



State of New Jersey

N J L R C
New Jersey Law Revision Commission

ANNUAL REPORT

2003

Report to the Legislature of the State of New Jersey
as provided by C. 1:12A-9.

February 1, 2004

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I. MEMBERS AND STAFF OF THE COMMISSION IN 2003

The members of the Commission are:

Albert Burstein, Chairman, Attorney-at-Law

Vito A. Gagliardi, Jr., Vice-Chairman, Attorney-at-Law

John Adler, Chairman, Senate Judiciary Committee, Ex officio

Daniel F. Becht, Attorney-at-Law, as of March 13, 2003

Peter A. Buchsbaum, Attorney-at-Law

Stuart Deutsch, Dean, Rutgers Law School - Newark, Ex officio
Represented by **Bernard Bell**, Professor of Law

William L. Gormley, Chairman, Senate Judiciary Committee, Ex officio

Linda R. Greenstein, Chairman, Assembly Judiciary Committee, Ex officio

Patrick Hobbs, Dean, Seton Hall Law School, Ex officio
Represented by **William Garland**, Professor of Law

Hugo Pfaltz, Jr., Attorney-at-Law, until March 13, 2003

Rayman Solomon, Dean, Rutgers Law School - Camden, Ex officio,
Represented by **Grace Bertone**, Attorney-at-Law

The staff of the Commission is:

John M. Cannel, Executive Director

John J. A. Burke, Assistant Executive Director

Laura C. Tharney, Counsel

Judith Ungar, Counsel

II. HISTORY AND PURPOSE OF THE COMMISSION

New Jersey has a tradition of law revision. The first Law Revision Commission was established in 1925 and it produced the Revised Statutes of 1937. The Legislature, however, intended the work of revision and codification to continue after the enactment of the Revised Statutes. As a result, the Law Revision Commission continued in operation. After 1939, its functions passed to a number of successor agencies, most recently the Legislative Counsel.¹

In 1985, the Legislature transferred the functions of statutory revision and codification to the newly created² New Jersey Law Revision Commission,³ which commenced work in 1987. Since that time, the Commission has filed 60 reports with the Legislature, 29 of which have been enacted into law. In addition to the reports already considered by the Legislature, several recommendations are now pending, including a comprehensive revision of New Jersey's election law prepared in an effort to update the law and to comply with recent federal mandates.

¹ N.J.S.A. 52:11-61.

² The Law Revision Commission was created by L.1985, c.498, and charged with the duty to:

a. Conduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it for the purpose of discovering defects and anachronisms therein, and to prepare and submit to the Legislature, from time to time, legislative bills designed to

(1) Remedy the defects, (2) Reconcile conflicting provisions found in the law, and (3) Clarify confusing and excise redundant provisions found in the law;

b. Carry on a continuous revision of the general and permanent statute law of the State, in a manner so as to maintain the general and permanent statute law in revised, consolidated and simplified form under the general plan and classification of the Revised Statutes and the New Jersey Statutes;

c. Receive and consider suggestions and recommendations from the American Law Institute, the National Conference of Commissioners on Uniform State Laws, and other learned bodies and from judges, public officials, bar associations, members of the bar and from the public generally, for the improvement and modification of the general and permanent statutory law of the State, and to bring the law of this State, civil and criminal, and the administration thereof, into harmony with modern conceptions and conditions; and

d. Act in cooperation with the Legislative Counsel in the Office of Legislative Services, to effect improvements and modifications in the general and permanent statutory law pursuant to its duties set forth in this section, and submit to the Legislative Counsel and the Division for their examination such drafts of legislative bills as the commission shall deem necessary to effectuate the purposes of this section.

³ L.1985, c. 498.

The objective of the Commission is to simplify, clarify and modernize New Jersey statutes. Pursuant to that objective, the Commission conducts an ongoing review of the statutes in order to identify areas that require revision. The scope of the revision performed by the Commission includes the correction of inconsistent, obsolete and redundant statutes, as well as comprehensive modifications of select areas of the law.

Before choosing an area of the law for revision, the Commission considers recommendations from the American Law Institute, the National Conference of Commissioners on Uniform State Laws, and other learned bodies and public officers. Once a revision project begins, the Commission extensively examines local law and practices, and the law of other jurisdictions. The Commission also consults with experts in the particular area of the law, and seeks input from individuals and organizations familiar with the practical operation and impact of the existing statutes. The Commission continues its efforts to obtain input from these various sources throughout the drafting process. When a revision is completed, it is submitted to the New Jersey Legislature.

The Commission's work has been published in law journals, cited by the New Jersey Courts in several reported opinions, and has been used by law revision commissions in other states.

The meetings of the Commission are open to the public and the Commission actively solicits public comment on its tentative reports, which are widely distributed to interested persons and groups. In 1996, the Commission established a website where its current projects and its reports are available to the public on the Internet at <http://www.lawrev.state.nj.us>.

III. FINAL REPORTS AND RECOMMENDATIONS

A final report contains the decision of the Commission on a particular area of the law. The report contains an analysis of the subject, proposed statutory language and appropriate commentary. A final report is approved and adopted after the public

has had an opportunity to comment on tentative drafts of the report, and is filed with the Legislature. After filing, the Commission and its staff work with the Legislature to draft the report in bill form and to facilitate its enactment.

In 2003, the New Jersey Law Revision Commission published two final reports and recommendations to the Legislature.

A. Election Law

In 2003, the Commission published a Final Report and Recommendations Relating to Elections. (See Appendix A) The Final Report and Recommendations on Elections substantially revises certain aspects of the New Jersey law regulating elections (19:1-1 to 19:60-12).

The New Jersey election law may be divided into three areas, each pertaining to a different aspect of the electoral process and each consisting of numerous statutory sections. The first area of the law concerns the way an individual obtains a place on a ballot (19:1-1 through 19:3-29, 5-1 *et seq.* and 19:12-1 through 19:13-23). The second area of the law concerns the manner in which an individual casts a vote (19:4-1 *et seq.*, 19:6-1 through 19:11-1, 19:14-1 through 19:37-5 and 19:47-1 through 19:60-12). The third area of the law pertains to election contributions and expenditures (19:39-1 through 19:46-14). The Report addresses the first and second of these three areas.

The initial impetus for the revision was the 2000 Presidential election, which revealed problems with state election systems and caused federal and state governments to re-examine their statutes.

Examination of the New Jersey statutes revealed that New Jersey election law was an appropriate candidate for revision. Originally enacted in the 1930s, the statute does not presently address recent developments in technology or mirror current election practices. While the Legislature has amended Title 19 since that time, the law has retained provisions that are neither necessary nor appropriate, while failing to reflect the impact of technological advances on current procedures or the time periods necessary to accomplish certain tasks.

In addition, recent federal law pertaining to elections imposes requirements on the states that necessitate changes to New Jersey's election law. Significantly, the *Help America Vote Act of 2002*, Pub. L. 107-252, requires the implementation of a statewide voter registration system. The New Jersey registration system is presently distributed throughout the twenty-one counties. The federal law also requires the widespread availability of provisional voting, increased accessibility of voting machines, an opportunity for voters to verify and correct their ballots before casting their votes, the discontinuation of obsolete voting methods and the increased use of available technologies, and the implementation of an administration complaint procedure for violations of federal voting law. The revised statutes incorporate the changes required by federal law while at the same time endeavoring to clarify, simplify and streamline the election process.

The New Jersey Legislature has clearly recognized the need to reform New Jersey Election law. At the time of the dissemination of the Commission's first Comprehensive Tentative Report in June of 2002, there were more than 70 pending bills pertaining to election issues.

Presently, New Jersey Election Law - Title 19, consists of two complete volumes of the New Jersey statutes. Many of its provisions pertain to obsolete voting systems, such as paper ballots and lever machine balloting, which are no longer widely used. Other provisions are duplicative and some, although they deal with one subject, are scattered throughout Title 19. In addition, some sections of the statute are overly detailed and include details better left to administrative rule making, while others leave gaps in coverage. The result is an unclear body of law not easily accessible to the government officials and others who must rely upon it. It is likely that the current statutes are even less accessible to concerned citizens who have limited contact with its provisions and are unfamiliar with its subtleties and with the various local practices that have developed over the years.

The Commission's Final Report contains recommendations to update New Jersey's law, to bring it into compliance with federal mandates, to reflect current realities of the voting process, and to allow for further modification of voting systems and technologies. The goal is to increase access to the vote and to make it easier for

a citizen to vote. To do so, the Report, unlike existing law, uses machine neutral language. The current statute focuses primarily on the use of paper ballots and lever machine balloting, neither of which is widely used anymore. As voting technology continues to develop, machine-neutral language is useful because it does not tie the law to a single voting system, which the passage of time may render, obsolete.

The Report recommends the adoption of a statewide voter registration system. This recommendation complies with the new federal law. In addition to the requirements of the federal law, the transition to a central official file of voter registration records is warranted in New Jersey with its dense and highly mobile population and its relatively small number of counties. Statewide voter registration permits voters who move from one county to another to vote in their new location as easily as they could if they simply had moved within their voting district.

The Report also creates a Commission on Elections. While the day-to-day responsibilities associated with elections will continue to be handled by personnel at the county level, the state-level entity is necessary to oversee the proposed statewide registration. In addition, the Commission would enforce the provisions of the statute to achieve more statewide uniformity in all aspects of the electoral process.

The Report recommends other significant changes including the expansion of the availability of absentee voting. The Report eliminates the current requirement that a voter provide a reason for voting by absentee ballot, and permits such voting on request. Various groups who presented information to the Commission asked that absentee voting be available without requiring justification.

The comments received by the Commission in response to the extensive distribution of its Tentative Reports suggest that most of the recommendations contained in this Report are acceptable to the individuals throughout the State who would be affected by the implementation of the proposed changes. Prompt consideration of the remaining issues by the Legislature should allow for the resolution of those limited issues in time to allow New Jersey to comply with the federal mandates within the deadlines imposed by the federal law.

This Report is to be interpreted in a manner consistent with federal law, including the *Help America Vote Act of 2002*, P.L. 107-252. Any implementation of the provisions of this report should be undertaken with an awareness of the deadlines imposed by that new federal law, which requires that every state comply with the provisional voting and voting information requirements, the registration by mail requirements, and the computerized statewide voter registration provisions by January 1, 2004, unless a waiver is granted for the latter; and with the voting systems standards by January 1, 2006.

B. Title Recordation

In 2003, the Commission published a Final Report and Recommendations Relating to Title Recordation. (See Appendix B) The Final Report and Recommendations substantially revises the statutes pertaining to the recording of title documents following the enactment of the federal Electronic Signatures in Global and National Commerce Act (E-sign), 15 U.S.C. §7001 *et seq.*, and New Jersey's enactment of the Uniform Electronic Transactions Act (UETA), L.2001, c.116. This legislation requires the acceptance of electronic alternatives to paper documents. While the use of electronic deeds and mortgages is not expected to occur in the near term, both E-sign and UETA encourage the development of systems that will accept electronic documents without disrupting the ongoing process of title recordation.

The New Jersey statutes related to the recording and indexing of title documents are contained in Title 46, chapters 15 to 26. Most of these statutes date from a period when recording meant the inclusion of documents in large well-bound books of good paper. The statutes initially were amended to allow recording offices to microfilm documents. Later amendments in 1997 permitted the use of any other method of recording that was "in conformance with rules, standards and procedures promulgated by the Division of Archives and Records Management in the Department of State and approved by the State Records Committee pursuant to its authority under section 6 of P.L.1994, c.140 (C.47:1-12) and the 'Destruction of Public Records Law (1953),' P.L.1953, c.410 (C.47:3-15 *et seq.*)." 46:19-1. This system for approving new methods of recording documents has the advantage of not requiring any particular

manner of recording, therefore it will not become obsolete with changes of recording technology.

The increased use of new methods of recording that affect the way documents are recorded and processed, however, necessitates an increase in regulatory authority to assure uniformity.

The proposed statutory language contained in this Tentative Report (the revision) addresses the methods of recording and indexing and reflects the same approach as the existing law. References to separate sets of books or separate databases for different kinds of documents have been deleted, since with modern technology, an index serves the same function. Requirements for marginal notation of documents also have been deleted. Most recording offices do not retain paper documents; redefining marginal notation in that context raises conceptual problems, and computerized indexes serve the same purpose. In addition, the revision attempts to simplify the statutes, combining overlapping provisions and deleting unnecessary ones. The current Chapter 16, for example, begins with a section that characterizes and lists the documents that may be recorded. Other statutory sections that address the recording of particular kinds of documents follow Chapter 16. In the revision, these sections have been combined into one section that lists documents entitled to recording, although in an exercise of caution, the revision retains specifically listed documents that arguably might fall within more general categories.

The general prerequisites for recording found in the current statutes are the result of the Commission's work in 1989. That effort generally was successful in simplifying the process of determining whether a document may be recorded. The scope of the Commission's 1989 report, however, was narrow. Exceptions and additions to the recording requirements found in other sections of the statute were left uncompiled. The current revision gathers together those sections, combining them where appropriate. In addition, while the 1989 report standardized the requirements for the most commonly recorded documents, issues regarding unusual documents were not addressed. For example, the question of how to meet the recording requirements if a document is not a conveyance, and is not prepared by the person who seeks to record it, had not been previously answered by the statute. The

practice of requiring an affidavit accompanying such a document is now reflected in the revision.

The revision also includes language allowing format requirements for documents. The current statutes contain some limitations on the size of paper documents and on the quality of paper used. The problem of formatting becomes more acute if electronic equivalents to paper documents are to be accepted. Format requirements must be standardized throughout the State so that recording offices can be ready to accept electronic documents from a variety of sources, and so that persons can know and comply with them regardless of the office in which they are being recorded. It must be acknowledged, however, that conventional paper documents will continue to be recorded for the foreseeable future. This revision is a first step toward balancing the need to use technological advances where appropriate, with the recognition that it is not appropriate to mandate an immediate switch to the latest technological development.

IV. TENTATIVE REPORTS

A tentative report represents the first settled attempt of the Commission to revise an area of law. It is the product of lengthy deliberations, but it is not final. A tentative report is distributed to the general public for comment. The Commission considers these comments and amends its report.

In 2003, the Commission published four tentative reports.

A. Title Recordation

In 2003, the Commission published its Second Tentative Report relating to Title Recordation. (Appendix C) See above Final Report and Recommendations.

B. Aviation

In 2003, the Commission published its Second Tentative Report relating to Aviation. (Appendix D)

In 1989, in conjunction with the Department of Transportation, the New Jersey Law Revision Commission began a project to revise the laws of New Jersey relating to the subject of transportation. The project is large, involving consideration of Titles 27 (Highways) and 6 (Aviation), as well as parts of other titles; it includes statutes on subjects as diverse as the construction and operation of state highways, and the regulation of billboards, railroads, buses, and aviation. The result of the project will be a new Title 27A containing a revision of the law on transportation.

This Report on Aviation is the first completed part of the project. The three chapters in the report, chapters 41 through 43 of Title 27 A, replace all of Title 6, Aviation. The first contains the general state law regulating aeronautics. It replaces an accumulation of statutes on aviation dating back to the 1920's and 1930's. The second and third chapters are substantial re-enactments of the New Jersey Air Safety and Hazardous Zoning Act of 1983 (as amended) and the New Jersey Airport Safety Act of 1983.

The report updates one completed approximately a decade ago by Commission staff. No action was taken by the Legislature on that prior report, and it is the goal of Commission staff to completely update the earlier project and resubmit it to the Legislature for action.

C. Transportation

In 2003, the Commission published its Second Tentative Report relating to Title 27A - Transportation. (Appendix E)

This Tentative Report is the largest part of the project to revise the laws relating to transportation. It includes all of the subject matter now covered by Title 27 - Highways. This material has been recompiled as parts of Title 27A - Transportation. The first six chapters concern the Department of Transportation and transportation policy generally. The next group of chapters, 11 through 19, concerns highway transportation. The last group of chapters concerns various programs administered by the Transportation Department.

The original revision by the Commission in 1993 varies with the nature of the material revised. In some cases, entirely new statutes have been written. That was the case with Chapter 3 - Property, where the material was fragmented and anachronistic, and with the part of Chapter 11 - State Highways, that concerns the mapping of highway routes, where the material does not reflect practice. Where the source material is relatively new, it merely has been edited to make it consistent in form with the other parts of the proposed new Title 27A - Transportation. Examples of that approach include Chapter 14 - Access Management and Chapter 61 - Development Districts.

The latest revision of Title 27A integrates current case law and legislative changes.

D. Motor Vehicle Liens

In 2003, the Commission published its Tentative Report relating to Motor Vehicle Liens. (Appendix F)

This project was begun in response to the opinion of the Appellate Division in *General Electric Capital Auto Lease v. Violante*, 358 N.J. Super. 171 (App. Div. 2003), which indicated "that the Legislature might wish to study the impact of certain language in *N.J.S.A. 2A:44-21*, bearing upon the garage keepers' lien, in the face of contemporary transactional realities." That case held that a lien for service to a motor vehicle was not effective against the lessor of the vehicle. In affirming the lower court's decision, Judge Kestin explicitly stated that the Appellate Court is bound

by "three cases from the third decade of the last century" though it might wish otherwise.

In 1994, The New Jersey Law Revision Commission examined in detail the six New Jersey artisans' liens statutes. These statutes establish liens for storage of, or work done on, goods which one person (owner) entrusts to another (lienor) who performs the service. The focus of the Commission's Report was to correct procedural defects in these statutes. Two of the six statutes require rather than allow sales in the absence of payment, and both were held unconstitutional. The Garage Keepers Lien Act provides for mandatory public sale of an automobile if the indebted owner does not post either the full amount of the disputed garage bill or a double bond, with court costs. The mandatory public sale procedure was held "unconstitutional under the Fourteenth Amendment in failing to afford all automobile owners the opportunity to be heard judicially prior to divestment of title." *Whitmore v. N.J. Div. Of Motor Vehicles*, 137 N.J. Super. 492, 500 (Ch. Div. 1975). (The other mandatory sale lien statute, the Stableman's Lien Act, was held unconstitutional in *White Birch Farms v. Garritano*, 233 N.J. Super. 553, 557-558 (L. Div. 1987).

The 1994 Commission Report on Distraint and Artisans' Liens proposed a single artisan's lien statute to replace most of the current statutes dealing with particular trades. However, as the Introduction to the report stated:

The one statute not replaced by this proposal is Garage Keepers and Automobile Repairmen. The Commission recommends repeal of the current statute and amendment of the Abandoned Motor Vehicles laws, N.J.S. 39:10A-8 through 39:10A-20. Change in ownership of motor vehicles and boats requires adherence to certificate of title requirements, which the proposal does not encompass. Motor vehicles and boats are excluded from the proposal for this reason.

The 1994 recommendations provide a context for drafting a statute on liens for service to motor vehicles, but none of those recommendations addresses the issue of the extent to which these liens should be enforceable against lessors of motor vehicles or holders of a security interest in motor vehicles. There is little financial difference between a lease, a conditional sale and a chattel mortgage. While distinctions can be made among them, all provide methods of financing a car. Under

current law, all are treated the same, and the Commission finds no reason to change that.

In some other respects, the proposed statute would change current law and practice. Current law makes a lessor or secured lender immune from the effects of the lien. However, in practice, a lessor or secured lender usually has to satisfy the lien to gain possession of the vehicle. Making lessors and secured lenders totally immune from these liens does not provide a fair result. If a lessor can reclaim a car that has been repaired without paying for the repair, he is unjustly enriched at the expense of the repair shop. But it is wrong to force a lessor to pay for months of storage of the car when he was not notified that the car was incurring these charges nor given a chance to claim the car and avoid the cost.

A fair statute requires careful balancing of the legitimate interests of repair, car towing and storage businesses, lessors, secured parties, and owner-drivers. The proposed statute attempts this balance. In general, liens for service to a vehicle are made enforceable against all parties. Liens for vehicle storage are made enforceable against a party after that party is notified and given a chance to reclaim the car. To assure that the rules set out in the statute apply in practice, a claimant is given a simple court remedy to reclaim a vehicle quickly, leaving the decision on the lawful amount of the lien until afterward. But a deposit of the asserted lien amount is required so that the lien holder is protected.

V. WORK IN PROGRESS

The Commission decided to review certain of its older reports (such as Transportation) on which no legislative action was taken, and bring those reports up-to-date so that they may be resubmitted for action. Aviation, the initial section of the Transportation project, was completed during the first half of 2003, and other parts were finished later in the year.

A new project begun by the Commission staff in 2003 and carried into 2004 concerns the law pertaining to motor vehicles. After reviewing this area of the law,

the Commission determined that the three volumes of the statute that comprise Title 39 are appropriate candidates for revision.

The basic statutory provisions concerning motor vehicles were drafted in the 1920s. Periodic modifications and accretions over time have resulted in a collection of layered statutes containing overlapping, contradictory and obsolete provisions.

The goal of the Commission with regard to this revision is not to significantly modify the substance of the law, but to consolidate and, where appropriate, restructure the law so that it is consistent, organized and accessible.

Another new project concerns Weights, Measures and Containers, the first chapter of Title 51. The purpose of the title is consumer protection. Title 51 comprises 13 chapters regulating the sale, transportation and licensing of commodities. Administrative regulations (N.J.A.C. 13:47C-1.1 et seq.) further delineate the statutory provisions, and state, county and municipal authorities enforce the system of controlling the trade of commodities. The mosaic of law and regulations governing weights and measures developed gradually over more than a century, undergoing periodic, though sporadic, amendment.

Chapter 1, containing 133 sections, is the longest chapter in Title 51, and possibly its most important. It tracks the federal Fair Packaging and Labeling Act, 15 U.S.C.A. Sect. 1451 et seq. The New Jersey Legislature last revised Chapter 1 in 1986.

State of New Jersey

N J L R C

New Jersey Law Revision Commission

FINAL REPORT AND RECOMMENDATIONS

relating to

ELECTION LAW

MARCH 2003

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Introduction

The Final Report and Recommendations on Elections substantially revises certain aspects of the New Jersey law regulating elections (*N.J.S.A.* 19:1-1 to *N.J.S.A.* 19:60-12).

The New Jersey election law may be divided into three areas, each pertaining to a different aspect of the electoral process and each consisting of numerous statutory sections. The first area of the law concerns the way an individual obtains a place on a ballot (*N.J.S.A.* 19:1-1 through 19:3-29, *N.J.S.A.* 5-1 *et seq.* and *N.J.S.A.* 19:12-1 through 19:13-23). The second area of the law concerns the manner in which an individual casts a vote (*N.J.S.A.* 19:4-1 *et seq.*, *N.J.S.A.* 19:6-1 through 19:11-1, *N.J.S.A.* 19:14-1 through 19:37-5 and *N.J.S.A.* 47-1 through 19:60-12). The third area of the law pertains to election contributions and expenditures (*N.J.S.A.* 19:39-1 through 46-14). The Report addresses the first and second of these three areas.

The initial impetus for the revision was the 2000 Presidential election which revealed problems with state election systems and caused federal and state governments to re-examine their statutes.

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The New Jersey Legislature has clearly recognized the need to reform New Jersey Election law. At the time of the dissemination of the Commission's first Comprehensive Tentative Report in June of 2002, there were more than 70 pending bills pertaining to election issues. More than 30 bills dealing with election law issues have already been introduced in the 2002-2003 Legislative Session.

Presently, New Jersey Election Law consists of two complete volumes of the New Jersey statutes found at Title 19. Many of its provisions pertain to obsolete voting systems, such as paper ballots and lever machine balloting, which are no longer widely used. Other provisions are duplicative and some, although they deal with one subject, are scattered

APPENDIX A

throughout Title 19. In addition, some sections of the statute are overly detailed and include details better left to administrative rule making, while others leave gaps in coverage. The result is an unclear body of law not easily accessible to the government officials and others who must rely upon it. It is likely that the current statutes are even less accessible to concerned citizens who have limited contact with its provisions and are unfamiliar with its subtleties and with the various local practices that have developed over the years.

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The Report recommends the adoption of a statewide voter registration system. This recommendation complies with the new federal law. In addition to the requirements of the federal law, the transition to a central official file of voter registration records is warranted in New Jersey with its dense and highly mobile population and its relatively small number of counties. Statewide voter registration permits voters who move from one county to another to vote in their new location as easily as they could if they had simply moved within their voting district.

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VOTING OFFENSES – TO BE COMPILED IN THE CRIMINAL CODE 87

CHAPTER 1. ADMINISTRATION

19A:1-1. County Board of Elections; membership

a. There shall be four members of the County Board of Elections appointed by the Governor. The Governor's appointments shall be the two persons who are nominated jointly by the chairperson and vice chairperson of the county committee and the state committee members of each of the two certified political parties that at the preceding general election cast the largest number and second largest number of votes for members of the General Assembly in that county. Each of the Governor's appointments shall serve for a term of four years beginning on July first and until a successor is appointed and qualified. Vacancies shall be filled for the unexpired term only.

b. No person who holds elective public office shall be eligible to serve as a member of the County Board during the term of that elective office. Holding a party office shall not disqualify a person from serving as a member of the County Board. The position of a member of the County Board shall be deemed vacant if the member becomes a candidate for an office to be voted on at any election, other than as a member of a county or state committee or as a delegate or alternate delegate to a national political convention. Candidacy shall be determined by the filing of a petition of nomination, accepted by the member.

Source: 19:6-17; 19:6-18.

COMMENT

The section is substantially identical to its sources except that it clarifies that the two parties from which the members of the Board are appointed are those that received the highest numbers of votes in the county. Section 9:6-18 is unclear as to whether the two parties are the two highest in the county or the state as a whole.

19A:1-2. County Board employees

The County Board may appoint employees necessary to carry out duties prescribed by law. The compensation of the employees shall be as recommended by the County Board and approved by the Board of Chosen Freeholders of the county. In counties of the first class, employees shall be in the competitive class of Civil Service.

Source: 19:6-17.

COMMENT

The section is similar to the provisions of its source.

19A:1-3. Superintendent and Deputy Superintendent of Elections

a. There shall be a Superintendent of Elections and Deputy Superintendent of Elections in counties where these offices have previously been established. Any other county may establish these offices by action of the county government. Once established, the offices of Superintendent of Elections and Deputy Superintendent of Elections shall not be abolished.

b. The offices shall be filled by suitable persons, nominated by the Governor with the advice and consent of the Senate, who shall hold office for the term of five years from the date of appointment and until their successors are appointed and have qualified. The terms of the

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Superintendent and Deputy Superintendent shall run concurrently. The Deputy Superintendent shall not be from the same political party as the Superintendent. Vacancies shall be filled in the same manner as original appointments, but shall be for the unexpired terms only. Any person filling a vacancy shall be from the same political party as the original appointee.

c. The Superintendent shall receive a salary set by the county. The annual salary of each Deputy Superintendent shall be 90% of what the Superintendent receives.

Source: 19:32-1.

COMMENT

Except for one change, this section is substantially identical to its source. The single change is that under this section, any county may establish the offices of Superintendent and Deputy Superintendent. Under current law, only counties of the second and fifth classes have that power.

19A:1-4. Administrator and Deputy Administrator of Elections

There shall be an Administrator and Deputy Administrator of Elections in counties that do not have a Superintendent of Elections and Deputy Superintendent of Elections. The offices shall be filled by suitable persons selected by the County Board of Elections. The Deputy Administrator of Elections shall not be from the same political party as the Administrator of Elections.

Source: New.

COMMENT

While this section is new, it is in accord with current practice. Most counties that do not have a Superintendent have an Administrator. Other counties have officials performing the same function but with different titles.

19A:1-5. Powers of County Board and Superintendents or Administrators of Elections

a. The County Boards shall conduct all elections in their counties, in accordance with law and the regulations of the Commission on Elections, and shall exercise other powers and duties prescribed by this Title and other law.

b. The Superintendents and Administrators of Elections, in accordance with law and the regulations of the Commission on Elections, shall:

- (1) Register voters;
- (2) Maintain election records, systems, equipment and supplies;
- (3) Be responsible for the printing and distribution of ballots for each election; and
- (4) Exercise other powers and duties prescribed by this Title and other law.

Source: New.

COMMENT

The section clarifies the role of the County Boards and Superintendents and Administrators in relation to the Commission on Elections and to each other. It is generally in accord with existing statutory provisions and practice.

19A:1-6. County Board, Superintendent, Administrator: office; equipment

Each county shall provide the County Board of Elections, and the Superintendent and Deputy Superintendent or Administrator and Deputy Administrator of Elections with suitable offices, furniture and other equipment that the County Board and Superintendent or Administrator find necessary. County Boards and Superintendents or Administrators and their Deputies may purchase necessary office equipment, furniture, books, materials and other supplies and articles. The county shall pay for the purchases and for the expenses of the Board and the Superintendent or Administrator and their employees.

Source: 19:6-21.

COMMENT

The section is substantially similar to existing statutory provisions.

19A:1-7. Organization meeting; chairman; secretary

Each County Board of Elections shall meet and organize prior to March 15, electing one member as chairman and one as secretary. The secretary shall not be from the same certified political party as the chairman. If a chairman is not elected, the member senior in service on the County Board shall be the chairman except that the post of chairman shall be rotated each year between the certified political parties. If a secretary is not elected, the member senior in service of the other certified political party shall be the secretary.

Source: 19:6-22.

COMMENT

The section simplifies and condenses the existing statutory language.

19A:1-8. Commission on elections; appointment; term; vacancies

a. The Commission on Elections shall exercise the powers and duties prescribed by this Title and other applicable law.

b. There shall be eight members of the Commission appointed by the Governor, with the advice and consent of the Senate. No more than three of the Governor's appointments shall be members of the same political party. Two members of the Commission shall be individuals who have not been members of a certified political party for at least five years prior to their appointment, and have not held any party office or position with a certified political party during that time. Each of the Governor's appointments shall serve for a term of four years beginning on July first and until a successor is appointed and qualified. Vacancies shall be filled for the unexpired term only.

c. No person who holds elective public office shall be eligible to serve as a member of the Commission during the term of that elective office. Except as set forth above, holding a party office shall not disqualify a person from serving as a member of the Commission. The position of a member of the Commission shall be deemed vacant if the member becomes a candidate for an office to be voted on at any election, other than as a member of a county or state committee or as a delegate or alternate delegate to a national political convention.

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Candidacy shall be determined by the filing of a petition of nomination, accepted by the member.

d. The Governor shall designate one appointee to serve as chairman of the Commission. The members shall serve without compensation, but shall be reimbursed for necessary expenses incurred in the performance of their duties under this law. For the purpose of complying with the provisions of Article V, Section IV, Paragraph 1 of the New Jersey Constitution, the Commission is allocated within the Department of Law and Public Safety; but the Commission shall be independent of any supervision or control by the Department. The assignment, direction, discipline and supervision of all the employees of the Commission except as otherwise provided in this Title, shall be fully determined by the Commission or by officers and employees to whom the Commission has delegated power.

Source: 19:44A-5.

COMMENT

The section is similar to the current statutory language except that it calls for the creation of a Commission on Elections rather than the Election Law Enforcement Commission. While setting forth a requirement for more Commission members and longer terms of service than the current Election Law Enforcement Commission, this section includes similar language limiting the number of members of the Commission who may be of the same political party. The section adds a provision calling for some members of the Commission to be individuals who are not affiliated with a certified political party, as defined by 19A:10-1 since most New Jersey voters are not registered in a party. This section retains the limitation on serving on the Commission while holding elective public office but clarifies that, with the exception of the unaffiliated members, holding a party office does not disqualify an individual from serving. The Commission is created in part because federal law requires that each state implement a single computerized statewide voter registration list, maintained and administered at the state level, and a state level administrative complaint procedure. See, 42 U.S.C.15483 et seq and 42 U.S.C. 15511.

