ASSEMBLY, No. 473



STATE OF NEW JERSEY

218th LEGISLATURE



PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

Assemblyman VINCENT PRIETO

District 32 (Bergen and Hudson)

Assemblyman PAUL D. MORIARTY

District 4 (Camden and Gloucester)

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SYNOPSIS

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

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



An Act concerning regulation of the construction industry, establishing a new office for homeowner protection, revising various parts of the statutory law and supplementing Title 45 of the Revised Statutes.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Construction trades” means those trades for which licensure is required under this act.

"Contracting" means engaging in business as a contractor and includes, but is not limited to, performance of any of the activities of a contractor engaged in a construction trade. The attempted sale of contracting services and the negotiation or bid for a contract on these services also constitutes contracting. If the services offered require licensure or agent qualification, the offering, negotiation for a bid, or attempted sale of these services requires the corresponding licensure. However, the term "contracting" shall not extend to an individual, partnership, corporation, trust, or other legal entity that offers to sell or sells completed residences on property on which the individual or business entity has any legal or equitable interest, if the services of a licensed contractor have been or will be retained for the purpose of constructing such residences.

"Contractor" means any person who, for compensation other than wages as an employee, undertakes any work in the construction trade for which licensure is required under P.L. , c. (C. ) (pending before the Legislature as this bill) and includes: a. a person who builds any structure on his own property for the purpose of sale or who builds any structure intended for public use on his own property;

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

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

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

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

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

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

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

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

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

"Individual" means a natural person.

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

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

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

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

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

"Swimming pool contractor” means a contractor whose scope of work involves, but is not limited to, the construction, repair, and servicing of any swimming pool, or hot tub or spa, whether public, private, or otherwise, regardless of use. The scope of work includes the installation, repair, or replacement of existing equipment, any cleaning or equipment sanitizing which requires at least a partial disassembling, excluding filter changes, and the installation of new pool or spa equipment, interior finishes, the installation of package pool heaters, the installation of all perimeter piping and filter piping, and the construction of equipment rooms or housing for pool or spa equipment, and also includes the scope of work of a swimming pool or spa servicing contractor. The scope of such work shall not include direct connections to a sanitary sewer system or to potable water lines. The installation, construction, modification, or replacement of equipment permanently attached to and associated with the pool or spa for the purpose of water treatment or cleaning of the pool or spa requires licensure; however, the usage of such equipment for the purposes of water treatment or cleaning shall not require licensure unless the usage involves construction, modification, or replacement of such equipment. Water treatment that does not require such equipment does not require a license. In addition, a license shall not be required for the cleaning of the pool or spa in any way that does not affect the structural integrity of the pool or spa or its associated equipment.

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

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

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

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

"Underground utility and excavation contractor" means a contractor whose services are limited to the construction, installation, and repair, on public or private property, whether accomplished through open excavations or through other means, including, but not limited to, directional drilling, auger boring, jacking and boring, (other than drilling, boring, coring, driving, jetting, digging, sealing or other construction related to wells), trenchless technologies, wet and dry taps, grouting, and slip lining, of main sanitary sewer collection systems, main water distribution systems, storm sewer collection systems, and the continuation of utility lines from the main systems to a point of termination up to and including the meter location for the individual occupancy, sewer collection systems at property line on residential or single occupancy commercial properties, or on multi-family properties at manhole or wye lateral extended to an invert elevation as engineered to accommodate future building sewers, water distribution systems, or storm sewer collection systems at storm sewer structures. However, an underground utility and excavation contractor may install empty underground conduits in rights of way, easements, platted rights of way in new site development, and sleeves for parking lot crossings no smaller than 2 inches in diameter, provided that each conduit system installed is designed by a licensed professional engineer or an authorized employee of a municipality, county, or public utility and that the installation of any such conduit does not include installation of any conductor wiring or connection to an energized electrical system. An underground utility and excavation contractor shall not install any piping that is an integral part of a fire protection system, which shall be installed by a fire protection contractor as defined in P.L.2001, c.289 (C.52:27D-25n et seq.).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) one member shall be a professional engineer licensed pursuant to P.L.1938, c.342 (C.45:8 27 et seq.);

(2) one member shall be a licensed architect pursuant to R.S.45:3 1 et seq;

(3) one member shall be a licensed general building contractor;

(4) two members shall be licensed residential and small commercial contractors;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Three individuals who are residential and small commercial contractors;

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

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

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

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

Two individuals who are code enforcement officials; and

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

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

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

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

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

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

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

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

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

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

f. Establish standards for continuing education; and

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

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

a. general building contractor;

b. residential and small commercial contractor;

c. swimming pool contractor;

d. roofing contractor;

e. sheet metal contractor; and

f. underground utility and excavation contractor.

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

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

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

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

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

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

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

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

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

f. No licensed general building contractor, or residential and small commercial contractor shall act as, hold himself or herself out to be, or advertise himself or herself to be a roofing contractor unless he or she is licensed as a roofing contractor. Nothing in this section shall be construed to prevent any contractor from acting as a prime contractor where the majority of the work to be performed under the contract is within the scope of his or her license and from subcontracting to other licensed contractors that remaining work which is part of the project contracted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The provisions of this act shall apply to the following boards and commissions: the New Jersey State Board of Accountancy, the New Jersey State Board of Architects, the New Jersey State Board of Cosmetology and Hairstyling, the Board of Examiners of Electrical Contractors, the New Jersey State Board of Dentistry, the State Board of Mortuary Science of New Jersey, the State Board of Professional Engineers and Land Surveyors, the State Board of Marriage and Family Therapy Examiners, the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Optometrists, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Board of Pharmacy, the State Board of Professional Planners, the State Board of Psychological Examiners, the State Board of Examiners of Master Plumbers, the New Jersey Real Estate Commission, the State Board of Court Reporting, the State Board of Veterinary Medical Examiners, the Radiologic Technology Board of Examiners, the Acupuncture Examining Board, the State Board of Chiropractic Examiners, the State Board of Respiratory Care, the State Real Estate Appraiser Board, the State Board of Social Work Examiners, the State Board of Examiners of Heating, Ventilation Air Conditioning and Refrigeration, the Construction Trades Licensing Board, and the State Board of Physical Therapy Examiners, the Orthotics and Prosthetics Board of Examiners, the New Jersey Cemetery Board, the State Board of Polysomnography and any other entity hereafter created under Title 45 to license or otherwise regulate a profession or occupation.

