, provided further, that public
26 members may participate in the development and establishment of
27 the procedures and criteria for such examination processes.

28 c. The Governor shall designate a department in the Executive
29 Branch of the State Government which is closely related to the
30 profession or occupation regulated by each of the boards or
31 commissions designated in section 1 of P.L.1971, c.60 (C.45:1-2.1)
32 and shall appoint the head of such department, or the holder of a
33 designated office or position in such department, to serve without
34 compensation at the pleasure of the Governor as a member of such
35 board or commission.

36 d. A majority of the voting members of such boards or
37 commissions shall constitute a quorum thereof and no action of any
38 such board or commission shall be taken except upon the
39 affirmative vote of a majority of the members of the entire board or
40 commission.

41 (cf: P.L. 2012, c.71, s.14)

42

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

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

1 Electrical Contractors, the New Jersey State Board of Dentistry, the
2 State Board of Mortuary Science of New Jersey, the State Board of
3 Professional Engineers and Land Surveyors, the State Board of
4 Marriage and Family Therapy Examiners, the State Board of
5 Medical Examiners, the New Jersey Board of Nursing, the New
6 Jersey State Board of Optometrists, the State Board of Examiners of
7 Ophthalmic Dispensers and Ophthalmic Technicians, the Board of
8 Pharmacy, the State Board of Professional Planners, the State Board
9 of Psychological Examiners, the State Board of Examiners of
10 Master Plumbers, the State Board of Court Reporting, the State
11 Board of Veterinary Medical Examiners, the Radiologic
12 Technology Board of Examiners, the Acupuncture Examining
13 Board, the State Board of Chiropractic Examiners, the State Board
14 of Respiratory Care, the State Real Estate Appraiser Board, the New
15 Jersey Cemetery Board, the State Board of Social Work Examiners,
16 the Construction Trades Licensing Board, the State Board of
17 Examiners of Heating, Ventilating, Air Conditioning and
18 Refrigeration Contractors, the Elevator, Escalator, and Moving
19 Walkway Mechanics Licensing Board, the State Board of Physical
20 Therapy Examiners, the State Board of Polysomnography, the
21 Orthotics and Prosthetics Board of Examiners, the New Jersey
22 Board of Massage and Bodywork Therapy, the Genetic Counseling
23 Advisory Committee and any other entity hereafter created under
24 Title 45 to license or otherwise regulate a profession or occupation.
25 (cf: P.L.2012, c.71, s.15)

26
27 22. Section 2 of P.L.1973, c.254 (C.45:1-9) is amended to read
28 as follows:

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

33
34 23. Section 2 of P.L.1978, c.73 (C.45:1-15) is amended to read
35 as follows:

36 2. The provisions of this act shall apply to the following boards
37 and all professions or occupations regulated by, through or with the
38 advice of those boards: the New Jersey State Board of
39 Accountancy, the New Jersey State Board of Architects, the New
40 Jersey State Board of Cosmetology and Hairstyling, the Board of
41 Examiners of Electrical Contractors, the New Jersey State Board of
42 Dentistry, the State Board of Mortuary Science of New Jersey, the
43 State Board of Professional Engineers and Land Surveyors, the
44 State Board of Marriage and Family Therapy Examiners, the State
45 Board of Medical Examiners, the New Jersey Board of Nursing, the
46 New Jersey State Board of Optometrists, the State Board of
47 Examiners of Ophthalmic Dispensers and Ophthalmic Technicians,
48 the Board of Pharmacy, the State Board of Professional Planners,

1 the State Board of Psychological Examiners, the State Board of
2 Examiners of Master Plumbers, the State Board of Court Reporting,
3 the State Board of Veterinary Medical Examiners, the State Board
4 of Chiropractic Examiners, the State Board of Respiratory Care, the
5 State Real Estate Appraiser Board, the State Board of Social Work
6 Examiners, the Construction Trades Licensing Board, the State
7 Board of Examiners of Heating, Ventilating, Air Conditioning and
8 Refrigeration Contractors, the Elevator, Escalator, and Moving
9 Walkway Mechanics Licensing Board, the State Board of Physical
10 Therapy Examiners, the State Board of Polysomnography, the
11 Professional Counselor Examiners Committee, the New Jersey
12 Cemetery Board, the Orthotics and Prosthetics Board of Examiners,
13 the Occupational Therapy Advisory Council, the Electrolologists
14 Advisory Committee, the Acupuncture Advisory Committee, the
15 Alcohol and Drug Counselor Committee, the Athletic Training
16 Advisory Committee, the Certified Psychoanalysts Advisory
17 Committee, the Fire Alarm, Burglar Alarm, and Locksmith
18 Advisory Committee, the Home Inspection Advisory Committee,
19 the Interior Design Examination and Evaluation Committee, the
20 Hearing Aid Dispensers Examining Committee, the Perfusionists
21 Advisory Committee, the Physician Assistant Advisory Committee,
22 the Audiology and Speech-Language Pathology Advisory
23 Committee, the New Jersey Board of Massage and Bodywork
24 Therapy, the Genetic Counseling Advisory Committee and any
25 other entity hereafter created under Title 45 to license or otherwise
26 regulate a profession or occupation.

27 (cf: P.L.2013, c.253, s.34)

28
29 24. (New section) a. The Division of Consumer Affairs in the
30 Department of Law and Public Safety shall issue a cease and desist
31 order to prohibit any person from engaging in the business of
32 contracting who does not hold the required license or who has failed
33 to properly register under the "New Home Warranty and Builders'
34 Registration Act," P.L.1977, c.467 (C.46:3B-1 et seq.). For the
35 purpose of enforcing a cease and desist order, the department may
36 file a proceeding in the name of the state seeking issuance of an
37 injunction or a writ of mandamus against any person who violates
38 any provision of such order.

39 The division may refuse to issue a license to an applicant; refuse
40 to renew the license of a licensee; revoke, suspend, restrict, or place
41 on probation the license of a licensee; issue a public or private
42 reprimand to a licensee; and issue a cease and desist order to a
43 licensee or any person claiming to hold a license.

44 b. Any business organization engaging in residential
45 contracting shall provide the Department of Law and Public Safety
46 pursuant to the "New Home Warranty and Builders' Registration
47 Act," P.L.1977, c.467 (C.46:3B-1 et seq.) the name and license
48 number of each licensed contractor employed by the business

1 organization to supervise its contracting activities. All registration
2 records maintained by the department shall be subject to disclosure
3 to construction code enforcement agents.