19A:1-9. Duties of Commission; employees

a. The Commission on Elections shall have general supervisory powers over the conduct of all elections by the County Boards, Superintendents and Administrators of Elections and it shall have rule-making authority in accordance with the Administrative Procedures Act.

b. The Commission shall appoint a full-time executive director, legal counsel and hearing officers. The executive director and legal counsel shall serve at the pleasure of the Commission. A hearing officer shall be terminable by the Commission only for good cause. The executive director, legal counsel and hearing officers shall not be within the classified civil service by virtue of their appointment. The Commission may delegate appointment of hearing officers to the executive director. The Commission shall appoint other employees necessary to carry out the purposes of this Title; these employees shall be in the classified service of the civil service and shall be appointed in accordance with and shall be subject to the provisions of Title 11A, Civil Service.

c. The Commission and its executive director shall administer all elections in a uniform and fair manner to promote full exercise of the franchise, and to ensure efficient administration and prevent election fraud. For good cause shown, the Commission may permit a county or individual district to conduct a particular election in a manner that deviates from the uniform standard provided that the goals of fairness, full exercise of the franchise, efficiency and the prevention of fraud are met.

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d. The Commission shall:

(1) Adopt regulations to implement the provisions of this Title in accordance with the provisions of the Administrative Procedure Act.

(2) Develop forms necessary under the provisions of this Title.

(3) Maintain for a minimum of 10 years centralized records of all papers filed with the Commission and all public questions appearing on any ballot in the State.

(4) Permit copying of any report required to be submitted pursuant to this Title and charge no more than the actual cost of making and providing the copies.

(5) Publish an annual report to the Legislature before May 1 each year, and provide sufficient copies for distribution to the general public.

(6) Develop and supervise training programs for election officials.

(7) Prescribe qualifications and recommend salary ranges for all employees of County Superintendents or Administrators of Elections and County Boards of Elections.

(8) Provide information regarding voter registration procedures and ballot procedures to be used by absent uniformed service voters and overseas voters with respect to federal elections pursuant to federal law.

(9) Provide any information, records or reports required by federal law including records required to show the amount and disposition of federal funds received by the State pursuant to federal law.

e. The Commission is designated as the state entity responsible for election functions when federal law requires a single such entity.

f. The Commission and executive director shall promptly forward to the Attorney General or to the appropriate county prosecutor any information concerning violations of this Title.

Source: New.

COMMENT

This section is patterned on 19:44A-6 relating to the Election Law Enforcement Commission. It defines the supervisory powers of the Commission, and its rulemaking authority, upon which other provisions of the revised statutory scheme rely. The provision emphasizes that while the Commission has regulatory authority and certain specified powers it will be county election officials who conduct elections. The section abbreviates the existing statutory provisions and deletes, as not pertinent, the subsection on nominations or elections that become void and the subsections on enforcement. This section clarifies that of the non-civil service employees to be appointed to carry out the purposes of the statute, the hearing officers are terminable only for good cause. This section also clarifies that while one of the goals of the revised statute is to promote statewide uniformity in election matters, the Commission does have discretion to permit a county or a district to conduct an election in a manner different from the uniform standard provided that the goals of the statute are met. This would permit a locality to test a different method of conducting an election to determine its efficacy. This section also contains language intended to comply with the provisions of the most recent federal law regarding elections, and to clarify that although the county entities retain responsibility for the day-to-day operations, the Commission has primary responsibility at the State level for insuring compliance with all federal law. Among the other duties of the Commission is the responsibility to hear and decide disputes as more specifically set forth in specific sections of the statute. Any such determination of the Commission may be challenged by application to the Superior Court, Appellate Division, as an appeal from a state agency.

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19A:1-10. Administrative complaint procedure

a. The Commission on Elections shall hear and decide complaints of violations of Title III of Pub. L. 107-252 of federal law and establish and maintain a uniform, non-discriminatory administrative complaint procedure to address these complaints.

b. The Commission may consolidate complaints filed pursuant to this section and, at the request of any complainant, may hold a hearing on the record.

c. Commission determinations shall be made public. If the Commission determines that any provision of applicable federal law has been violated, the appropriate remedy shall be provided.

d. The Commission shall make a final determination on a complaint within 90 days of the date of the filing of the complaint unless the complainant consents to a longer period of time within which to decide the matter. If the Commission fails to do so, the matter shall be resolved within 60 days thereafter pursuant to an alternative dispute resolution procedure established by the Commission for this purpose at which any materials comprising the record shall be available.

Source: New.

COMMENT

This section is new, and was added to comply with the provisions of the most recent federal law regarding to elections. Federal law requires that any state that receives any federal funding pursuant to a program set forth in the Help America Vote Act of 2002 (Pub. L. 107-252) establish and maintain state-based administrative complaint procedure. See, 42 *U.S.C.*15511 et seq.

19A:1-11. Sitting on all election days

The County Board of Elections shall sit on the days of all elections at the office of the County Board from 6:00 a.m. and until all of the duties of the Board have been concluded. However, if duties have not been completed by midnight, the Board may adjourn its work to the following day.

Source: 19:6-25.

COMMENT

The section clarifies the procedure that may be followed if the duties of the County Board have not been concluded "between the hours of 6:00 A.M. and midnight" on the day of the election.

19A:1-12. Poll officials; appointment and assignment

a. The County Board of Elections shall appoint a sufficient number of poll officials to conduct each election. Poll officials shall be residents of the county in which they are appointed. Poll officials may be appointed for a particular municipality or for the county. Officials appointed for a municipality may be assigned to any district within that municipality; officials appointed for the county may be assigned to any district in the county.

b. The County Board shall assign four poll officials to each election district except that it shall assign six officials to any election district in which there are more than 900 registered voters. The Board shall appoint the poll officials thirty days before the election in which they will serve. The officials in each district shall include at least one member of each certified political

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party and shall include equal numbers of members of the certified political parties. Other poll officials may be persons who have not been members of either certified political party for at least five years prior to the appointment, and have not held any party office or position with a certified political party during that time.

c. In election districts in which census data establishes that the primary language of 10 percent or more of the registered voters is a language other than English, the County Board shall appoint two members who are fluent in that language.

d. Poll officials who are appointed to serve for the entire day of election shall be paid \$200. Poll officials who are appointed to serve for part of the day shall be paid a pro-rata amount per hour. The Commission on Elections may adjust the rate of pay after it has been in effect for at least five years.

Source: 19:6-1; 19:6-7; 19:45-6(d).

COMMENT

The section substitutes "poll officials" for "members of the district board of elections" reflecting the current practice that the persons who conduct an election are poll workers assigned to districts where needed rather than a continuing administrative board for a particular district. As a result, the term of office of officials (19:6-8) has been deleted. Subsection (a) is based on 19:6-7 but allows appointment of election officials for the whole county rather than for a particular municipality. The subsection also eliminates the requirement that an official be certified for a particular district 25 days before an election. "Certified political parties" is a term defined by section 19A:10-1. Unlike current law, the section does not require that poll officials be members of the two certified political parties unless these people are unavailable. Instead it requires a balance among poll officials who are identified with a political party. It allows the use of independent poll workers without restriction. Subsection (c) substitutes the phrase "a language other than English" for the word "Spanish" in 19:6-1 to reflect the contemporary reality in New Jersey of increasing numbers of speakers of different primary languages. Subsection (d) is derived from 19:45-6(d). The distinction between pay for school elections and other elections has been eliminated as the time the polls will be open will now be the same for all elections. However, the hourly rate is retained to allow poll officials to be employed for less than the whole day if that seems desirable.

19A:1-13. Poll officials; duties; oath; training

a. The poll officials assigned to a district shall conduct the election in the district and shall keep the polls open on Election Day during the times prescribed in this Title.

b. Prior to commencing duties, each poll official shall subscribe to an oath prescribed by the Commission on Elections. All new poll officials shall be required to attend a training session supervised by the County Boards of Elections. All poll officials shall attend training sessions at least once every three years.

Source: 19:6-11.

COMMENT

The section clarifies the duties of local poll officials, and requires the periodic training of election officials.

19A:1-14. Poll officials; removal

a. The County Board may dismiss any poll official for cause including failure to attend training sessions.

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b. A poll official shall be deemed to have resigned if the official becomes a candidate for an office to be voted on at any election for which the official was appointed to serve. Candidacy shall be determined by the filing of a petition of nomination, accepted by the official.

Source: 19:6-4; 19:6-5; 19:6-12.

COMMENT

Subsection (a) substantially follows 19:6-4 and 19:6-5 but clarifies that the failure to attend training sessions constitutes cause for dismissal in addition to other acts or omissions that may be deemed to constitute cause. Subsection (b) follows 19:6-12.

19A:1-15. Chairman and secretary

Before beginning their duties on Election Day, poll officials assigned to a district shall meet and elect one official as chairman, and one as secretary. The secretary shall not be from the same certified political party as the chairman. If a chairman is not elected, the official senior in service in the district shall be the chairman. If a secretary is not elected, the official senior in service of the other certified political party shall be the secretary.

Source: 19:6-10.

COMMENT

The section streamlines existing statutory language and, in the interest of consistency, modifies the terminology to refer to a chairman and secretary rather than a judge and an inspector.

19A:1-16. Police assigned to polls

The municipal governing body in charge of the police department may assign police to any district. Any police officer assigned shall, under the direction of the election officials, enforce the election laws, maintain order during Election Day, and assist the officials in transporting the results and election equipment. For good cause, the County Board of Elections may request that an individual police officer not be assigned to a particular polling place. The poll officials assigned to a district may request that an officer assigned to a particular polling place leave the polling area; the officer shall comply pending a final determination by the County Board.

Source: 19:6-16; 19:15-8.

COMMENT

The section is substantially like the existing statutory provision, although it has been streamlined. It also has been modified to indicate that while the municipal governing body normally may assign police to any district; it is within the power of the County Board to request for good cause that a specific officer not be assigned to a particular polling place. This section also clarifies that an officer may be asked to leave by the poll officials for the district, and that the officer shall comply pending a final determination.

19A:1-17. Calculation of time

If the date on which any action must be taken pursuant to the election law falls on a Saturday, Sunday or legal holiday, the time within which the action may be taken shall run until the end of the next day that is not a Saturday, Sunday or legal holiday.

Source: 19:11-1.

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COMMENT

This section is substantially similar to 19:11-1.

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CHAPTER 2. Statewide Voter Registration Database

19A:2-1. Statewide voter registration database; website

a. The Commission on Elections shall establish, administer and maintain a statewide voter registration database continuously available to every Superintendent or Administrator of Elections, every County Board of Elections and to other agencies approved by the Commission. The registration database shall be the official record for the conduct of all elections held in this State. The Commission shall also maintain a website from which any person may obtain a registration form and information of general importance to voters.

b. The Commission shall prescribe a uniform statewide voter registration form and shall require county election offices, voter registration agencies, armed forces recruitment offices, qualified educational institutions and individuals to use that form to register a voter in the central database.

c. The Commission shall make rules to implement the registration database and the website consistent with the objectives of enhancing the uniformity of the administration of elections, decreasing the public cost of maintaining the voter registration records, applying the most advanced technology available to simplify voter registration and protecting the integrity of the voting process.

Source: New.

COMMENT

This section provides for statewide registration records. It requires the Commission on Elections to design and implement an electronic database of voter registration records that is online and available to designated officials, a concept entirely novel to New Jersey. The section generally follows current law as to the contents of records. *See* 19:31-3.1; 19:31-3.3; 19:31-10.1. However, the Commission on Elections has regulatory power to dictate the content of records and the methods of record keeping. It is understood that the current voter records will need to be transferred and that details regarding the transition of those records will be addressed by the Commission in regulations. Federal law requires that each state implement a single computerized statewide voter registration list maintained and administered at the state level. *See*, 42 *U.S.C.* 15483 et seq.

19A:2-2. Minimum components of the registration database

a. The central database shall have the following minimum components:

(1) An electronic network that links all county election offices and the Division of Motor Vehicles, and may link voter registration agencies and other approved departments of government. Only State and county election offices may add, delete or modify the records contained in the database.

(2) A computer program to compare the voter registration records with records contained in the computer databases of the Division of Motor Vehicles and such federal agencies as are required by law. The computer program may also compare records with other agencies approved by the Commission on Elections, such as those responsible for maintaining records regarding an individual's death or criminal conviction.

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(3) An interactive computer program allowing access to records contained in the registration database by persons authorized by the Commission to add, delete, modify or print a voter registration record, and to update the central database daily so that the records reflect the name of each registered voter without duplication and so that the names of ineligible or unregistered voters are removed. The database shall contain safeguards to ensure that the names of eligible voters are not removed in error.

(4) A search program capable of verifying registered voters and their required information by name, driver's license number, unique numeric identifier and street address.

b. The Commission shall:

(1) Specify how to convert existing voter registration records in the counties to electronic files to be used in the central database.

(2) Specify the persons authorized to access records contained in the registration database.

(3) Provide adequate technological security measures to prevent unauthorized access to the records contained in the registration database.

(4) Examine the suitability of a system capable of permitting registered voters to cast a ballot in their voting district from any polling place in this state.

Source: New; 19:31-15; 19:31-16.

COMMENT

This section establishes minimum requirements to enable state registration records to be available in every county and to specify the transition from a paper-based to an electronic records system, while attempting to provide adequate security for the information that will be available electronically. Most important, the Commission on Elections must design a database that interfaces with other voter registration sources, such as the Division of Motor Vehicles, social agencies and the federal requirements for uniformed and overseas citizens. 42 *U.S.C.* 1973ff. This section states that even though other offices may be connected with the registration database, only selected election officials may add, delete, or modify the records. Federal law requires that each state implement a single computerized statewide voter registration list maintained and administered at the State level, and specifies certain minimum requirements for the database. See, 42 *U.S.C.* 15483 et seq.

19A:2-3. Uniform statewide voter registration form

a. The uniform statewide voter registration form must elicit the following information from the applicant:

- (1) Full name,
- (2) Date of birth,
- (3) Citizenship,
- (4) Address of legal residence,
- (5) Mailing address, if different,
- (6) County of legal residence,
- (7) Party affiliation, if applicable, as limited by 19A:10-2,
- (8) Name and address of last registration, and

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(9) New Jersey driver's license number, if the applicant has been issued a license; if not, the last four digits of the applicant's Social Security number.

b. The uniform statewide voter registration form shall be used for any of the following purposes:

- (1) Initial registration,
- (2) Change of address,
- (3) Change of name, and
- (4) Change of party affiliation.

c. The uniform statewide voter registration form shall contain a declaration whereby the applicant swears that the applicant is:

- (1) A United States citizen,
- (2) 18 years of age on or before the next election, and
- (3) Not under the supervision of the Department of Corrections for an indictable offense.

d. The form shall set forth the penalties that may be imposed for submitting false or fraudulent information.

e. The applicant must sign the form.

f. The Commission on Elections shall develop instructions for completing the form and attach them to the form. The Commission shall prepare the form and instructions in English and in any other language that it finds is the primary language of a substantial number of persons eligible to register to vote. The Commission may specify additional information on the form or instructions, including any information required by federal law. The instructions shall state that if the form is submitted other than in person, the applicant will be required to present identification when the applicant first votes and if the applicant is unable to do so, the applicant may vote using a provisional ballot.

g. The Commission shall be responsible for printing the uniform statewide voter registration forms and distributing them to county election offices, voter registration agencies, armed forces recruitment offices and qualified educational institutions. The form also must be available upon request to applicants and available on the website.

Source: 19:31-6.4.

COMMENT

Except as required by the Uniformed and Overseas Citizens Absentee Voting Act, the Commission on Election must develop a single uniform registration form for use throughout the State. This section is similar to 19:31-6.4; it specifies the items of information that the uniform registration form must contain, but leaves the design of the form to the Commission. The reference to the Secretary of State has been changed to the Commission on Elections. Subsection (f) has been broadened because languages other than English and Spanish may be required. Subsection (g) has been broadened to reflect the current requirement that forms are distributed and accepted by a variety of public agencies. A requirement has been added that forms be available at educational institutions and on the Commission on Elections' website. Subsection (h) of the source, which dealt with determining when an application made through a motor vehicle office was made within time requirements, was deleted. Other sections now deal with that matter. Federal law requires certain information on the voter registration form and it is intended that all such information appear on the form, including requirements not duplicated here. See, 42 *U.S.C.* 15483. Completing a statewide uniform voter

registration form and submitting that form in person to a voter registration agency will be considered an 'in-person' registration, even if the form is later mailed by the agency to the Commission on Elections, since the agency personnel will have the opportunity to confirm the identification of the prospective voter at the time that the registration form is submitted.

19A:2-4. Federal registration form

a. The Commission on Elections shall accept the Federal Post Card Application to register applicants covered by the Uniformed and Overseas Citizens Absentee Voting Act or any federal successor statute or successor federally required or recommended voter registration form.

b. The Uniformed and Overseas Citizens Absentee Voting Act or any federal successor statute supersedes any inconsistent provision of this statute.

Source: New.

COMMENT

This section acknowledges that federal law recommends, and all states have adopted, the use of the Federal Post Card Application for use by uniformed and active military personnel and civilian overseas voters. Hence, the Commission on Elections should continue the practice of using the FPCA for purposes of voter registration. However, use of this registration form does not result in different treatment of these voter registration records in terms of content and unique numeric identifier. While the supremacy clause of the United States Constitution states that federal law trumps inconsistent state law, that principle is restated here to reduce confusion and to alert state election officials to relevant federal law.

19A:2-5. Persons entitled to register and vote

a. Any person may register to vote who:

- (1) Is a citizen of the United States,
- (2) Is 18 years of age or older,
- (3) Has not been disqualified from voting, and
- (4) Is a resident of this State.

b. A person shall be permitted to vote at an election if the person has been registered to vote at least 30 days before the election and has resided in the county for 30 days at the time of the election. A person who has not resided in the county for a period of 30 days before an election may, in a Presidential election year, vote for President and Vice-President of the United States on a provisional ballot.

c. A person may vote in an election district only if the person is registered to vote at an address in that district and either resides in that district or resided in that district 30 days before the election.

Source: 19:31-1; 19:31-5; 19:31-6.1; 19:31-29.

COMMENT

Subsection (a) is similar to 19:31-1; the residence requirement is derived from 19:31-5. The residence requirement has been moved to subsection (b) because under current law a person may register within 30 days of an election, but then may not vote in the election. See 19:31-5 and 19:31-6.1. The New Jersey Constitution, however, permits such an individual to vote for President and Vice-President on a

provisional ballot. See, Art. 2, Sec. 1, ¶ 3. Material in 19:31-5 making registration permanent regardless of whether a person has failed to vote has been deleted as unnecessary. Other sections limit the grounds for removing a voter's name from registration. The federal Uniformed and Overseas Citizens Absentee Voting Act overrides inconsistent provisions of this section. For example, an overseas voter is entitled to vote in Federal elections regardless of how long the voter has not resided in New Jersey and even if that voter does not intend to reside in the State in the future. Federal law includes certain requirements for voting by provisional ballot and the language of this and other sections of the statute is intended to comply with those requirements. See, 42 U.S.C. 15482.

19A:2-6. Registration

a. A person may register to vote by completing a statewide uniform voter registration form and submitting that form to a voter registration agency or mailing that form to the Commission on Elections.

b. Voter registration agencies are:

(1) An agency or office serving as a food stamp issuer, pursuant to P.L.1988, c.79 (C.44:8-153 et seq.) and the "Food Stamp Act of 1977," Pub.L.95-113 (7 U.S.C. s.2011 et seq.);

(2) An agency or office providing or administering assistance under the "New Jersey Medical Assistance and Health Services Program," pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.) and 42 U.S.C. s.1395 et seq.;

(3) An agency or office distributing food pursuant to the special supplemental food program for women, infants and children (WIC), established pursuant to P.L. 1987, c.261 (C.26:1A-36.1 et seq.) and Pub.L. 95-267 (42 U.S.C. s.1786);

(4) An agency or office administering assistance under the Work First New Jersey program established pursuant to P.L.1997, c.38 (C.44:10-55 et seq.);

(5) An office of the Division of Developmental Disabilities, established pursuant to section 2 of P.L.1985, c.145 (C.30:6D-24), in the Department of Human Services;

(6) An office of the Office of Disability Services, established pursuant to section 3 of P.L.1999, c.91 (C.30:6E-3), in the Department of Human Services;

(7) A recruitment office of the Armed Forces of the United States, subject to any agreement between this State and the Secretary of Defense of the United States for the joint development and implementation, as provided under subsection (c) of section 7 of Pub.L.103-31 (42 U.S.C. s. 1973gg-6), of procedures for applying at those offices to register to vote;

(8) An office of the Division of Vocational Rehabilitation Services of the New Jersey Department of Labor;

(9) An office of the Commission for the Blind and Visually Impaired of the New Jersey Department of Human Services;

(10) A county welfare agency or county board of social services established pursuant to the provisions of chapter 1 or chapter 4 of Title 44 of the Revised Statutes;

(11) The office of a County Superintendent or Administrator of Elections; and

(12) The office of the municipal clerk of municipalities of this State.

c. A voter registration agency shall inquire of members of the public whether they are registered to vote. Any member of the public who is not registered and does not express a decision not to register shall be provided with a uniform statewide voter registration form and instructions.

Source: 19:31-6; 19:31-6.3; 19:31-6.11.

COMMENT

Most of the section is derived from 19:31-6. Though generalized, the section is similar to current law. Completing a statewide uniform voter registration form and submitting that form in person to a voter registration agency will be considered an 'in-person' registration, even if the form is later mailed by the agency to the Commission on Elections, since the agency personnel will have the opportunity to confirm the identification of the prospective voter at the time that the registration form is submitted.

19A:2-7. Acceptance of registration

a. The Commission on Elections shall adopt procedures to accept or reject a completed and submitted uniform statewide registration form, and may delegate that authority to county election offices or voter registration agencies. Periodic reports detailing the number of registration forms rejected, and the reason for the rejections, shall be made and retained by the Commission for five years.

b. An accepted uniform statewide registration form shall be indexed and identified by the voter's driver's license number. If the voter has not been issued a driver's license number, then the Commission shall generate a unique numeric identifier, including the last four digits of the voter's Social Security number, to index and to identify the voter registration record contained in the central database.

c. If the Commission finds that the form is not in order or that the person is ineligible to vote, the Commission shall notify the person of the reasons for any rejection of the uniform statewide registration form or refusal to register the person.

d. A voter is registered to vote as of the date that a registration form is filed with the Commission, a Superintendent or Administrator of Elections, or an approved agency unless the form is rejected. If the registration form is filed with the Commission, or a Superintendent or Administrator of Elections, unless the form is rejected, the information shall be immediately entered into the registration database.

Source: 19:31-6.5.

COMMENT

This section is similar to 19:31-6.5. Small changes have been made to reflect an electronic statewide voter registration database and the fact that the information should be immediately entered into it. In conformance with federal law, the section requires the assignment of a unique identifying number for each voter. If the voter has a driver's license, the license number is used. If not, and the voter has a social security number, the last four digits of the social security number are used as part of the identifying number.

In the unlikely event that the voter has neither a driver's license nor a social security number, a unique identifier is still assigned independently for registration.

19A:2-8. Voter registration record

A voter registration record shall include:

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- a. The name of the voter,
- b. Date of registration,
- c. Date of birth,
- d. Driver's license number or, if the voter is not licensed to drive in this state, a unique numeric identifier,
- e. Voting history for last four years,
- f. Political party affiliation,
- g. Address of voter,
- h. The voter's election district,
- i. The voter's signature; and
- j. Whether or not the voter has applied for absentee or other pre-election day voting in lieu of voting in person on Election Day.

Source: 19:31-3.1; 19:31-3.3; 19:31-10.1.

COMMENT

This section has been generalized to apply functional requirements for all counties and has been supplemented to give the Commission on Elections regulatory power over the content of records and the methods of record keeping. Subsection (j) references the language of 19A:6-2 which states that a voter opting to cast a pre-Election Day ballot may not vote in person at the polls on Election Day except as prescribed by federal law.

19A:2-9. Purging of records contained in the registration database

- a. The State Registrar of Vital Statistics shall file with the Commission on Elections, at least monthly, a list of persons who have died during the preceding interval. The list shall contain the name, the address, the date of birth and the date of death of the deceased person.
- b. The Prosecutor of each county shall file with the Commission, at least monthly, a list of all names, addresses and dates of birth of all persons sentenced to imprisonment or probation for a crime. The list shall also contain the date of the judgment of conviction and the sentence imposed by the court.
- c. The Commission shall agree with the United States Postal Service or its licensee to receive information provided by the Postal Service concerning the change by any Postal Service customer of that customer's address.
- d. Any person may petition the Commission to remove the name of a voter registered in the central database because the person has died, is ineligible to vote or does not reside at the registered address. The Commission shall specify a uniform petition form.
- e. The Commission shall communicate with the federal office that maintains lists of military personnel covered under the Uniformed and Overseas Citizens Absentee Voting Act to ascertain the active military status of registered voters.
- f. The Commission shall comply with any applicable provisions of federal law regarding the removal of persons who have not responded to a notice attempting to confirm their address and who have not voted in two consecutive general elections for federal office.

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g. Upon receipt of the information as provided by this section, the Commission shall investigate and verify the accuracy of the information, and correct the registration database. However, corrections shall not be made during the 30 day period before an election, and a voter may not be removed from registration unless the voter is notified and given an opportunity to challenge the removal.

Source: 19:31-15; 19:31-16; 19:31-16.1; 19:31-17; 19:31-19.

COMMENT

This section attempts to capture the substance of 19:31-15; 19:31-16; 19:31-16.1 and 19:31-17 and the requirements contained in the federal law for removal of individuals from the database. The limitations on changes during the 30 days before an election is intended to insure that the statewide registration database will be identical to the records used for an election. Federal law requires that maintenance of the statewide voter registration list be performed on a regular basis and that the information contained in the information be coordinated with other agency databases within the State, and with the State motor vehicle authority and the federal Commissioner of Social Security. See, 42 *U.S.C.* 15483.

19A:2-10. Use of the registration database during elections

The County Superintendent or Administrator of Elections shall produce polling records for each district 21 days before any election. Records for each registered voter shall include the voter's name, address, numeric identifier and signature accessible by alphabetical order, address and numeric identifier. Records shall include a signature space to allow comparison of signatures but the registration process at the polling place may provide for another method of verifying the identity of the voter, approved by the Commission. The polling record shall also allow entry of other information required by law and of any challenge and its determination. For a primary election, the voter registration record shall include the political party of the voter. The Commission shall retain polling records for two years.

Source: 19:31-18; 19:31-18.1; 19:31-18.3.

COMMENT

This section is substantially identical to 19:31-18, but provides for registration lists in computer accessible form. Federal law requires that local election officials have access to the information contained in the statewide voter registration database. See, 42 *U.S.C.* 15483.

19A:2-11. Confidentiality of registration records of victims of domestic violence

A person who is (1) a victim of domestic violence who has obtained a permanent restraining order against a defendant pursuant to section 13 of the "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-29) and fears further violent acts by the defendant, or (2) a victim of stalking, or member of the immediate family of such a victim as defined by paragraph (3) of subsection a. of section 1 of P.L.1992, c.209 (C.2C:12-10), who is protected under the terms of a permanent restraining order issued pursuant to section 3 of P.L.1996, c.39 (C.2C:12-10.1) and who fears bodily injury from the defendant against whom that order was issued, shall be allowed to register to vote without disclosing the person's street address. Such a person shall leave the space for a street address on the uniform statewide registration application blank and shall, instead, attach to the application a copy of the permanent restraining order and a note which indicates that the person fears future violent acts by the defendant and which contains a mailing address, post office box or other contact point

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where mail can be received by the person. Upon receipt of the person's voter registration application, the Commission of Elections shall provide the person with a map of the municipality showing the various voting districts. The person shall indicate the voting district in which he or she resides and shall be permitted to vote in that district. If the person changes residences, the person shall complete a new registration application in the manner described above.

Any person who makes public any information which has been provided by a victim of domestic violence, or by a victim of stalking or the family member of such a victim, concerning the mailing address, post office box or other contact point of the victim or family member or the election district in which the victim or family member resides, is guilty of a crime of the fourth degree.

Source: 19:31-3.2.

COMMENT

This section is substantially identical to its source.

19A:2-12. Public availability of voter registration lists

a. Except as set forth in 19A:2-11, the Commission on Elections shall provide each county clerk access to the name, place of residence and party affiliation for the persons registered to vote in any district in the county.

b. Except as set forth in 19A:2-11, the list of names, place of residence and party affiliation of registered voters shall be a public record, and the county clerk shall permit any person to obtain a copy of that list in a computer accessible form and may charge a fee for production of lists based on the actual cost of production.

c. Any individual or the Attorney General may bring an action for injunctive relief to prevent the improper use of the information contained in the voter registration list, including commercial solicitation.

Source: 19:31-18; 19:31-18.3.

COMMENT

Subsection (a) is derived from 19:31-18 but, due to changes in technology, provides constant access to lists instead of providing that lists are made available at a particular time. Subsection (b) is derived from 19:31-18.3. The current section 19:31-18.1 has been moved from this section dealing with permanent registration of voters, to the criminal section of the law in the interest of consistency since all other sections of the election law that include criminal penalties are included there. This section also has been changed to provide that registration lists be provided in computer accessible form. The automatic supply of lists to certain party officials has been deleted because copies of computerized records should be available at insignificant cost. Note that the Governor, by Executive Order, has suggested that address information not be made public. Barring action by the Legislature in this area, the information will continue to be made accessible as indicated above as a result of the significance of the availability of that information in the election context.

CHAPTER 3. VOTING SYSTEMS

19A:3-1. Voting systems; requirements for all systems

Every voting system used in this state shall:

- a. Assure to the voter secrecy in the act of voting and the vote cast, and provide a private place to conceal the voter while voting.
- b. Assist voters in voting as they intend and minimize the likelihood of mistake.
- c. Permit the voter to vote for any candidate and for as many candidates, or on as many questions, as permitted by law, but no more.
- d. Notify the voter if more than one candidate has been improperly selected for a single office, advise the voter of the effect of multiple votes, and provide the opportunity for the voter to correct the ballot before it is cast.
- e. Permit the voter to verify the votes selected before the ballot is cast.
- f. Provide the voter with the opportunity to change the ballot before it is cast.
- g. Prevent the voter from voting for the same person more than once for the same office.
- h. Allow primary election officials to limit voting to primary contests within a voter's party.
- i. Correctly record and count all votes cast regarding all candidates and questions.
- j. Produce a permanent paper record after a vote is cast and afford a manual audit capacity.
- k. Include protective devices and procedures to prevent any operation of the system before or after the election and to prevent any change in the record of votes cast in the election.
- l. Be accessible for individuals with disabilities in a manner that provides those voters with the same opportunity for access and participation in the voting process as other voters as required by federal law.
- m. Provide alternate language accessibility in accordance with federal law.
- n. Include a method or mechanism to show, at all times during an election, how many persons have voted.
- o. Meet any requirement of federal law, including requirements regarding permissible error rates.

Source: 19:48-1.

COMMENT

This section is based on 19:48-1, which establishes requirements for voting machines, but the scope of the section has been broadened to include any kind of voting system. In addition, three of the standards are new. Subsection (b) expresses a standard that has existed in practice though not in the statute: that a voting system should be clear, easy to use, and minimize voting mistakes. Issues raised in other states during the 2000 presidential election emphasize the importance of this consideration. Subsection (k) includes new language concerning the prevention of change in the record of votes after the election. At present that matter is dealt with in other sections by specific procedures for paper ballots and mechanical machines. Since those procedures are not relevant to most systems now in use, a generalized

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standard is appropriate. Federal law now imposes minimum voting system standards, including certain general standards, and requirements pertaining to audit capacity, accessibility, error rates, and a uniform definition of what constitutes a vote. See, 42 U.S.C. 15481.

