

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)

Assemblyman JOSEPH A. LAGANA

District 38 (Bergen and Passaic)

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

Co-Sponsored by:

Assemblywoman Jimenez

SYNOPSIS

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

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 2/13/2018)

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

5

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

8

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

12

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

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

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

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

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

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

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

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

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

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 "Individual" means a natural person.

46 "Primary project supervisor" means a person who possesses the
47 requisite skill, knowledge, and experience, is licensed in at least one
48 of the construction trades, and has the responsibility to supervise,

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

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

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

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

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

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

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

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

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

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

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

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

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

23

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

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

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

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

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

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

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

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

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

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

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

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

18 b. Initially, the commission shall be comprised of the following
19 10 members:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (2) Notwithstanding the requirements of subparagraph (a) of this
21 subsection, the director with the approval of the Governor shall, at
22 the time of appointment or reappointment, adjust the length of terms
23 to stagger the terms of commission members so that approximately
24 1/2 of the commission members are appointed every two years.

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

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

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

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

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

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

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

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

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

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

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

14 Three individuals who are residential and small commercial
15 contractors;

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

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

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

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

24 Two individuals who are code enforcement officials; and

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

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

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

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

45

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

- 1 a. Examine and pass on the qualifications of all applicants for
- 2 license subject to its jurisdiction, and issue a license to each
- 3 qualified successful applicant;
- 4 b. Examine, evaluate and supervise all examinations and
- 5 procedures;
- 6 c. Adopt a seal which shall be affixed to all licenses issued by
- 7 it;
- 8 d. Adopt rules and regulations pursuant to the "Administrative
- 9 Procedure Act," P.L.1968, c.410 (C.52:14B 1 et seq.) as it may
- 10 deem necessary to enable it to perform its duties under and to
- 11 enforce the provisions of this act;
- 12 e. Annually publish a list of the names and addresses of all
- 13 persons who are licensed under this act;
- 14 f. Establish standards for continuing education; and
- 15 g. Prescribe or change the charges for examinations, licensures,
- 16 renewals and other services performed pursuant to P.L.1974, c.46
- 17 (C.45:1-3.1 et seq.).
- 18
- 19 7. (New section) Any person desiring to obtain a State
- 20 contractor's license for the following professions shall make
- 21 application for licensure to the Construction Trades Licensing
- 22 Board, pay all the fees required in connection with the application,
- 23 and be examined as required by section 13 of P.L. , c. (C.)
- 24 (pending before the Legislature as this bill):
- 25 a. general building contractor;
- 26 b. residential and small commercial contractor;
- 27 c. swimming pool contractor;
- 28 d. roofing contractor;
- 29 e. sheet metal contractor; and
- 30 f. underground utility and excavation contractor.
- 31
- 32 8. (New section) a. A person shall not work as a building or
- 33 construction contractor or use the title or designation of "licensed"
- 34 in any manner concerning the construction trades listed in section 7
- 35 of P.L. , c. (C.) (pending before the Legislature as this
- 36 bill), or concerning the trade of heating, ventilation, air
- 37 conditioning and refrigeration unless licensed pursuant to the
- 38 provisions of this act, or P.L. , c. (C.) (pending before the
- 39 Legislature as Assembly, No. 1016 of 2006), or working under the
- 40 supervision of a person so licensed.
- 41 b. A person, firm, partnership, corporation or other legal entity
- 42 shall not engage in the business of contracting or advertise in any
- 43 manner as a contractor or use the title or designation of "licensed
- 44 contractor" unless authorized to act as a contractor in one of the
- 45 construction trades listed in section 7 of P.L. , c. (C.)
- 46 (pending before the Legislature as this bill) or other duly licensed
- 47 trade.