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

11 A primary qualifying agent for a business organization shall be
12 designated by that organization and shall be responsible for
13 supervision of all operations of the business organization; for all
14 field work at all sites; and for financial matters, both for the
15 organization in general and for each specific job. A primary
16 qualifying agent shall be deemed to be the primary project
17 supervisor, unless that position is specifically delegated by the
18 primary qualifying agent to a qualified licensed contractor, or such
19 duties are assumed by a secondary qualified agent.

20 Upon approval by the director, a business organization may
21 designate a financially responsible officer for purposes of
22 registration. A financially responsible officer shall be responsible
23 for all financial aspects of the business organization and may not be
24 designated as the primary qualifying agent. The designated
25 financially responsible officer shall furnish evidence of the
26 financial responsibility, credit, and business reputation of either the
27 officer or the business organization.

28 Whenever a business organization has a registered financially
29 responsible officer, the primary qualifying agent shall be
30 responsible for all construction activities of the business
31 organization, both in general and for each specific job.

32 The director shall adopt rules prescribing the qualifications for
33 financially responsible officers, including net worth, cash, and
34 bonding requirements. These qualifications must be at least as
35 extensive as the requirements for the financial responsibility of
36 qualifying agents.

37 If an organization has more than one qualifying agents for a
38 business organization that has more than one qualifying agent, one
39 agent may be designated as the sole primary qualifying agent for the
40 business organization by a joint agreement that is executed, on a
41 form provided by the board, by all qualifying agents for the
42 business organization. The joint agreement shall be submitted to
43 the director for approval. If the director determines that the joint
44 agreement is in good order, the director shall approve the
45 designation and immediately notify the qualifying agents of such
46 approval. The designation made by the joint agreement is effective
47 upon receipt of the notice by the qualifying agents.

1 The qualifying agent designated for a business organization by a
2 joint agreement shall be the sole primary qualifying agent for the
3 business organization, and all other qualifying agents for the
4 business organization shall be secondary qualifying agents.

5 A designated sole primary qualifying agent shall have all the
6 responsibilities and duties of a primary qualifying agent,
7 notwithstanding that there are secondary qualifying agents for
8 specified jobs. The designated sole primary qualifying agent is
9 jointly and equally responsible with secondary qualifying agents for
10 field work supervision.

11 A secondary qualifying agent is responsible only for:

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

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

15 A secondary qualifying agent shall not be responsible for
16 supervision of financial matters.

17 A qualifying agent who has been designated by a joint agreement
18 as the sole primary qualifying agent for a business organization may
19 terminate this status as such by giving actual notice to the business
20 organization, to the director, and to all secondary qualifying agents
21 of his or her intention to terminate this status. The notice to the
22 director must include proof satisfactory to the director that the agent
23 has given the notice required in this paragraph.

24 The status of the qualifying agent shall cease upon the
25 designation of a new primary qualifying agent or 60 days after
26 satisfactory notice of termination has been provided to the director,
27 whichever first occurs.

28 If no new primary qualifying agent has been designated within
29 60 days, all secondary qualifying agents for the business
30 organization shall become primary qualifying agents unless the
31 joint agreement specifies that one or more of them shall become
32 sole qualifying agents under such circumstances, in which case only
33 they shall become sole qualifying agents.

34 Any change in the status of a qualifying agent is prospective
35 only. A qualifying agent is not responsible for his or her
36 predecessor's actions but is responsible, even after a change in
37 status, for matters for which he or she was responsible while in a
38 particular status.

39

40 25. (New section) If an incomplete contract exists at the time of
41 death of a licensed contractor, the contract may be completed by
42 any person even though not registered. Such person shall notify the
43 director, within 30 days after the death of the contractor, of the
44 contractor's name and address, knowledge of the contract, and
45 ability to complete it. If the director approves, the contract may be
46 completed. For purposes of this section, an incomplete contract is
47 one which has been awarded to, or entered into by, the contractor
48 before his or her death, or on which he or she was the low bidder

1 and the contract is subsequently awarded to him or her, regardless
2 of whether any actual work has commenced under the contract
3 before the contractor's death.

4
5 26. (New section) a. All contractors who are registered
6 pursuant to P.L. , c. (C.) (pending before the Legislature
7 as this bill) shall maintain complete financial and business records
8 for the immediately preceding three years. The business and
9 financial records to be maintained shall include minutes of
10 corporate meetings, business contacts, telephone records, insurance
11 policies, letters of complaint, notices received from government
12 entities, bank statements, canceled checks, records of accounts
13 receivable and payable, financial statements, loan documents, tax
14 returns, and all other business and financial records the contractor
15 maintains in the regular course of business.

16 b. Each registrant of the department shall be solely responsible
17 for notifying the department in writing of the registrant's current
18 mailing address and phone number. If the mailing address is not the
19 registrant's physical address, the registrant shall also supply the
20 physical address.

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

23 d. The registrant shall be responsible for retaining proof that
24 the registrant has notified the department of the registrant's current
25 address of record.

26 e. Notwithstanding any other provision of law, service by
27 regular mail to a registrant's address of record shall constitute
28 adequate and sufficient notice to the registrant for any official
29 communication to the registrant by the office or the department,
30 except when other service is required pursuant to law.

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

33 g. Any unlicensed person who commits a violation of this
34 section after having been previously found guilty of such a violation
35 commits a crime of the third degree.

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

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

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

6 a. For purposes of this section, an individual is unlicensed if
7 the individual does not have a license required by P.L. ,
8 c. (C.) (pending before the Legislature as this bill)
9 concerning the scope of the work to be performed under the
10 contract. A business organization is unlicensed if the business
11 organization does not have a primary or secondary qualifying agent
12 in accordance with this part concerning the scope of the work to be
13 performed under the contract.

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

19 (2) This section shall not affect the rights of parties other than
20 the unlicensed contractor to enforce contract, lien, or bond
21 remedies. This section shall not affect the obligations of a surety
22 that has provided a bond on behalf of an unlicensed contractor. It
23 shall not be a defense to any claim on a bond or indemnity
24 agreement that the principal or indemnitor is unlicensed for
25 purposes of this section.