19A:3-2. Approval of voting systems

a. A voting system shall not be used in the State unless it has been approved by the Commission on Elections.

b. The Commission shall approve only voting systems meeting the requirements of this chapter.

c. In the interest of uniformity, the Commission may decline to approve a system that offers no significant advantage over currently approved systems.

d. The Commission may, in the interest of uniformity and quality, withdraw approval of systems previously approved. In making a decision to withdraw approval of a currently approved voting system, the Commission shall consider the expenditure made by a district for the system.

e. Through approval and disapproval of voting systems, the Commission shall try to make the process of voting and the appearance of voting systems as uniform as possible throughout the State.

Source: New.

COMMENT

This section carries forward the policy of Title 19, chapter 48, which requires that voting machines may not be used unless they are of a kind approved by State authority. The section transfers that authority from special committees within the Attorney General's Office to the Commission on Elections. Subsection (d) gives the Commission the explicit power to remove systems from the approved list. The Attorney General's Office may have that power now but it is not stated in current statutes and it has never been exercised. Subsection (e) requires the Commission on Elections to use the power to regulate the voting systems in use to progress toward a time when all voting systems have the same appearance and require the same actions by voters. Similarity of voting systems will reduce confusion and mistakes when voters move from one county to another. One of the goals of requiring Commission approval of voting systems is to insure consistent compliance with the federal standards.

19A:3-3. Regulations for use of voting systems

When it approves a voting system, the Commission on Elections shall enact regulations for the use of the system to assure that it will be used in accordance with the requirements of this Title. Regulations shall include:

- a. The arrangement of the room in which voting takes place;
- b. Procedures for checking the system before the beginning of voting;
- c. Instructions to voters on the use of the system;
- d. Procedures to determine whether a valid vote has been cast;
- e. Procedures to ascertain vote totals and to transmit those totals to the County Board of Elections; and

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f. Procedures to secure the system after the close of voting to prevent tampering with the system and to allow recounts when ordered.

Source: New.

COMMENT

This section requires that the Commission promulgate regulations for the use of any system that it approves. Current statutes provide detailed procedures for the use of paper ballots and mechanical voting machines. However, no such procedures exist in statute or regulation for the newer machines now used in the majority of counties. Without these procedures, a system that has the capacity to work well may be used in ways that do not assure that voters actually cast the votes they think they are casting, or that only the votes cast during Election Day are counted or that tallies are preserved to allow for recounts. Static voting system technology until about twenty years ago allowed procedures to be established by statute, but the current speed of change makes establishment of procedure by regulation the better approach. The Commission will need to make certain that any procedures created by regulation comply with federal law.

19A:3-4. Selection of voting system

a. A county may use any voting system selected by the County Board of Elections and the Superintendent or Administrator of Elections and approved by the Commission on Elections.

b. The Superintendent or Administrator and the County Board shall follow the Commission regulations for the voting system selected.

Source: New.

COMMENT

Again, this section carries forward the policy of Title 19, chapter 48, that a county may not use a voting system that has not been approved. Subsection (b) enforces the regulations required by the previous section to assure that the system chosen will be used in a way that meets the general requirements of this chapter.

CHAPTER 4. BALLOTS

19A:4-1. Commission responsible for ballot format

a. The Commission on Elections shall prepare a single general format of ballot for each election that shall include positions for the names of all candidates and any public questions to be voted on at such election. The same format of ballot shall be utilized statewide and the format of the ballot shall be the same for pre-election day ballots, voting system ballots used on Election Day, provisional ballots, and sample ballots. If the same format of ballot cannot be used, the ballot shall approximate as closely as possible the single format of ballot.

b. The Commission shall determine the size and format of the ballot, the type of print, the necessary instructions to voters, and other similar matters of form.

c. Ballots shall be designed to facilitate fairness, simplicity and clarity in the voting process. Ballots shall be designed to make it easy for a voter to communicate intent.

d. The ballots shall include candidates nominated by political parties and by petition, and also shall allow a method to write in the names of candidates.

e. In primary elections, there shall be separate ballots for each political party, identifying the party.

Source: 19:14-2; 19:14-2.1; 19:14-3; 19:14-4; 19:14-5; 19:14-6; 19:14-7; 19:14-12; 19:14-16; 19:15-27; 19:15-28; 19:15-29; 19:15-31; 19:23-23; 19:23-25; 19:23-28; 19:49-2.

COMMENT

This section replaces sections of the law that detail the design and form of the ballot. Many of those sections, enacted in the 1930s and 1940s, were applicable primarily to paper ballots, which are no longer widely used as official ballots. In keeping with other revisions to the election law, this section clarifies that the Commission on Elections shall, by regulation rather than statute, prepare a single form of ballot to be used, as nearly as possible, throughout the State. This section also condenses language pertaining to ballots found throughout the statutory provisions pertaining to election, and combines it into a single section of the law both for clarification and to eliminate duplication.

19A:4-2. Form of official ballots; instructions

a. Each ballot shall identify the election, the name of the municipality, the election district, and the date of the election. For school elections, the ballot shall also identify the name of the school district and the municipalities comprising that district.

b. Each ballot shall contain instructions for the voter regarding the manner in which votes are to be cast, including write-in votes, and the number of candidates to be elected to each office.

c. The contents of each ballot shall be legible. The text of the various section headings shall be clearly differentiated from the remaining text of the ballot.

d. The ballot for a district shall be prepared in English and any other language that the County Board finds is the primary language of 10 percent of the registered voters in the district and in any other language if required by federal law. The percentage of registered voters whose primary language is other than English shall be determined from the most recent United States census data.

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Source: 19:14-3; 19:14-4; 19:14-6; 19:14-10; 19:14-16.

COMMENT

This section indicates basic information to be included on the ballot and offers limited general guidelines for the Commission regarding the design of the ballot while leaving the details to be addressed by the Commission by regulation.

19A:4-3. Arrangement of titles of office

a. The title of each office to be filled at an election shall be arranged on the ballot in the following order: President and Vice-President of the United States; member of the United States Senate; member of the House of Representatives; Governor; member of the State Senate; members of the General Assembly; county executive; sheriff; county clerk; surrogate; register of deeds and mortgages; county supervisor; members of the board of chosen freeholders; mayor and members of municipal governing bodies, and any other titles of office. For primary elections, the ballot shall also include the delegates and party positions.

b. The title of each office and the candidates for that office shall be set apart from the titles of the other offices and the candidates for those offices on the ballot. The title of an office and the candidates for that office shall be organized so that they are differentiated from other offices and candidates based on ballot position. Candidates sharing a party affiliation, designation or slogan shall likewise be differentiated from competing candidates based on ballot position. The method of differentiation may be the use of rows and columns.

c. When Presidential Electors are to be elected, their names shall not appear on the ballot. Instead, the names of the candidates for President and Vice President shall appear together in pairs.

Source: 19:14-8; 19:14-8.1; 19:14-10; 19:23-24; 19:23-26.1; 19:49-2.

COMMENT

Subsection (a) is substantially identical to the second paragraph of 19:14-8 and to 19:14-10. Subsection (b) is derived from other sections of the prior law that called for the arrangement of candidates and titles in rows and columns. Subsection (c) is derived from 19:14-8.1, but has been simplified and shortened.

19A:4-4. Position on ballot; procedure

a. In a general election, each of the political parties that made party nominations in the primary election shall be chosen for the initial two or more certified political party positions on the general election ballot, and the other parties shall be chosen for the remaining ballot positions. Candidates who are not members of certified political parties shall, to the extent possible, be arranged in a manner similar to those from the certified parties, with candidates who share a party affiliation, designation or slogan grouped together as appropriate and differentiated from competing candidates.

b. The Commission on Elections shall select a method to be used by the County Boards of Elections to determine the placement of political parties and candidates on any ballot in a fair and equitable manner. Ballot positions in all elections shall be chosen by the same method selected by the Commission.

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c. If the Commission fails to determine a method before the ballot is to be prepared the position on the ballot shall be determined by the drawing of lots, first to determine the placement of the political parties, then to determine the placement of candidates' names for the various offices. The name of the first party or candidate drawn shall occupy the first position on the ballot, the name of the next party or candidate drawn shall occupy the next position, and so on. The manner of drawing the lots shall be as follows:

(1) Paper slips with the names of each political party or candidate for office, as appropriate, shall be placed in capsules of the same size, shape, color and substance;

(2) The capsules shall be placed in a covered box with an opening in the top large enough to allow the capsules to be drawn out;

(3) The box shall be shaken to thoroughly mix the capsules;

(4) One member of the County Board shall draw each capsule separately from the box without knowledge of which capsule is being drawn; and

(5) The person making the drawing shall open the capsule and announce the name in it publicly.

Source: 19:14-12; 19:14-13; 19:23-24.

COMMENT

Subsection (a) is derived from the initial section of 19:14-6. Subsection (b) clarifies that candidates from non-certified political parties, and other candidates, are to be treated for ballot arrangement purposes in the same way as those from certified parties. "Certified political parties" is a term defined by section 19A:10-1. Subsection (c) is substantially derived from 19:14-12 but it has been simplified and shortened. The goal was not to limit the selection of the position on the ballot to the capsule method that has been in effect for more than 50 years, but to leave that familiar method substantially in place in the event that the Commission selects no new method.

19A:4-5. Witnesses to selection of position on ballot by County Board of Elections

a. Any voter of the county shall be allowed to witness the selection of placement of the political parties and the names of candidates on the ballot.

b. The selection of the placement of the names of candidates on a ballot shall take place on a date and time to be determined in advance by the Commission on Elections.

c. If the Commission fails to select new dates and times:

(1) The selection of placement of the political parties and the names of candidates on the general election ballot shall be held at 3 o'clock in the afternoon of the 85th day prior to the day of the election.

(2) The selection of placement of the names of candidates in a primary or other election ballot shall be held at 3 o'clock in the afternoon of the 43rd day prior to the day of the election.

Source: 19:14-12; 19:23-24.

COMMENT

This section affords the Commission the opportunity to modify the date and time by which the parties and candidates are placed on the ballot, but retains the existing procedure for general and primary elections in the event that the Commission does not. Subsection (c)(2) adds a deadline for the placement of

candidates for an election that is not a general or primary election by applying the primary election deadline to those other elections.

19A:4-6. Names of candidates on ballot

- a. Only qualified candidates shall appear on a ballot.
- b. The name of a candidate shall appear only once upon the ballot for the same office.
- c. When no nomination for an office has been made, that fact shall be indicated on the ballot.

Source: 19:14-2; 19:14-2.1; 19:14-9; 19:14-12; 19:23-25.

COMMENT

This section derives from several sections of current law that address basic issues pertaining to the names of candidates on the ballot. Those provisions have been simplified and shortened.

19A:4-7. Grouping of candidates

a. A group of candidates, other than members of a certified political party who have been nominated in a primary election, may request that their names be grouped together on the ballot in a single column or row. Several candidates for nomination who have requested that their names be grouped together may request that a common designation or slogan be applied to all of them. The County Board of Elections shall comply with the request unless it is impractical to do so.

b. A request that candidates' names be grouped may be made in a letter signed by all such candidates delivered to the officer who receives nomination petitions no later than the last date on which petitions may be submitted.

Source: 19:14-9; 19:14-12; 19:14-18; 19:23-17; 19:23-18; 19:23-25; 19:23-25.1.

COMMENT

This section derives from several sections of current law, which address the appearance of the names of candidates on the ballot. While substantially similar to the source sections, the provisions collected here have been simplified and shortened. This section clarifies that there can be grouping of candidates in any election.

19A:4-8. Permissible descriptive language on ballot

a. Any candidate, other than a candidate of a certified political party in a general election, may request that a party designation or slogan of not more than six words appear with that candidate's name on the ballot.

b. If two candidates or groups select the same designation, the candidate or group whose petition was last filed shall be required to select a different designation.

c. No designation or slogan shall include the name of any person or corporation unless the written consent of that person or corporation is filed with the petition of nomination. No designation or slogan used in a non-partisan or a general election shall contain the name of any certified political party, any derivative of that party name, or any part of it.

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d. A request for a designation or slogan shall be included in a nominating petition or in a request for the grouping of candidates as provided in 19A:4-7.

e. A candidate who is nominated for the same office by more than one political party shall appear on the ballot in only one of the party positions for which the candidate was nominated. The candidate may choose to include on the ballot the words "Indorsed by" followed by the names of the other parties or political entities that also provided nominations. The candidate must notify the County Board of any selection and designations no later than seven days after the primary election; otherwise the County Board will make those choices.

f. No ballot for any election may include as part of a candidate's name, any honorary or assumed title or prefix, but may include in the candidate's name any nickname or familiar form of the proper name of the candidate.

Source: 19:14-9; 19:14-12; 19:14-18; 19:23-17; 19:23-18; 19:23-25; 19:23-25.1.

COMMENT

This section derives from several sections of current law, which addressed the appearance of the names of candidates on the ballot. While substantially similar to the source sections, the provisions collected here have been simplified and shortened.

19A:4-9. Public questions

Any public question to be submitted to the voters shall be printed in a separate space on the ballot with appropriate instructions to the voter. All public questions to be voted on by the voters of the entire State shall appear before any other public questions on the ballot in the order certified by the Secretary of State. All public questions to be voted on only by voters of a particular county shall appear after any statewide public questions, in the order determined by the County Board by the same neutral procedure utilized for determining the position of political parties and candidates. All other public questions shall appear last, in the order determined by the County Board by that same neutral procedure.

Source: 19:14-2; 19:14-13; 19:14-14.

COMMENT

This subsection is substantially similar to 19:14-13, although the order of the placement of the questions has been modified to go from those questions with the broadest geographic scope to those with the least broad geographic scope. There are Constitutional provisions pertaining to the appearance of public questions on the ballot, including a requirement of publication, that are not duplicated here.

19A:4-10. Preparation of ballot

a. The Commission on Elections shall fix the deadline for the preparation of the official ballot for each election. The County Board of Elections shall prepare the ballot by that date and shall submit it to the Commission for approval. The Commission shall consider whether the ballot is clear and understandable to voters and shall inform the County Board of its decision promptly. If the Commission fails to fix a deadline for an election, the deadlines shall be as follows:

(1) The contents of the official ballot for a general election shall be prepared no later than the 43rd day prior to the election.

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(2) The contents of the official ballot for a primary or other election shall be prepared no later than the 35th day prior to the election.

b. The County Board shall keep a copy of the official ballot on file and open to public inspection until the sample ballots have been distributed.

c. No changes to the ballot shall be permitted less than 25 days before the election.

Source: 19:14-1.

COMMENT

This section affords the Commission the opportunity to change the deadline for the preparation of the official ballot for each election in the event that the circumstances giving rise to the old deadlines are no longer applicable. The section retains the existing deadline for the general election in the event that the Commission does not, and adds a deadline for the primary and other elections, which were not previously set forth in the law. This section also requires that each County Board submit ballots to the Commission for approval.

19A:4-11. Correction of errors

a. When it appears that an error or omission has occurred in the preparation of any ballots by the County Board, the Board may make any required corrections.

b. If the County Board fails to correct the error or omission, any voter resident in the county may present to a judge of the Superior Court in that county a verified petition setting forth the asserted error or omission. If the Court is satisfied that an error or omission has occurred, the Court may order that the Board make any necessary corrections.

Source: 19:14-20; 19:23-29.

COMMENT

This section is substantially similar to 19:14-20 and 19:23-29, but adds a provision that the County Board may, on its own initiative, correct errors as appropriate.

19A:4-12. Number of provisional and emergency ballots

The Commission on Elections shall specify a number of provisional and emergency ballots to be available in any election. That number shall be based on information provided by each County Superintendent or Administrator of Elections.

Source: 19:14-18; 19:14-19; 19:23-22.4; 19:23-27; 19:49-3.

COMMENT

This section requires the Commission to specify the number of provisional and emergency ballots to be available for any election based on information provided by the County Superintendent or Administrator in which the Superintendent or Administrator anticipates its needs based on the voting history in the district and/or other sources of information. The numbers of ballots other than provisional or emergency that are required to be on hand are to be determined by the Commission as required by other sections of the law.

19A:4-13. Sample ballot format

a. The Commission on Elections shall determine the format of the sample ballots for each election and any instructions provided to the voters with sample ballots. The format of sample ballots for each election shall, as nearly as possible, be identical to the format of the official ballot for that election. The sample ballot shall be identified as merely a sample copy of the official ballot, not to be used for voting.

b. The sample ballot shall, in addition to any other information it contains, advise the voter of the date of the election and the location where the voter may vote on election day.

Source: 19:14-22; 19:23-31.

COMMENT

This section provides limited general guidelines for the Commission regarding the format of the sample ballot while leaving the details to be addressed by the Commission.

19A:4-14. Preparation and distribution of sample ballots

a. The County Superintendent or Administrator of Elections shall cause the sample ballots to be printed for each election.

b. The sample ballots shall be printed in English and in any other language that the County Board finds is the primary language of 10 percent of the registered voters in the district and in any other language if required by federal law.

c. By the eighth day prior to an election, the County Superintendent or Administrator shall mail a sample ballot to each voter who was registered to vote in that election as of the 30th day prior to the election.

d. On the portion of the ballot visible during mailing, or the outside of the envelope in which the ballot is mailed, the sample ballot shall state that it is a sample ballot, the election for which it is a sample ballot, the name of the municipality, the election district, and the date of the election. For school elections, the ballot shall also identify the name of the school district and the municipalities comprising that district. The portion of the ballot or envelope visible during mailing shall also state that if the ballot is not delivered in two days, it shall be returned to the County Superintendent or Administrator, and shall not be forwarded to the voter at any other address than that appearing on the ballot or envelope.

d. The County Superintendent or Administrator shall also provide sufficient sample ballots so that at least five sample ballots are posted and available for review in each polling place on Election Day.

Source: 19:14-21; 19:23-30; 19:14-21; 19:14-23; 19:14-24; 19:14-25; 19:23-30; 19:23-32; 19:23-33; 19:23-34; 19:23-35; 19:49-4; 19:60-10.

COMMENT

This section provides limited general guidelines regarding the preparation of sample ballots, while leaving the details to be addressed by the Commission based on information provided to it by the County Boards. This section derives from diverse sections of current law concerning the distribution of sample ballots. While substantially similar to the previous language, the provisions collected here have been simplified, shortened, and modified to reflect the role of the County Board and the Superintendent or Administrator. The language of this section also eliminates distinctions in the distribution method in different districts.

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19A:4-15. Preservation of envelopes or ballots returned by postmaster

The County Superintendent or Administrator shall forward to the Commission on Elections all envelopes and sample ballots returned by the postal service. These envelopes or ballots shall be used to update the statewide voter registration database.

Source: 19:14-26; 19:23-36; 19:23-37.

COMMENT

This subsection is substantially similar to sections of current law, but eliminates the time periods for which the returned ballots or envelopes are to be retained and variations in the retention process from county to county.

19A:4-16. Referendum information

Any question or proposition submitted to the voters at an election shall be shown on the sample ballot as it will appear on the official ballot. The information provided to the voters shall be sufficient to inform them of the impact of the question or proposition on the existing law.

Source: 19:14-27; 19:14-28; 19:14-29; 19:14-30; 19:14-31; 19:14-32.

COMMENT

This section eliminates sections of current law that have ceased to be applicable but are still included in the statute, and offers limited guidance regarding the presentation of a question or proposition.

CHAPTER 5. VOTING PROCEDURE

19A:5-1. Dates of elections

The dates for elections are as follows:

a. Primary elections and elections of the State and county committees of the political parties shall be held on the Tuesday after the first Monday in June.

b. General elections and any partisan election not specifically identified herein shall be held on the Tuesday after the first Monday in November. Unless otherwise provided by law, all elective public offices and all public questions shall be voted upon on the date established for general elections.

c. All non-partisan elections, including fire district elections, and school elections shall be held together on the third Tuesday in April.

d. Special elections, including run-off elections, shall be held on the dates required by the statutory section dealing specifically with those elections.

Source: New; 19:3-2; 19:3-3.

COMMENT

This section is included to increase the uniformity and efficiency of the electoral process in the State. The dates selected for elections are, for the most part, those already set forth in the relevant statutes.

School elections and the non-partisan elections have been consolidated on the same day since they are generally held less than one month apart. Holding these elections together will reduce cost to the municipalities and school boards and should increase the number of persons voting. Since the timing of school elections is closely tied to budgetary issues, the school election date was selected for the combined election.

19A:5-2. Time polls open

a. The polling place for a district shall be open from 6:00 a.m. to 8:00 p.m. for all elections except that if the election is solely a school or fire district election, the school board or fire district may set the time polls open at no later than 12 noon.

b. Any person who is at the polling place or on line to vote at the time for closing the polls shall be allowed to vote. Any person who is not at the polling place or on line to vote at the time for the closing of the polls but who is permitted to vote after the closing of the polls, by court order or otherwise, shall vote by provisional ballot.

c. Poll officials shall report to the polling place forty-five minutes before polls open. At no time from the opening of the polls to the completion of the canvass shall there be fewer than two poll officials present in the polling place, except that during a school election there shall always be at least one poll official present.

Source: 19:15-1; 19:15-2; 19:15-9; 19:52-1.

COMMENT

Subsection (a) is new and it removes potentially confusing variations in the times that polls are open for various elections. Subsection (b) is substantially identical to 19:15-9. Subsection (c) is simplified but is substantively similar to parts of 19:52-1.

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19A:5-3. Rescheduling of elections; natural disaster

a. If, as the result of a natural disaster or other extraordinary occurrence, it appears that a substantial number of persons will be prevented from voting, the Commission on Elections, a Superintendent or Administrator of Elections or a County Board of Elections may bring a summary action in Superior Court to extend voting hours in the districts affected. Notice shall be given by the official bringing the action to the individuals or entities affected, including the Attorney General and the other officials authorized to bring such an action. If the court is satisfied that extension of voting hours is necessary for persons who intended to vote to have a fair opportunity to vote, it shall order extension of hours.

b. If as the result of a natural disaster or other extraordinary occurrence, it appears that it will be impossible to conduct an election on the day set, the Commission may bring a summary action in Superior Court to change the day of the election. If the court is satisfied that the election cannot be conducted on the day set, it shall order a new date for the election not less than two weeks or more than a month after the original date.

Source: New.

COMMENT

There is no provision in current law allowing a court to extend the hours of an election or to reschedule an election when a natural disaster or other extraordinary occurrence requires that action. Recent occurrences in other states as well as problems in New Jersey in the past make the inclusion of such a provision desirable.

19A:5-4. Polling places

a. The County Superintendent or Administrator of Elections shall select a polling place for each election district in the county at a place convenient to voters in the district. In selecting polling places, the Superintendent or Administrator shall give preference to schools and other public buildings. Whenever possible, the polling place for a district shall be the same location for all elections.

b. If the County Superintendent or Administrator of Elections is not able to select a polling place for an election district, application shall be made to the Commission on Elections to select the location.

c. The polling place for a district shall be accessible to the elderly and to persons with disabilities unless the Commission:

(1) Determines that an emergency exists that makes the use of an accessible place impossible without interference with the efficient administration of the election; or

(2) Grants a waiver based on determination that all potential polling places have been surveyed and no accessible polling place is available, and the municipality is not able to make a place temporarily accessible in or near the election district.

d. If the Commission, acting pursuant to subsection (c), allows the use of a polling place that cannot be made accessible, the Commission shall, by regulation, provide for an alternate method of accessible voting.

Source: 19:8-3; 19:8-3.1.

COMMENT

Subsection (a) is derived from 19:8-3 but has been simplified to remove formal requirements that the municipality transmit a list of recommended places and that the Board certify each place. Subsection (c) is substantially similar to identical to 19:8-3.1 but has been greatly simplified and shortened.

19A:5-5. Poll officials; equipment

a. The polling place for a district shall be staffed with a sufficient number of poll officials to allow the efficient conduct of the election.

b. The polling place shall be equipped with a voting system approved by the Commission on Elections and shall be arranged in the manner approved by Commission regulations.

c. An American Flag approximately three feet by five feet shall be displayed at the outside entrance of the polling place.

d. Each polling place shall publicly post sample ballots, information regarding polling places and hours, instructions for the voter on how to vote, instructions regarding mail-in registration, and other information required by federal law.

Source: 19:6-1; 19:8-5; 19:8-6; 19:8-7; 19:8-8; 19:8-9; 19:8-10; 19:15-3; 19:15-4.

COMMENT

Subsection (a) gives discretion to the Board of Elections to decide on the number of poll officials necessary to conduct the election. Current statutes specify that there be four district officials. See, 19:6-1. Subsection (b) is new. Current statutes provide for either mechanical voting machines or paper ballots. Most counties now use electronic voting systems approved pursuant to Title 19, Chapter 53A. The subsection allows the use of any approved system. Subsection (c) is substantially identical to 19:8-5. Subsection (d) is new, and is included to incorporate certain of the provisions of the new federal law. See, 42 U.S.C. 15482.

19A:5-6. Persons permitted in polling place

The only persons who shall be allowed to be in the polling place during an election are:

a. Candidates,

b. Authorized challengers,

c. Persons present for the purpose of voting and their dependent children,

d. Police officers detailed to be present pursuant to this title, to preserve the peace and enforce the election law,

e. Persons connected with a simulated election for minors if one has been authorized by the County Board of Elections; and

f. Other officials and individuals necessary to conduct the election.

Source: 19:15-8.

COMMENT

This section, though reorganized and simplified, is substantially similar to 19:15-8. The group of “officials and individuals necessary to conduct the election” is intended to include not only poll officials,

but members of the County Board of Elections, the Commission, and others who may have a proper reason for being present at the polling place.

19A:5-7. Identity of voter; signature comparison

a. The Commission on Elections may establish a system of voting that does not require a person to vote in person in his or her district. The Commission may also establish a system of voter identification to be used as an alternative to signature comparison.

b. Unless the Commission has acted pursuant to subsection (a), a person who seeks to vote shall go to the polling place for the district where he or she is qualified to vote and shall state his or her name and address to the election officials. In a primary election, the person shall also announce the primary in which the person wishes to vote. If the officials find that the person is registered to vote in that district, they shall announce the name of the person, have the person sign the form established by the Commission and compare the signature with the sample signature in the registration records. If the officials find from the comparison that the person is the person registered to vote, and if the election officials do not find that the person is not qualified to vote in the district, the person shall be authorized to vote.

c. If a person is unable to sign the form, other means of identification established by the Commission shall be used.

d. If a person has registered by mail, and has not voted since the current registration, the election officials shall require that the person present valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the person. If the voter fails to supply proper identification, the voter shall be permitted to vote using a provisional ballot.

Source: 19:31A-8; 19:23-46.

COMMENT

This section, though reorganized, simplified and condensed, contains most of the substance of 19:31A-8. However, detailed requirements and forms have been deleted, and the Commission on Elections has been given authority to establish forms and procedures. The requirement that an individual announce the primary in which he or she wishes to vote is taken from 19:23-46. The language pertaining to the identification requirements is taken from federal law. 42 U.S.C. 15483.

19A:5-8. Voting using provisional ballot

a. If election officials find that a person seeking to vote is properly registered to vote in another district, the officials may direct the person to the polling place for that district and shall, in any case, permit the person to vote using a provisional ballot.

b. If a person seeking to vote asserts that he or she is qualified to vote and registered but election officials cannot find a record of the person's registration, the person shall be permitted to vote using a provisional ballot. Prior to the use of the provisional ballot, the election official shall make an effort to determine if the records pertaining to the person's qualification to vote are available. If the election official is unable to determine if the person is qualified, or if the available information suggests that the person is not qualified, the voter shall be informed that the provisional ballot may not be counted unless a successful application is made to the Superior Court.

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c. Any person who votes using a provisional ballot shall first sign a written affirmation indicating that the person is a registered voter in the jurisdiction in which the person desires to vote, and that the person is eligible to vote in the current election.

d. The election officials shall send the provisional ballot to the County Board of Elections, which shall review the matter and count the provisional ballot if it finds that the person was qualified to vote.

e. An election official shall provide to any person casting a provisional ballot written information explaining that the voter may determine, by accessing a free access notification system, whether the vote was counted or not and, if not, why not. The written material shall also inform voters that they may apply to the Superior Court to request that their vote be counted by following the procedure set forth in 19A:5-9.

f. The free access system made available by the Commission on Elections to inform provisional voters of the status of their vote shall be secure and confidential and the integrity of any information collected by the system protected. Access to information pertaining to an individual ballot shall be limited to the person who cast that ballot.

Source: New.

COMMENT

While there is no provision of current law similar to this section, parts (a) and (b) reflect current practice. Sections (c), (e) and (f) are new and are included to incorporate provisions of the new federal law. See, 42 U.S.C. 15482.

19A:5-9. Application for permission to vote

a. A person who has been denied permission to vote on the day of election for any reason, even if permitted to vote provisionally, may apply to a Superior Court judge for permission to vote or for an order that the provisional ballot be counted.

b. No papers need be filed; the court shall hear oral applications. The applicant may appear pro se or be represented by counsel. The rules of evidence shall not apply to these proceedings.

c. At the time of the hearing, the applicant shall be permitted to state facts establishing eligibility to vote and to furnish a copy of any information considered by the election officials that was provided to the voter.

d. The judge shall grant the application or require that the voter's provisional ballot be counted, if the judge finds that the applicant:

(1) Is a citizen of the United States and a resident of this State, and has been for at least 30 days before the election,

(2) Is at least 18 years of age,

(3) Has not been convicted of a crime which would disenfranchise a person under the laws of this State, and

(4) Is properly registered at his or her current address or was properly registered at a prior address at the time of the last election in which the applicant voted but has moved within the state and in good faith attempted to register at the new address within time by

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completing a registration form and mailing it to the Commission on Elections or delivering it to a registration agency no later than 30 days before the election.

e. The judge of the Superior Court shall file the record of the proceeding in the office of the county clerk of the county. The record shall be an open and public record. The county shall pay all costs and expenses of such proceedings.

Source: 19:15-18.3; 19:15-19; 19:15-20; 19:15-21.

COMMENT

This section is substantially identical to 19:15-18.3, but it removes the distinction between challenges from the superintendent of elections' challenge list and other challenges. Applicability of the court procedure is broadened in two respects. First, persons who have been allowed to vote on a provisional ballot are given the explicit authority to seek a court determination of their right to have the vote counted. Since all persons who claim a right to vote are to be given provisional ballots, without such a provision the section would be a nullity. Even though current law does not contain this provision, courts now entertain actions to require that a provisional vote be counted. Second, the limitation in current law as to persons on the challenge list prepared by the Superintendent of Elections has been deleted. Current practice does not seem to be in accord with that limitation and there is no basis to deny any person denied the right to vote quick and efficient recourse to the courts.

19A:5-10. Voting

a. No person who has a right to vote at any election shall be arrested by virtue of civil process on the day on which the election is held.

b. When a person has been authorized to vote, the person shall be permitted to enter the voting booth. A voter shall not remain in the voting booth longer than two minutes and shall leave the booth immediately after voting. A voter who has emerged from the voting booth shall not be permitted to reenter it.

c. Only one voter at a time shall be permitted in the voting booth to vote. A voter shall be permitted to be accompanied into the voting booth by a dependent child.

d. A person who is unable to vote without assistance because of inability to read or write, blindness or other physical disability may have assistance by a person selected by the voter or by two election officials who are not members of the same political party.

e. Other than as provided by 19A:5-2(b), any person who, for any reason, including a federal or state court order, votes after the polls close, shall vote only by provisional ballot. The provisional ballot of any person who votes in an election for federal office as a result of a federal or state court order or any other order extending the time established for the closing of the polls shall be held apart from other provisional ballots cast by persons not affected by the order.

Source: 19:4-4; 19:31A-8; 19:52-3.

COMMENT

Subsections (a) and (b), though much simplified, retain the substance of 19:52-3. Subsection (d), simplified, is substantively similar to a provision in 19:31A-8. Subsection (e) is new and is included to incorporate provisions of the new federal law. See, 42 U.S.C. 15482.

19A:5-11. Tabulating votes

As soon as the polls have closed, election officials shall tabulate the votes cast in the manner provided by regulations of the Commission on Elections for the voting system used. Two election officials who are not of the same certified political party shall perform each step in the tabulation process. Tabulation shall be done without unnecessary delay and within the view of the challengers present.