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

3
4 9. (New section) A contractor shall subcontract all electrical,
5 mechanical, plumbing, roofing, sheet metal, swimming pool, and air
6 conditioning work, unless the contractor holds a construction
7 contractor's license in the respective trade category, however:

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

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

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

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

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

40 f. No licensed general building contractor, or residential and
41 small commercial contractor shall act as, hold himself or herself out
42 to be, or advertise himself or herself to be a roofing contractor
43 unless he or she is licensed as a roofing contractor.

44 Nothing in this section shall be construed to prevent any
45 contractor from acting as a prime contractor where the majority of
46 the work to be performed under the contract is within the scope of
47 his or her license and from subcontracting to other licensed

1 contractors that remaining work which is part of the project
2 contracted.

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

9
10 10. (New section) a. The provisions of P.L. , c. (C.)
11 (pending before the Legislature as this bill) shall not apply to a
12 single family home owner who personally occupies his own
13 dwelling and who solely performs construction work on his own
14 dwelling, upon receipt of all required permits, except that any
15 construction work that requires a license tradesperson by law or
16 regulation shall be performed only by a person duly licensed to
17 perform such work.

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

24
25 11. (New section) The provisions of P.L. , c. (C.)
26 (pending before the Legislature as this bill) shall not apply to any
27 public utility company regulated by the Board of Public Utilities
28 pursuant to Title 48 of the Revised Statutes that performs
29 emergency repair services to prevent an imminent threat to the
30 health and safety of life or property, which repair services include,
31 but are not limited to, turning off, disconnecting, shutting down or
32 disabling any equipment or condition or the provision of any
33 products.

34
35 12. (New section) The provisions of P.L. , c. (C.)
36 (pending before the Legislature as this bill) shall not deny to any
37 municipality the power to inspect construction work or equipment
38 or the power to enforce the standards and manner in which
39 construction work shall be done, but no municipality, local board of
40 health or other agency shall require any contractor licensed under
41 this act to obtain any additional license, apply for or take any
42 examination, or pay any licensing fee.

43
44 13. (New section) a. On or after January 1, 2007, no person
45 shall advertise, enter into contracts or engage in work as a
46 contractor in the construction trades set forth in section 7 of
47 P.L. , c. (C.) (pending before the Legislature as this
48 bill) unless that person has first obtained a license from the

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

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

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

41
42 14. (New section) a. Every contractor's license examination
43 shall be substantially uniform and shall be designed so as to
44 establish the competence and qualifications of the applicant to
45 perform the type of work in the construction trade for which
46 licensure is sought. The examination may be theoretical or
47 practical in nature, or both.

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

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

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

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

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

36
37 16. (New section) The board may in its discretion grant
38 licenses without examination to applicants so licensed by other
39 states; provided that equal reciprocity is provided for New Jersey
40 licensed contractors by the law of the applicant's domiciliary state
41 and provided further that the domiciliary state's standards are equal
42 to or comparable to those of this State.

43
44 17. (New section) Notwithstanding any other provision of this
45 act to the contrary, the board shall, upon application to it and
46 submission of satisfactory proof and the payment of the prescribed
47 fee within six months following the effective date of this act, issue a
48 construction license in one of the trades listed in section 7 of

1 P.L. , c. (C.) (pending before the Legislature as this bill)
2 without examination to any person who has been engaged as a
3 contractor in that trade for at least five years prior to his date of
4 application for a license, provided proof of the following is
5 provided:

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

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

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

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

14 A person entitled to a license under the provisions of this section
15 shall comply with the remaining provisions of this act.
16

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

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

34 1. The provisions of this act shall apply to the following boards
35 and commissions: the New Jersey State Board of Accountancy, the
36 New Jersey State Board of Architects, the New Jersey State Board
37 of Cosmetology and Hairstyling, the Board of Examiners of
38 Electrical Contractors, the New Jersey State Board of Dentistry, the
39 State Board of Mortuary Science of New Jersey, the State Board of
40 Professional Engineers and Land Surveyors, the State Board of
41 Marriage and Family Therapy Examiners, the State Board of
42 Medical Examiners, the New Jersey Board of Nursing, the New
43 Jersey State Board of Optometrists, the State Board of Examiners of
44 Ophthalmic Dispensers and Ophthalmic Technicians, the Board of
45 Pharmacy, the State Board of Professional Planners, the State Board
46 of Psychological Examiners, the State Board of Examiners of
47 Master Plumbers, the New Jersey Real Estate Commission, the
48 State Board of Court Reporting, the State Board of Veterinary