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

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

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

39

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

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

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

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

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

9 b. The department shall cause an investigation of any incident
10 where it appears that any unregistered person associated with a
11 contracting firm is in violation of this section. When, after
12 investigation, the department finds there is probable cause to
13 believe this section has been violated, the department shall prepare
14 and file an administrative complaint which shall be served on the
15 unlicensed or unregistered person. The department shall prosecute
16 the complaint pursuant to this section.

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

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

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

40

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

46 b. In addition to any penalties issued pursuant to the "State
47 Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119
48 et seq.), the failure of a licensee to take corrective action concerning

1 a construction code violation upon the order of a code enforcement
2 agent may subject the licensee to disciplinary proceedings by the
3 Construction Trades Licensing Board.

4
5 30. (New section) The Division of Homeowners' Protection
6 shall create a web page, accessible through an Internet website,
7 dedicated solely to listing any known information concerning
8 unlicensed construction contractors or unlicensed contracting
9 businesses. The information shall be provided in such a way that
10 any person with computer on line capabilities can access
11 information concerning unlicensed contractors by name or by
12 county. The office shall recognize that persons found guilty of
13 unlicensed contracting do not have the same rights and privileges as
14 licensees, and the department shall not restrict the quality or
15 quantity of information on the web page required by this subsection,
16 unless otherwise required by law.

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

21 The Department of Law and Public Safety may investigate any
22 complaint which is made with the department. Upon a
23 recommendation by the department, the Construction Trades
24 Services Commission may take such action for suspension or
25 revocation of a license, or refer the matter to the Construction
26 Trades Licensing Board for such disciplinary action as it may deem
27 warranted.

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

30
31 31. Section 3 of P.L.1977, c.419 (C.45:22A-23) is amended to
32 read as follows:

33 3. As used in this act unless the context clearly indicates
34 otherwise:

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

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

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

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

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

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

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

5 h. "Planned real estate development" or "development" means
6 any real property situated within the State, whether contiguous or
7 not, which consists of or will consist of, separately owned areas,
8 irrespective of form, be it lots, parcels, units, or interest, and which
9 are offered or disposed of pursuant to a common promotional plan,
10 and providing for common or shared elements or interests in real
11 property. This definition shall not apply to any form of
12 timesharing.

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

18 This definition shall be construed liberally to effectuate the
19 purposes of this act.

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

25 j. "Advertising" means and includes the publication or causing
26 to be published of any information offering for disposition or for
27 the purpose of causing or inducing any other person to purchase an
28 interest in a planned real estate development, including the land
29 sales contract to be used and any photographs or drawings or artist's
30 representations of physical conditions or facilities on the property
31 existing or to exist by means of any:

32 (1) Newspaper or periodical;

33 (2) Radio or television broadcast;

34 (3) Written or printed or photographic matter;

35 (4) Billboards or signs;

36 (5) Display of model houses or units;

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

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

44 "Advertising" does not mean and shall not be deemed to include:
45 Stockholder communications such as annual reports and interim
46 financial reports, proxy materials, registration statements, securities
47 prospectuses, applications for listing securities on stock exchanges,
48 and the like; all communications addressed to and relating to the

1 account of any person who has previously executed a contract for
2 the purchase of the subdivider's lands except when directed to the
3 sale of additional lands.

4 k. "Non-binding reservation agreement" means an agreement
5 between the developer and a purchaser and which may be canceled
6 without penalty by either party upon written notice at any time prior
7 to the formation of a contract for the disposition of any lot, parcel,
8 unit or interest in a planned real estate development.

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

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

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

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

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

28 (cf: P.L.2006, c.63, s.39)

29
30 32. Section 4 of P.L.1977, c.419 (C.45:22A-24) is amended to
31 read as follows:

32 4. This act shall be administered by the Division of **【Housing**
33 **and Development】** Homeowners' Protection in the State
34 Department of **【Community Affairs】** Law and Public Safety,
35 hereinafter referred to as the "agency."

36 (cf: P.L.1993, c.258, s.9)

37
38 33. Section 7 of P.L.1977, c.419 (C.45:22A-27) is amended to
39 read as follows:

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

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

46 (2) The states or other jurisdictions, including the federal
47 government, in which an application for registration or similar
48 documents have been filed, and any adverse order, judgment or

1 decree entered in connection with the development by the
2 regulatory authorities in each jurisdiction or by any court;

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

8 (4) Copies of its articles of incorporation, with all amendments
9 thereto, if the developer is a corporation; copies of all instruments
10 by which the trust is created or declared, if the developer is a trust;
11 copies of its articles of partnership or association and all other
12 papers pertaining to its organization, if the developer is a
13 partnership, unincorporated association, joint stock company, or
14 any other form of organization; and if the purported holder of legal
15 title is a person other than the developer, copies of the above
16 documents from such person;

17 (5) A legal description of the lands offered for registration,
18 together with a map showing the subdivision proposed or made, and
19 the dimensions of the lots, parcels, units, or interests, as available,
20 and the relation of such lands to existing streets, roads, and other
21 improvements;

22 (6) Copies of the deed or other instrument establishing title to
23 the subdivision in the developer, and a statement in a form
24 acceptable to the agency of the condition of the title to the land
25 comprising the development, including encumbrances as of a
26 specified date within 30 days of the date of application by a title
27 opinion of a licensed attorney, or by other evidence of title
28 acceptable to the agency;

29 (7) Copies of the instrument which will be delivered to a
30 purchaser to evidence his interest in the development, and of the
31 contracts and other agreements which a purchaser will be required
32 to agree to or sign;

33 (8) Copies of any management agreements, service contracts, or
34 other contracts or agreements affecting the use, maintenance or
35 access of all or a part of the development;

36 (9) A statement of the zoning and other government regulations
37 affecting the use of the development including the site plans and
38 building permits and their status, and also of any existing tax and
39 existing or proposed special taxes or assessments which affect the
40 development; and a statement of the existing use of adjoining lands;

41 (10) A statement that the lots, parcels, units or interests in the
42 development will be offered to the public, and that responses to
43 applications will be made without regard to marital status, sex, race,
44 creed, or national origin;

45 (11) A statement of the present condition of access to the
46 development, the existence of any unusual conditions relating to
47 noise or safety, which affect the development and are known to the
48 developer, the availability of sewage disposal facilities and other

1 public utilities including water, electricity, gas, and telephone
2 facilities in the development to nearby municipalities, and the
3 nature of any improvements to be installed by the developer and his
4 estimated schedule for completion;