The tabulation shall be transmitted without delay to the County Board of Elections in a manner approved by the Commission. The County Board shall transmit a tabulation of the votes cast in any election for state or federal office or for any statewide public question to the Commission.

Source: 19:16-2; 19:16-3; 19:16-4; 19:16-5; 19:16-6; 19:16-7; 19:16-8; 19:16-9; 19:16-10; 19:23-49; 19:23-50; 19:52-5; 19:52-6; 19:53A-8.

COMMENT

This section derives from diverse sections of current law which address the tabulation of the votes and the transmission of that information after voting has concluded. The provisions collected here have been simplified and shortened.

19A:5-12. Basis of certification

At every election, the persons qualified for the offices to be filled and for whom the greatest number of votes were cast shall be elected to the offices. If the election results in a tie vote, a runoff election shall be held to determine who is elected to the office in question.

A public question shall be approved when the percentage of voters required by the statute authorizing the proposal of such public question properly votes in favor of its approval.

Source: 19:3-4; 19:3-6.

COMMENT

This section is substantially similar to 19:3-4 and 19:3-6, but the language has been simplified. The provision pertaining to a runoff election is new.

19A:5-13. Certification of election results

a. After it receives and tabulates the votes, the Commission on Elections shall certify the result of any election for state or federal office or for any statewide public question, and the County Board of Elections shall certify the result of any other election.

b. The election results for any state office or statewide public question shall be certified to the Secretary of State.

c. The election results for any county office or countywide public question, or any matter voted on by the voters of more than one municipality, shall be certified to the appropriate county clerk.

d. The election results for any election in which a single municipality or any part thereof is voting shall be certified to the appropriate municipal clerk.

e. School elections shall be certified as set forth in the Education Law.

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f. In addition to certifying the election results to the proper government officials, the Commission or the County Board, as appropriate, shall also issue a certificate to each successful candidate, which certificate shall serve as prima facie evidence of the right to hold the office to which the candidate shall have been determined to be elected.

g. The election results for members of the United States Senate or House of Representatives shall be certified to the Governor who shall sign the certificate and affix the State seal and transmit the certificate to the clerk of the United States Senate or the House of Representatives.

h. The election results for the President and Vice President of the United States shall be certified to the Governor who shall sign the certificate and affix the State seal and transmit the certificate to the electors of this State.

Source: 19:16-8; 19:16-9; 19:16-10; 19:17-1; 19:17-2; 19:17-3; 19:19-8; 19:19-9; 19:19-10; 19:19-11; 19:19-12; 19:19-13; 19:19-15; 19:19-16; 19:19-17; 19:20-1; 19:20-2; 19:20-3; 19:20-4; 19:20-5; 19:20-6; 19:20-7; 19:20-8; 19:20-9; 19:21-1; 19:21-2; 19:21-3; 19:21-4; 19:21-5; 19:21-6; 19:21-7; 19:22-1; 19:22-2; 19:22-3; 19:22-4; 19:22-5; 19:22-6; 19:22-7; 19:22-8; 19:22-9; 19:23-49; 19:23-50; 19:23-51; 19:23-52; 19:23-53.

COMMENT

This section derives from sections of current law concerning the certification of election results. The provisions collected here have been simplified and shortened, and set forth the role of the Commission on Elections and the County Boards of elections.

19A:5-14. Securing the voting system

After the district election officials have tabulated the votes, they shall secure the voting system in the manner provided by regulations of the Commission on Elections. The system shall be secured in a way that will allow a recount of votes if one is ordered.

Source: 19:18-1; 19:18-2; 19:18-3; 19:18-4; 19:18-6; 19:18-7; 19:18-7; 19:18-8; 19:52-5; 19:52-6; 19:52-6.1; 19:52-7; 19:53A-14.

COMMENT

This section derives from sections of current law which address securing voting systems. The provisions collected here have been simplified and shortened, and they reflect the role of the Commission on Elections in establishing the specific procedures to be followed.

19A:5-15. Recount

a. Within 10 days of an election, a candidate or any 10 voters may apply to a Superior Court for a recount of the votes cast at the election in any district or districts.

b. The Court shall order a recount, set the procedure for the recount and fix the amount of money required to be deposited with the court as security for the expense of the recount. The amount shall be based on the projected cost of the recount but shall not exceed \$25 per election district to be recounted.

c. If, as a result of the recount, the outcome of an election or public question is changed, the court shall order the outcome corrected. A copy of the order shall be filed with the Commission on Elections.

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d. The full cost of the recount shall be borne by the State if:

(1) The difference between the vote totals of the top two candidates is less than one-half of one percent of the total votes cast, or

(2) As a result of the recount, the outcome of an election is changed.

Otherwise, the cost of the recount in any district in which the difference in the vote between the top two candidates or the vote total for a public question is not changed by 10 percent or more of the total number of votes cast in that district shall be paid out of the deposit made by the candidate for that district.

Source: 19:28-1; 19:28-2; 19:28-3; 19:28-4; 19:28-5; 19:28-6; 19:28-7; 19:28-8.

COMMENT

Subsection (a) is substantially identical to 19:28-1. The portions of Subsections (b) that concern the security deposit are substantially identical to provisions in 19:28-2. The subsection also allows the judge to set the terms of the recount. Though stripped of procedural detail, that provision is substantially similar to 19:28-3. Subsection (c) is a simplification of sections 19:28-4 through 19:28-8. Subsection (d) is substantially similar to the part of 19:28-2 that concerns cost of the recount.

19A:5-16. Preserving election equipment and records

a. The Commission on Elections shall adopt regulations establishing the custody of election equipment and supplies and a schedule for the destruction of documents or other records pertaining to elections.

b. When not in use for an election, the equipment and supplies necessary for the conduct of an election shall be maintained by the County Superintendent or Administrator of Elections.

c. All documents or other records of the outcome of an election shall be maintained until the time period within which to certify or challenge any aspect of that election has passed and until such time as they may be destroyed in the manner and pursuant to the schedule adopted by the Commission, whichever is longer.

Source: 19:10-1; 19:18-1; 19:18-2; 19:18-3; 19:18-4; 19:18-5; 19:18-6; 19:18-7; 19:18-8; 19:19-14; 19:26-1; 19:26-2.

COMMENT

This section derives from sections of current law which address the preservation of equipment, supplies, documents and other records of elections. The provisions collected here have been simplified, shortened and modified to reflect the fact that paper ballots and the associated equipment are no longer widely used for elections. This section also has been modified to reflect the role of the Commission on Elections in establishing the specific procedures to be followed.

19A:5-17. Responsibility for cost of elections

a. All costs of conducting general and primary elections shall be paid by the County Board of Elections.

b. Special costs of municipal, school and fire district elections shall be paid by the municipality, school board or fire district. Special costs allocable to one entity will be borne by

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that entity; shared costs will be divided between the entities evenly. Other costs of municipal, school and fire district elections shall be paid by the County Board.

c. "Special costs" shall mean:

- (1) The pay of election officials hired to conduct the election;
- (2) Any cost of transportation of voting machines to the voting districts paid to private contractors;
- (3) Any overtime pay of county employees necessary to conduct the election;
- (4) Printing costs for ballots paid to private contractors;
- (5) Mailing sample ballots; and
- (6) Any other costs paid by the County Board directly resulting from the election.

d. "Special costs" shall not include:

- (1) Allocated cost of county employees; or
- (2) Allocated cost of county equipment and supplies.

Source: New.

COMMENT

While Chapter 45 of Title 19 contains provisions on the costs of elections, none of them regulate the division of costs among the counties, school boards and municipalities for non-partisan elections. Current practice varies. This section is intended to settle this issue.

19A:6-1. Pre-Election Day voting

a. The Commission on Elections shall establish procedures to allow any registered voter of New Jersey to vote during the 14-day period prior to Election Day subject to the requirements of this section.

b. The Commission shall design, print and distribute a uniform pre-Election Day request to vote form and these forms shall be available to the public at all County Superintendents or Administrators of Elections and registration agencies. These forms shall be available by written or electronic request and may be delivered by written or electronic methods.

c. The Commission shall establish deadlines for filing a pre-Election Day request to vote form, but shall not set a deadline earlier than seven days prior to the date of the Election.

Source: 19:57-1 et seq.

COMMENT

This section replaces existing absentee ballot law that requires a civilian voter to state a reason why that voter cannot appear at the poll on Election Day. Because the law applies to voters physically present in the state on Election Day, the term "absentee" is a misnomer. The Commission elected to dispense with the requirement that a voter provide a reason to obtain an absentee ballot since, as a practical matter, election officials do not subject the request form to a merit review. The liberalized absentee ballot is more accurately described as a procedure to cast a ballot prior to Election Day. Persons covered by federal law, military and overseas voters are treated separately since federal law defines these terms and sets minimum requirements.

19A:6-2. Approving or rejecting a pre-Election Day vote request

a. A voter who wants to vote by pre-Election Day ballot shall complete and sign a pre-Election Day request to vote form requesting either a written ballot or permission to vote in person at the County Board of Elections. The form shall be mailed or delivered to the County Superintendent or Administrator of Elections for the county in which the voter is registered. A voter may request to vote by pre-Election Day ballot for the next four regularly scheduled general elections on a single form.

b. The County Superintendent or Administrator of Elections shall approve a pre-Election Day request to vote form if the voter signs the form, is registered, and is qualified by law to vote.

c. If a voter has registered by mail, and has not voted since the current registration, the voter shall submit, with the pre-Election Day request to vote, a photocopy of valid photo identification or a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the person. If the voter fails to supply proper identification, the ballot submitted shall be treated as a provisional ballot.

d. If the form is approved, the County Superintendent or Administrator of Elections shall mark the voter registration record of the voter in the statewide registration database to show that the voter has opted to cast a pre-Election Day ballot. Except as prescribed by federal law, that voter shall not be permitted to vote in person at the polls on Elections Day.

e. If the County Superintendent or Administrator of Elections rejects the request, it shall inform the voter of the reason and provide an opportunity for the voter to challenge that decision.

Source: 19:57-10.

COMMENT

This section specifies the requirements that a request to vote prior to Election Day is granted if the voter is registered, otherwise qualified by law to vote and eligible to vote in the particular election for which the request is made. A voter who is granted the option to vote prior to Election Day is barred from voting in person at the polls. This bar is also reflected in the language of 19A:2-8, which clarifies that the voter registration database shall include an indication of whether the voter has requested a pre-Election Day ballot.

19A:6-3. Pre-Election Day voting procedure

a. The Superintendent or Administrator of Elections shall print and distribute a pre-Election Day ballot in a form approved by the Commission on Elections and identical to the ballot used on the day of Election. The ballot shall be available at least 30 days prior to the date of the Election.

b. The Commission shall establish procedures to permit in-person pre-Election Day voting at designated places where the voter may vote by using an approved voting machine rather than a paper ballot.

Source: 19:57-4.1; 19:57-5; 19:57-8.

COMMENT

This section omits from the statute the specific requirements as to the content of the request form and the ballot and the methods by which voters may obtain a request form and cast a ballot. Since an objective of election law reform is the reduction of paper ballots, this section requires the Commission on Elections to develop procedures to allow voters to cast a pre-Election Day ballot by machine at designated offices.

19A:6-4. Verification and secrecy of ballot

a. The Commission on Elections shall establish procedures to ensure the secrecy of pre-Election Day ballots submitted to a County Board of Elections, and to ensure that the voter voting by pre-Election Day ballot is the registered voter whose request to vote prior to the date of election was granted. The Commission may use an inner and outer envelope whereby the inner envelope contains the voter's marked paper ballot, is signed and sealed and placed in the outer envelope for delivery to the approved office.

b. The Commission shall establish procedures for pre-election day voting that do not require a notarized witness signature, an address, a postmark, or other formality not necessary to confirm the identity of the voter.

c. If a voter casts a pre-Election Day ballot at a designated voting machine, the Commission shall apply the same methods of voter identification used at a polling place on Election Day.

Source: 19:57-17; 19:57-19; 19:57-20; 19:57-21; 19:57-22; 19:57-23; 19:57-24.

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COMMENT

This section replaces the statutory requirements for handling absentee ballots. It leaves the details to the regulations of the Commission on Elections. However, it imposes the standards of secrecy and verification.

19A:6-5. Counting the pre-Election Day vote

Every pre-Election Day ballot received by an approved office prior to the close of the Election Day shall be counted unless that voter is shown to have died prior to Election Day or that vote is successfully challenged.

Source: 19:57-26; 19:57-30.

COMMENT

This section follows existing law.

19A:6-6. Pre-Election Day voting by persons covered under federal law

a. The Commission on Elections shall establish procedures to comply with the Uniformed and Overseas Citizens Absentee Voting Act, or successor federal law, and to meet the non-mandatory recommendations of that Act to simplify and facilitate the request and submission of absentee ballots for use by absent uniformed services voters.

b. Persons covered by subsection (a) shall be entitled to vote by pre-election day ballot in all elections held in this state provided they otherwise meet the requirements to vote in that particular election.

Source: New.

COMMENT

New Jersey has adopted the Federal Post Card Application to permit absent uniformed services voters and overseas voters to cast their ballots absentee. 42 U.S.C. 1973ff. The UOCAVA was amended by P.L. 107-107; 2001, 115 Stat. 1012. The Commission shall continuously review and conform registration and absentee procedures for voters covered by the UOCAVA.

19A:6-7. Rule making authority

The Commission on Elections shall adopt rules to implement this Chapter.

Source: New.

COMMENT

The Commission on Elections must develop rules defining the mechanics of implementing the pre-Election Day ballot procedures.

CHAPTER 7. CHALLENGERS AND CHALLENGES

19A:7-1. Appointment of challengers

a. The following persons may appoint challengers:

(1) A candidate may appoint two challengers for each election district in which the candidate's election is to be held.

(2) The chairman of the county committee of a certified political party that has nominated candidates in an election in a district greater than a single municipality may appoint two challengers for each election district in which the election will be held.

(3) The chairman of the municipal committee of a certified political party that has nominated candidates in an election within the municipality may appoint two challengers for each election district in which the election is to be held.

(4) The proponent and the opponent of a public question may appoint two challengers for each election district in which the public question is to be voted on.

b. No person may be appointed a challenger who is not a registered voter.

c. A list of the challengers appointed shall be filed with the County Board of Elections no later than 14 days prior to the election at which the challengers are to act.

Source: 19:7-1; 19:7-2; 19:7-3.

COMMENT

This language is substantially similar to the source sections, but has been simplified and shortened.

19A:7-2. Permits to challengers

a. The County Board of Elections shall issue a permit and an identifying badge for each person appointed a challenger.

b. Each permit shall authorize the person to act as a challenger in any district in the county in which the election for which the challenger was appointed will take place.

c. At the request of the person who nominated a challenger, the permit for that challenger may be revoked and a permit issued in its place for a different challenger at any time up to and including the day of election.

Source: 19:7-4.

COMMENT

This substance of the section is similar to the source section, except for one important change: subsection (b) permits a challenger to act in any district in the county in which the election for which the challenger was appointed will take place, rather than limiting a challenger to a single district.

19A:7-3. Identification of challengers

A challenger shall wear the badge furnished by the County Board of Elections that identifies the candidate, political officer or other person who appointed the challenger.

Source: 19:7-6.

COMMENT

This language is substantially similar to the source section, but has been simplified and shortened.

19A:7-4. Powers of challengers

a. A challenger may be present in the voting place and shall be provided a place to sit where the challenger can hear the names of persons seeking to vote announced.

b. A challenger may be present and may witness the confirmation of voter identification.

c. A challenger may challenge the right to vote of any person.

d. A challenger may be present when the votes are counted, including when pre-election day votes are counted, and may challenge the counting or rejecting of any ballot or part of any ballot.

e. A challenger may not address voters directly unless authorized to do so by a poll official.

Source: 19:7-5; 19:15-17; 19:15-22.

COMMENT

This language is substantially similar to the source section, but has been simplified and shortened. It should be noted that the term "voting place" includes polling places used for pre-election day voting.

19A:7-5. Number of challengers

Unless the County Board of Elections gives written permission, no more than one challenger appointed by a single person shall be present at any time in any election district. If the Board permits more than one challenger to be present at any time, it shall permit a like number of challengers to be present on behalf of any opposing candidate, party or public question.

Source: 19:7-6.1.

COMMENT

This language is substantially similar to the source section, but has been simplified and shortened.

19A:7-6. Basis for challenge

A person seeking to vote may be challenged only on the ground that the person is ineligible or disqualified from voting.

Source: 19:4-1.

COMMENT

The principle announced by this section is not explicitly stated in current law, but it is fairly implied by 19:4-1.

19A:7-7. Challenges

a. An authorized challenger or a poll official may challenge a person's right to vote, stating the ground for the challenge and including the information on which the challenge is based. A challenge may not be made because of a person's race, color, national origin, expected manner of casting a vote or place of residence other than residence necessary to satisfy requirements for voting in the district.

b. When a person's authority to vote is challenged, the poll officials present at the polling place shall question the person and decide the challenge. The person shall be allowed to vote unless the poll officials find that the person is not qualified to vote in the district from statements of the person seeking to vote or evidence of public records.

c. If the poll officials find that a person seeking to vote is not qualified to vote in the district but the person disputes that finding, the person shall be permitted to vote on a provisional ballot. The poll officials shall send the ballot and a record of the information on which the finding was made to the County Board of Elections, which shall review the matter and count the provisional ballot unless it finds that the person was not qualified to vote in the district.

d. As set forth in 19A:5-8(e) a poll official shall provide to any individual casting a provisional ballot written information explaining that the voter may determine, by accessing a free notification system, whether the vote was counted or not and if not, why not. The written material shall also inform the voter that the voter may apply to the Superior Court to request that the vote be counted following the procedure set forth in 19A:5-9.

Source: 19:15-18; 19:15-22; 19:15-23; 19:15-24; 19:23-48; 19:53C-3.

COMMENT

This section differs from its source in providing a stricter standard for accepting challenges. For the most part, subsection (a) is not changed in substance from 19:15-18. The requirement to supply information on which the challenge is based is similar to the requirement of an affidavit where a challenge is granted. See, 19:15-18.2. Subsection (b) is new in requiring a finding based on reliable information before a person is denied a right to vote. However, the affidavit requirement of current 19:15-18.2 has a similar effect. Subsection (c) is also new. At present, the only recourse for a voter who has been successfully challenged is to go to court. See, 19:15-18.3. This section removes the distinction between challenges from the superintendent of elections' challenge list and other challenges. The purpose of a statewide registration database is to make every effort to keep registration information current and accurate. Reliance on a mailing and challenges where letters are returned is an inefficient manner in which to disclose voters who have moved and errors in the postal system may cause problems for qualified voters. For that reason, the section treats all challenges alike.

19A:7-8. Application by challenged voter to Superior Court

A voter who has been challenged and found not qualified to vote, even if permitted to vote provisionally, may contest the challenge in the Superior Court in the manner set forth in 19A:5-9 seeking a determination that the voter is qualified and an order that the provisional ballot be counted.

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Source: 19:15-18.3; 19:15-19; 19:15-20; 19:15-21.

COMMENT

For the most part, the section is identical in substance to 19:15-18.3. Applicability of the court procedure is broadened in two respects. First, persons who have been allowed to vote on a provisional ballot are given the explicit authority to seek a court determination of their right to have the vote counted. Since all persons who claim a right to vote are to be given provisional ballots, without such a provision the section would be a nullity. Even though current law does not contain this provision, courts now entertain actions to require that a provisional vote be counted. Second, the limitation in current law as to persons on the challenge list prepared by the Superintendent of Elections has been deleted. Current practice does not seem to be in accord with that limitation and there is no basis to deny any person denied the right to vote quick and efficient recourse to the courts.

CHAPTER 8. PETITIONS FOR NOMINATION

19A:8-1. Direct petition and primary election

Candidates for public office, other than electors for President and Vice President of the United States, shall be nominated directly by petition, or at the primary for the general election held pursuant to this title.

Source: 19:13-1; 19:23-8.

COMMENT

This section is substantively identical to provisions of 19:13-1 and the nomination by petition language should be read to include candidates in a primary election now covered by 19:23-8.

19A: 8-2. To whom petition addressed

a. Petitions naming candidates for office to be filled by voters of the entire State, of any congressional district, of any political division or district greater than a single county, or for election to the Senate or General Assembly, shall be addressed to the Commission on Elections.

b. Petitions nominating candidates for office to be filled by voters of a single county, part of a county but more than a single municipality, and all other petitions naming candidates to be voted for at the general election, shall be addressed to the county clerk.

c. Petitions nominating candidates for office to be filled by voters of a single municipality, or part of a municipality, and not to be voted for at the general election, shall be addressed to the municipal clerk.

Source: 19:13-3; 19:23-6.

COMMENT

Subsections (a) and (b) are substantively identical to provisions of 19:13-3 and 19:23-6 although the prior reference to the Secretary of State has been replaced with a reference to the Commission on Elections. Subsection (c) is new; it is intended to provide for non-partisan municipal elections.

19A:8-3. Contents of petition

a. A petition shall:

(1) Set forth the name and place of residence of each candidate, the political party in whose primary the candidate seeks to be nominated, and the title of the office for which each candidate is named.

(2) Include a statement that the petitioners are legally qualified to vote for the offices named in the petition, that they have not signed any other petition for these offices, and that they pledge themselves to support and vote for the candidates named.

(3) Be arranged to contain sufficient spacing between the signature lines of the petition to permit each signer to provide his or her printed name, place of residence and signature.

b. A petition may:

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(1) State in not more than six words the name of a party or slogan to be printed on the ballots with the names of the candidates. No slogan may be placed on the petition that does not meet the requirements for placement on the ballot pursuant to 19A:4-8.

(2) Name three persons as a committee on vacancies to fill a vacancy caused by the death, resignation or disqualification of the person indorsed as a candidate in the petition.

b. A petition nominating electors for President and Vice President of the United States may include the names of the candidates for President and Vice President for whom the electors are to vote, but the petition or petitions shall not include the names of any candidates for President or Vice President who have been nominated at a convention of a political party, as defined by this title.

Source 19:13-4; 19:23-7.

COMMENT

This section is substantively similar to the parts of 19:13-4 and 19:23-7 that regulate the contents of a petition. Other parts of the section, dealing with limitations on nomination by petition, have been moved to the section on that subject.

19A:8-4. Signatures to petition; number; addresses

a. A petition for nomination for a statewide office shall require signatures of a number of legally qualified voters of this State equal to two percent of the entire vote cast for members of the General Assembly at the preceding general election or 800 voters, whichever is less.

b. A petition for nomination for an office elected from a district or political subdivision shall require signatures of a number of legally qualified voters of this State equal to two percent of the entire vote cast for members of the General Assembly at the preceding general election in that district or political subdivision or 100 voters, whichever is less.

c. The place of residence of each voter signing a petition shall be included with the signature.

d. A voter may sign no more than one petition for each officer to be elected.

e. Not all of the names of the petitioners need be signed to a single petition.

Source: 19:13-5; 19:13-6; 19:23-8; 19:23-10.

COMMENT

Subsections (a) and (b) are substantially identical to provisions of 19:13-5. Another part of that statute providing separately for the number of signatures requires in new districts was deleted as unnecessary. Subsections (c) and (d) incorporate the provisions of 19:13-6. The language regarding petitioner for a primary, which had stricter signature requirements, was revised to be consistent with this language.

19A:8-5. Certification of petition

Each petition shall be accompanied by an affidavit that the petition is made in good faith and that the affiant believes that the signers are duly qualified voters.

Source: 19:13-7; 19:23-11.

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COMMENT

This section is substantially similar to 19:13-7 and 19:23-11, but incorporates three changes. The requirement that the affiant be a signer of the petition has been deleted, as has the requirement that the affiant witness all of the signatures made on the petition, and the requirement of a written affidavit has been made explicit.

19A:8-6. Acceptance of nomination by candidate

A petition shall not be filed unless it is accompanied by acceptance of nomination consisting of:

- a. A written acceptance of the nomination signed by the candidate;
- b. The oath of allegiance prescribed by statute taken by the candidate before an officer authorized to take oaths in this State;
- c. A certification that the candidate is a resident of and a legal voter in the jurisdiction of the office for which the nomination is made.

Source: 19:13-8; 19:23-15.

COMMENT

This section is substantively similar to the parts of 19:13-8 and 19:23-15 that regulate the certifications that must accompany a petition. Other parts of the section, dealing with limitations on who may accept nominated by petition, have been moved to the section on restrictions on nomination by petition.

19A:8-7. Restrictions on nomination by petition

- a. A petition for direct nomination, including a petition filed to fill a vacancy, shall not nominate to any elective public office a candidate who unsuccessfully sought the nomination of a political party to that office in the primary election held in the same calendar year.
- b. No such petition shall undertake to nominate any candidate who has accepted the nomination for the primary for such position.
- c. A candidate shall not sign an acceptance for more than one petition of nomination under this chapter.
- d. A candidate shall not sign an acceptance for a petition for the office of member of the House of Representatives in more than one congressional district in the same calendar year.

Source: 19:13-8; 19:13-8.1; 19:23-15.

COMMENT

Subsection (a) is substantively identical to 19:13-8.1. Subsection (b) is substantively identical to part of 19:13-4. Subsections (c) and (d) are substantively identical to part of 19:13-8.

19A:8-8. Time for filing petitions

- a. Petitions and certifications and acceptances nominating electors of candidates for President and Vice President of the United States, shall be filed with the Commission on Elections before 4:00 p.m. of the 99th day preceding the general election.

b. Petitions and certifications and acceptances for other offices for which primary elections are held shall be filed with the officer to whom they are addressed before 4:00 p.m. of the day of the holding of the primary election.

c. Petitions and certifications and acceptances for offices for which primary elections are not held shall be filed with the officer to whom they are addressed before 4:00 p.m. of the 60th day preceding the date of election.

d. Petitions and certifications and acceptances for a candidate for nomination in a primary election shall be filed with the officer to whom they are addressed before 4:00 p.m. of the 60th day preceding the date of the primary election.

Source: 19:13-9; 19:23-14.

COMMENT

Subsections (a) and (b) are substantively identical to the time provisions of 19:13-9 and are similar to the provisions of 19:23-14 except that the reference to the Secretary of State has been replaced with a reference to the Commission on Elections. Subsection (c) has been added to provide for non-partisan elections.

19A:8-9. Receipt of petitions

a. All filed petitions, and determinations of various officers regarding objections to those petitions and the validity of the petitions, shall be open under proper regulations for public inspection.

b. The officer who receives a petition shall notify the Commission on Elections of the names of all candidates, other than candidates for federal office, nominated by petition and any other information required by the Commission and shall notify the Commission immediately upon the withdrawal of a petition of nomination.

Source: 19:13-9.

COMMENT

This section is substantively identical to provisions of 19:13-9.

19A:8-10. Objection to petition

a. Every petition of nomination in apparent conformity with the provisions of this Title shall be deemed to be valid unless an objection to it is filed in writing with the officer with whom the original petition was filed not later than the fourth day after the last day for filing petitions.

b. If an objection is made to a petition, the officer shall immediately give notice of the objection to the candidate who may be affected by the objection, mailed to the candidate at the address given in the petition of nomination.

c. Unless a court orders otherwise, the officer with whom the petition is filed shall make a determination regarding the validity of the objection in a summary way. For this purpose, the officer may subpoena witnesses and take testimony or depositions. In the case of petitions nominating electors of candidates for President and Vice President of the United States, the Commission on Elections shall file a determination in writing by the 93rd day before the general

election. In other cases, the officer shall file a determination in writing on or before the tenth day after the last day for the filing of petitions.

d. A candidate may challenge the officer's determination by filing a verified complaint with the Superior Court. If the complaint concerns a petition for electors of candidates for President and Vice President of the United States, it shall be filed at least 95 days before the general election. In other cases, the complaint shall be filed on or before the 12th day after the last day for the filing of petitions. The court shall hear the matter in a summary manner and shall order any relief that is necessary to protect and enforce the rights of candidates. The court's order or determination shall be filed within three days after the filing of the complaint.

Source: 19:13-10; 19-13-11; 19-13-12.

COMMENT

Subsections (a) and (b) are substantively identical to 19:13-10. Subsection (c) is substantially identical to 19:13-11 except that the reference to the Secretary of State has been replaced with a reference to the Commission on Elections. Subsection (d) is substantially identical to 19:13-12. While there is no apparent reason for the small differences in time periods for determination of objections between presidential and other petitions, these differences have been preserved.

19A:8-11. Amendment of petitions; time

a. If a petition of nomination is defective, except as to the number of signatures, the officer with whom the petition has been filed shall promptly notify the candidates setting forth the nature of the defect and the date before which the petition may be amended.

b. A candidate whose petition of nomination, certification or acceptance is defective may amend as necessary, but may not add signatures. The amendment may be made by filing a new or substitute document. A proper amendment shall be treated as if filed on the date of the filing of the original document.

c. Any amendment of petitions for electors for candidates for President and Vice President of the United States shall be made on or before the 93rd day before the general election. Any amendment of other petitions shall be made on or before the tenth day after the last day for the filing of petitions.

d. This provision shall be liberally construed to protect the interest of candidates.

Source: 19:13-13; 19:23-19; 19:23-20.

COMMENT

This section is substantively identical to provisions of 19:13-13 but it incorporates language drawn from 19:23-19 calling for notification of a candidate regarding a defective petition and modifies the deadline for amending petitions previously included in 19:23-20.

19A:8-12. Nomination of presidential and vice presidential electors and candidates

a. In presidential election years, the State committee of a political party shall meet at the call of its chairman, within one week following the closing of the party's national convention, to nominate candidates for electors of President and Vice-President of the United States.

b. The nominations shall be certified in writing and shall contain the name and place of residence of each person nominated, and the names of the candidates for President and Vice-

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President for whom such electors are to vote. The nominations may state the designation of the party the nominating body represents. The State committee may also appoint a committee to fill vacancies among candidates for elector, and include the names and addresses of the committee in the certificate.

c. The certificate shall be signed by the State chairman and shall be accompanied with an affidavit of the State chairman that he or she is the State chairman of the political party and that the certificate and statements contained in it are true to the best of knowledge and belief. The certificate shall be accompanied by statements that the persons named in the certificate accept nominations and by the oaths of allegiance prescribed by statute.

d. The certificate of nomination and acceptances shall be filed with the Commission on Elections not later than one week after the nomination of electors of President and Vice-President of the United States.

e. The procedure for objections to the certificates of nomination, the determination of the validity of objections, the correction of defective certificates, and the presentation of certificates and any attached documents, shall be the same as for direct petitions of nominations.

Source: 19:13-15.

COMMENT

Though simplified, this section is substantively similar to provisions of 19:13-15. Subsection (b) requires that the names of the candidates for President and Vice President be included in the certification. At present, that is allowed but not required. In section (d), the reference to the Secretary of State was replaced with a reference to the Commission on Elections.

19A:8-13. Declined nomination

a. A person may decline nomination for election to public office by filing a signed and acknowledged writing with the officer with whom the original petition or certificate of nomination was filed at least 30 days before the day of the election.

b. In the case of the nomination of electors of President and Vice-President of the United States by the State committee of a political party the officer to whom the notification of declination is given shall inform the committee appointed by the State committee to fill vacancies, or if there is no such committee, the chairman of the State committee.

c. In all other cases, the officer to whom the notification of declination is given shall inform at least five of the persons who signed the original petition that the nomination has been declined.

Source: 19:13-16; 19:13-17.

COMMENT

Subsection (a) is substantively identical to provisions of 19:13-16. Subsections (b) and (c) are substantively identical to provisions of 19:13-17.