1 Medical Examiners, the Radiologic Technology Board of
2 Examiners, the Acupuncture Examining Board, the State Board of
3 Chiropractic Examiners, the State Board of Respiratory Care, the
4 State Real Estate Appraiser Board, the State Board of Social Work
5 Examiners, the State Board of Examiners of Heating, Ventilation
6 Air Conditioning and Refrigeration, the Construction Trades
7 Licensing Board, and the State Board of Physical Therapy
8 Examiners, the Orthotics and Prosthetics Board of Examiners, the
9 New Jersey Cemetery Board, the State Board of Polysomnography
10 and any other entity hereafter created under Title 45 to license or
11 otherwise regulate a profession or occupation.
12 (cf: P.L.2005, c.308, s.8.)
13

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

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

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

1 shall be filled for the unexpired term only. The Governor may
2 remove any such public member after hearing, for misconduct,
3 incompetency, neglect of duty or for any other sufficient cause.

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

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

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

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

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

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

43

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

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

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

24
25 22. Section 2 of P.L.1973, c.254 (C.45:1-9) is amended to read
26 as follows:

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

31
32 23. Section 2 of P.L.1978, c.73 (C.45:1-15) is amended to read
33 as follows:

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

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

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

25
26 24. (New section) a. The Division of Consumer Affairs in the
27 Department of Law and Public Safety shall issue a cease and desist
28 order to prohibit any person from engaging in the business of
29 contracting who does not hold the required license or who has failed
30 to properly register under the "New Home Warranty and Builders'
31 Registration Act," P.L.1977, c.467 (C.46:3B 1 et seq.). For the
32 purpose of enforcing a cease and desist order, the department may
33 file a proceeding in the name of the state seeking issuance of an
34 injunction or a writ of mandamus against any person who violates
35 any provision of such order.

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

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

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

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

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

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

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

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

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

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

7 A secondary qualifying agent is responsible only for:

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

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

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

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

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

24 If no new primary qualifying agent has been designated within
25 60 days, all secondary qualifying agents for the business
26 organization shall become primary qualifying agents unless the
27 joint agreement specifies that one or more of them shall become
28 sole qualifying agents under such circumstances, in which case only
29 they shall become sole qualifying agents.

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

35

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

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

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

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

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

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

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

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

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

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

45

46 27. (New section) As a matter of public policy, contracts
47 entered into on or after the effective date of P.L. , c. (C.)
48 (pending before the Legislature as this bill) by an unlicensed

1 contractor shall be unenforceable in law or in equity by the
2 unlicensed contractor.

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

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

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

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

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

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

36
37 28. (New section) a. No unlicensed or unregistered person
38 associated with a contracting firm qualified by the licensee under
39 P.L. , c. (C.) (pending before the Legislature as this bill)
40 shall:

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

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

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

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

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

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

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

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

37
38 29. (New section) a. No building permit shall be issued to any
39 contractor, or to any person representing himself or herself as a
40 contractor, who has not complied with the registration requirements
41 of P.L.1977, c.467 (C.46:3B-1 et seq.) or P.L. , c. (C.)
42 (pending before the Legislature as this bill).