5 (12) In the case of any conversion an engineering survey shall
6 be required, which shall include mechanical, structural, electrical
7 and engineering reports to disclose the condition of the building;

8 (13) In the case of any development or portion thereof against
9 which there exists a blanket encumbrance, a statement of the
10 consequences for an individual purchaser of a failure, by the person
11 or persons bound, to fulfill obligations under the instrument or
12 instruments creating such encumbrances and the steps, if any, taken
13 to protect the purchaser in such eventuality;

14 (14) A narrative description of the promotional plan for the
15 disposition of the lots, parcels, units or interests in the development,
16 together with copies of all advertising material which has been
17 prepared for public distribution, and an indication of their means of
18 communication;

19 (15) The proposed public offering statement;

20 (16) A current financial statement, which shall include such
21 information concerning the developer as the agency deems to be
22 pertinent, including but not limited to, a profit and loss statement
23 certified by an independent public accountant and information
24 concerning any adjudication of bankruptcy during the last five years
25 against the developer, or any principal owning more than 10% of
26 the interest in the development at the time of filing, provided,
27 however, that this shall not extend to limited partners, or others
28 whose interests are solely those of investors;

29 (17) Copies of instruments creating easements or other
30 restrictions;

31 (18) A statement of the status of compliance with the
32 requirements of all laws, ordinances, regulations, and other
33 requirements of governmental agencies having jurisdiction over the
34 premises;

35 (19) Such other information, documentation, or certification as
36 the agency deems necessary in furtherance of the protective
37 purposes of this act, including such information as may be required
38 pursuant to P.L. , c. (C.) (pending before the Legislature
39 as this bill).

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

44 c. A developer may register additional property pursuant to the
45 same common promotional plan as those previously registered by
46 submitting another application, providing such additional
47 information as may be necessary to register the additional lots,

1 parcels, units or interests, which shall be known as a consolidated
2 filing.

3 d. The developer shall immediately report any material changes
4 in the information contained in an application for registration. The
5 term "material changes" shall be further defined by the agency in its
6 regulations.

7 e. The application shall be accompanied by a fee in an amount
8 equal to \$500.00 plus \$35.00 per lot, parcel, unit, or interest
9 contained in the application, which fees may be used by the agency
10 to partially defray the cost of rendering services under the act. If
11 the fees are insufficient to defray the cost of rendering services
12 under P.L.1977, c.419 (C.45:22A-21 et seq.), the agency shall, by
13 regulation, establish a revised fee schedule. The revised fee
14 schedule shall assure that the fees collected reasonably cover but do
15 not exceed the expenses and administration of implementing
16 P.L.1977, c.419 (C.45:22A-21 et seq.).

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

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

32 (3) If the agency finds there is a significant discrepancy between
33 the engineering survey submitted by the applicant and an
34 engineering survey submitted by any tenant or tenants currently
35 residing in the building, the agency shall investigate the matter in
36 order to determine the true state of facts prior to approving the
37 application. The agency may use its own staff or contract with
38 independent professionals, and may conduct hearings in accordance
39 with the "Administrative Procedure Act," P.L.1968,
40 c.410 (C.52:14B-1 et seq.). Any cost to the agency of hiring
41 independent professionals shall be borne by the applicant developer
42 at the discretion of the agency.

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

44

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

47 8. a. A public offering statement shall disclose fully and
48 accurately the characteristics of the development and the lots,

1 parcels, units, or interests therein offered, and shall make known to
2 prospective purchasers all unusual or material circumstances or
3 features affecting the development. The proposed public offering
4 statement submitted to the agency shall be in a form prescribed by
5 its rules and regulations and shall include the following:

6 (1) The name and principal address of the developer;
7 (2) A general narrative description of the development stating
8 the total number of lots, units, parcels, or interests in the offering,
9 and the total number of such interests planned to be sold, leased or
10 otherwise transferred;

11 (3) Copies of any management contract, lease of recreational
12 areas, or similar contract or agreement affecting the use,
13 maintenance, or access of all or any part of the development, with a
14 brief and simple narrative statement of the effect of each such
15 agreement upon a purchaser, and a statement of the relationship, if
16 any, between the developer and the managing agent or firm;

17 (4) (a) The significant terms of any encumbrances, easements,
18 liens, and restrictions, including zoning and other regulations,
19 affecting such lands and each unit, lot, parcel, or interest, and a
20 statement of all existing taxes and existing or proposed special taxes
21 or assessments which affect such lands; and

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

26 (5) (a) Relevant community information, including hospitals,
27 health and recreational facilities of any kind, streets, water supply,
28 levees, drainage control systems, irrigation systems, sewage
29 disposal facilities and customary utilities; and

30 (b) The estimated cost, size, date of completion, and
31 responsibility for construction and maintenance of existing and
32 proposed amenities which are referred to in connection with the
33 offering or disposition of any interest in the subdivision or
34 subdivided lands;

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

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

39 b. The public offering statement shall not be used for any
40 promotional purposes before registration of the development and
41 afterwards only if it is used in its entirety. No person may advertise
42 or represent that the agency approves or recommends the
43 development or dispositions therein. No portion of the public
44 offering statement may be underscored, italicized, or printed in
45 larger or heavier or different color type than the remainder of the
46 statement, unless the agency requires or permits it.

47 c. The agency may require the developer to alter or amend the
48 proposed public offering statement in order to assure full and fair

1 disclosure to prospective purchasers, and no change in the
2 substance of the promotional plan or plan of disposition or
3 development of a planned real estate development may be made
4 after registration without the approval of the agency. A public
5 offering statement shall not be current unless all amendments have
6 been incorporated.

7 d. The public offering statement shall, to the extent possible,
8 combine simplicity and accuracy of information, in order to
9 facilitate purchaser understanding of the totality of rights,
10 privileges, obligations and restrictions, comprehended under the
11 proposed plan of development. Under no circumstances shall a
12 developer be permitted to create a loan to himself from the
13 homeowners' association required to be formed, or fail to
14 accurately disclose the true costs of the sale. In reviewing such
15 public offering statement, the agency shall pay close attention to the
16 requirements of this subsection, and shall use its discretion to
17 require revision of a public offering statement which is
18 unnecessarily complex, confusing, or is illegible by reason of type
19 size or otherwise.