19A:8-14. Filling vacancies generally

a. When a person declines nomination, if a nomination petition or certificate is insufficient or inoperative, or if a nominee dies, becomes disabled, is convicted of an offense that

would preclude the candidate from holding office, withdraws, becomes ineligible, or vacates nomination for any other reason, the vacancy may be filled as provided in this section.

b. If the candidate vacating the nomination was nominated by petition:

(1) if the petition is valid and provides for a committee on vacancies, the committee shall fill the vacancy as provided in this chapter; or

(2) otherwise, the successor shall be nominated in the same manner by direct petition. The new petition of nomination must be filed not later than 25 days before the day of election.

c. If the candidate was nominated by a primary election:

(1) For a statewide office, the candidate shall be selected and certified by the State committee of the political party in which the vacancy occurred;

(2) For a countywide office, the candidate shall be selected and certified by the county committee of the political party in which the vacancy occurred;

(3) For an office with a district comprised of parts of two or more counties, the candidate shall be selected and certified by members of the county committees of the party where the vacancy occurred who represent those portions of the counties comprising the district;

(4) For an office with a district comprised of part of a county, the candidate shall be selected and certified by those members of the county committee of the party where the vacancy occurred who represent those portions of the county comprising the district.

d. A selection shall be made pursuant to subsection (c) and a statement of the selection shall be filed not later than the 25th day before the election.

e. If the vacancy is for a candidate for elector of the President and Vice-President of the United States, the vacancy shall be filled by the committee to whom power was delegated to fill vacancies, or, if no committee was delegated that power, by the State committee of the political party that nominated the elector whose nomination is vacated. A statement of the selection of a candidate shall be filed not later than the 25 days before the election.

f. If there is no candidate on the primary election ballot of a political party for nomination for election to a public office in the general election and no write-in candidate for nomination for that office is certified as nominated at the primary election, a vacancy shall not be deemed to exist and the provisions of this section allowing vacancies to be filled shall not be applicable.

g. If a replacement candidate is selected to fill a vacancy less than 45 days before the election, the party that selects the candidate shall pay any cost associated with reprinting and remailing ballots.

h. As set forth in section 19A:4-10, no changes to the ballot shall be permitted less than 25 days before the election.

Source: 19:13-18; 19:13-19; 19:13-20; 19:13-20.1; 19:13-21.

COMMENT

Subsection (a) is substantively identical to provisions of 19:13-18. Subsection (b) is substantively identical to provisions of 19:13-19. Subsections (c) and (d) are derived from 19:13-20, but the detailed procedures specified in that section have been deleted as unnecessary. Subsection (e) is substantively

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identical to 19:13-20(c). Subsection (f) is substantively similar to 19:13-21, but the detailed procedures specified in that section have been deleted as unnecessary. Subsection (g) is substantively similar to 19:13-20.1. Subsection (g) was included to reflect the payment of costs rule adopted by the Court in *New Jersey Democratic Party, Inc. v. Samson*, 175 N.J. 178 (2002). Subsection (h) was added to clarify that there is a time after which no changes to the ballot will be permitted regardless of whether or not an event has occurred that would normally justify such a change, including matters such as the death or withdrawal of a candidate.

19A:8-15. Committee on vacancies candidate nominated by petition

a. If a petition provides for a committee on vacancies, and a vacancy occurs, the committee may file a certificate stating the name of the candidate nominated by the petition, the office for which the candidate was nominated, the cause of the vacancy, the name of the substitute candidate and that the candidate is a member of the same political party as the original candidate, the fact that the committee is authorized to fill vacancies and any other information required to be given in an original petition of nomination. The certificate executed, sworn to and filed by the members of the committee shall have the same effect as the original petition of nomination and shall be accompanied by the oath of allegiance prescribed by law.

b. The certificate shall be filed at least 45 days before election and shall be filed with:

(1) The Commission on Elections in the case of officers to be voted for by the voters of the entire State or a portion of the state involving more than one county or any congressional district,

(2) The county clerk in the case of officers to be voted for by the voters of the entire county or any part of a county involving more than one municipality, or

(3) With the municipal clerk in the case of officers to be voted for by the voters of the entire municipality or any part of it.

Source: 19:23-12.

COMMENT

This section is substantially identical to 19:23-12.

19A:8-16. Statement to county clerks of nominations; vacancies

a. Not later than 86 days before an election, the Commission on Elections shall certify and forward to the county clerks a statement of candidates for election in the county. This statement shall contain the names and residences of the candidates, the offices for which they were nominated, and the names of the parties or the political appellation under which they were nominated. Candidates nominated directly by petition, without distinctive political appellation, shall be certified as independent candidates.

b. If a vacancy has occurred among the candidates whose petitions or certificate of nomination are on file with the Commission, the name of the person who has been nominated to fill the vacancy shall be inserted in the statement of candidates. If a vacancy occurs or is filled after the statement is sent, a corrected statement shall be forwarded to the county clerks immediately.

Source: 19:13-22; 19:13-23.

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COMMENT

Subsection (a) is substantively identical to provisions of 19:13-22. Subsection (b) is substantively identical to provisions of 19:13-23 except that the reference to the Secretary of State has been replaced with a reference to the Commission on Elections.

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CHAPTER 9. OFFICES, VACANCIES AND PUBLIC QUESTIONS

19A:9-1. Incompatible offices

a. No person shall hold at the same time more than one of the following offices: elector of President and Vice-President of the United States, member of the United States Senate, member of the United States House of Representatives, member of the New Jersey Senate or General Assembly, county clerk, register, surrogate or sheriff.

b. No person shall be elected a member of the House of Representatives, or an elector of President and Vice-President, who is an officer or employee of the United States or of the State of New Jersey.

c. No person may accept a nomination by petition or consent to the acceptance of a nomination in a petition for a primary election for more than one office to be filled at the same general election if the simultaneous holding of the two offices would be prohibited by the Constitution of the State of New Jersey.

Source: 19:3-5; 19:3-5.1

COMMENT

This section is substantially similar to the language of parts of 19:3-5 and 19:3-5.1.

19A:9-2. Qualification of presidential and vice-presidential electors

No person shall be elected an elector of the President or Vice-President of the United States unless that person is qualified to be a voter of the State, is at least 25 years of age, and has been a United States citizen for at least seven years by the date of the election.

Source: 19:3-5.

COMMENT

This section is substantially similar to the language of parts of 19:3-5.

19A:9-3. Void nomination or election

If a candidate for public office fails to file any statement or oath required by law, or files a false statement, the nomination or election of the candidate shall be void unless it appears from the evidence presented at proceedings conducted in the Superior Court that:

a. The act complained of was not committed by the candidate or with the candidate's knowledge or consent and the candidate took all reasonable means to prevent the commission of the offense;

b. The act complained of was trivial and that the candidate in all respects complied with the law; or

c. Any act or omission of the candidate arose from accidental miscalculation or some other similar reasonable cause; and not from lack of good faith, and it would be unjust to require the candidate to forfeit the nomination or election to office.

Source: 19:3-7; 19:3-9.

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COMMENT

This section is substantially similar to the language of 19:3-7 and 19:3-9 but has been simplified and shortened.

19A:9-4. Effect of void nomination

a. If a court determines that the nomination of any candidate at a primary election is void, and if the determination is made at least 30 days before the election, the court shall order that the name of the candidate not appear on the ballot, and the name of the candidate receiving the next highest number of votes at the primary shall be placed on the ballot.

b. If a determination that a nomination is void is made after the time within which modifications may be made to the ballot, and the candidate is elected, that election is void.

Source: 19:3-10; 19:3-11; 19:3-12; 19:3-13.

COMMENT

The language of this section is substantially similar to the language of 19:3-10, 19:3-11, and 19:3-12 but it has been simplified and shortened.

19A:9-5. Effect of void election to public office

a. If the determination is made that an election to a public office is void, no certification of election shall be delivered and if a certificate has been delivered, that certificate shall be void.

b. If the determination is made that an election to public office is void after the candidate has been inducted into office:

(1) A certified copy of the record of the determination shall be sent to the Attorney General of the State who shall have a duty to institute appropriate proceedings for the vacation of the office if no other such proceedings have been instituted.

(2) If the record pertains to the election of any candidate for the offices of United States Senator, member of Congress, State Senator or member of the General Assembly, the Attorney General shall, in lieu of instituting proceedings, send the certified copy of the record to the United States Senate, the House of Representatives, the State Senate, or the General Assembly, as appropriate.

(3) If the record pertains to the election of an individual to a party office, the Attorney General shall, in lieu of instituting proceedings, send to the appropriate party body a certified copy of the judgment and determination of the Court declaring the election void so that the certificate of election delivered to the candidate having the next highest number of votes shall be honored by that body. Any delegate to a national convention served with a certified copy of the judgment and determination of the Court declaring the election void shall surrender the certificate to the Clerk of the Superior Court without delay.

c. The copy of any record forwarded by the Attorney General to a legislative body shall be forwarded within five days of the receipt by the Attorney General if the legislative body is in session, or, if not, on the first day of the legislative session.

Source: 19:3-14; 19:3-15; 19:3-16; 19:3-17; 19:3-18; 19:3-19.

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COMMENT

The language of this section is substantially similar to the language of 19:3-14, 19:3-15, 19:3-16, 19:3-17; 19:3-18; and 19:3-19 but it has been simplified and shortened.

19A:9-6. Vacation of office

a. When the nomination or election of a person to public office has been declared null and void, that person shall be removed from the office.

b. The Attorney General may institute an action in lieu of prerogative writ to remove from office any person whose nomination or election is void.

c. Nothing shall abridge the right of a claimant to any office to institute an action in lieu of prerogative writ for the recovery of an office.

Source: 19:3-23; 19:3-24.

COMMENT

The language of this section is substantially similar to the language of 19:3-23 and 19:3-24 but it has been simplified and shortened.

19A:9-7. Appointments after declaration of nomination void or removal from office

a. A candidate whose nomination or election has been annulled or set aside shall not, during the period fixed by law as the term of such office, be appointed to fill a vacancy which occurs in such office.

b. Any person removed from or deprived of office for an offense shall not, during the period fixed by law as the term of the office, or the period fixed by law as the next term of the office, be appointed to fill a vacancy which may occur in the office.

c. This section shall not apply to appointments to any office the qualifications for which are prescribed by the Constitution of this State or of the United States.

Source: 19:3-20; 19:3-21; 19:3-22.

COMMENT

The language of this section is substantially similar to the language of 19:3-20, 19:3-21, and 19:3-22 but it has been simplified and shortened.

19A:9-8. What constitutes a vacancy

An office to which a person has been nominated or elected shall be deemed vacant if:

a. The person dies, resigns or is unqualified for office.

b. The person is removed from office because the nomination or election was declared void.

c. The person elected or appointed to any office shall, during the term for which elected or appointed, be elected or appointed to an incompatible office as defined by statute and shall accept the new office. The person shall not be permitted to qualify or take the new office until formally relinquishing the initial office.

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d. A person is elected to two or more offices at an election. The person may accept only one of the offices and the others shall be deemed vacant.

Source: 19:3-25.

COMMENT

The language of this section is similar to the language of 19:3-25 but it has been simplified and shortened. The provision concerning a vacancy in the Senate or the General Assembly as a result of unexcused absence or failure to take the seat has been removed as more properly addressed by constitutional provisions and the rules of those bodies. The provision suggesting that a vacancy was created as the result of an equal number of votes cast for two or more persons was removed and replaced with a provision inserted elsewhere which calls for a run-off election under those circumstances.

19A:9-9. Elections to fill vacancies

A vacancy in the office of United States Senator or Representative, State Senator or Member of the General Assembly, any county office, except of a member of the Board of Chosen Freeholders or of any municipal office elected at a general election that occurs six months or more before the end of a term shall be filled in the following manner:

a. If the vacancy occurs at least 64 days before the date of the primary election, the vacancy shall be filled at the next general election in the ordinary manner provided by law.

b. If the vacancy is in the office of United States Senator, and the vacancy occurs between the date 63 days before the primary election and the date of the general election, the Governor may designate by proclamation either (1) that the vacancy be filled at the subsequent general election or (2) that a special election be held to fill the vacancy. If a special election is to be held, the special primary election shall be held between 65 and 71 days after the proclamation and the special general election shall be held 49 days after the special primary election.

c. If the vacancy is in any other office to which this section applies, and the vacancy occurs less than 63 days before the primary election and at least 51 days before the general election, the vacancy shall be filled at the general election and no primary shall be held. Each political party may designate its candidate in the manner used to fill vacancies for candidates nominated at primary elections.

d. Notwithstanding subsections (a) and (c), if the vacancy is in the office of a state legislator and the election to fill the vacancy would be the same general election as to select a successor for a new term, there shall no election to fill the vacancy.

Source: 19:27-4; 19:27-6; 19:27-10.1; 19:27-11

COMMENT

This section is an amalgam of its source sections. While it has been extensively rearranged and reworded, and parts have been deleted as unnecessary, the section makes no substantive change from prior law with one exception: the opening language includes a provision that elections to fill vacancies will only be held if the vacancy occurs when there are six months left in the term. That is the current rule for the U.S. Senate. 19:27-4. In some cases, involving the U.S. House of Representatives, the equivalent time period is one year. There is no similar limitation for county and local offices. Subsection (a) is the general rule stated in 19:27-4 and implied in 19:27-10.1 and 19:27-11. Subsection (b) is derived from 19:27-4. Subsection (c) is found in 19:27-4, 19:27-10.1 and 19:27-11. Subsection (d) is a special rule for state legislators now found in 19:27-11.1.

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19A:9-10. Filling vacancies within six months of end of term

A vacancy in the office of United States Senator or Member of Congress, State Senator or Member of the General Assembly, any county office, except of a member of the Board of Chosen Freeholders or of any municipal office elected at a general election that occurs less than six months before the end of a term shall be filled in the following manner:

a. If the vacancy is in the office of United States Senator, it shall be filled at the subsequent general election unless the vacancy happens within thirty days of the next preceding election, in which case it shall be filled by election at the next succeeding election unless the Governor deems it advisable to call a special election for the filling of the vacancy. The Governor may make a temporary appointment of a senator from this State whenever a vacancy shall occur as a result of any cause other than the expiration of the term, and such appointee shall serve as a Senator until an election shall have been held to fill the position, and a certificate of election delivered to the individual elected.

b. If a vacancy occurs in the representation of New Jersey in the United States House of Representatives, it shall be the duty of the Governor to issue a writ of election to fill the vacancy unless the term of service for the vacant office will expire within 6 months after the happening of the vacancy.

c. A vacancy happening in a public office other than that of United States Senator, Member of Congress, State Senator, or Member of the General Assembly shall be filled at the general election next succeeding the vacancy unless the vacancy happens within 30 days of the next preceding election, in which case it shall be filled by election at the next succeeding election.

Source: 19:3-26; 19:3-27; 19:3-29.

COMMENT

The language of this section is substantially similar to the language of 19:3-27, 19:3-27 and 19:3-29 but it has been simplified and shortened.

19A:9-11. Interim successor; Senate or General Assembly

a. If a vacancy occurs with respect to a member of the Senate or General Assembly who was elected as the candidate of a political party that at the preceding general election for members of the General Assembly received the largest number of votes or the next largest number of votes in the State for members of the General Assembly, the vacancy shall be filled for the interim period pending the election and qualification of a permanent successor, or for remainder of the term if the vacancy cannot be filled by election under this law. The interim successor shall be selected within 35 days by the appropriate political party's county committee or committees in the same manner prescribed for selecting candidates to fill vacancies among candidates nominated at primary elections.

b. Members of the political party's county committee or committees who are empowered to select a candidate for the vacated office shall only nominate a candidate from the floor during the selection meeting and shall present written evidence of the nominee's acceptance of the nomination.

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c. A statement of the selection of the successor shall be certified to and filed with the Secretary of State. The Secretary of State shall thereupon, without delay, issue a certificate of selection based upon that filed statement of selection to the interim successor and to presiding officer of the house of the Legislature in which the vacancy occurred.

d. If a vacancy occurs with respect to a member of the Senate or General Assembly who was not elected as the candidate of a political party that at the preceding general election for members of the General Assembly received the largest number of votes or the next largest number of votes in the State for members of the General Assembly, the office shall remain vacant pending expiration of the term.

Source 19:27-11.2; 19:27-11.3; 19:27-11.4.

COMMENT

Subsections (a) and (c) are derived from 19:27-11.2. Though they have been simplified, they do not represent any substantive change from prior law. Subsection (b) is substantially identical to 19:27-11.3. Subsection (d) is substantially identical to 19:27-11.4. This section raises Constitutional issues. While the section mirrors the current statute, the State Constitution provides a different method of filling vacancies. See, New Jersey Constitution Art. 4 §4 ¶1. It would be advisable to amend the State Constitution to reflect the substance of this section.

19A:9-12. Filling vacancies among presidential electors

If a vacancy occurs among Electors for President and Vice President of the United States, the vacancy shall be filled by vote of the remaining Electors.

COMMENT

There is no current provision for vacancies among Electors. Presumably, if an elector died during the period between the election and the casting of electoral votes, New Jersey would cast one fewer vote. This section would prevent that result.

CHAPTER 10. PARTY ORGANIZATIONS

19A:10-1. Powers of certified political parties; party columns on official ballot

a. A political party that polls 10 percent of the votes cast in the State for members of the General Assembly at the preceding general election shall be a certified political party and shall be entitled to:

- (1) Nominate candidates for public office at primary elections;
- (2) Have its candidates listed in a column or columns on the ballot in the general election designated with the name of the party; and
- (3) Elect party committees at primary elections.

b. Other political parties may nominate candidates by petition and the names of the candidates shall be printed in a column or columns on the ballot in the general election designated "Nomination by Petition" followed by the designation of the political party of which the candidates are members.

Source: 19:5-1.

COMMENT

This section is substantially similar to 19:5-1, but it has been rearranged and simplified in the interest of clarity. The current law contains language affording certified party status to an entity as long as it does not "fail[] to poll at any primary election for a general election at least ten per centum (10%) of the votes cast in the State for members of the General Assembly". That language is not clear, and it may limit party status to the two current parties contrary to the balance of the language of the statute. In addition, this section distinguishes between "certified political parties" who meet the 10% threshold, and other recognized political parties that may run individual candidates or slates of candidates in various areas throughout the State but do not meet that threshold.

19A:10-2. Other political parties; registration

A voter may register as a member of any certified political party or as a member of any party that has nominated a candidate for state or federal office by petition within the last four years.

Source: New.

COMMENT

This section is new, and is intended to recognize the right of voters to register as members of parties other than the certified political parties. *See, Council of Alternative Political Parties v. State, Division of Elections, 344 N.J. Super. 245 (App. Div. 2001).*

29A:10-3. Membership and organization of county and municipal committees

a. The members of the county committees of a certified political party shall be elected annually at that party's primary for the general election. The county committee shall consist of members elected from geographic districts in the county. Members of the county committee shall reside in the districts from which they are elected for the duration of their term. No person shall be qualified to be a member of the county committee of a certified political party unless the person is registered as a member of that certified political party or registers as a member of that

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certified political party within ten days after being elected. In its bylaws, the county committee shall determine the districts from which members are elected and the number of members to be elected from each district. If the county committee does not provide the information required by this section, then the county committee shall consist of two members from each district within the county. The chairman of the county committee of each certified political party shall, before April 1, certify to the County Board of Elections the election districts constituting each district and the number of committee members to be elected from each.

b. The members of the county committee shall take office on the first Saturday following their election. The annual meeting of each county committee shall be held within 10 days after the primary election, at a time and place designated in a notice mailed by the chairman of the outgoing county committee to each member-elect. At the annual meeting, the members of the committee shall elect a chairman and vice chairman to hold office for one year and until a successor is elected.

c. A vacancy in the office of a member of the county committee shall be filled for the unexpired term by the municipal committee of the municipality where the vacancy occurs.

d. The members of the municipal committee of a certified political party shall consist of the members of the county committee resident in the municipality.

Source: 19:5-2; 19:5-3; 19:23-54; 19:23-56; 19:23-57.

COMMENT

Subsections (a), (b) and (c) of this section are derived from 19:5-3, but they incorporate several changes. Throughout the section, references requiring equal numbers of committeemen and committeewomen have been deleted. The source section allowed the county committee to decide the districts of committee members; subsection (a) gives the committee more discretion by allowing multi-member districts and adds a new default provision in the event that the committee fails to set forth, in its bylaws, the number of members to elect from each district and the districts from which members are to be elected. In subsection (b), the county committee is given more flexibility in the date of the annual meeting.

Subsection (d) is derived from 19:5-2, but most of the source has been eliminated as unnecessarily duplicative of parallel provisions relating to the county committees.

19A:10-4. Members and organization of state committees; national committee members

a. The members of the State committees of a certified political party shall be elected every four years at that party's primary for the general election in which a Governor is to be elected. The State committee shall consist of members elected from geographic districts in the state. Members of the State committee shall reside in the districts from which they are elected for the duration of their term. No person shall be qualified to be a member of the state committee of a certified political party unless the person is registered as a member of that certified political party or registers as a member of that certified political party within ten days after being elected. In its bylaws, a State committee shall determine the districts from which members are elected and the number of members to be elected from each district. If the state committee does not provide the information required by this section, then the state committee shall consist of two members from each State Senate district within the county. The chairman of the State committee of each political party shall notify the Commission on Elections of any change in districts or the number of members elected from a district. Before April 1 in a year in

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which a gubernatorial election will be held, the chairman shall certify to the County Boards of Elections the election districts constituting each district and the number of committee members to be elected from each.

b. The members of the State committee shall take office on the first Saturday following their election. A meeting of the State committee shall be held within ten days after the primary election at a time and place designated in a notice mailed by the chairman of the outgoing county committee to each member-elect. At that meeting, the members of the committee shall elect a chairman and vice chairman to hold office for four years and until a successor is elected.

c. Members of the State committee shall serve for four years and until their successors are elected. A vacancy in the office of a member of the State committee shall be filled for the unexpired term by the members of the county committee of the certified political party in the county in which the vacancy occurs.

d. The State committee shall choose the members of the national committee of its certified political party.

Source: 19:5-4; 19:5-4.1; 19:23-54; 19:23-56; 19:23-57.

COMMENT

This section is derived from 19:5-4 and 19:5-4.1, but some change has been made in the way the committee is elected. Section 19:5-4 allows the state committee to choose among three methods of representation. That provision is superseded by 19:5-4.1 which allows the State committee to adopt a different method by bylaw and certify that method to the Secretary of State.

In place of that provision, a State committee is given authority to decide the districts from which members will be elected and the number of members to be elected from each district. In addition, references requiring equal numbers of committeemen and committeewomen have been deleted. Subsection (a) adds a new default provision in the event that the committee fails to set forth in its bylaws the number of members to elect from each district and the districts from which members are to be elected.

In subsection (b), the day of the start of State committee terms is made consistent with that of county committees. The State committee is also given more flexibility in setting the date of its initial meeting.

Other parts of the section are identical in substance to provisions of 19:5-4.

19A:10-5. Access to financial records of state, county and municipal committees

a. Between the time a member of a county committee of a certified political party is elected and the annual meeting of the county committee, any elected member may request by certified mail:

- (1) Access to the complete financial records of the county committee;
- (2) A copy of the balance sheet of the county committee showing the assets and liabilities of the county committee as of the close of business on the date of the primary election;
- (3) Access to the complete financial records of the municipal committee of the municipality from which the member was elected;
- (4) A copy of the balance sheet of the municipal committee of the municipality from which the member was elected showing the assets and liabilities of the municipal committee as of the close of business on the date of the primary election.

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b. Between the time a member of a State committee of a political party is elected and the first meeting of the State committee, any elected member may request by certified mail:

(1) Access to the complete financial records of the State committee;

(2) A copy of the balance sheet of the State committee showing the assets and liabilities of the State committee as of the close of business on the date of the primary election;

c. A committee member who requests access to records or a copy of a balance sheet shall receive the access or copy requested within 48 hours of the receipt of the request.

Source: 19:5-2.1; 19:5-3.1; 19:5-4a.

COMMENT

This section is an amalgam of the three source sections. It makes no substantive change.

19A:10-6. Delegates to the national convention

a. In a year in which primary elections are to be held for the election of delegates to the national conventions of certified political parties, the chairman of the State committee of each certified political party shall notify the Commission on Elections, on or before March 1, of the number of delegates-at-large and the number of alternates-at-large to be elected to the next national convention of the party throughout the State, and of the number of delegates and alternates to be chosen to the convention in the respective congressional districts or other territorial subdivisions of the State.

b. If a State chairman fails to file notice, the Commission on Elections shall ascertain such facts from the call for its national convention issued by the National or State committee.

c. The Commission on Elections shall, on or before March 20 of that year, certify to the County Board of each county the number of delegates and alternates-at-large to be chosen by each party and the number of delegates and alternates to be chosen in each congressional district or other territorial subdivision of the State, composed in whole or in part by that county.

d. Notwithstanding any provision of this Title, national and State party rules shall govern the selection of delegates and alternates to national party conventions, provided the State chairman of the certified political party notifies the Commission on Elections prior to March 1 of the year in which delegates and alternates are elected of the applicable party rules governing the delegate selection process. The Commission on Elections shall notify the county clerks prior to April 1 of the year in which delegates and alternates are elected of the applicable party rules, if any, which apply to matters within their jurisdiction. Pursuant to this section, the Commission on Elections shall issue to the County Boards uniform regulations governing the delegate selection process.

Source: 19:24-1; 19:24-2.

COMMENT

Subsections (a) and (b) are substantially identical to 19:24-1. Subsections (c) and (d) are substantially identical to 19:24-2.

19A:10-7. Nomination of delegates by petition

a. Candidates for election as delegates or alternates to the national conventions of certified political parties shall be nominated by petition in the manner provided for the nomination of candidates at a primary election for the general election except as otherwise provided in this section.

b. Candidates for the position of delegates or alternates may be grouped together, if they so request in their petitions, and may also have the name of the candidate for President whom they favor placed opposite their names or opposite their group, if they so request in their petitions and if the written consent of the candidate for President is endorsed on their petitions, under the caption "Choice for President."

c. Not fewer than 100 members of each certified political party may file with the Commission on Elections at least 57 days prior to the primary election for the general election in any year of a national convention a petition requesting that the name of a person therein indorsed shall be printed on the primary ticket of such political party as candidate for the position of delegate-at-large or alternate-at-large, to be chosen by the party voters throughout the State to the national convention of that party, or as a delegate or alternate to be chosen to that convention by the voters of any congressional district.

d. The signers to the petition for any delegate-at-large or alternate-at-large shall be legal voters resident in the State; and the signers for any delegate or alternate from any Congressional district shall be voters of such district.

e. The Commission on Elections shall not later than the 48th day preceding the primary election for the general election certify to each County Clerk and County Board such nominations for delegates and alternates-at-large and the nominations for delegate or alternate for any Congressional district.

Source: 19:24-3; 19:24-4; 19:24-5.

COMMENT

Subsection (a) is substantially identical to 19:24-3. Subsection (b) is substantially identical to 19:24-5. The remaining subsections are substantially similar to the language of 19:24-4.

19A:10-8. Maintenance of party organization

A State committee, county committee or municipal committee of a certified political party may receive and disburse moneys for the general purposes of maintaining the organization during the year. The expenses for maintenance of organization shall be confined to acquisition of suitable quarters for meetings of the committee, for stationery, for hiring of necessary clerks, for notices of the meetings of the committee, for giving publicity to the policies and candidates, and other expenses incidental to the maintenance of the organization.

Source: 19:5-5.

COMMENT

This section makes no substantive change is the source sections.

CHAPTER 11. PRIMARIES

19A:11-1. Notice of requirements to vote in primary election

a. The County Superintendent or Administrator of Elections in each county shall cause a notice to be published in each municipality in a newspaper or newspapers circulating therein. The notice shall be published once during each of the two calendar weeks preceding the week in which the 50th day before the primary election occurs.

b. The published notice shall inform the public of the criteria for voting in a primary election and the procedure for registering as a member of a certified political party.

c. The notice shall also state the time and location where a person may obtain certified political party affiliation declaration forms.

d. The cost of the publishing of the required notices shall be paid by the respective counties.

Source: 19:23-45.1; 19:23-45.2.

COMMENT

This section is substantially similar to 19:23-45.1 and 19:23-45.2. Although other sections of the statute calling for the publication of notice of an election and the publication of notice regarding challengers have been eliminated, this section was carried forward since the information pertaining to primaries may not be as familiar to the voters.

19A:11-2. Primary elections; voting; petitions; registration

a. A person may not vote in a certified political party's primary election or sign a petition for a candidate to appear on the ballot in a certified party's primary if the person is a member of the county committee of another certified political party or a public official or public employee holding any office or public employment to which the person was elected or appointed as a member of another certified political party.

b. A person may not vote in a certified political party's primary election unless the person:

(1) Was registered as a member of the certified political party at least 40 days before the primary election;

(2) Was registered as a member of the certified political party at the time the person registered to vote; or

(3) Is not registered as a member of any certified political party.

c. A person may not sign a petition for a candidate to appear on the ballot in a certified political party's primary election unless the person is registered as a member of the certified political party or is not registered as a member of any certified political party.

d. A person may register as a member of a certified political party by:

(1) By registering or by changing existing registration and requesting registration in that certified political party; or

(2) By voting in a primary of that certified political party.

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Source: New; 19:23-25; 19:23-45.

COMMENT

Subsection (a), with subsection (c), regulates who may vote in a primary election, continuing the substance of 19:23-45. That section bars members of other political parties from voting in a party's primary unless they change their party affiliation 50 days before the primary election.

Subsection (b) follows the interpretation of 19:23-7 in *Lesniak v. Budzash*, 133 N.J. 1 (1993) which allows a person to sign a petition for a candidate to run in a primary election even though the person is not registered in the party. Sections 19:23-6 through 19:23-17 state all the requirements of a petition to run in a primary election, repeating those that apply to all petitions; this subsection does not repeat those requirements.

This section also includes the provisions of 19:23-25 and 19:23-45.

19A:11-3. Acceptance by a person nominated as a write-in candidate

a. Any person nominated for an office at the primary as a write-in candidate shall file the oath of allegiance prescribed by law and an acceptance of nomination stating that the person:

- (1) Is qualified for the office;
- (2) Is a resident and a legal voter of the jurisdiction of the office; and
- (3) Consents to stand as a candidate at the general election.

b. The acceptance of nomination and oath shall be filed within seven days after the primary with the county clerk in the case of county and municipal offices and with the Commission on Elections for all other offices.

Source: 19:23-16.

COMMENT

This section is substantially identical to 19:23-16.

19A:11-4. Certification of primary election results generally

Unless otherwise specified, the results of a primary election shall be certified in the same manner as those for general elections.

Source: 19:23-55.

COMMENT

In keeping with the effort to make election procedures more uniform where appropriate, this section standardizes the process of certifying election results.

CHAPTER 12. SPECIAL, RUNOFF AND RECALL ELECTIONS

19A:12-1. Special elections

a. Unless otherwise provided, candidates for public office to be voted for at any special election shall be nominated and the special election conducted and the results ascertained and certified in the same manner as provided for general elections.

b. Candidates to be voted for at a special election shall be nominated by members of the same certified political party by petition.

c. Special elections shall be called for by the Governor by means of a writ of election in the nature of a proclamation.

d. The County Superintendent or Administrator of Elections in each county shall cause a notice of any special election to be published in each affected municipality in a newspaper or newspapers circulating therein. Notice shall be published once during each of the two calendar weeks preceding the election.

COMMENT

Subsection (a) is substantially similar to 19:27-1. Subsection (b) is substantially the same as 19:27-3. Subsection (c) is substantially similar to 19:27-5. Subsection (d) is drawn from 19:27-9.

19A:12-2. Runoff elections

a. A runoff election shall be held as set forth in the section pertaining to special elections.

b. A runoff shall be held if the election results in a tie vote.

c. The candidates to be voted for at a runoff election shall be the top two candidates, or the group of candidates among whom it is impossible to determine the person for whom the greatest number of votes was cast.

d. In addition to any circumstances set forth in the statute for which a runoff election is required, a runoff election shall also be held if no votes are cast for a particular position at any given election.