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

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

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

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

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

26

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 26 (1) Newspaper or periodical;
- 27 (2) Radio or television broadcast;
- 28 (3) Written or printed or photographic matter;
- 29 (4) Billboards or signs;
- 30 (5) Display of model houses or units;
- 31 (6) Material used in connection with the disposition or offer of
32 the development by radio, television, telephone or any other
33 electronic means; or

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

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

46 k. "Nonbinding reservation agreement" means an agreement
47 between the developer and a purchaser and which may be cancelled
48 without penalty by either party upon written notice at any time prior

1 to the formation of a contract for the disposition of any lot, parcel,
2 unit or interest in a planned real estate development.

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

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

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

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

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

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

23

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

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

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

31

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

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

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

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

45 (3) The name, address, and principal occupation for the past five
46 years of every officer of the applicant or person occupying a similar
47 status, or performing similar management functions; the extent and

- 1 nature of his interest in the applicant or the development as of a
2 specified date within 30 days of the filing of the application;
- 3 (4) Copies of its articles of incorporation, with all amendments
4 thereto, if the developer is a corporation; copies of all instruments
5 by which the trust is created or declared, if the developer is a trust;
6 copies of its articles of partnership or association and all other
7 papers pertaining to its organization, if the developer is a
8 partnership, unincorporated association, joint stock company, or
9 any other form of organization; and if the purported holder of legal
10 title is a person other than the developer, copies of the above
11 documents from such person;
- 12 (5) A legal description of the lands offered for registration,
13 together with a map showing the subdivision proposed or made, and
14 the dimensions of the lots, parcels, units, or interests, as available,
15 and the relation of such lands to existing streets, roads, and other
16 improvements;
- 17 (6) Copies of the deed or other instrument establishing title to
18 the subdivision in the developer, and a statement in a form
19 acceptable to the agency of the condition of the title to the land
20 comprising the development, including encumbrances as of a
21 specified date within 30 days of the date of application by a title
22 opinion of a licensed attorney, or by other evidence of title
23 acceptable to the agency;
- 24 (7) Copies of the instrument which will be delivered to a
25 purchaser to evidence his interest in the development, and of the
26 contracts and other agreements which a purchaser will be required
27 to agree to or sign;
- 28 (8) Copies of any management agreements, service contracts, or
29 other contracts or agreements affecting the use, maintenance or
30 access of all or a part of the development;
- 31 (9) A statement of the zoning and other government regulations
32 affecting the use of the development including the site plans and
33 building permits and their status, and also of any existing tax and
34 existing or proposed special taxes or assessments which affect the
35 development; and a statement of the existing use of adjoining lands;
- 36 (10) A statement that the lots, parcels, units or interests in the
37 development will be offered to the public, and that responses to
38 applications will be made without regard to marital status, sex, race,
39 creed, or national origin;
- 40 (11) A statement of the present condition of access to the
41 development, the existence of any unusual conditions relating to
42 noise or safety, which affect the development and are known to the
43 developer, the availability of sewage disposal facilities and other
44 public utilities including water, electricity, gas, and telephone
45 facilities in the development to nearby municipalities, and the
46 nature of any improvements to be installed by the developer and his
47 estimated schedule for completion;