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

21
22 35. Section 18 of P.L.1977, c.419 (C.45:22A-38) is amended to
23 read as follows:

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

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

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

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

46
47 36. Section 6 of P.L.1993, c. 30 (C.45:22A-48) is amended to

1 read as follows:

2 6. The **【Commissioner of Community Affairs】** Director of the
3 Division of Homeowner Protection shall cause to be prepared and
4 distributed, for the use and guidance of associations, executive
5 boards and administrators, explanatory materials and guidelines to
6 assist them in achieving proper and timely compliance with the
7 requirements of P.L.1993, c.30 (C.45:22A-43 et al.) and the
8 “Condominium Act,” P.L.1969, c.257 (C.46:8B-1 et seq.). Such
9 guidelines **【may】** shall include the text of model bylaw provisions
10 that are required by statute, regulation or court decision, and may
11 include model bylaws suggested or recommended for adoption.
12 Failure or refusal of an association or executive board to make
13 proper amendment or supplementation of its bylaws prior to the
14 effective date of P.L.1993, c.30 (C.45:22A-43 et al.) shall not,
15 however, affect their obligation of compliance therewith on and
16 after that effective date.
17 (cf: P.L.1993, c.30, s.6)

18
19 37. Section 1 of P.L.1993, c.258 (C.45:22A-49) is amended to
20 read as follows:

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

22 "Agency" means the Division of **【Housing and Development in**
23 **the Department of Community Affairs】** Homeowner Protection in
24 the Department of Law and Public Safety.

25 "Proprietary campground facility" means any real property
26 designed and used for the purpose of camping and associated
27 recreational uses under a condominium or cooperative form of
28 ownership.

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

30
31 38. Section 6 of P.L.1993, c.258 (C.45:22A-54) is amended to
32 read as follows:

33 6. Any person aggrieved by any order issued by the agency
34 under this act shall be entitled to a hearing before the
35 **【Commissioner of Community Affairs】** Attorney General pursuant
36 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
37 1 et seq.). The application for such hearing must be filed with the
38 agency within 10 business days of the receipt by the applicant of
39 notice of the order complained of.

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

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

44 2. As used in this act:

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

46 b. "Commissioner" means the Commissioner of Community
47 Affairs.

- 1 c. "Warranty" means the warranty prescribed by the
2 commissioner pursuant to P.L.1977, c.467 (C.46:3B-1 et seq.).
- 3 d. "New home" means any dwelling unit not previously
4 occupied, excluding dwelling units constructed solely for lease.
- 5 e. "Owner" means any person for whom the new home is built
6 or to whom the home is sold for occupation by him or his family as
7 a home and his successors in title to the home or mortgagee in
8 possession. Owner does not mean any development company,
9 association or subsidiary company of the builder or any person or
10 organization to whom the home may be sold or otherwise conveyed
11 by the builder for subsequent resale, letting or other purpose.
- 12 f. "Builder" means any individual corporation, partnership or
13 other business organizations engaged in the construction of new
14 homes.
- 15 g. "Major construction defect" means any actual damage to the
16 load bearing portion of the home including damage due to
17 subsidence, expansion or lateral movement of the soil (excluding
18 movement caused by flood or earthquake) which affects its load
19 bearing function and which vitally affects or is imminently likely to
20 vitally affect use of the home for residential purposes.
- 21 h. "Warranty date" means the first occupation or settlement
22 date, whichever is sooner.
- 23 i. "Approved claim" means, for the purposes of P.L.1991,
24 c.202 (C.46:3B-13 et al.), a claim examined and approved by the
25 commissioner in accordance with section 3 of P.L.1991,
26 c.202 (C.46:3B-15).
- 27 j. "Approved method" means, for the purposes of P.L.1991,
28 c.202 (C.46:3B-13 et al.), a method of remediation approved by the
29 commissioner in accordance with section 3 of P.L.1991,
30 c.202 (C.46:3B-15).
- 31 k. "Fund" means the new home warranty security fund
32 established in the department pursuant to section 7 of P.L.1977,
33 c.467 (C.46:3B-7).
- 34 l. "Warranty guarantor" means, for the purposes of P.L.1991,
35 c.202 (C.46:3B-13 et al.), (1) the new home warranty program
36 established in the department pursuant to P.L.1977, c.467 (C.46:3B-
37 1 et seq.) or (2) any alternate new home warranty security program
38 approved pursuant to section 8 of P.L.1977, c.467 (C.46:3B-8).
- 39 m. "Board" means the Board of Trustees established pursuant
40 to section 2 of P.L.2001, c.147 (C.46:3B-7.2).
- 41 n. "Pervasive construction defect" means any defect or defects
42 including items of extremely shoddy or negligent workmanship, or
43 uncorrected construction code violations, and which, taken as a
44 whole, encompass more than 40 percent of the structure, or which
45 exist in any areas that expose parts of the structure to water, air or
46 extreme temperatures.

1 o. "Director" means the Director of the Division of Homeowner
2 Protection in the Department of Law and Public Safety, unless
3 otherwise specified.

4 p. "Division" means the Division of Homeowner Protection in
5 the Department of Law and Public Safety.

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

7
8 40. (New section) a. There is created within the Department of
9 Law and Public Safety, a Division of Homeowners' Protection.
10 Upon the effective date of P.L. , c. (C.) (pending before the
11 Legislature as this bill), all responsibilities, duties and powers
12 concerning the program for registration of builders, except such
13 registration as deemed necessary by the Department of Community
14 Affairs in administering the "New Home Warranty Program,"
15 P.L. 1977, c. 419 (C.46:3B-1 et seq.), and the State duties under
16 "The Planned Real Estate Development Full Disclosure Act,"
17 P.L.1977, c.419 (C.45:22A-21 et seq.) shall be transferred from the
18 Department of Community Affairs to the Division of Homeowner
19 Protection in the Department of Law and Public Safety. All
20 contractors for home improvements and new residential
21 construction shall thereafter register with that office.

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

30
31 41. Section 3 of P.L.1977, c. 467 (C.46:3B-3) is amended to
32 read as follows:

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

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

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

3 (1) **【One year】** Two years from and after the warranty date the
4 dwelling shall be free from defects caused by faulty workmanship
5 and defective materials due to noncompliance with the building
6 standards as approved by the commissioner pursuant to **【paragraph**
7 **3a. of this act】** subsection a. of this section, except as set forth in
8 **【section 3b. (2) and (3)】** paragraphs (2) and (3) of this subsection.