Source: New.

COMMENT

This section is new and is included to clarify the manner and the circumstances under which runoff elections are to be held.

19A:12-3. Recall authorized

Pursuant to the provisions of the New Jersey Constitution, the people of the State of New Jersey may recall any United States Senator or Representative elected from this State, and any state or local elected official.

Source: 19:27A-2.

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COMMENT

This section is substantially similar to 19:27A-2. This provision is retained because it is included in the current statute and in the New Jersey Constitution (New Jersey Constitution Art. 1, ¶ 2); however, it raises serious constitutional issues since a State may not change the term of a federal official any more than it may change the qualifications for a federal official. *See, United States Constitution, Art. I, §4, cl. 1; and see, for example, Cook v. Gralike, 531 U.S. 510 (2001); Foster v. Love, 522 U.S. 67 (1997).*

19A:12-4. Notice of intention to recall

a. Before collecting any signatures on a recall petition, the sponsors of a recall petition shall file a notice of intention to recall with the Secretary of State for recall of a State or Federal official or the County Clerk or with the County Clerk for recall of any other official. The notice of intention shall contain the following information:

(1) The name and office of the official sought to be recalled;

(2) The name and address of at least three sponsors of the recall petition who constitute a recall committee representing the signers of the recall petition;

(3) A statement certified by each member of the recall committee that the member is registered in the district which the named official represents or serves, supports the recall of the named official and accepts the responsibilities associated with serving on the recall committee; and

(4) A statement as to whether the recall election shall be held at the next general or regular election, or at a special election.

b. The procedures to initiate a recall election may be commenced not earlier than the 50th day before the completion of the first year of the term of office by the official sought to be recalled.

Source: 19:27A-6.

COMMENT

This section incorporates most of the provisions of 19:27A-6.

19A:12-5. Review of notice of intention to recall

a. A Secretary of State or County Clerk who receives a notice of intention to recall shall review it for compliance with the statutory requirements and, if it is found to comply, shall return a certified copy of the approved notice to the recall committee within three business days of the receipt of the notice. If the recall committee has requested that the recall election be held at a special election, the Superintendent or Administrator shall also prepare an estimate of the cost of conducting recall election and shall return that information to the recall committee with the certified copy of the notice.

b. Within five business days of the approval of the notice of intention, the Secretary of State or County Clerk shall serve a copy of the notice on the official sought to be recalled by personal delivery or certified mail. Within two weeks of approving the notice, the Secretary of State or County Clerk shall cause a copy of the notice to be printed in a newspapers circulating within the district, and shall retain an affidavit setting forth the manner of service and proof of publication.

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c. Within five business days of being served with the notice of intention, the official to be recalled may file an answer consisting of not more than 200 words with the Secretary of State or County Clerk, or a written acknowledgement of receipt of a copy of the notice. Within two business days of the filing of the written answer or acknowledgement, the Superintendent or Administrator shall serve a copy on the recall committee by personal delivery or certified mail, or shall inform the recall committee that no such answer or acknowledgment was timely filed.

d. If the notice of intention is found not to be in compliance, the Superintendent or Administrator shall, within three business days of the receipt of the notice, return the notice and advise the recall committee in writing of any deficiencies, allowing the recall to file a corrected notice of intention.

e. The original notice of intention shall be retained by the Superintendent or Administrator and shall be available for public inspection and copying for a period of not less than five years.

Source: 19:27A-7.

COMMENT

This section is substantially similar to 19:27A-7, but it has been simplified and shortened.

19A:12-6. Form and content of recall petition

a. The Commission on Elections shall prepare a single form of recall petition.

b. The recall petition shall identify the name of the official sought to be recalled and the office held by that official, and shall include the information contained in the notice of intention filed by the recall committee and any response to the notice, as well as identifying information for three members of the recall committee. No statement of reasons or grounds for the recall is required.

c. All petitions shall be reviewed by the Secretary of State or County Clerk prior to use. The Secretary of State or County Clerk shall review the petition within three business days of receipt, and, if approved, shall affix a statement of approval to the first page of the petition and return it to the recall committee.

d. Signers of a recall petition shall include their signatures, printed name, place of residence, the date on which the petition was signed, and confirmation that the signer has read the petition.

e. Every circulator of a petition shall sign the petition.

f. Only signatures appearing on a proper recall petition may be counted to determine whether a recall election shall be held.

Source: 19:27A-8.

COMMENT

This section is substantially similar to 19:27A-8, but it has been simplified and shortened. The requirement that a petition contain a response to the notice of petition raises serious constitutional issues. *See, Pacific Gas and Elec. Co. v. Public Utilities Comm'n of California*, 475 U.S. 1 (1986) *reh'g den.* 475 U.S. 1133 and *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974) which deal with "compelled speech". The provision is included because it is part of the current law.

19A:12-7. Petition circulators

a. Only individuals who are registered voters in the district which the official sought to be recalled represents or serves may be petition circulators.

b. The bottom of each page of a recall petition shall include an affidavit signed by the circulator of that page of the petition which includes:

(1) The name and place of residence of the circulator;

(2) A statement indicating that the circulator assumed responsibility for the circulation of that page of the petition, witnessed the signatures on that page, and that the petition was circulated in good faith; and

(3) The dates between which all signatures on that page were collected.

c. If a solicitation for signatures to a recall petition is presented to prospective petition signers by a paid print advertisement or paid mailing, or if a recall petition is presented to such a prospective signer by a paid circulator, the solicitation or petition, respectively, shall disclose prominently in a statement printed in at least 10-point type (1) the identity of the person paying for the printed or personal solicitation, and (2) that the circulator is paid. The Election Law Enforcement Commission shall promulgate such rules and regulations as are necessary to implement the provisions and effectuate the purposes of this subsection.

Source: 19:27A-8; 19:27A-10.

COMMENT

This section is substantially similar to 19:27A-10, but it has been simplified and shortened. Subsection (c) is lifted directly from 19:27A-8(i) without modification.

19A:12-8. Signatures required for recall petition; filing of petition

a. A petition demanding an election to determine whether an official shall be recalled from office shall be signed by at least 25 percent of the voters registered to vote at the general election preceding the date of the notice of intention to recall in the district which the official represents or serves.

b. A recall petition for a State or Federal official or for the County Clerk shall be filed with the Secretary of State. Other recall petitions shall be filed with the County Clerk.

c. A recall petition shall not demand an election to recall more than one official.

Source: 19:27A-5.

COMMENT

This section is substantially similar to 19:27A-5 with the addition of subsection (d) which includes language previously found in 19:27A-6(b).

19A:12-9. Deadlines for petitions

a. The required number of signatures shall be collected and the completed petition filed with the Secretary of State or County Clerk within 320 days of notice of the approval the notice

of intention to recall if the official sought to be recalled is the Governor or a United States Senator and within 160 if any other official is sought to be recalled.

b. If a completed petition is not filed with the time period indicated above, the petition is void and may not be used in connection with any other recall effort.

c. The Secretary of State or County Clerk shall determine whether or not the petition contains the required number of signatures within ten business days of the filing of the completed petition. If a petition contains an insufficient number of signatures or fails to comply with any other provision of law, it is void.

Source: 19:27A-10; 19:27A-11.

COMMENT

This section contains the requirements of 19:27A-10 and 19:27A-11, but it has been simplified and shortened.

19A:12-10. Challenges to determination of signatures

The official sought to be recalled, or the recall committee may file a written objection to the determination by the Secretary of State or County Clerk as to whether the petition contains the required number of signatures and otherwise complies with the provisions of law. The Secretary of State or County Clerk shall, upon request of either of the parties, provide a copy of the recall petition and allow examination of the original petition during regular business hours.

The Secretary of State or County Clerk shall pass upon the validity of an objection in an expedited manner. The decision of the Secretary of State or County Clerk may be challenged by filing an action in the Superior Court, which shall hear and decide the matter on an expedited basis. When the determination of the Secretary of State or County Clerk is challenged with regard to a recall petition requiring more than 1,000 signatures, the parties may use a statistically valid sampling method to demonstrate that the petition contains a sufficient or an insufficient number of signatures, the results of which shall constitute a rebuttable presumption as to the validity of the petition.

Source: 19:27A-12.

COMMENT

This section is substantially similar to 19:27A-12, but it has been simplified and shortened.

19A:12-11. Time of election

a. A recall election shall not be held until after the official sought to be recalled has served one year of the current term of office.

b. A recall election shall not be held within six months of the election for a successor to the official sought to be recalled.

Source: 19:27A-4.

COMMENT

This section is substantially similar to 19:27A-4, but has been shortened.

19A:12-12. Recall election

a. If it is determined that a petition complies with the statute, the Secretary of State or County Clerk shall issue a certificate as to the sufficiency of the petition to the recall committee and shall serve a copy of the certificate on the official sought to be recalled by personal delivery or certified mail. The Secretary of State or County Clerk shall also cause a notice to be printed in a newspaper circulating within the district stating the information contained in the certificate. The notice shall be published once in the 30 days preceding the close of registration for the election, and once in the 30 days preceding the election.

b. A certificate shall contain:

- (1) The name and office of the official sought to be recalled;
- (2) The number of signatures required to cause a recall election to be held for that office;
- (3) Confirmation that a valid recall petition was properly filed and that a recall election will be held;
- (4) The date and time when the election will be held if the official does not resign.

c. The recall election shall be held on a date to be determined as follows:

(1) If the petition specifies that the recall election be a special election, the Secretary of State or County Clerk shall select the Tuesday that is between 60 and 66 days after the service of the certificate. If that Tuesday falls within 28 days of any other election, it shall be held on the first Tuesday thereafter that does not fall within 28 days of an election.

(2) If the petition specifies that the recall election be a general election and the office is one ordinarily filled at a general election, it shall be held at the next general election that is no less than 60 days after the service of the certificate.

(3) If the petition specifies that the recall election be a general election and the office is one ordinarily filled at an election other than a general election, it shall be held at either the next general election or the next regular election for that office that is no less than 60 days after the service of the certificate.

d. A recall election shall not be held until after the official sought to be recalled has served one year of the current term of office. A recall election shall not be held within six months before the election for a successor to the official sought to be recalled.

Source: 19:27A-13.

COMMENT

This section is substantially similar to 19:27A-13, but it has been simplified and shortened.

19A:12-13. Recall ballot; filling vacancies

a. The ballot used at a recall election shall ask if the official in question should be recalled from the particular office held. The sample ballot, but not the actual ballot, shall include any statement of reasons prepared by the recall committee and any answer by the official. If a successor is to be chosen at the recall election, the ballot shall include the nominees for

successor to the name and title of the elected official sought to be recalled in the event that official is recalled.

b. If the official sought to be recalled is the Governor or a member of the Legislature, no nominees for successor shall be included on the ballot; the vacancy in those offices shall be filled in the same manner as any other vacancy occurring in those offices.

c. For all other officials normally elected at general elections, candidates for successor may be nominated by each certified political party within fourteen days after the service of the certificate in the same manner as candidates are selected to fill vacancies among candidates for a primary election. Candidates for successor may also be nominated by petition within that same period in the same manner as candidates are nominated by petition for a general election. For all officials normally elected at nonpartisan elections, all nominations shall be by petition within fourteen days after the service of the certificate.

Source: 19:27A-15.

COMMENT

This section is substantially similar to 19:27A-15, but it has been simplified and shortened.

19A:12-14. Election results; further petitions

a. If a majority of the votes cast on the question of the recall of an elected official are in the affirmative, the term of office of that official shall terminate upon the certification of the election results. Where nominees are voted on at the time of the recall election, the nominee receiving the greatest number of votes shall succeed to the office and shall serve for the remainder of the unexpired term. If a majority of the votes cast are in the negative, the elected official shall continue in office.

b. An elected official sought to be recalled who is not recalled as the result of a recall election shall not again be subject to recall until having served one year from the date of the recall election.

c. If the elected official is recalled, or resigns after the filing of a notice of intention to recall, the official shall not be eligible to fill the vacancy in that office for the remainder of that term but shall be eligible to be elected as that official's own successor in the event that the official is recalled.

Source: 19:27A-16.

COMMENT

This section is substantially similar to 19:27A-16, but it has been simplified and shortened. The provision barring a recall committee from sponsoring a second attempt to recall the targeted official has been deleted as it is unnecessary and raises Constitutional questions.

19A:12-15. Campaign committees and contributions

a. Except as otherwise provided in this section, a recall committee shall be treated as a candidate committee for the purposes of "The New Jersey Campaign Contributions and Expenditures Reporting Act," P.L.1973, c. 83 (C. 19:44A-1 et seq.), except that all contributions received by a recall committee shall be used only for (1) the payment of campaign expenses incurred in the course of and directly related to the committee's effort to promote the

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recall or the passage of the question of recall at the recall election, (2) the payment of overhead and administrative expenses related to the operation of the committee, or (3) the pro-rata repayment of contributors.

b. Except as provided in subsection c. of this section:

(1) An elected official sought to be recalled who receives contributions and makes expenditures for the purpose of opposing a recall effort shall establish a "recall defense committee," which shall be separate from, but subject to the same organizational and filing requirements and limitations on the receipt of contributions applicable to any candidate committee under "The New Jersey Campaign Contributions and Expenditures Reporting Act," P.L.1973, c. 83 (C. 19:44A-1 et seq.), except that a recall defense committee shall be permitted to receive without limit contributions from the candidate committee or joint candidates committee of the elected official sought to be recalled. A recall defense committee, for all purposes relating to campaign finance, shall be in addition to any candidate committee or joint candidates committee which an official sought to be recalled may by law establish. If an elected official sought to be recalled transfers funds from the official's candidate committee or joint candidates committee to the official's recall defense committee, a new election cycle shall be deemed to begin with respect to the candidate committee or joint candidates committee after the recall election is held or the recall effort fails and such official shall be permitted to solicit and receive contributions thereto, including contributions from prior contributors, up to the limits imposed by P.L.1973, c. 83 (C. 19:44A-1 et seq.). A recall defense committee may be formed at any time after an official sought to be recalled is served with either form of notice provided for by subsection e. of this section. All contributions received by a recall defense committee shall be used only for (a) the payment of campaign expenses incurred in the course of and directly related to the committee's effort to oppose the recall effort or the passage of the question of recall at the recall election, (b) the payment of the overhead and administrative expenses related to the operation of the committee, or (c) the pro-rata repayment of contributors; and

(2) Any nominee to succeed that elected official shall be treated as a candidate for the purposes of "The New Jersey Campaign Contributions and Expenditures Reporting Act," P.L.1973, c. 83 (C. 19:44A-1 et seq.).

c. The limits on contributions established by 2 U.S.C. § 441a shall apply to a federal elected official sought to be recalled, a candidate to succeed such an official and a recall committee seeking to recall a federal elected official.

d. A Governor who is sought to be recalled shall not be entitled to public support pursuant to P.L.1974, c. 26 (C. 19:44A-27 et seq.) for the purpose of opposing the recall effort.

e. Neither a recall committee nor a recall defense committee shall solicit or accept contributions in connection with a recall effort until after either: (1) the recall committee serves written notice of the recall effort on the official sought to be recalled by personal service or certified mail, with a copy thereof filed with the recall election official; or (2) a copy of an approved notice of intention is served on the official sought to be recalled as provided in subsection b. of section 7 of this act. If a recall committee notifies an official sought to be recalled of its intention to initiate a recall effort by the method described in paragraph (1) of this subsection, it must file a notice of intention within 30 days of the date the notice is served on the official or cease the solicitation, acceptance and expenditure of funds.

f. Contributions to a recall committee by a candidate committee or joint candidates committee of a candidate who was defeated by the official sought to be recalled at the last election for that office shall be subject to the limits on contributions established by "The New Jersey Campaign Contributions and Expenditures Reporting Act," P.L.1973, c. 83 (C. 19:44A-1 et seq.).

g. A recall committee shall submit, at the time of its initial filing with the Election Law Enforcement Commission, in addition to its depository account registration information, a registration statement which includes:

(1) The complete name or identifying title of the committee and the general category of entity or entities, including but not limited to business organizations, labor organizations, professional or trade associations, candidates for or holders of public offices, political parties, ideological groups or civic associations, the interests of which are shared by the leadership, members, or financial supporters of the committee;

(2) The mailing address of the committee and the name and resident address of a resident of this State who shall have been designated by the committee as its agent to accept service of process; and

(3) A descriptive statement prepared by the organizers or officers of the committee that identifies:

(a) The names and mailing addresses of the persons having control over the affairs of the committee, including but not limited to persons in whose name or at whose direction or suggestion the committee solicits funds;

(b) The name and mailing address of any person not included among the persons identified under subparagraph (a) of this paragraph who, directly or through an agent, participated in the initial organization of the committee;

(c) In the case of any person identified under subparagraph (a) or subparagraph (b) who is an individual, the occupation of that individual, the individual's home address, and the name and mailing address of the individual's employer, or, in the case of any such person which is a corporation, partnership, unincorporated association, or other organization, the name and mailing address of the organization; and

(d) Any other information which the Election Law Enforcement Commission may, under such regulations as it shall adopt pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.), require as being material to the fullest possible disclosure of the economic, political and other particular interests and objectives which the committee has been organized to or does advance. The commission shall be informed, in writing, of any change in the information required by this paragraph within three days of the occurrence of the change.

h. In accordance with the Election Law Enforcement Commission's regular reporting schedule, the commission may, by regulation, require a recall committee or a recall defense committee to file during any calendar year one or more additional cumulative reports of such contributions received and expenditures made to ensure that no more than three months shall elapse between the last day of a period covered by one such report and the last day of the period covered by the next such report.

Source: 19:27A-15.

COMMENT

This section is unchanged from section 19:27A-15. No changes are recommended at this time since the election contribution and expenditure aspects of election law are not being revised at this time.

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CHAPTER 13. CONTEST OF NOMINATIONS OR ELECTIONS

19A:13-1. Petition to contest result of election

a. A petition to contest the result of an election involving an office or proposition voted upon by the voters of the whole State may be signed by at least 25 voters or by any defeated candidate. A petition to contest the result of any other election may be signed by at least 15 voters or by any defeated candidate.

b. A petition shall be verified by the oath of at least two of the petitioners or by the candidate filing it. If the receipt of illegal votes or the rejection of legal votes at the polls is alleged, the names and election districts of the persons who voted improperly, or whose proper votes were rejected, shall be included in the petition.

c. The petition shall be accompanied by a bond or cash deposit in the amount of \$500 available to pay all costs to the State in the case of a contested proposition, or to the person declared elected in other cases if the election is confirmed

d. A petition to contest the result of an election shall be filed in the Superior Court and shall be heard by a Judge of the Superior Court selected by the Chief Justice of the Supreme Court.

Source: 19:29-2.

COMMENT

This section is substantially similar to 19:29-2, but it has been simplified and shortened.

19A:13-2. Grounds for contest

The nomination or election of any person to any public office or party position, or the approval or disapproval of any public proposition, may be contested by any of the voters affected thereby upon at least one of the following grounds:

a. Misconduct, fraud or corruption on the part of any election official sufficient to affect the result; misconduct shall not be held sufficient to set aside an election unless the rejection of the vote of the district in question would change the result as to the office in question.

b. Ineligibility for office of the person who has been declared elected;

c. The offering, by the person who has been declared elected, of a bribe or reward to a voter or election official for the purpose of procuring election;

d. The receipt of illegal votes or the rejection of legal votes at the polls sufficient to change the result of the election of the election;

e. Error in the counting of the votes or declaring the result of the election if such an error would change the result of the election;

f. The payment, promise to pay or expenditure of any money or other thing of value, or the incurring of any liability for expenditure in excess of the amount permitted by statute regarding elections for any purpose or in any manner not authorized by statute; or

g. Any other cause which would change the result of the election.

Source: 19:29-1.

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COMMENT

This section is substantially similar to 19:29-1.

19A:13-3. Time for filing petition

a. Except as provided in subsection (b) and (c), a petition contesting a nomination, election to party office, shall be filed not later than 10 days after the primary election and a petition contesting any election to office, or the approval or disapproval of any proposition shall be filed not later than 30 days after the election.

b. If the basis for the contest is discovered from documents filed after the election, the petition may be filed 10 days after the documents are filed in the case of a primary, or 30 days after the documents are filed in the case of another election.

c. A petition may be filed within 10 days after the result of a recount has been determined or announced.

Source: 19:29-3.

COMMENT

This section is substantially similar to 19:29-3.

19A:13-4. Notice of petition; trial; judgment; costs

a. The Court shall hold a hearing on the matter between 15 and 30 days after the petition is filed. The matter shall be tried without a jury.

b. The petition and notice of the hearing shall be served by the contestant on the person declared elected or, in the case of a proposition, on the entity who caused the proposition to be printed on the ballot, at least 10 days prior to the trial date.

c. If an election is confirmed, the contestants shall pay the costs, and if judgment is entered against a person declared elected, that person may be required to pay the costs. If a contestant successfully challenges the approval or disapproval of a proposition, the State, county or municipality may be required to pay costs.

Source: 19:29-4; 19:29-5; 19:29-8; 19:29-10; 19:29-14.

COMMENT

This section is substantially similar to 19:29-4, but it has been simplified and shortened. Language from 19:29-5 regarding the trial of the matter without a jury was incorporated into this section, but the other specific procedural requirements for the trial contained in sections 19:29-6 and 19:29-7 have been eliminated as more properly established by the Court Rules rather than by the election law statute. Language from 19:29-8 was added regarding the insufficiency of misconduct to set aside the election unless setting aside the district results would change the election. The language regarding costs is drawn from 19:29-14.

CHAPTER 14. NON-BINDING COUNTY OR MUNICIPAL REFERENDA

19A:14-1. Ordinance or resolution for submitting question

a. If the governing body of a municipality or county wishes to determine the sentiment of voters on a question or policy pertaining to the government and if there is no other statute setting

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forth a procedure to submit the question to the voters at an election, the governing body may adopt an ordinance or resolution at a regular meeting that a proposition be placed on the ballot at the next general election. The proposition shall be filed with the County Board not later than 74 days before the election.

b. On the presentation to the governing body of a municipality or county of a petition signed by 10 percent or more of the voters of that political subdivision qualified to vote at the last general election requesting that the governing body determine the sentiment of voters on a question or policy pertaining to the government and reasonably related to the subject of the governing body's ordinance or resolution, the governing body shall adopt an ordinance or resolution at its next regular meeting that the proposition included in the petition be placed on the official ballots at the next general election. The proposition shall be filed with the County Board not later than 60 days before the election.

c. The ballots cast for and against a public question submitted in the manner described above shall be tabulated and transmitted in the same manner provided by law for other votes.

d. The result of the election with regard to the question submitted in the manner described above is to be considered an expression of sentiment by the voters, and shall not bind any governing body.

Source: 19:37-1; 19:37-1.1; 19:37-3; 19:37-4.

COMMENT

This section is substantially similar to 19:37-1, 19:37-1.1, 19:37-3 and 19:37-4, but it has been simplified and shortened.

VOTING OFFENSES – TO BE COMPILED IN THE CRIMINAL CODE

2C:31-1. Illegal voting

A person commits a crime of the fourth degree if that person knowingly:

- a. Votes in an election in which the person is not eligible to vote;
- b. Registers as a voter when the person is not eligible to register;
- c. Votes more than once in an election;
- d. Votes as another person; or
- e. Votes in violation of the voting procedures established by law.

A person who knowingly signs a nominating petition or other petition relating to an election when the person is not eligible to sign the petition commits a disorderly person's offense.

Source: Various.

COMMENT

This section establishes crimes directly related to voting. Subsection (a) generally forbids voting in an election when one is not eligible to vote. That prohibition comprehends a range of illegal acts. It includes not only voting when not registered, but also voting in a party primary when not authorized to vote in that election.

Subsections (b) and (c) forbid the unauthorized registering to vote and signing of election petitions. These activities are closely related to voting but are not forbidden under subsection (a). Subsections (d), (e) and (f) forbid kinds of illegal voting that are not included in subsection (a). A person may be eligible to vote in an election, but if that person votes more than once or votes as someone other than the voter or votes in a manner contrary to established voting procedures, the voter commits an offense under one of these subsections.

This section generalizes the substance of a large number of current particular offenses into a few coherent categories. Current statutes are specific and overlapping. Subsection (a) is the subject of 19:34-12, 19:34-20 and 18A:14-78. Particular acts constituting voting when not authorized to do so are made criminal by 18A:14-67, 18A:14-70, 18A:14-77, 18A:14-86, 19:23-45, 19:34-22 and 19:57-37. Subsection (b) is the subject of 19:34-20 and 18A:14-67. Subsection (c) is the subject of 19:34-2 and, insofar as signing petitions is a kind of voting, the sections relating to subsection (a). Subsection (d) and (e) are the subject of 18A:14-67, 18A:14-78, 18A:14-86, 19:34-12 and 19:34-20. Subsection (f) is a generalization of many particular statutes requiring adherence to particular voting procedures. See for example, 18A:14-53 and 19:34-7.

2C:31-2. Tampering with voting system

a. A person commits a crime of the third degree if that person tampers with a voting system, ballots or election records with the purpose to change the record of votes cast.

b. A person commits a crime of the fourth degree if that person possesses a key to a voting machine knowing that election officials do not authorize the possession.

Source: 19:53-1.

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COMMENT

This section is based on 19:53-1, which specifically forbids tampering with voting machines and the unauthorized possession of voting machine keys. It has been broadened to include tampering with ballots and election records. These activities are separately forbidden by a large number of other sections. See e.g. 18A:14-77.

2C:31-3. Interfering with voting

a. A person commits a crime of the fourth degree if, without lawful authorization, that person knowingly obstructs an election or hinders another person from voting, registering as a voter, or signing a nominating petition or other petition relating to an election.

b. A person commits a crime of the fourth degree if that person offers a benefit to another person with purpose to induce the person to refrain from voting, registering to vote, or signing a nominating petition or other petition relating to an election.

c. A person commits a crime of the third degree if that person engages in three or more instances of the conduct prohibited by subsections (a) or (b).

d. A person who accepts a benefit forbidden by subsection (b) commits a disorderly persons offense.

Source: Various.

COMMENT

This section gathers together all of the offenses which involve interfering with voting. Subsection (a) prohibits obstructing an election or hindering a person from voting. It replaces a large number of offenses, many of them very specific as to means or as to the relationship between the person hindering and the voter. Subsections (b) and (c) make it an offense to bribe a person not to vote or to accept such a bribe. These subsections supplement the Criminal Code provision on bribery, 2C:27-2. The Code provision makes it an offense to offer a benefit in exchange for a vote but does not deal with the problem of offering a benefit not to vote.

2C:31-4. Electioneering at polls

A person commits a disorderly persons offense if, within 100 feet of a polling place at which an election is being held, that person:

a. Distributes campaign material;

b. Solicits support for a person or matter which is the subject of the election; or

c. Displays a political badge other than an official badge distributed by election officials.

Source: 18A:14-81, 18A:14-85, 19:34-15, 19:34-19.

COMMENT

The section is similar in substance to the four source sections. Subsection (a) is derived from 19:34-15. Subsection (b) is derived from 19:34-15 and 18A:14-81. Subsection (c) is derived from 19:34-19 and 18A:14-85. See also 18A:14-72 which generally prohibits electioneering at the polls.

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2C:31-5. Ballot secrecy

A person who tampers with a voting system or ballots to determine how a voter has voted, or who induces the voter to distinguish the record of that person's vote from others, commits a disorderly persons offense.

Source: Various.

COMMENT

At present, a number of sections make it an offense to induce a voter to mark his ballot outside of the voting booth or to make distinguishing marks on a ballot. See e.g. 19:34-10 and 18A:14-76. Although the problem of ballot secrecy is lessened with the advent of voting machines, the problem persists to a limited degree. This section has generalized the current law and makes it an offense to tamper with a voting machine or ballots to determine how a person has voted or induce a person to distinguish that person's vote in any manner.

2C:31-6. Betting on elections

A person who bets on the outcome of an election commits a disorderly persons offense.

Source: 18A:14-87.

COMMENT

This section continues the substance of the source statute. A similar prohibition applicable to elections generally is found in 19:34-24. That section does not include a criminal penalty perhaps because prior to 1979 gambling generally was punishable as a misdemeanor. Compare 2A:112-7 (repealed 1979) with its replacement, 2C:37-2.

2C:31-7. Improper use of voting registration list

A person who uses a voter registration list for commercial solicitation of voters commits a disorderly persons offense.

Source: 19:31-18.1

COMMENT

This section moves the criminal provisions of 19:31-18.1 from the section of the law dealing with permanent registration of voters, to the criminal section of the law in the interest of consistency since all other sections of the election law that include criminal penalties are included in this Chapter. Section 19A:2-12 still references a private right of action for injunctive relief.

State of New Jersey

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N J L R C

New Jersey Law Revision Commission

FINAL REPORT

relating to

TITLE RECORDATION

NOVEMBER 2003

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APPENDIX B

TITLE RECORDATION - FINAL REPORT - NOVEMBER 13, 2003
/titlerecordation/trFR111303.doc

Introduction

The New Jersey Law Revision Commission approved a project to revise the statutes pertaining to the recording of title documents following the enactment of the federal Electronic Signatures in Global and National Commerce Act (E-sign), 15 U.S.C. §7001 *et seq.*, and New Jersey's enactment of the Uniform Electronic Transactions Act (UETA), L.2001, c.116. This legislation requires the acceptance of electronic alternatives to paper documents. While the use of electronic deeds and mortgages is not expected to occur in the near term, both E-sign and UETA encourage the development of systems that will accept electronic documents without disrupting the ongoing process of title recordation.

The New Jersey statutes related to the recording and indexing of title documents are contained in Title 46, chapters 15 to 26. Most of these statutes date from a period when recording meant the inclusion of documents in large well-bound books of good paper. The statutes initially were amended to allow recording offices to microfilm documents. Later amendments in 1997 permitted the use of any other method of recording that was "in conformance with rules, standards and procedures promulgated by the Division of Archives and Records Management in the Department of State and approved by the State Records Committee pursuant to its authority under section 6 of P.L.1994, c.140 (C.47:1-12) and the 'Destruction of Public Records Law (1953),' P.L.1953, c.410 (C.47:3-15 *et seq.*)." *N.J.S.* 46:19-1. This system for approving new methods of recording documents has the advantage of not requiring any particular manner of recording so it will not become obsolete with changes of recording technology.

The increased use of new methods of recording that affect the way documents are recorded and processed, however, necessitates an increase in regulatory authority to assure uniformity.

The proposed statutory language contained in this Tentative Report (the revision) addresses the methods of recording and indexing and reflects the same approach as the existing law. References to separate sets of books or separate databases for different kinds of documents have been deleted, since with modern technology, an index serves the same function. Requirements for marginal notation of documents also have been deleted. Most recording offices do not retain paper documents; redefining marginal notation in that context raises conceptual problems, and computerized indexes serve the same purpose. In addition, the revision attempts to simplify the statutes, combining overlapping provisions and deleting unnecessary ones. The current Chapter 16, for example, begins with a section that characterizes and lists the documents that may be recorded. Other statutory sections that address the recording of particular kinds of documents follow Chapter 16. In the revision, these sections have been combined into one section that lists documents entitled to recording, although in an exercise of caution, the revision retains specifically listed documents that arguably might fall within more general categories.

The general prerequisites for recording found in the current statutes are the result of the Commission's work in 1989. That effort is generally considered to have been successful in simplifying the process of determining whether a document may be recorded. The scope of the

Commission's 1989 report, however, was narrow. Exceptions and additions to the recording requirements found in other sections of the statute were left uncompiled. The current revision assembles all of those sections, combining them where appropriate. In addition, while the 1989 report standardized the requirements for the most commonly recorded documents, issues regarding unusual documents were not addressed. For example, the question of how to meet the recording requirements if a document is not a conveyance, and is not prepared by the person who seeks to record it, had not been previously answered by the statute. The practice of requiring an affidavit accompanying such a document is now reflected in the revision.