- 1 (12) In the case of any conversion an engineering survey shall be
2 required, which shall include mechanical, structural, electrical and
3 engineering reports to disclose the condition of the building;
- 4 (13) In the case of any development or portion thereof against
5 which there exists a blanket encumbrance, a statement of the
6 consequences for an individual purchaser of a failure, by the person
7 or persons bound, to fulfill obligations under the instrument or
8 instruments creating such encumbrances and the steps, if any, taken
9 to protect the purchaser in such eventuality;
- 10 (14) A narrative description of the promotional plan for the
11 disposition of the lots, parcels, units or interests in the development,
12 together with copies of all advertising material which has been
13 prepared for public distribution, and an indication of their means of
14 communication;
- 15 (15) The proposed public offering statement;
- 16 (16) A current financial statement, which shall include such
17 information concerning the developer as the agency deems to be
18 pertinent, including but not limited to, a profit and loss statement
19 certified by an independent public accountant and information
20 concerning any adjudication of bankruptcy during the last five years
21 against the developer, or any principal owning more than 10% of
22 the interest in the development at the time of filing, provided,
23 however, that this shall not extend to limited partners, or others
24 whose interests are solely those of investors;
- 25 (17) Copies of instruments creating easements or other
26 restrictions;
- 27 (18) A statement of the status of compliance with the
28 requirements of all laws, ordinances, regulations, and other
29 requirements of governmental agencies having jurisdiction over the
30 premises;
- 31 (19) Such other information, documentation, or certification as
32 the agency deems necessary in furtherance of the protective
33 purposes of this act, including such information as may be required
34 pursuant to P.L. , c. (C.) (pending before the Legislature
35 as this bill).
- 36 b. The information contained in any application for registration
37 and copies thereof, shall be made available to interested parties at a
38 reasonable charge and under such regulations as the agency may
39 prescribe.
- 40 c. A developer may register additional property pursuant to the
41 same common promotional plan as those previously registered by
42 submitting another application, providing such additional
43 information as may be necessary to register the additional lots,
44 parcels, units or interests, which shall be known as a consolidated
45 filing.
- 46 d. The developer shall immediately report any material changes
47 in the information contained in an application for registration. The

1 term "material changes" shall be further defined by the agency in its
2 regulations.

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

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

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

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

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

39

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

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

- 1 (1) The name and principal address of the developer;
- 2 (2) A general narrative description of the development stating
3 the total number of lots, units, parcels, or interests in the offering,
4 and the total number of such interests planned to be sold, leased or
5 otherwise transferred;
- 6 (3) Copies of any management contract, lease of recreational
7 areas, or similar contract or agreement affecting the use,
8 maintenance, or access of all or any part of the development, with a
9 brief and simple narrative statement of the effect of each such
10 agreement upon a purchaser, and a statement of the relationship, if
11 any, between the developer and the managing agent or firm;
- 12 (4) (a) The significant terms of any encumbrances, easements,
13 liens, and restrictions, including zoning and other regulations,
14 affecting such lands and each unit, lot, parcel, or interest, and a
15 statement of all existing taxes and existing or proposed special taxes
16 or assessments which affect such lands; and
17 (b) In the case of a conversion subject to the provisions of the
18 "Tenant Protection Act of 1992," P.L.1991, c.509 (C.2A:18-61.40 et
19 al.), the information required pursuant to section 14 of P.L.1991,
20 c.509 (C.2A:18-61.53);
- 21 (5) (a) Relevant community information, including hospitals,
22 health and recreational facilities of any kind, streets, water supply,
23 levees, drainage control systems, irrigation systems, sewage
24 disposal facilities and customary utilities; and
25 (b) The estimated cost, size, date of completion, and
26 responsibility for construction and maintenance of existing and
27 proposed amenities which are referred to in connection with the
28 offering or disposition of any interest in the subdivision or
29 subdivided lands;
- 30 (6) A copy of the proposed budget for the operation and
31 maintenance of the common or shared elements or interests;
- 32 (7) Additional information required by the agency to assure full
33 and fair disclosure to prospective purchasers.
- 34 b. The public offering statement shall not be used for any
35 promotional purposes before registration of the development and
36 afterwards only if it is used in its entirety. No person may advertise
37 or represent that the agency approves or recommends the
38 development or dispositions therein. No portion of the public
39 offering statement may be underscored, italicized, or printed in
40 larger or heavier or different color type than the remainder of the
41 statement, unless the agency requires or permits it.
- 42 c. The agency may require the developer to alter or amend the
43 proposed public offering statement in order to assure full and fair
44 disclosure to prospective purchasers, and no change in the
45 substance of the promotional plan or plan of disposition or
46 development of a planned real estate development may be made
47 after registration without the approval of the agency. A public

1 offering statement shall not be current unless all amendments have
2 been incorporated.