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

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

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

b. In addition to the membership otherwise prescribed by law, the Governor shall appoint in the same manner as presently prescribed by law for the appointment of members, two additional members to represent the interests of the public, to be known as public members, to each of the following boards and commissions: the New Jersey State Board of Accountancy, the New Jersey State Board of Architects, the New Jersey State Board of Cosmetology and Hairstyling, the New Jersey State Board of Dentistry, the State Board of Mortuary Science of New Jersey, the State Board of Professional Engineers and Land Surveyors, the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Optometrists, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Board of Pharmacy, the State Board of Professional Planners, the State Board of Psychological Examiners, the New Jersey Real Estate Commission, the State Board of Court Reporting, the State Board of Social Work Examiners, the State Board of Examiners of Heating, Ventilation, Air Conditioning and Refrigeration, the Construction Trades Licensing Board, and the State Board of Veterinary Medical Examiners, and one additional public member to each of the following boards: the Board of Examiners of Electrical Contractors, the State Board of Marriage and Family Therapy Examiners, the State Board of Examiners of Master Plumbers, and the State Real Estate Appraiser Board. Each public member shall be appointed for the term prescribed for the other members of the board or commission and until the appointment of his successor. Vacancies shall be filled for the unexpired term only. The Governor may remove any such public member after hearing, for misconduct, incompetency, neglect of duty or for any other sufficient cause.

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

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

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

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

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

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

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

1. The provisions of this act shall apply to the following boards and commissions: the New Jersey State Board of Accountancy, the New Jersey State Board of Architects, the New Jersey State Board of Cosmetology and Hairstyling, the Board of Examiners of Electrical Contractors, the New Jersey State Board of Dentistry, the State Board of Mortuary Science of New Jersey, the State Board of Professional Engineers and Land Surveyors, the State Board of Marriage and Family Therapy Examiners, the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Optometrists, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Board of Pharmacy, the State Board of Professional Planners, the State Board of Psychological Examiners, the State Board of Examiners of Master Plumbers, the State Board of Court Reporting, the State Board of Veterinary Medical Examiners, the Radiologic Technology Board of Examiners, the Acupuncture Examining Board, the State Board of Chiropractic Examiners, the State Board of Respiratory Care, the State Real Estate Appraiser Board, the New Jersey Cemetery Board, the State Board of Social Work Examiners, the State Board of Examiners of Heating, Ventilation, Air Conditioning and Refrigeration, the Construction Trades Licensing Board, and the State Board of Physical Therapy Examiners, the State Board of Polysomnography, the Orthotics and Prosthetics Board of Examiners and any other entity hereafter created under Title 45 to license or otherwise regulate a profession or occupation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A secondary qualifying agent is responsible only for:

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

Any other work for which he or she accepts responsibility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Newspaper or periodical;

(2) Radio or television broadcast;

(3) Written or printed or photographic matter;

(4) Billboards or signs;

(5) Display of model houses or units;

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

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

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

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

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

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

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

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

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

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

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

4. This act shall be administered by the Division of **[**Housing and Development**]** Homeowners’ Protection in the State Department of **[**Community Affairs**]** Law and Public Safety, hereinafter referred to as the "agency."

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) A statement of the present condition of access to the development, the existence of any unusual conditions relating to noise or safety, which affect the development and are known to the developer, the availability of sewage disposal facilities and other public utilities including water, electricity, gas, and telephone facilities in the development to nearby municipalities, and the nature of any improvements to be installed by the developer and his estimated schedule for completion;

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

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

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

(15) The proposed public offering statement;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. As used in this act:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

p. “Division” means the Division of Homeowner Protection in the Department of Law and Public Safety.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(cf: P.L.2001, c.147, s.5)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"State law requires construction to be done by licensed contractors. You have applied for a permit under an exemption to that law. The exemption allows you, as the owner of your property, to act as your own contractor with certain restrictions even though you do not have a license. You must provide direct, onsite supervision of the construction yourself. You may build or improve a one family residence. The building or residence must be for your own use or occupancy. It may not be built or substantially improved for sale or lease. If you sell or lease a building you have built or substantially improved yourself within one year after the construction is complete, the law will presume that you built or substantially improved it for sale or lease, which is a violation of this exemption. You may not hire an unlicensed person to act as your contractor or to supervise people working on your building. It is your responsibility to make sure that people employed by you have licenses required by State law and by county or municipal licensing ordinances. You may not delegate the responsibility for supervising work to a licensed contractor who is not licensed to perform the work being done. Any person working on your building who is not licensed must work under your direct supervision and must be employed by you, which means that you must deduct F.I.C.A. and withholding tax and provide workers' compensation for that employee, all as prescribed by law. Your construction must comply with all applicable laws, ordinances, building codes, and zoning regulations."

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

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

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

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

STATEMENT

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

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

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

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

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

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

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

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