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

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

17 In the event that pervasive construction defects are found to
18 exist, the program administrator shall provide the homeowner with
19 an option to repair all defects with a licensed contractor of the
20 homeowners' choice, or, if the severity of the defects warrants it,
21 the program administrator shall purchase the home from the
22 homeowner. The program administrator shall thereafter institute a
23 legal action against the builder or builders of the new construction
24 for recovery of costs. Successful warranty program claimants
25 against a builder of new construction found to have constructed a
26 new home with pervasive construction defects shall be entitled to
27 reasonable costs and, in the court's discretion, treble damages.
28 Amounts recovered under this section shall be deposited into the
29 appropriate warranty fund.

30 (4) However, any alternate program as provided for in section 8
31 of this act submitted for approval, subsequent to the effective date
32 of this act, may contain warranties and time periods greater than
33 provided for in **【section 3b.】** paragraphs (1), (2), and (3) of this
34 **【act】** subsection.

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

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

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

43

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

46 5. No builder shall engage in the business of constructing new
47 homes unless he is registered with the department and the division.

1 The department and the division shall provide application forms for
2 such registration and shall prescribe the information to be included
3 therein. Each application shall be accompanied by a reasonable fee,
4 prescribed by the commissioner and the Director of the Division of
5 Homeowners' Protection, and proof, satisfactory to the
6 commissioner and director, of participation in the new home
7 warranty security fund or an approved alternate new home warranty
8 security program. Upon receipt of the above, the department shall
9 issue a certificate of registration.

10 Each certificate of registration shall be valid for a period of 2
11 years from the date of issue and may be renewed for additional 2
12 year periods.

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

16 No corporation, partnership or other business organization shall
17 be entitled to registration hereunder, nor shall they engage in the
18 construction of new homes unless a stockholder, director, officer,
19 partner, or employee thereof, as the case may be, shall be a
20 registered builder.

21 In addition to registering as a builder, registration shall also be
22 made with the Division of Homeowners' Protection each time a
23 residential building project is begun by a builder, if registration is
24 not required for the project pursuant to "The Planned Real Estate
25 Development Full Disclosure Act," P.L.1977, c.419 (C.45:22A-21
26 et seq.). The builder shall indicate the primary qualifying agent,
27 and the primary project supervisor on such forms as shall be
28 established by the director. This information shall be made
29 available by the director to a code enforcement official upon the
30 request of the official.

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

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

36

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

39 6. a. The commissioner, upon the complaint of an aggrieved
40 person, may conduct investigations into the allegations made
41 against any builder required to be registered under this act. In
42 pursuit of such investigations, the commissioner shall be authorized
43 to hold hearings in accordance with the provisions of the
44 Administrative Procedures Act (P.L.1968, c.410, C.52:14B-1 et
45 seq.) applicable to contested cases, to **【subpena】 subpoena**
46 witnesses and compel their attendance, to require the production of
47 papers, records or documents, administer oaths or affirmations to
48 witnesses, to inspect such relevant books, papers, records or

1 documents of such builder at his place of business during business
2 hours, and to conduct inspections of new home construction sites
3 owned by a builder or in which a builder has an ownership interest.

4 b. The commissioner may forward to the director a
5 recommendation to deny, suspend or revoke any certificate of
6 registration, or may refer a builder to the appropriate licensing
7 board for disciplinary action, after affording the registrant or
8 applicant the opportunity for a hearing in accordance with the
9 provisions of the Administrative Procedures Act (P.L.1968,
10 c.410, C.52:14B-1 et seq.) applicable to contested cases, if the
11 registrant or applicant has:

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

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

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

16 (4) Willfully violated any applicable building code to a
17 substantial degree;

18 (5) Failed to continue his participation in the new home
19 warranty security fund or an approved alternate new home warranty
20 security program after proper notice from the commissioner in
21 writing by certified mail; or

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

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

26
27 44. Section 7 of P.L.1977, c.467 (C.46:3B-7) is amended to read
28 as follows:

29 7. a. There is hereby established a new home warranty security
30 fund to be maintained by the State Treasurer in a trust account,
31 separate and apart from other funds and administered by the
32 commissioner. The purpose of the fund is (1) to provide moneys
33 sufficient to pay claims by owners against builders participating in
34 the fund for defects in new homes covered by the new home
35 warranty; and (2) to pay the costs of administering the new home
36 warranty program established in the department, including the costs
37 of obtaining sufficient reinsurance to prudently protect the fund
38 against unanticipated risks and costs incurred by the board in the
39 discharge of its duties. The amounts payable by participating
40 builders shall be established and may be changed from time to time,
41 as the experience of the fund shall require, by the commissioner,
42 and shall be sufficient to cover anticipated claims, to provide a
43 reasonable reserve and to cover the costs of administering the fund.
44 Amounts paid by participating builders shall be forwarded to the
45 State Treasurer and shall be accounted for and credited by him to
46 the new home warranty security fund.

47 b. The State Treasurer shall hold, manage and, through the
48 Division of Investment, invest and reinvest moneys in the fund and

1 credit all income earned thereon to the fund in the same manner as
2 provided by law for the investment of pension and retirement funds
3 administered by the State. The department shall keep the State
4 Treasurer and the board advised of anticipated cash demands for
5 payment of claims against the fund. No funds shall be spent,
6 appropriated or transferred from the fund other than for the express
7 purposes of paying claims or costs related to administering the
8 program or the fund as enumerated in subsection a, c, or e of this
9 section. In the event funds are spent, appropriated or transferred
10 from the fund for other purposes in violation of this subsection, the
11 obligation of participating builders to contribute to the fund shall
12 be suspended until such time as the funds are replenished, and if the
13 amount in the fund shall become insufficient thereafter to pay
14 claims or make awards, the payment of claims and making of
15 awards shall be made from the General Fund. The Joint Budget
16 Oversight Committee, or its successor, shall have the authority to
17 investigate complaints of violative fund transfers under this section,
18 and shall order the Commissioner of Community Affairs to suspend
19 collection from participating builders if it determines that the
20 provisions of this subsection have been violated.