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

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

17

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

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

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

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

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

41

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

44 6. The **【Commissioner of Community Affairs】** Director of the
45 Division of Homeowner Protection shall cause to be prepared and
46 distributed, for the use and guidance of associations, executive
47 boards and administrators, explanatory materials and guidelines to

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

13
14 37. Section 1 of P.L.1993, c.258 (C.45:22A-49) is amended to
15 read as follows:

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

17 "Agency" means the Division of **【Housing and Development in**
18 **the Department of Community Affairs】** Homeowner Protection in
19 the Department of Law and Public Safety.

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

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

25
26 38. Section 6 of P.L.1993, c.258 (C.45:22A-54) is amended to
27 read as follows:

28 6. Any person aggrieved by any order issued by the agency
29 under this act shall be entitled to a hearing before the
30 **【Commissioner of Community Affairs】** Attorney General pursuant
31 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
32 1 et seq.). The application for such hearing must be filed with the
33 agency within 10 business days of the receipt by the applicant of
34 notice of the order complained of.

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

36
37 39. Section 2 of P.L.1977, c.467 (C.46:3B-2) is amended to read
38 as follows:

39 2. As used in this act:

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

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

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

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

47 e. "Owner" means any person for whom the new home is built
48 or to whom the home is sold for occupation by him or his family as

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

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

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

23
24 41. Section 3 of P.L.1977, c. 467 (C.46:3B-3) is amended to
25 read as follows:

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

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

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

44 (1) **One year** Two years from and after the warranty date the
45 dwelling shall be free from defects caused by faulty workmanship
46 and defective materials due to noncompliance with the building
47 standards as approved by the commissioner pursuant to **paragraph**

1 3a. of this act】 subsection a. of this section, except as set forth in
2 【section 3b. (2) and (3)】 paragraphs (2) and (3) of this subsection.

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

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

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

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

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

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

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

37

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

40 5. No builder shall engage in the business of constructing new
41 homes unless he is registered with the department and the division.
42 The department and the division shall provide application forms for
43 such registration and shall prescribe the information to be included
44 therein. Each application shall be accompanied by a reasonable fee,
45 prescribed by the commissioner and the Director of the Division of
46 Homeowners' Protection, and proof, satisfactory to the
47 commissioner and director, of participation in the new home

1 warranty security fund or an approved alternate new home warranty
2 security program. Upon receipt of the above, the department shall
3 issue a certificate of registration.

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

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

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

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

25 In addition to the requirements of P.L.1977, c.467 (46:3B-1 et
26 seq.) a builder shall comply with any additional registration and
27 licensing requirements of P.L. , c. (C.) (pending before the
28 Legislature as this bill).
29 (cf: P.L.1977, c.467, s.5)
30

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

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

46 b. The commissioner may forward to the director a
47 recommendation to deny, suspend or revoke any certificate of
48 registration, or may refer a builder to the appropriate licensing

1 board for disciplinary action, after affording the registrant or
2 applicant the opportunity for a hearing in accordance with the
3 provisions of the Administrative Procedures Act (P.L.1968, c.410,
4 C.52:14B-1 et seq.) applicable to contested cases, if the registrant
5 or applicant has:

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

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

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

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

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

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

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

20
21 44. Section 7 of P.L.1977, c.467 (C.46:3B-7) is amended to read
22 as follows:

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

41 b. The State Treasurer shall hold, manage and, through the
42 Division of Investment, invest and reinvest moneys in the fund and
43 credit all income earned thereon to the fund in the same manner as
44 provided by law for the investment of pension and retirement funds
45 administered by the State. The department shall keep the State
46 Treasurer and the board advised of anticipated cash demands for
47 payment of claims against the fund. No funds shall be spent,
48 appropriated or transferred from the fund other than for the express