The revision also includes language allowing format requirements for documents. The current statutes contain some limitations on the size of paper documents and on the quality of paper used. The problem of formatting becomes more acute if electronic equivalents to paper documents are to be accepted. Format requirements must be standardized throughout the State so that recording offices can be ready to accept electronic documents from a variety of sources, and so that persons can know and comply with them regardless of the office in which they are being recorded. It must be acknowledged, however, that conventional paper documents will continue to be recorded for the foreseeable future. This revision is a first step toward balancing the need to use technological advances where appropriate, with the recognition that it is not appropriate to mandate an immediate switch to the latest technological development.

CHAPTER 1 -- RECORDING

1-1. Definitions: document and recorded

For the purpose of this chapter:

a. "Document" includes both:

- (1) Paper documents, and
- (2) Electronic documents, documents created, communicated or stored by electronic means;

b. A document is "recorded" if:

- (1) The document or its image has been placed in the permanent records of the recording office, and
- (2) The document has been indexed as provided by this chapter.

Source: New.

COMMENT

Current statutes do not state directly what is meant by "recording." The concept is most important in regard to the legal effect of a recorded document. Cases are not consistent as to when a document is recorded.

1-2. Documents that may be recorded

Documents affecting real estate entitled to recording are:

- a. Deeds or other conveyances, releases, or declarations of trust of any interest;
- b. Powers of attorney for conveyance or release of any interest;
- c. Leases, or memoranda of leases, for life or a term not less than two years;
- d. Mortgages or other conveyances in the nature of a mortgage;
- e. Liens or encumbrances and releases of liens or encumbrances on any interest;
- f. Assignments, discharges, cancellations or releases;
- g. Options and rights of first refusal;
- h. Certified copies of judgments, decrees and orders of courts of record;
- i. Reports of condemnation commissioners filed with the Superior Court;
- j. Notices of Federal tax liens, liens arising from the federal "Comprehensive Environmental Response, Compensation and Liability Act of 1980," Pub. L. 96-510 (42 U.S.C. § 9601 et seq.), and other federal liens, which any Act of Congress or regulation adopted pursuant to it provides for filing of notice in the recording office designated by a state, and certificates discharging such liens;
- k. Restrictions affecting the real estate or its use;

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- l. Notices of settlement as provided by this chapter;
- m. Maps as provided by this chapter;
- n. Condominium master deeds and unit deeds as defined by law;
- o. Cooperative master declarations and proprietary leases as defined by law;
- p. Any other document that affects title to any interest in real estate in any way or contains any agreement in relation to real estate, or grants any right or interest in real estate or grants any lien on real estate; and
- q. Any other document relating to real estate that is directed to be recorded by any statute or court order.

Source: 46:16-1.

COMMENT

This section is derived from the parts of 46:16-1 that relate to real estate. The section makes no substantive change in the kinds of documents that may be recorded. The general rule that any document that affects title to real estate and meets certain requirements may be recorded is stated both in 46:16-1 and 46:16-2. Other provisions in Chapter 16 provide for the recording of particular kinds of documents.

The parts of 46:16-1 that provide for recording of instruments concerning personal property have been deleted as unnecessary. Documents of title to the few kinds of personalty that are recorded are not recorded with the county recording offices. Liens against personalty are governed, in general, by Revised Article 9 of the Uniform Commercial Code. *N.J.S.* 12A:9-101 et seq. Liens against personalty, other than personalty that is or will be fixtures, are recorded by filing a UCC form with the division of Commercial Recording. Liens against fixtures are recorded by filing the required document (usually a fixture filing) with the county recording officer, but that recording is separate from the recording governed by this Chapter. Fixtures are part of the real estate, may be encumbered by mortgages, liens, and the like filed in the real estate records, and may be affected by any kind of encumbrance on the real estate generally. Recording these encumbrances is provided for by subsections (d) and (e).

Subsections (h) and (i) are derived from 46:16-1.1. Subsection (h) also includes the subject matter of 46:16-4.1 and 46:16-4.3, decrees and orders of the United States Bankruptcy Courts. Subsection (l) is based on 46:16A-1. It incorporates the chapter allowing the recording of settlement statements into the general recording provisions. The general provisions, subsections (p) and (q), are derived from 46:16-2.

1-3. Prerequisites for recording

a. A document satisfies the prerequisites for recording if it appears from the document or the image of it delivered to the recording office that:

- (1) The document is in English or accompanied by a translation into English;
- (2) The document bears a signature;
- (3) The document (including a corrected document submitted for re-recording) is acknowledged or proved as provided by this title;
- (4) The names are printed beneath all signatures that appear on the document;
- (5) If the document is a deed conveying title to real estate, it (a) fulfills the requirements of P.L.1968, c.49, s.2 (C.46:15-6), and (b) includes a reference to the lot and block number of the real estate conveyed as designated on the tax map of the municipality at the time of the conveyance or the account number of the real estate. If the real estate has been

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subdivided, the reference shall be preceded by the words "part of." If no lot and block or account number has been assigned to the real estate, the deed shall state that fact, and

(6) if the document is an assignment, release or satisfaction of a mortgage or an agreement respecting a mortgage, it states the book and page number or the document identifying number of the mortgage to which it relates if the mortgage has been given such a number.

b. A document, whether made by an individual, corporation or other entity, is not required to be executed under seal, or to contain words referring to execution under seal.

Source: 46:15-1.1; 46:18-1.

COMMENT

This section is substantially similar to 46:15-1.1, which was based on the Commission's 1989 report. The opening language has been changed to reflect the section's new context. That language establishes that the original document need not be submitted to the recording office. The recording office even now retains only an image of the document; under this provision; the recording office may never see the original.

That rule is necessary to facilitate the electronic filing of documents. Subsection (a)(4) of the source has been reworded to allow for electronic documents. In the source, the subsection required that the names of signatories "appear typed, printed or stamped beneath the signatures" suggesting a requirement of a paper document. The new phrase, "printed beneath the signatures" is intended to indicate only that the name of the signatory appear in readable form. The provision of the source, requiring the payment of fees, has been deleted here because it appears elsewhere.

The section makes two small substantive changes in the prerequisites for recording. First, the requirement that the name of the preparer of the document appear on the first page has been deleted. The name of the preparer was included to provide a person for the recording officer to call if questions arose about the document. In practice, the burden of the requirement exceeded its usefulness. The person who presents the document for recording provides a sufficient source for answers concerning it. Second, the section modifies the requirement as to a book and page reference on assignments, releases and satisfactions of mortgages. Often, a mortgage is assigned before it is given a book and page reference. In that case, the reference is not required under this section.

This section applies only to documents that are recorded with the county recording officer. Other documents, such as fixture filings under the Uniform Commercial Code, that are filed rather than recorded are governed by separate statutes with different requirements,

1-4. Exceptions to prerequisites to recording

Notwithstanding the prerequisites to recording in section 1-3, the following may be recorded:

a. Documents that establish or evidence a trust under which a fiduciary has acquired real estate if accompanied by an affidavit of the fiduciary that the document is an original trust document;

b. Ancient documents that cannot be acknowledged or proved because of the death or other disability of the grantors and subscribing witnesses, accompanied by an affidavit made by a person claiming to derive title from the document stating that the affiant truly believes that quiet, continuous, adverse and undisturbed possession of the real estate has been enjoyed by virtue of the document for the period applicable for adverse possession;

c. Documents other than those listed in section 1-2 that by their nature cannot be acknowledged or proved, accompanied by an affidavit made by a person claiming to derive title

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to the real estate stating that the document is genuine and how the document relates to title to the real estate;

d. Notices of Federal tax liens, liens arising from the federal "Comprehensive Environmental Response, Compensation and Liability Act of 1980," Pub.L.96-510 (42 *U.S.C.* § 9601 et seq.), and other federal liens, which any Act of Congress or regulation adopted pursuant to it provides for filing of notice in the recording office designated by a state, and certificates discharging such liens;

e. Maps as provided by this act;

f. Notices of settlement executed by an attorney at law or authorized representative of a party in accordance with this act;

g. Certified copies of:

(1) Judgments, decrees, or orders of any court of record and petitions filed in a United States Bankruptcy Court;

(2) Government issued documents affecting title to real estate;

(3) Documents recorded or filed in any public recording office in the United States; and

h. Any other document that is permitted by another statute to be recorded or filed without acknowledgement.

Source: 46:16-1.1; 46:16-4.1; 46:16-4.2; 46:16-4.3; 46:16-5.1; 46:16-7; 46:16-9; 46:16-9; 46:16-13; 46:16-14; 46:16-15; 46:16-17.

COMMENT

This section assembles the exceptions to the ordinary prerequisites for recording and does not make any substantive change in those exceptions. Subsection (g) provides for the kinds of public documents that may not comply with every requirement. This subsection continues the substance of 46:16-1.1, 46:16-4.1, 46:16-4.2, 46:16-4.3, and 46:16-14. Although current law does not provide for recording of public documents, subsection (g)(2) reflects current practice. Subsection (g)(3) is a generalization of 46:16-9 and 46:16-10. Subsection (a) contains the substance of 46:16-5.1. Subsection (b) contains the substance of 46:16-7. Subsection (c) has no direct source but enacts current practice. Subsection (d) contains the substance of 46:16-13, 46:16-15 and 46:16-17. Subsection (f) is identical in substance to 46:16A-2.

1-5. Form of documents and maps; cover sheet or electronic synopsis

a. To be accepted for recording, a document or its image shall be either:

(1) Legibly printed on paper no larger than 8½ inches by 14 inches; or

(2) In compliance with regulations on the form of documents promulgated by the Division of Archives and Records Management in the Department of State.

b. A document or its image accepted for recording may be accompanied by a cover sheet or an electronic synopsis separate from the document or integrated with the document. The Division of Archives and Records Management in the Department of State shall establish forms for cover sheets and formats for electronic synopses. The form for a separate cover sheet shall be available at every recording office and on a web site maintained by the Division of Archives and Records Management. The cover sheet or electronic synopsis shall include:

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- (1) The nature of the document;
 - (2) The date of the document;
 - (3) The names of the parties to the document and any other names by which the document is to be indexed;
 - (4) If the document is a deed conveying title to real estate:
 - (A) the lot and block number or other real property tax designation of the real estate conveyed or a statement that the information is not available; and
 - (B) the consideration for the conveyance; and
 - (5) If the document is an assignment, release or satisfaction of a mortgage or an agreement respecting a mortgage, it states the book and page number or the document identifying number of the mortgage to which it relates if the mortgage has been given such a number.
- c. If the person submitting the document for recording does not include a cover sheet or electronic synopsis, the recording office shall charge an additional fee of ten dollars for the additional cost of indexing.
- d. To be accepted for recording, a map shall be clearly and legibly drawn in black ink on translucent tracing cloth, translucent mylars at least 4 mils thick or its equivalent, of good quality, with signatures in ink, or as an equivalent reproduction on photographic fixed line mylar 4 mils thick with signatures in black ink or its equivalent and accompanied by a cloth print or photographic fixed line mylar 4 mils thick duplicate; and one of six standard sizes: 8 1/2" x 13", 30" x 42", 24" x 36", 11" x 17", 18" x 24" or 15" x 21" as measured from cutting edges. If one sheet is not of sufficient size to contain the entire territory, the map may be divided into sections to be shown on separate sheets of equal sizes, with references on each sheet to the adjoining sheets.
- e. The regulations of the Division of Archives and Records Management specifying the form of documents shall comply with rules, standards and procedures authorized by the State Records Committee pursuant to its authority under section 6 of P.L.1994, c.140 (C.47:1-12) and the "Destruction of Public Records Law (1953)," P.L.1953, c.410 (C.47:3-15 et seq.).

Source: New.

COMMENT

Currently, the only form restriction in the statutes is 46:19-4. It requires: "where photographic methods are used, all instruments presented for recording shall be typed, written or printed on paper not to exceed 8 1/2" x 14" of sufficient quality to avoid bleed-through, and shall be legible and clear to produce a good, clear, legible photo recording." However, as a practical matter, that form restriction is generally applicable, since every recording office uses some kind of photographic method. Of course, even before recording offices used photographic methods, there were restrictions that did not need to be stated: that every document must be in writing, on paper and of a size that allowed its binding into the record books. The current form restriction is continued as a "safe harbor" provision in subsection (a)(1).

While the section preserves unchanged the ability to file a document on paper, it allows for acceptance of electronic documents. If recording offices are to accept documents in electronic form, other restrictions will be necessary. To avoid confusion that would result from 21 separate sets of requirements for electronic recording, authority is given to the Division of Archives and Records Management to establish statewide form requirements. Despite any new systems of electronic recording that are allowed, the section provides that documents still may be recorded on paper.

The section has been expanded to include the form requirements for maps. Currently, these form restrictions are in 46:23-9.11 along with content requirements. The current form restrictions are continued unchanged as a "safe harbor" provision in subsection (d).

1-6. Duty to record; recording officer's books, methods

a. The county recording officer shall record any document or map affecting the title to real estate located in the county, delivered for recording, provided the document:

- (1) Is in the form required by this act,
- (2) Appears to comply with requirements for recording specified in this act, and
- (3) Is accompanied by payment of any required fee and any state tax.

b. Every document or map shall be recorded and indexed not later than two days after its receipt.

c. A document or map that is rejected shall be returned to the person who delivered it for recording with a statement of all grounds for its rejection within two days after its receipt.

d. When a document is recorded, a book and page number or other permanent, unique document identifying number shall be assigned to it.

e. Recording shall be done by a method that:

- (1) Produces a clear, accurate and permanent image of a document,
- (2) Allows the document to be found by use of the indexes maintained, and
- (3) Is authorized by R.S.47:1-5 and is in conformance with rules, standards and procedures promulgated by the Division of Archives and Records Management in the Department of State and approved by the State Records Committee pursuant to its authority under section 6 of P.L.1994, c.140 (C.47:1-12) and the "Destruction of Public Records Law (1953)," P.L.1953, c.410 (C.47:3-15 et seq.).

f. For documents recorded before the effective date of this act, the recording office shall:

- (1) retain the documents or clear, accurate and permanent images of the documents, and
- (2) maintain indexes that allow the documents to be found.

g. The Division of Archives and Records Management and the State Records Committee shall consult with the Office of Telecommunications and Information Systems in the Department of the Treasury in the development of technical standards for record keeping. Despite this section, the State Records Committee may adopt rules and regulations to authorize pilot programs for various individual counties in order to evaluate alternative technologies for the preservation of records.

Source: 46:19-1; 46:19-3; 46:8B-1; 46:8D-4.

COMMENT

This section contains the portions of 46:19-1 that relate to methods of recording generally. The parts of the source section that refer specifically to "well-bound books" and to the systems of books of documents have been deleted as unnecessary. Subsection (b) reflects the settlement of litigation between

the county recording officers and the New Jersey Land Title Association. Current statutes assume that every document will be recorded and indexed on the day received. All parties to the litigation agreed that that time requirement was impractical. Subsection (e) is derived from 46:19-3, but has been generalized to allow any kind of recording method that allows the search and use of the documents. As such, it provides for an identifying number rather than a book and page, and sets out general requirements for recording standards.

The section allows for new methods of recording but preserves the practical effect of the present system: every document is required to be recorded and indexed so that the whole text of the document and appended notations may be found by the use of standard indexes.

The section adds time limits for recording or rejection of a document. A time limit for recording is now in effect by court orders against recording officers. A time limit for rejection is fairly implied by those court orders.

To the extent that the Cooperative Recording Act, the Condominium Act or other statutes require the county recording officer to maintain separate books and indexes, this act supersedes them and allows a single set of books and indexes for newly-recorded documents. Of course, old, separate indexes will need to be maintained for previously-recorded documents unless those indexes are replaced or combined.

1-7. Receipts for documents presented for record

Upon request, the county recording officer shall:

- a. Furnish a receipt for the document and fees paid; and
- b. Return a copy of the document with the date and time it was received for recording, the fee paid, and the book and page number or other permanent, unique document identifying number assigned to the document. If the copy returned is a paper document, the information shall be endorsed on the document.

Source: 46:19-5.

COMMENT

This section replaces sections 46:19-4 and 46:19-5, which provide that the recording officer give receipts for documents lodged for record and, on request, return a copy of the document with recording information endorsed on it. The reference to a receipt for the fee is new but reflects current practice.

The section allows an identifying number other than the traditional book and page to be used.

1-8. Indexes; entries

a. The county recording officer shall maintain one index of all recorded documents and may make other separate, classified, analytical or combination indexes.

b. A deed or other conveyance shall be indexed by the names of its grantors and grantees, and also shall be indexed by the name of:

(1) The testator or intestate if a deed or other conveyance is made by executors or administrators;

(2) The person granting the power of attorney if a deed is made under power of attorney;

(3) The defendants in the execution for which the sale was made if a deed is made by a sheriff; and

(4) The person whose property has been conveyed if a deed is made by a person appointed to convey property by a court.

c. A mortgage shall be indexed by the names of the mortgagors and mortgagees.

d. An assignment, extension, postponement, modification or discharge of a mortgage shall be indexed by the names of the mortgagors, assignors and assignees.

e. A trust instrument shall be indexed by the names of the parties to the instrument and in the names of beneficiaries if they appear.

f. Any other document shall be indexed by the names of the parties to it.

g. A document shall also be indexed by additional names requested by the person submitting the document for recording.

h. A document shall be indexed from the information supplied on its cover sheet or electronic synopsis if one is submitted. A recording officer shall not be liable for differences between the cover sheet or electronic synopsis and the document.

Source: 46:20-1; 46:20-3; 46:20-5; 46:19-2.

COMMENT

This section, for the most part, simplifies section 46:20-1. Subsection (b) is derived from 46:20-3. The provision in subsection (a) allowing other indexes is derived from 46:20-5. Subsection (f) has been added to provide for indexing of unusual documents in accord with common practice.

1-9. Sequence of recording

The county recording officer shall record and index documents in the order received. If two documents affecting the same property are submitted for recording by the same person and are received at the same time, the county recording officer shall record and index the documents in the order requested by the person who submitted them.

Source: 46:20-2.

COMMENT

This section is new in allowing a person who submits a group of documents to determine the order in which they are recorded. Otherwise, though simplified, it is similar to 46:20-2 which provides for the sequence of index entries and to the second paragraph of 46:19-3 which provides for the sequence of recording.

1-10. Documents filed as provided by other statutes

When a statute outside of this chapter provides that a document relating to real estate be filed rather than recorded:

a. Requirements for the form and content of the document shall be those established by the statute outside of this chapter;

b. The document shall be recorded with all other documents affecting real estate using the method established by section 1-6(e) of this chapter; and

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c. The document shall be indexed with all other documents affecting real estate as provided by section 1-8 of this chapter.

COMMENT

This section is new. Under current law when a document is filed rather than recorded, the original rather than an image of the document is retained in the recording officer's records and separate files and indexes are made for each kind of document. The distinction between filing and recording serves no modern purpose. This section provides that documents that are now filed be recorded and indexed with recorded documents using the same methods. This change will not only simplify the recording office processes, it will allow a single search to disclose all county-filed or county-recorded documents that affect real estate.

1-11. Notices of settlement

a. A party to a settlement which will convey an interest in real estate, a mortgage on real estate, or both, or the authorized representative of a party or a licensed title insurance producer, may execute a document titled "notice of settlement" and record it in the county recording office of the county in which the real estate is located. The county recording officer may charge a fee not to exceed the fee charged for the recording of notices of Federal tax liens.

b. The notice of settlement shall be signed by a party to the settlement or a party's authorized representative and shall state the names of the parties to the settlement and a description of the real estate. If the notice is executed by anyone other than an attorney at law of this State, the execution shall be acknowledged or proved in the manner of acknowledgement or proof of deeds.

c. A notice of settlement shall be in substantially the following form:

Name

Address

(Seller or Mortgagor)

NOTICE OF SETTLEMENT

Name

Address

(Purchaser or Mortgagee)

NOTICE is hereby given of a(contract, agreement or mortgage commitment) between the parties.

THE lands to be affected are described as follows:

Premises in the of, (municipality) County of and State of New Jersey, commonly known as (street address) and more particularly described as follows:

(legal description)

Name of party or authorized representative

Address

(acknowledgement)

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d. A notice of settlement shall be effective for 60 days from the date of recording, unless it is terminated by the recording of a “discharge of notice of settlement.” The effective period of a notice of settlement may be extended for one period of 60 days by recording an additional notice of settlement before the expiration or discharge of the notice of settlement.

e. A discharge of notice of settlement shall be substantially in the form prescribed for a notice of settlement and shall be recorded by the party or authorized representative who recorded the notice of settlement. The recording officer shall record and index each discharge in the same fashion as a notice of settlement.

f. Any person who claims an interest in or lien on the real estate described in the notice of settlement arising during the time that a notice of settlement is effective shall be deemed to have acquired the interest or lien with knowledge of the anticipated settlement and shall be subject to the estate or interest created by the deed or mortgage described in the notice of settlement provided the deed or mortgage is recorded within the time that the notice is effective.

Source: 46:16A-1 through 46:16A-5.

COMMENT

This section is substantially similar to 46:16A-1 through -5. Subsection (a) has been reworded and clarified to indicate that a single notice of settlement can be recorded for both a conveyance and mortgage. Most sales of real property involve both. The form in subsection (c) has been simplified slightly. Subsection (d) clarifies the method for extending a notice of settlement and limits the total time that the notice and extension may be effective to 120 days. The section has been reworded to reflect its intended effect more accurately.

1-12. Effect of recording

a. Any recorded document affecting the title to real estate is, from the time of recording, notice to all subsequent purchasers, mortgagees and judgment creditors of the execution of the document recorded and its contents.

b. A claim under a recorded document affecting the title to real estate shall not be subject to the effect of a document that was later recorded or was not recorded unless the claimant was on notice of the later recorded or unrecorded document.

c. A deed or other conveyance of an interest in real estate shall be of no effect against subsequent judgment creditors without notice, and against subsequent bona fide purchasers and mortgagees for valuable consideration without notice and whose conveyance or mortgage is recorded, unless that conveyance is evidenced by a document that is first recorded.

Source: 46:21-1; 46:22-1.

COMMENT

Subsection (a) is closely based on its 46:21-1, but one important substantive change has been made. While the source section gives notice effect to any document “lodged for record with the county recording officer,” subsection (a) limits that effect to documents that are actually recorded. As provided by section 1-2, a document is not recorded unless it has been indexed. It is assumed that a person will protect the position between the time a document is executed and the time it is recorded with an earlier recording of a notice of settlement.

There is one other difference between subsection (a) and its source. The source section does not give the effects of recording to documents that have not been acknowledged or proved. Another section,

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46:21-2, limits those effects to any document that has been on record for six years despite defects in acknowledgment. This distinction serves no modern purpose. If a document has been actually recorded, a prospective purchaser should have notice of it.

Subsection (b) contains the rule that is implied by subsection (a) and its source, 46:21-1. The first recorded document takes precedence over later recorded documents unless the claimant under the first recorded document has notice of the documents that are recorded later at the time that he gave value and acquired his interest. See e.g., *Lieberman v. Arzee Mid-State Supply*, 306 N.J. Super. 335, 341 (App. Div. 1997). To the extent that this rule is stated explicitly in the statutes, it is part of 46:22-1. It has been separated from subsection (c), the provision directly derived from 46:22-1, for clarity. Otherwise, Subsection (c) is closely based on 46:22-1. The only substantive changes are those noted in the comment to the previous section.

Subsection (c) is based on 46:22-1. It embodies one of the basic principles underlying the recording statutes, that an unrecorded document is ineffective against later claimants who have no notice of it. See, e.g. *Cox v. RKA Corp.*, 164 N.J. 487, 496 (2000). However, case law is not consistent on this point. One reported case, *Michalski v. U.S.*, 49 N.J. Super. 104 (Ch. Div. 1958), held that a conveyance, which was unwritten and so could not be recorded, is effective against a creditor without notice. See also, *In re L.D. Patella Construction Co.*, 114 B.R. 53, 58-59 (Bankr. D.N.J. 1990). Subsection (c) reverses that rule. If a party makes a conveyance in a form that does not permit it to be recorded, then a subsequent bona fide purchaser, mortgagee or creditor who could not learn of the conveyance from the land records is not bound by the conveyance absent notice of it at the time he acquired the interest for value or docketed the judgment. This principle is in accord with the statute of frauds, 25:1-11, which makes unwritten conveyances enforceable as conveyances only in some cases where possession is transferred. Transfer of possession frequently is notice to prospective purchasers or mortgagees.

CHAPTER 2 -- FEES

2-1. Realty transfer fees

In addition to the recording fees imposed by section 2 of P.L.1965, c.123 (C.22A:4-4.1), a fee is imposed upon grantors, at the rate of \$3.50 for each \$1000 of consideration or fractional part thereof recited in the deed; provided however, that on and after the tenth day following a certification by the Director of the Division of Budget and Accounting in the Department of the Treasury pursuant to subsection b. of section 2 of P.L.1992, c.148 (C.46:15-10.2), the fee imposed shall be \$1.00 for each \$1000 of consideration or fractional part thereof recited in the deed, which fee shall be collected by the county recording officer at the time the deed is offered for recording. For each \$1000 of consideration or fractional part thereof recited in the deed in excess of \$150,000 an additional fee is imposed of \$1.50; provided however, that on and after the tenth day following a certification by the Director of the Division of Budget and Accounting in the Department of the Treasury pursuant to subsection b. of section 2 of P.L.1992, c.148 (C.46:15-10.2), no such fee shall be imposed.

Every deed subject to the additional fee required by this act, which is in fact recorded, shall be conclusively deemed to have been entitled to recording, notwithstanding that the amount of the consideration shall have been incorrectly stated, or that the correct amount of such additional fee, if any, shall not have been paid, and no such defect shall in any way affect or impair the validity of the title conveyed or render the same unmarketable; but the person or

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persons required to pay the additional fee at the time of recording shall be and remain liable to the county recording officer for the payment of the proper amount thereof.

Source: 46:15-7.

COMMENT

This section is identical to its source except that the fees have been expressed per \$1000 of value.

2-2. County, State sharing of fee proceeds

The proceeds of the fees collected by the county recording officer, as authorized by this act, shall be accounted for and remitted to the county treasurer. An amount equal to 28.6% of the proceeds from the first \$3.50 for each \$1000 of consideration or fractional part thereof recited in the deed so collected shall be retained by the county treasurer for the use of the county and the balance shall be paid to the State Treasurer for the use of the State; provided however, that on and after the tenth day following a certification by the Director of the Division of Budget and Accounting in the Department of the Treasury pursuant to subsection b. of section 2 of P.L.1992, c.148 (C.46:15-10.2), 100% of the proceeds from the first \$1.00 for each \$1000 of consideration or fractional part thereof recited in the deed so collected shall be retained by the county treasurer for the use of the county and no amount shall be paid to the State Treasurer for the use of the State. Payments shall be made to the State Treasurer on the tenth day of each month following the month of collection. Amounts, not in excess of \$25,000,000, paid during the State fiscal year to the State Treasurer from the payment of fees collected by the county recording officer other than the additional fee of \$1.50 for each \$1000 of consideration or fractional part thereof recited in the deed in excess of \$150,000 shall be credited to the "Shore Protection Fund" created pursuant to section 1 of P.L.1992, c.148 (C.13:19-16.1), in the manner established under that section. All amounts paid to the State Treasurer in payment of the additional fee of \$1.50 for each \$1000 of consideration or fractional part thereof recited in the deed in excess of \$150,000 shall be credited to the Neighborhood Preservation Nonlapsing Revolving Fund established pursuant to P.L.1985, c.222 (C.52:27D-301 et al.), in the manner established under section 20 thereof (C.52:27D-320).

Source: 46:15-8.

COMMENT

This section is identical to its source except that the fees have been expressed per \$1000 of value.

2-3. Falsifying consideration; penalty

Any person who knowingly falsifies the consideration recited in a deed or in the proof or acknowledgment of the execution of a deed or in an affidavit annexed to a deed declaring the consideration therefor or a declaration in an affidavit that a transfer is exempt from recording fee is guilty of a crime of the fourth degree.

Source: 46:15-9.

COMMENT

This section is identical to its source.

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2-4. Exemptions from realty transfer fee

The fee imposed by this act shall not apply to a deed:

- a. For a consideration of less than \$100;
- b. By or to the United States of America, this State, or any instrumentality, agency, or subdivision thereof;
- c. Solely in order to provide or release security for a debt or obligation;
- d. Which confirms the estate or interest previously acquired by the grantee by operation of law or which corrects a deed previously recorded;
- e. On a sale for delinquent taxes or assessments;
- f. On partition;
- g. By a receiver, trustee in bankruptcy or liquidation, or assignee for the benefit of creditors;
- h. Eligible to be recorded as an "ancient deed" pursuant to R.S.46:16-7;
- i. Acknowledged or proved on or before July 3, 1968;
- j. Between husband and wife, or parent and child;
- k. Conveying a cemetery lot or plot;
- l. In specific performance of a final judgment;
- m. Releasing a right of reversion;
- n. Previously recorded in another county and full realty transfer fee paid or accounted for, as evidenced by written instrument, attested by the grantee and acknowledged by the county recording officer of the county of such prior recording, specifying the county, book, page, date of prior recording, and amount of realty transfer fee previously paid;
- o. By an executor or administrator of a decedent to a devisee or heir to effect distribution of the decedent's estate in accordance with the provisions of the decedent's will or the intestate laws of this State;
- p. Recorded within 90 days following the entry of a divorce decree which dissolves the marriage between the grantor and grantee; and
- q. Issued by a cooperative corporation, as part of a conversion of all of the assets of the cooperative corporation into a condominium, to a shareholder upon the surrender by the shareholder of all of the shareholder's stock in the cooperative corporation and the proprietary lease entitling the shareholder to exclusive occupancy of a portion of the property owned by the corporation.

Source: 46:15-10.

COMMENT

This section is identical to its source except for a clarification in subsection (d) which clarifies current practice. NJAC 18:16-5.11.

2-5. Partial fee exemptions; allocation of proceeds

a. The following transfers of title to real property shall be exempt from payment of \$2.50 per \$1000 of consideration or fractional part thereof of the fee imposed upon grantors by this act:

(1) The sale of any one- or two-family residential premises which are owned and occupied by a senior citizen, blind person, or disabled person who is the seller in such transaction; provided, however, that except in the instance of a husband and wife no exemption shall be allowed if the property being sold is jointly owned and one or more of the owners is not a senior citizen, blind person, or disabled person.

(2) The sale of low and moderate income housing.

b. Transfers of title to real property upon which there is new construction shall be exempt from payment of \$2.00 for each \$1000 or fractional part thereof not in excess of \$150,000.

c. The director shall promulgate rules, regulations and forms of certification necessary to carry out the provisions of this section. No transfer shall be eligible for more than one exemption under this section. All fees collected on transfers subject to exemption under subsection a. of this section shall be remitted to the county treasurer for the use of the county. An amount equal to 66 2/3% of the proceeds from the fee imposed upon the consideration not in excess of \$150,000 for transfers of real property upon which there is new construction, and an amount equal to 20% of the proceeds of the \$5.00 fee imposed upon each \$1000 of consideration or fractional part thereof in excess of \$150,000 for transfers of real property upon which there is new construction, shall be remitted to the county treasurer for the use of the county.

d. The balance of the fees collected on transfers subject to exemption under subsection b. of this section shall be remitted to the State Treasurer and shall be credited to the Neighborhood Preservation Nonlapsing Revolving Fund established pursuant to P.L.1985, c.222 (C.52:27D-301 et al.), to be spent in the manner established under section 20 thereof (C.52:27D-320).

e. Subsections a. through d. of this section shall be without effect on and after the tenth day following a certification by the Director of the Division of Budget and Accounting in the Department of the Treasury pursuant to subsection b. of section 2 of P.L.1992, c.148 (C.46:15-10.2).

Source: 46:15-10.1.

COMMENT

This section is identical to its source except that the fees have been expressed per \$1000 of value.