21 c. Prior to making a claim against the fund for defects covered
22 by the warranty, an owner shall notify the builder of such defects
23 and allow a reasonable time period for their repair. If the repairs
24 are not made within a reasonable time or are not satisfactory to the
25 owner, he may file a claim against the fund in the form and manner
26 prescribed by the commissioner. The commissioner shall
27 investigate each claim to determine the validity thereof, and the
28 amount of the award that shall be made thereon, and shall hold a
29 hearing if requested by either party, in accordance with the
30 provisions of the "Administrative Procedure Act," P.L.1968,
31 c.410 (C.52:14B-1 et seq.) applicable to contested cases.
32 Reasonable hearing fees shall be assessed against the unsuccessful
33 party. The amount of the award shall be sufficient to cover the
34 reasonable costs necessary to correct any defect or defects covered
35 under the warranty, but the total amount of awards from the fund
36 for any new home shall not exceed the purchase price of the home
37 in the first good faith sale thereof or the fair market value on the
38 home on its completion date if there is no good faith sale. All
39 claims submitted by an owner shall first be reviewed through [a
40 conciliation or] an arbitration procedure by the [department]
41 Division of Homeowners' Protection in accordance with P.L.2003,
42 c.95 (C.2A:23B-1 et seq.), and in the event that the claim of the
43 owner is found to be [in the right] substantiated, then the builder
44 shall be required to correct such claims as determined through the
45 conciliation or arbitration procedure. If a builder is unable or
46 willfully refuses to correct such deficiency, then an amount
47 sufficient to cure the problem shall be paid from the fund to the
48 owner. In such cases, the commissioner may then proceed against

1 the builder in accordance with subsection b. of section 6 of
2 P.L.1977, c.467 (C.46:3B-6). Upon certification from the
3 commissioner of the amount of an award, the State Treasurer shall
4 make payment to the claimant from the fund.

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

6 e. If the board determines that fund reserves and reinsurance
7 may be insufficient to cover anticipated claims, the board shall
8 recommend steps to the commissioner to restore fund resources to
9 sufficiency, which may include increases in premiums and fees,
10 expanded reinsurance and changes in standards and claims
11 adjudication procedures.

12 f. The commissioner may provide for surcharges against those
13 builders who are responsible for a significant number of awards
14 against the fund and may discontinue the participation in the fund
15 of any builder who is responsible for an excessive number of
16 awards against the fund after a hearing in accordance with the
17 provisions of the "Administrative Procedure Act," P.L.1968,
18 c.410 (C.52:14B 1 et seq.) applicable to contested cases. In
19 addition, the commissioner may refer any builder who appears to
20 have violated the provisions of P.L.1977, c.467 or P.L. _____,
21 c. _____ (C. _____) (pending before the Legislature as this bill) to the
22 Construction Trades Licensing Board for disciplinary action. At no
23 time shall the State be required to contribute any moneys to the
24 fund, nor shall the State have any liability to any person having any
25 right to or claim against the fund over and above the amount therein
26 except in those instances where it is determined by the Joint Budget
27 Oversight Committee that the provisions of subsection b. of this
28 section have been violated concerning amounts spent, appropriated
29 or transferred from the fund.

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

34
35 45. Section 1 of P.L.1992, c.56 (C.46:3B-8.1) is amended to
36 read as follows:

37 1. Whenever a builder participating in an alternative new home
38 warranty program approved by the commissioner pursuant to
39 section 8 of P.L.1977, c.467 (C.46:3B-8) issues a warranty
40 guaranteed by that plan, the warranty guarantor shall, before the
41 15th day of the month next following the month in which the new
42 home covered by the warranty is conveyed to the owner, file with
43 the commissioner a statement listing: (1) the name of the approved
44 program as listed with the department; (2) the name or names and
45 **【Social Security】** identification number or numbers of the owner or
46 owners to whom the warranty was issued, which identification
47 number shall not be the social security number, the warranty date,
48 and the enrollment number or other designation by which the

1 warranty is identified in the records of the approved program; (3)
2 the name, address and registration number of the registered builder
3 by whom the warranty has been issued; (4) the sales price of the
4 new home upon which the warranty was issued, its type and method
5 of construction in accordance with categories established by the
6 commissioner, and its location by street address or its block and lot
7 number designation in the tax records of the municipality in which
8 it is located; and (5) such other information as the commissioner
9 may require in order to carry out the provisions and purposes of this
10 act. Personal identification information of owners provided under
11 this section shall not be considered a public record or subject to
12 disclosure as such.

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

14

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

17 3. The files maintained pursuant to section 2 of this act, other
18 than information specifically exempted, shall be subject to the
19 provisions of P.L.2001, c.404 (C.47:1A-5 et al.) and shall be open
20 to inspection by the public at any time during regular business
21 hours at the department's main office and at any other location at
22 which the commissioner may direct duplicate files to be maintained.
23 Copies of information derived from these files shall be available,
24 upon payment of fees sufficient to defray the cost of preparing and
25 distributing those copies, to any person requesting them.

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

27

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

30 9. Nothing contained herein shall affect other rights and
31 remedies available to the owner. The owner shall have the
32 opportunity to pursue any remedy legally available to the owner.
33 However, initiation of procedures under P.L.1977, c.467 (C.46:3B-
34 1 et seq.) to enforce a remedy shall constitute an election which
35 shall bar the owner from all other remedies until a final judgment
36 has been rendered pursuant to P.L.1977, c.467. Nothing contained
37 herein shall be deemed to limit the owner's right to file a claim
38 based on fraud under the consumer fraud act, P.L.1960,
39 c.39 (C.56:8-1 et seq.), or maintain an action of appeal as applicable
40 to the remedy elected.

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

42

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

45 2. The Superior Court and every municipal court shall have
46 jurisdiction of proceedings for the collection and enforcement of a
47 penalty imposed because of the violation, within the territorial
48 jurisdiction of the court, of any provision of the act to which this act

1 is a supplement. Except as otherwise provided in this act the penalty
2 shall be collected and enforced in a summary proceeding pursuant
3 to **["the penalty enforcement law" (N.J.S.2A:58-1 et seq.)]** the
4 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
5 et seq.). Process shall be either in the nature of a summons or
6 warrant and shall issue in the name of the State, upon the complaint
7 of the Attorney General or any other person.

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

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

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

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

30
31 49. (New section) The following statement shall be provided by
32 the local code enforcing agency office to an owner requesting a
33 construction permit for work on their residence without the services
34 of a licensed contractor.