1 purposes of paying claims or costs related to administering the
2 program or the fund as enumerated in subsection a, c, or e of this
3 section. In the event funds are spent, appropriated or transferred
4 from the fund for other purposes in violation of this subsection, the
5 obligation of participating builders to contribute to the fund shall
6 be suspended until such time as the funds are replenished, and if the
7 amount in the fund shall become insufficient thereafter to pay
8 claims or make awards, the payment of claims and making of
9 awards shall be made from the General Fund. The Joint Budget
10 Oversight Committee, or its successor, shall have the authority to
11 investigate complaints of violative fund transfers under this section,
12 and shall order the Commissioner of Community Affairs to suspend
13 collection from participating builders if it determines that the
14 provisions of this subsection have been violated.

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

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

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

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

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

29
30 45. Section 1 of P.L.1992, c.56 (C.46:3B-8.1) is amended to
31 read as follows:

32 1. Whenever a builder participating in an alternative new home
33 warranty program approved by the commissioner pursuant to
34 section 8 of P.L.1977, c.467 (C.46:3B-8) issues a warranty
35 guaranteed by that plan, the warranty guarantor shall, before the
36 15th day of the month next following the month in which the new
37 home covered by the warranty is conveyed to the owner, file with
38 the commissioner a statement listing: (1) the name of the approved
39 program as listed with the department; (2) the name or names and
40 **【Social Security】** identification number or numbers of the owner or
41 owners to whom the warranty was issued, which identification
42 number shall not be the social security number, the warranty date,
43 and the enrollment number or other designation by which the
44 warranty is identified in the records of the approved program; (3)
45 the name, address and registration number of the registered builder
46 by whom the warranty has been issued; (4) the sales price of the
47 new home upon which the warranty was issued, its type and method
48 of construction in accordance with categories established by the

1 commissioner, and its location by street address or its block and lot
2 number designation in the tax records of the municipality in which
3 it is located; and (5) such other information as the commissioner
4 may require in order to carry out the provisions and purposes of this
5 act. Personal identification information of owners provided under
6 this section shall not be considered a public record or subject to
7 disclosure as such.

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

9
10 46. Section 3 of P.L.1992, c.56 (C.46:3B-8.3) is amended to
11 read as follows:

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

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

22
23 47. Section 9 of P.L.1977, c.467 (C.46:3B-9) is amended to read
24 as follows:

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

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

36
37 48. Section 2 of P.L.1966, c.39 (C.56:8-14) is amended to read
38 as follows:

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

1 warrant and shall issue in the name of the State, upon the complaint
2 of the Attorney General or any other person.

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

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

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

21 The court may reduce the amounts of an award to an individual
22 who received payments as a result of warranty claims pursuant to
23 P.L.1977, c.457 (C.46:3B-1 et seq.) for identical items.
24 (cf: P.L.1999, c.298, s.4).
25

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

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

1 responsibility to make sure that people employed by
2 you have licenses required by State law and by
3 county or municipal licensing ordinances. You may
4 not delegate the responsibility for supervising work
5 to a licensed contractor who is not licensed to
6 perform the work being done. Any person working on
7 your building who is not licensed must work under
8 your direct supervision and must be employed by
9 you, which means that you must deduct F.I.C.A. and
10 withholding tax and provide workers' compensation
11 for that employee, all as prescribed by law. Your
12 construction must comply with all applicable laws,
13 ordinances, building codes, and zoning regulations."
14

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

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

44 51. This act shall take effect on the first day of the third month
45 next following enactment, however the Department of Law and
46 Public Safety and the Department of Community Affairs may take
47 such anticipatory action as necessary to effectuate the provisions of
48 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

1 building projects to be registered with that department, if the
2 projects are not registered under “The Planned Real Estate
3 Development Full Disclosure Act,” P.L.1977, c.419 (C.45:22A-21
4 et seq.). The bill also reallocates the oversight for the latter act,
5 which provides consumer protections in the sale of certain new
6 construction with commonly-owned elements, to the Department of
7 Law and Public Safety.

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

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

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