35
36 "State law requires construction to be done by
37 licensed contractors. You have applied for a permit
38 under an exemption to that law. The exemption
39 allows you, as the owner of your property, to act as
40 your own contractor with certain restrictions even
41 though you do not have a license. You must provide
42 direct, onsite supervision of the construction yourself.
43 You may build or improve a one family residence.
44 The building or residence must be for your own use
45 or occupancy. It may not be built or substantially
46 improved for sale or lease. If you sell or lease a
47 building you have built or substantially improved
48 yourself within one year after the construction is

1 complete, the law will presume that you built or
2 substantially improved it for sale or lease, which is a
3 violation of this exemption. You may not hire an
4 unlicensed person to act as your contractor or to
5 supervise people working on your building. It is your
6 responsibility to make sure that people employed by
7 you have licenses required by State law and by
8 county or municipal licensing ordinances. You may
9 not delegate the responsibility for supervising work
10 to a licensed contractor who is not licensed to
11 perform the work being done. Any person working on
12 your building who is not licensed must work under
13 your direct supervision and must be employed by
14 you, which means that you must deduct F.I.C.A. and
15 withholding tax and provide workers' compensation
16 for that employee, all as prescribed by law. Your
17 construction must comply with all applicable laws,
18 ordinances, building codes, and zoning regulations."
19

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

22 4. The Local Finance Board in the Division of Local
23 Government Services in the Department of Community Affairs
24 shall have jurisdiction to govern and guide the conduct of local
25 government officers or employees regarding violations of the
26 provisions of this act who are not otherwise regulated by a county
27 or municipal code of ethics promulgated by a county or municipal
28 ethics board in accordance with the provisions of this act. The
29 Local Finance Board shall have jurisdiction to govern and guide the
30 conduct of construction code enforcement officials regardless of
31 whether those officials are otherwise regulated by a county or
32 municipal code of ethics. Local government officers or employees
33 serving a local government agency created by more than one county
34 or municipality and officers or employees of county colleges
35 established pursuant to N.J.S.18A:64A-1 et seq. shall be under the
36 jurisdiction of the board. The board in interpreting and applying the
37 provisions of this act shall recognize that under the principles of
38 democracy, public officers and employees cannot and should not be
39 expected to be without any personal interest in the decisions and
40 policies of government; that citizens who are government officers
41 and employees have a right to private interests of a personal,
42 financial and economic nature; and that standards of conduct shall
43 distinguish between those conflicts of interest which are legitimate
44 and unavoidable in a free society and those conflicts of interest
45 which are prejudicial and material and are, therefore, corruptive of
46 democracy and free society.
47 (cf: P.L.1995, c.21, s.1)

1 51. This act shall take effect on the first day of the third month
2 next following enactment, however the Department of Law and
3 Public Safety and the Department of Community Affairs may take
4 such anticipatory action as necessary to effectuate the provisions of
5 this act.

6
7
8 STATEMENT

9
10 This bill modifies and creates new laws concerning new home
11 construction to address the issues identified by the State
12 Commission of Investigation (SCI) in its report entitled “The Good,
13 the Bad and the Ugly: New Home Construction in New Jersey,”
14 dated March 2005.

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

20 The SCI report indicated that these deficiencies, and numerous
21 others identified in the report, were not isolated. The commission
22 attributed these deficiencies mainly to low-quality materials and
23 inferior construction practices and cited irresponsibility and lack of
24 skills on the part of builders as a major contributing factor. The
25 commission recommended specially trained and skilled experts be
26 present on the construction site at all times. The commission’s
27 report also noted a system of weak code enforcement as overseen
28 by the State Department of Community Affairs and identified
29 conflicts of interests inherent in the process of processing new
30 home warranty claims.

31 The approach taken under this bill is to address the root causes of
32 these problems. The first prong of the approach recognizes the
33 need to enhance the skills of those persons in the construction
34 trades. The bill creates new licenses for certain construction trades,
35 and a trade board to oversee these regulated professions. The
36 licensing of construction trades will result in a labor force with
37 enhanced skills, and lead to better compliance with construction
38 codes. In addition to the trades licensing, the bill imposes new
39 accountability and notice requirements upon builders, and requires
40 that each builder designate a primary qualifying agent who must be
41 a licensed contractor and who will be responsible for on-site
42 supervision of all construction activities, or who will designate a
43 primary project supervisor. These parties will be responsible for
44 assisting the code enforcement official in all required inspections.

45 The second prong of the approach addresses the systemic failures
46 to provide many of the consumer protections offered under existing
47 laws, and to address the conflicts of interests inherent in a State
48 system that regulates all aspects of construction through one

1 department. The bill reorganizes the oversight of certain consumer
2 protection programs into a State department which has significant
3 experience in providing consumer protections. Home improvement
4 contractors are currently required to be registered with the
5 Department of Law and Public Safety. The bill reallocates the
6 registration of all new home builders to that department. In
7 addition to builder registration, the bill also requires all new home
8 building projects to be registered with that department, if the
9 projects are not registered under “The Planned Real Estate
10 Development Full Disclosure Act,” P.L.1977, c.419 (C.45:22A-21
11 et seq.). The bill also reallocates the oversight for the latter act,
12 which provides consumer protections in the sale of certain new
13 construction with commonly-owned elements, to the Department of
14 Law and Public Safety.

15 The administration of the New Home Warranty program will
16 remain the responsibility of the Department of Community Affairs,
17 which will also continue its responsibilities for enforcement of the
18 “State Uniform Construction Code Act.” The bill amends the
19 “Local Government Ethics Law” to specifically provide that
20 construction code officials are subject the ethics requirements of
21 that act. In addition, the law modifies some of the warranties to be
22 granted under the new home warranty program and requires that
23 arbitration of warranty issues be handled by the Division of
24 Homeowners’ Protection in the Department of Law and Public
25 Safety, under rules to be promulgated by that office. This provision
26 is designed to avoid conflicts of interest for dispute resolvers which
27 were identified by the State Commission of Investigation in its
28 report.

29 Finally, the bill modifies some of the terms of the new home
30 warranty provided by statute. The bill defines pervasive
31 construction defects to mean any defect or defects including items
32 of extremely shoddy or negligent workmanship, or uncorrected
33 construction code violations, and which, taken as a whole,
34 encompass more than 40 percent of the structure, or which exist in
35 any areas that expose parts of the structure to water, air or extreme
36 temperatures. Under the bill, purchasers may choose to either have
37 a new builder of their choice make repairs, which will be paid for
38 under the warranty program, or have the program purchase the
39 house from them. In the event of a house purchase, the warranty
40 program will be permitted to seek recovery of its costs from the
41 builder, and may be awarded treble damages in the court’s
42 discretion.

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