2-6. Required provisions of annual appropriations act; funding duty of county

a. The annual appropriations act for each State fiscal year shall, without other conditions, limitations or restrictions on the following:

(1) Credit amounts paid to the State Treasurer, if any, in payment of fees collected pursuant to section 3 of P.L.1968, c.49 (C.46:15-7), to the "Shore Protection Fund"

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created pursuant to section 1 of P.L.1992, c.148 (C.13:19-16.1), and the Neighborhood Preservation Nonlapsing Revolving Fund established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320), pursuant to the requirements of section 4 of P.L.1968, c.49 (C.46:15-8);

(2) Appropriate the balance of the "Shore Protection Fund" created pursuant to section 1 of P.L.1992, c.148 (C.13:19-16.1), for the purposes of that fund; and

(3) Appropriate the balance of the Neighborhood Preservation Nonlapsing Revolving Fund established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320), for the purposes of that fund.

b. If the requirements of subsection a. of this section are not met on the effective date of an annual appropriations act for the State fiscal year, or if an amendment or supplement to an annual appropriations act for the State fiscal year should violate any of the requirements of subsection a. of this section, the Director of the Division of Budget and Accounting in the Department of the Treasury shall, not later than five days after the enactment of the annual appropriations act, or an amendment or supplement thereto, that violates any of the requirements of subsection a. of this section, certify to the Director of the Division of Taxation that the requirements of subsection a. of this section have not been met.

c. The county government shall provide sufficient funds to the office of the County Clerk or Register of Deeds to allow that office to record and index documents within the time limits provided by law. If the county does not provide sufficient funds to allow the County Clerk or Register of Deeds to comply with this chapter, the County Clerk or Register of Deeds may make application to the Assignment Judge of the Superior Court in the county for an order directing the appropriation of additional funds.

Source: 46:15-10.2.

COMMENT

With the exception of the last sentence of subsection (c), this section is identical to its source. The new sentence in subsection (c) is designed to assure that recording officers are allocated sufficient funds to allow them to comply with the time limit for recording documents. The remedy chosen is analogous to that used by prosecutors' offices to secure sufficient funding.

2-7. Rules and regulations

a. The Director of the Division of Taxation of the Department of the Treasury may prescribe such rules and regulations as the director may deem necessary to carry out the purposes of this act.

b. Any person aggrieved by any action of the Director of the Division of Taxation or county recording officer under P.L.1968, c.49 (C.46:15-5 et seq.), may appeal therefrom to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq.

c. The Director of the Division of Taxation shall, no later than five days after certification by the Director of the Division of Budget and Accounting in the Department of the Treasury pursuant to subsection b. of section 2 of P.L.1992, c.148 (C.46:15-10.2), that the requirements of subsection a. of section 2 of P.L.1992, c.148 (C.46:15-10.2), have not been met or have been violated by an amendment or supplement to the annual appropriations act, notify the county recording officers and county treasurers of the several counties of such certification.

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Source: 46:15-11.

COMMENT

This section is identical to its source.

2-8. Payment of recording fees

a. A recording office shall accept payment for recording fees in any form approved by the Department of the Treasury.

b. If a document is submitted for recording with payment of an amount exceeding the recording fee, the recording officer shall record the document and refund the surplus amount after the payment is collected.

c. A recording office may allow a person to establish an account with the office to be used for recording fees. When a person submits a document for recording, the recording officer shall deduct the amount of fees due from the account and notify the person of the amount deducted and the amount remaining in the account. If a person who has established an account for recording fees submits a document for recording with an incorrect fee, the recording office may record the document and credit any overpayment to the account or take any underpayment from the account.

Source: New.

COMMENT

Subsection (a) allows the Department of the Treasury to regulate the forms of payment. Its purpose is to allow the use of credit cards if certain technical problems can be solved. Subsection (b) is intended to prevent the return of documents when the person who submits the document includes an incorrect payment that exceeds the recording fees. To avoid having the Clerk's office required to cash checks that might not be honored the subsection provides that a refund is not made until a payment is collected. Subsection (c) allows persons who record documents frequently to establish an account to cover fees rather than to pay each fee separately. Both provisions are intended to prevent the return of documents for mistakes as to the amount of fee due. The complications of the current fee structure result in documents being submitted with incorrect fees. In such a case, recording is delayed and the recording office must notify the recorder of the correct fee. This provision would prevent this problem for frequent recorders by allowing them to establish accounts with the recording office.

CHAPTER 3 -- MAPS

3-1. Definitions

As used in this act:

a. "Condominium plan" means a survey of the condominium property in sufficient detail to identify the location and dimensions of units and common elements, which shall be filed in accordance with the requirements of section 3 of P.L.1960, c.141 (C.46:23-9.11). A condominium plan shall bear a certification by a land surveyor, professional engineer or architect authorized to practice in this State that the plan is a correct representation of the improvements described.

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b. "Entire tract" means all of the property that is being subdivided including lands remaining after subdivision.

c. "General property parcel map" means a right of way parcel map showing a group of parcel and easement acquisitions for part of a highway or street project.

d. "Land Surveyor" means a person who is legally authorized to practice land surveying in this State as provided by P.L.1938, c.342 (C.45:8-27 et seq.).

e. "Map" includes a map, plat, condominium plan, right of way parcel maps of the State, county or municipality, chart, or survey of lands presented for approval to a proper authority or presented for filing as provided by this act, but does not include a map, plat or sketch required to be filed or recorded under the provisions of P.L.1957, c.130 (C.48:3-17.2) or a subdivision plat for a subdivision that was granted final approval by a municipal approving authority on or prior to July 1, 1999.

f. "Municipal Engineer" means the official licensed professional engineer appointed by the proper authority of the municipality in which the territory shown on a map is located.

g. "Professional Engineer" means a person who is legally authorized to practice professional engineering in this State as provided by P.L.1938, c.342 (C.45:8-27 et seq.).

h. "Proper authority" means the chief legislative body of a municipality or other agencies to which the authority for approval of maps has been designated by ordinance.

i. "Right of way parcel map" means any general property parcel map which shows highways or street acquisitions and any associated easements for highway or street rights of way.

Source: 46:23-9.10.

COMMENT

All of the definitions in 46:23-9.10 have been retained. Language has been simplified slightly and the definitions have been put into alphabetical order. The first exclusion in the definition of maps, subsection (e), has been retained even though it is unnecessary in that it duplicates a provision in 48:3-17.3(d). The second exclusion in the definition of map continues the substance of 46:23-9.18.

3-2. Requirements for approval or filing of a map

a. A map shall not be approved by a proper authority unless it meets the requirements of this section specified for the kind of map involved. The following kinds of maps shall meet the following requirements:

(1) Major subdivision plats shall meet all of the requirements of this section.

(2) Right of way parcel maps shall meet the requirements of subsections (b) (1), (2), (4), (5), (6), (7), (11) of this section.

(3) Minor subdivision maps shall meet all of the requirements of this section except for the outside tract line monuments requirement of subsection (b)(8).

(4) Condominium plans shall meet the requirements of subsections (b)(1), (4), (5), (6), (7) and (11).

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b. No map requiring approval by law or that is to be approved for filing with a county, shall be approved by the proper authority unless it conforms to the following requirements:

(1) A map shall show the scale, which shall be inches to feet and be large enough to contain legibly written data on the dimensions, bearings and all other details of the boundaries, and it shall also show the graphic scale.

(2) A map shall show the dimensions, square footage of each lot to the nearest square foot or nearest one hundredth of an acre. Bearings and curve data shall include the radius, delta angle, length of arc, chord distance and chord bearing sufficient to enable the definite location of all lines and boundaries shown, including public easements and areas dedicated for public use. Non-tangent curves and non-radial lines shall be labeled. Right of way parcel maps shall show bearings, distances and curve data for the right of way or the center line or base line and ties to right of way lines if from a base line.

(3) Where lots are shown thereon, those in each block shall be numbered consecutively. Block and lot designations shall conform with the municipal tax map if municipal regulations so require. In counties which adopt the local or block system of indices pursuant to sections 46:24-1 to 46:24-22 of the Statutes, the map shall show the block boundaries and designations established by the board of commissioners of land records for the territory shown on the map.

(4) The reference meridian used for bearings on the map shall be shown graphically. The coordinate base, either assumed or based on the New Jersey Plane Coordinate System, shall be shown on the plat.

(5) All municipal boundary lines crossing or adjacent to the territory shall be shown and designated.

(6) All natural and artificial watercourses, streams, shorelines and water boundaries and encroachment lines shall be shown. On right of way parcel maps all easements that affect the right of way, including slope easements and drainage, shall be shown and dimensioned.

(7) All permanent easements, including sight right easements and utility easements, shall be shown and dimensioned.

(8) The map shall clearly show all monumentation required by this chapter, including monuments found, monuments set, and monuments to be set. An indication shall be made where monumentation found has been reset. For purposes of this subsection "found corners" shall be considered monuments. A minimum of three corners distributed around the tract shall indicate the coordinate values. The outbound corner markers shall be set pursuant to regulations promulgated by the State Board of Professional Engineers and Land Surveyors.

(9) The map shall show as a chart on the plat any other technical design controls required by local ordinances, including minimum street widths, minimum lot areas and minimum yard dimensions.

(10) The map shall show the name of the subdivision, the name of the last property owners, the municipality and county.

(11) The map shall show the date of the survey and shall be in accordance with the minimum survey detail requirements of the State Board of Professional Engineers and Land Surveyors.

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(12) A certificate of a land surveyor or surveyors, shall be endorsed on the map as follows:

(A) I certify that to the best of my knowledge and belief this map and land survey dated meet the minimum survey detail requirements of the State Board of Professional Engineers and Land Surveyors and the map has been made under my supervision, and complies with the "map filing law" and that the outbound corner markers as shown have been found, or set.

(Include the following, if applicable)

I further certify that the monuments as designated and shown have been set.

.....

Licensed Professional Land Surveyor and No.

(Affix Seal)

(13) If the land surveyor who prepares the map is different from the land surveyor who prepared the outbound survey, the following two certificates shall be added in lieu of the certificate above.

(A) I certify to the best of my knowledge information and belief that this land survey dated has been made under my supervision and meets the minimum survey detail requirements of the State Board of Professional Engineers and Land Surveyors and that the outbound corner markers as shown have been found, or set

.....

Licensed Professional Land Surveyor and No.

(Affix seal)

(B) I certify that this map has been made under my supervision and complies with the "map filing law."

(Including the following if applicable)

I further certify that the monuments as designated and shown have been set.

.....

Licensed Professional Land Surveyor and No.

(Affix seal)

(C) If monuments are to be set at a later date, the following requirements and endorsement shall be shown on the map.

The monuments shown on this map shall be set within the time limit provided in the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) or local ordinance.

I certify that a bond has been given to the municipality, guaranteeing the future setting of the monuments as designated and shown on this map.

.....

Municipal Clerk

(D) If the map is a right of way parcel map the project surveyor need only to certify that the monuments have been set or will be set.

(14) A certificate of the municipal engineer shall be endorsed on the map as follows:

I have carefully examined this map and to the best of my knowledge and belief find it conforms with the provisions of "the map filing law," resolution of approval and applicable municipal ordinances and requirements.

.....

Municipal Engineer (Affix Seal)

(15) An affidavit setting forth the names and addresses of all the record title owners of the lands subdivided by the map and written consent to the approval of the map of all those owners shall be submitted to the proper authority with the map.

(16) If the map shows highways, streets, lanes or alleys, a certificate shall be endorsed on it by the municipal clerk that the municipal body has approved the highways, streets, lanes or alleys, except where such map is prepared and presented for filing by the State of New Jersey or any of its agencies. The map shall show all of the street names as approved by the municipality.

Source: 46:23-9.11.

COMMENT

The substance of 46:23-9.11 has not been changed; language has been simplified slightly. Subsection (r) of 46:23-9.11 has been separated as a new section on monumentation.

Format requirements, limitations on the size of maps and the materials from which they may be made, from 46:23-9.11 (a) and (b), have been moved to a separate section.

3-3. Monumentation

a. A map shall not be approved by a proper authority unless it meets the monumentation requirements of this section specified for the kind of map involved. The following kinds of maps shall meet the following requirements:

- (1) Subdivision plats shall meet all of the requirements of this section.
- (2) Right of way parcel maps shall meet the requirements of subsection (b) (9).

b. Monuments are required on one side of the right of way only and shall be of metal detectable durable material at least 30 inches long. The top and bottom shall be a minimum of 4 inches square; if concrete, however, it may be made of other durable metal detectable material

specifically designed to be permanent, as approved by the State Board of Professional Engineers and Land Surveyors. All monuments shall include the identification of the professional land surveyor or firm. They shall be firmly set in the ground so as to be visible at the following control points; provided that in lieu of installation of the monuments, the municipality may accept bond with sufficient surety in form and amount to be determined by the governing body, conditioned upon the proper installation of the monuments on the completion of the grading of the streets and roads shown on the map.

(1) At each intersection of the outside boundary of the whole tract, with the right-of-way line of any side of an existing street.

(2) At the intersection of the outside boundary of the whole tract with the right-of-way line on one side of a street being established by the map under consideration.

(3) At one corner formed by the intersection of the right-of-way lines of any two streets at a T-type intersection.

(4) At any two corners formed by the right-of-way lines of any two streets in an "X" or "Y" type intersection.

(5) If the right-of-way lines of two streets are connected by a curve at an intersection, monuments shall be as stipulated in (3) and (4) of this subsection at one of the following control points:

(A) The point of intersection of the prolongation of said lines,

(B) The point of curvature of the connecting curve,

(C) The point of tangency of the connecting curve,

(D) At the beginning and ending of all tangents on one side of any street,

or

(E) At the point of compound curvature or point of reversed curvature where either curve has a radius equal to or greater than 100 feet. Complete curve data as indicated in subsection d. of this section shall be shown on the map, or

(F) At intermediate points in the sidelines of a street between two adjacent street intersections in cases where the street deflects from a straight line or the line of sight between the adjacent intersections is obscured by a summit or other obstructions which are impractical to remove. This requirement may necessitate the setting of additional monuments at points not mentioned above. Bearings and distances between the monuments or coordinate values shall be indicated.

(6) In cases where it is impossible to set a monument at any of the above designated points, a nearby reference monument shall be set and its relation to the designated point shall be clearly designated on the map; or the plate on the reference monument shall be stamped with the word "offset" and its relation to the monument shown on the filed map.

(7) In areas where permanency of monuments may be better insured by off-setting the monuments from the property line, the municipal engineer may authorize such procedure; provided, that proper instrument sights may be obtained and complete off-set data is recorded on the map.

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(8) By the filing of a map in accordance with the provisions of “the map filing law,” reasonable survey access to the monuments is granted, which shall not restrict in any way the use of the property by the landowner.

(9) On right of way parcel maps, the monuments shall be set at the points of curvature, points of tangency, points of reverse curvature and points of compound curvature or the control base line or center line, if used, and be intervisible with a second monument.

(10) On minor subdivisions a monument shall be set at each intersection of an outside boundary of the newly created lot(s) with the right of way line of any side of an existing street.

Source: 46:23-9.11(r).

COMMENT

The substance of 46:23-9.11 has not been changed; language has been simplified slightly. Subsection (r) of 46:23-9.11 has been separated as a new section on monumentation.

3-4. Approval of maps

a. The proper authority shall approve or disapprove a map within 45 days from its receipt.

b. The approval of a map under this law by the proper authority shall not be construed as acceptance of any street or highway indicated on the map; nor shall approval obligate the State of New Jersey or any county or municipality, to maintain or exercise jurisdiction over those streets or highways.

Source: 46:23-9.12; 46:23-9.13.

COMMENT

Subsection (a) continues the substance of 46:23-9.12 unchanged. Subsection (b) continues the substance of 46:23-9.13 unchanged. Language has been simplified slightly.

3-5. Additional prerequisites to filing

The county recording officer shall not accept for filing any map unless it has endorsed on it a certificate by the municipal clerk or secretary of the planning board stating:

a. That the proper authority has approved the map or stating its exemption from approval;

b. That the map complies with the provisions of this law; and

c. The date by which the map is required to be filed by the applicable law.

Source: 46:23-9.14.

COMMENT

This section continues the substance of 46:23-9.14 unchanged. The final sentence of the source has been deleted as unnecessary; section TR-5 makes reference to all of the requirements for recording.

3-6. Filing and indexing of maps, fee

a. The county recording officer shall file a map if an original and a copy of the map are presented for filing, the map complies with all the requirements for filing and is accompanied with the fees for filing and indexing that are provided by law. No fee shall be charged when the map is presented by the State of New Jersey, or any of its agencies.

b. The original map and a duplicate shall be endorsed by the recording office with a receipt indicating the date of filing.

c. The original map shall be retained by the recording office in an appropriate manner for preservation and use for reproduction purposes.

d. Copies of filed maps shall be made available to the public at a reasonable cost.

Source: 46:23-9.15.

COMMENT

This section continues the substance of 46:23-9.15 with little change. References to the way that a map should be stored and the format of a map and its copies have been deleted to allow any technological method that serves the purposes of map filing: preservation and use. The section has also been rearranged and substantially reworded.

3-7. Duplicates of maps in cities having atlases or block maps

Whenever a map is filed in the office of the county recording officer of land in a municipality that has an atlas, or block map, on which is plotted the lots or subdivision of lots of lands, the person filing the map shall file a duplicate of the map, and the recording officer shall indorse on the duplicate the time of recording and filing of the original and deliver the duplicate to the officer of the city having charge of the atlas or block map.

This section shall have no application to maps filed by commissioners appointed to assess benefits derived from the construction of sewers, drains or other municipal improvements.

Source: 46:23-10.

COMMENT

This section continues the substance of 46:23-9.15 with no change. The section has been reworded slightly.

3-8. Approval and filing of duplicates of filed maps

Whenever a map has been filed in the office of the county recording officer, and copies of it have been made that differ from the original only in title or style, and there have been made conveyances or liens, under which the lands intended to be conveyed or liened have been described by reference to the unfiled copy, the governing body of the municipality in which the land is located, by resolution, may approve the copy for filing in the manner prescribed by law. This approval and filing shall not constitute a dedication of the streets or lot locations as therein delineated and shall be merely for the identification of the lands conveyed or liened.

Source: 46:23-11.

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COMMENT

This section continues the substance of 46:23-11 with no change. The section has been condensed and clarified.

CHAPTER 4 -- GENERAL AND TRANSITIONAL

4-1. Regulations

a. The Division of Archives and Records Management in the Department of State in consultation with the County Clerks and Registers of Deeds shall adopt regulations to establish format and technical requirements for recorded documents to foster state-wide uniformity in title recordation and otherwise to implement this Act.

b. Regulations shall be adopted within 12 months after the effective date of this Act.

4-2. UETA superseded

To the extent that this Act conflicts with Sections 17 and 18 of the Uniform Electronic Transactions Act (NJS 12A:12-17 and 18) this Act supersedes UETA.

This act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et seq.) but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

22A:4-4.1. Fees for services of county clerks and registers.

County clerks and registers of deeds and mortgages, in counties having such offices, shall charge for the services herein enumerated the following fees:

Fee

For recording veteran's discharge papers No fee

For recording any instrument: First page ~~-----~~ \$30.00

Each additional page or part thereof ~~-----~~ 10.00

~~Each rider, insertion, addition, or any~~ Any map, plat or sketch filed or recorded pursuant to subsection (c) of section 2 of P.L.1957, c.130 (C.48:3-17.3) \$10.00

~~For entering the marginal notation of an order judgment, statement or warrant discharging, annulling a notice of lis pendens and for filing such order, judgment or statement~~
~~-----~~ \$10.00

For filing a lis pendens foreclosure ~~-----~~ \$30.00

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Notation ~~_____~~ \$10.00

For preparing and transmitting to the assessor, collector, or other custodian of the assessment map of any taxing district, the abstract of an instrument evidencing title to realty ~~_____~~ \$10.00

For entering the marginal notation of a discharge or release of a New Jersey building and loan or savings and loan mortgage and forwarding abstract \$10.00

For entering the marginal notation of a discharge, assignment, postponement or release of a mortgage, other than building and loan and savings and loan mortgages \$10.00

For the cancellation of any mortgage ~~_____~~ \$20.00

For a marginal notation of the discharge of a mortgage in counties where mortgages are indexed under a system requiring a duplication of indices and description \$10.00

For filing and recording notice of federal tax lien or other federal lien or certificate discharging such lien \$25.00

For filing a notice of settlement \$20.00

For filing each map, plat, plan or chart (except when presented by the State or its agencies or filed pursuant to subsection (c) of section 2 of P.L.1957, c.130 (C.48:3-17.3)) \$55.00

For recording tax sale certificate, except by municipalities, or a redemption or assignment of tax sale certificate, first page ~~\$30.00~~ \$35.00

Each additional page or part thereof ~~_____~~ \$10.00

Certified copy of veteran's discharge \$6.00

5 For indexing any recorded instrument in excess of 5 parties, per each name in excess of \$6.00

For recording tax sale certificate, lien, deed, or related instrument by a municipality \$8.00

For recording vacations or dedications of roads, first page ~~\$70.00~~ \$30.00

Each additional page or part thereof. ~~_____~~ \$10.00

For disclaimers \$15.00

For reimbursement agreements No fee

For recording a deed other than a condominium
or cooperative master deed ~~_____~~ \$70

For recording a condominium or cooperative master deed ~~_____~~ \$1000

For recording a mortgage ~~_____~~ \$130

For recording an assignment of a mortgage ~~_____~~ \$50

For recording a discharge of a mortgage ~~_____~~ \$45

For recording a notice of lis pendens ~~_____~~ \$40

For recording a lease or memorandum of a lease _____ \$70

For recording a document of a kind not listed in this section _____ \$50

COMMENT

The Commission recommends abandoning the current system of calculating filing fees based on the number of pages and adopting a system of flat fees based on the kind of document. The fees in this amendment for documents now priced per page are based on the average fees now charged for these documents. The Commission intends that the amounts in this section will not or increase or decrease the amount of fees now received by any governmental entity to any significant extent. Any change in amounts received will be an insubstantial increase due to rounding of the average fee now received.

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State of New Jersey

N J L R C

New Jersey Law Revision Commission

SECOND TENTATIVE REPORT

relating to

TITLE RECORDATION

MAY 2003

This tentative report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the tentative report, please inform the Commission so that your approval can be considered along with other comments.

COMMENTS MUST BE RECEIVED BY THE COMMISSION NOT LATER THAN AUGUST 1, 2003.

Please send comments concerning this tentative report or direct any related inquiries, to:

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Introduction

The New Jersey Law Revision Commission approved a project to revise the statutes pertaining to the recording of title documents following the enactment of the federal Electronic Signatures in Global and National Commerce Act (E-sign), 15 U.S.C. §7001 *et seq.*, and New Jersey's enactment of the Uniform Electronic Transactions Act (UETA), L.2001, c.116. This legislation requires the acceptance of electronic alternatives to paper documents. While the use of electronic deeds and mortgages is not expected to occur in the near term, both E-sign and UETA encourage the development of systems that will accept electronic documents without disrupting the ongoing process of title recordation.

The New Jersey statutes related to the recording and indexing of title documents are contained in Title 46, chapters 15 to 26. Most of these statutes date from a period when recording meant the inclusion of documents in large well-bound books of good paper. The statutes initially were amended to allow recording offices to microfilm documents. Later amendments in 1997, permitted the use of any other method of recording that was "in conformance with rules, standards and procedures promulgated by the Division of Archives and Records Management in the Department of State and approved by the State Records Committee pursuant to its authority under section 6 of P.L.1994, c.140 (C.47:1-12) and the 'Destruction of Public Records Law (1953),' P.L.1953, c.410 (C.47:3-15 *et seq.*)." *N.J.S.* 46:19-1. This system for approving new methods of recording documents has the advantage of not requiring any particular manner of recording so it will not become obsolete with changes of recording technology.

The increased use of new methods of recording that affect the way documents are recorded and processed, however, necessitates an increase in regulatory authority to assure uniformity.

The proposed statutory language contained in this Tentative Report (the revision) addresses the methods of recording and indexing and reflects the same approach as the existing law. References to separate sets of books or separate databases for different kinds of documents have been deleted since, with modern technology, an index serves the same function. Requirements for marginal notation of documents also have been deleted. Most recording offices do not retain paper documents; redefining marginal notation in that context raises conceptual problems, and computerized indexes serve the same purpose. In addition, the revision attempts to simplify the statutes, combining overlapping provisions and deleting unnecessary ones. The current Chapter 16, for example, begins with a section that characterizes and lists the documents that may be recorded. Other statutory sections that address the recording of particular kinds of documents follow Chapter 16. In the revision, these sections have been combined into one section that lists documents entitled to recording although, in an exercise of caution, the revision retains specifically listed documents that arguably might fall within more general categories.

The general prerequisites for recording found in the current statutes are the result of the Commission's work in 1989. That effort is generally considered to have been successful in simplifying the process of determining whether a document may be recorded. The scope of the

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Commission's 1989 report, however, was narrow. Exceptions and additions to the recording requirements found in other sections of the statute were left uncompiled. The current revision assembles all of those sections, combining them where appropriate. In addition, while the 1989 report standardized the requirements for the most commonly recorded documents, issues regarding unusual documents were not addressed. For example, the question of how to meet the recording requirements if a document is not a conveyance, and is not prepared by the person who seeks to record it, had not been previously answered by the statute. The practice of requiring an affidavit accompanying such a document is now reflected in the revision.

The revision also includes language allowing format requirements for documents. The current statutes contain some limitations on the size of paper documents and on the quality of paper used. The problem of formatting becomes more acute if electronic equivalents to paper documents are to be accepted. Format requirements must be standardized throughout the State so that recording offices can be ready to accept electronic documents from a variety of sources, and so that persons can know and comply with them regardless of the office in which they are being recorded. It must be acknowledged, however, that conventional paper documents will continue to be recorded for the foreseeable future. This revision is a first step toward balancing the need to acknowledge and utilize technological advances where appropriate, with the recognition that it is not appropriate to mandate an immediate switch to the latest technological development.

CHAPTER 1 -- RECORDING

1-1. Definitions: document and recorded

For the purpose of this section:

a. "Document" includes both:

- (1) Paper documents, and
- (2) Electronic documents, documents created, communicated or stored by electronic means;

b. A document is "recorded" if:

- (1) The document or its image has been placed in the permanent records of the recording office, and
- (2) The document has been indexed as provided by this chapter.

Source: New.

COMMENT

Current statutes do not state directly what is meant by "recording." The concept is most important in regard to the legal effect of a recorded document. Cases are not consistent as to when a document is recorded.

1-2. Documents that may be recorded

Documents affecting real estate entitled to recording are:

- a. Deeds or other conveyances, releases, or declarations of trust of any interest;
- b. Powers of attorney for conveyance or release of any interest;
- c. Leases, or memoranda of leases, for life or a term not less than two years;
- d. Mortgages, defeasible deeds or other conveyances in the nature of a mortgage;
- e. Liens or encumbrances and releases of liens or encumbrances on any interest;
- f. Assignments, discharges, cancellations or releases;
- g. Options and rights of first refusal;
- h. Certified copies of judgments, decrees, orders and minutes of courts of record;
- i. Reports of condemnation commissioners filed with the Superior Court;
- j. Notices of Federal tax liens, liens arising from the federal "Comprehensive Environmental Response, Compensation and Liability Act of 1980," Pub. L. 96-510 (42 U.S.C. § 9601 et seq.), and other federal liens, which any Act of Congress or regulation adopted pursuant to it provides for filing of notice in the recording office designated by a state, and certificates discharging such liens;
- k. Restrictions affecting the real estate or its use;

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- l. Notices of settlement as provided by this chapter;
- m. Maps as provided by this chapter;
- n. Any document that corrects a document previously recorded;
- o. Condominium master deeds and unit deeds as defined by law;
- p. Cooperative master declarations and proprietary leases as defined by law;
- q. Any other document that affects title to any interest in real estate in any way or contains any agreement in relation to real estate, or grants any right or interest in real estate or grants any lien on real estate; and
- r. Any other document relating to real estate that is directed to be recorded by any statute or court order.

Source: 46:16-1.

COMMENT

This section is derived from the parts of 46:16-1 that relate to real estate. The section makes no substantive change in the kinds of documents that may be recorded. The general rule that any document that affects title to real estate and meets certain requirements may be recorded is stated both in 46:16-1 and 46:16-2. Other provisions in Chapter 16 provide for the recording of particular kinds of documents.

The parts of 46:16-1 that provide for recording of instruments concerning personal property have been deleted as unnecessary. Documents of title to the few kinds of personalty that are recorded are not recorded with the county recording offices. Liens against personalty are governed, in general, by Revised Article 9 of the Uniform Commercial Code. *N.J.S.* 12A:9-101 et seq. Liens against personalty, other than personalty that is or will be fixtures, are recorded by filing a UCC form with the division of Commercial Recording. Liens against fixtures are recorded by filing the required document (usually a fixture filing) with the county recording officer, but that recording is separate from the recording governed by this Chapter. Fixtures are part of the real estate, may be encumbered by mortgages, liens, and the like filed in the real estate records, and may be affected by any kind of encumbrance on the real estate generally. Recording these encumbrances is provided for by subsections (d) and (e).

Subsections (h) and (i) are derived from 46:16-1.1. Subsection (h) also includes the subject matter of 46:16-4.1 and 46:16-4.3, decrees and orders of the United States Bankruptcy Courts. Subsection (k) is based on 46:16A-1. It incorporates the chapter allowing the recording of settlement statements into the general recording provisions. The general provisions, subsections (q) and (r), are derived from 46:16-2.

1-3. Prerequisites for recording

a. A document satisfies the prerequisites for recording if it appears from the document or the image of it delivered to the recording office that:

- (1) The document is in English or accompanied by a translation into English;
- (2) The document bears a signature;
- (3) The document (including a corrected document submitted for re-recording) is acknowledged or proved as provided by this title;
- (4) The names are printed beneath all signatures that appear on the document;
- (5) If the document is a deed conveying title to real estate, it (a) fulfills the requirements of P.L.1968, c.49, s.2 (C.46:15-6), and (b) includes a reference to the lot and

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block number of the real estate conveyed as designated on the tax map of the municipality at the time of the conveyance or the account number of the real estate. If the real estate has been subdivided, the reference shall be preceded by the words "part of." If no lot and block or account number has been assigned to the real estate, the deed shall state that fact.

(6) if the document is an assignment, release or satisfaction of a mortgage or an agreement respecting a mortgage, it states the book and page number or the document identifying number of the mortgage to which it relates if the mortgage has been given such a number.

b. A document, whether made by an individual, corporation or other entity, is not required to be executed under seal, or to contain words referring to execution under seal.

Source: 46:15-1.1; 46:18-1.

COMMENT

This section is substantially similar to 46:15-1.1, which was based on the Commission's 1989 report. The opening language has been changed to reflect the section's new context. Subsection (a)(4) of the source has been reworded to allow for electronic documents. In the source, the subsection required that the names of signatories "appear typed, printed or stamped beneath the signatures" suggesting a requirement of a paper document. The new phrase, "printed beneath the signatures" is intended to indicate only that the name of the signatory appear in readable form. The provision of the source, requiring the payment of fees, has been deleted here because it appears elsewhere.

The section makes two small substantive changes in the prerequisites for recording. First, the requirement that the name of the preparer of the document appear on the first page has been deleted. The name of the preparer was included to provide a person for the recording officer to call if questions arose about the document. In practice, the burden of the requirement exceeded its usefulness. The person who presents the document for recording provides a sufficient source for answers concerning it. Second, the section modifies the requirement as to a book and page reference on assignments, releases and satisfactions of mortgages. Often, a mortgage is assigned before it is given a book and page reference. In that case, the reference is not required under this section.

This section applies only to documents that are recorded with the county recording officer. Other documents, such as fixture filings under the Uniform Commercial Code, that are filed rather than recorded are governed by separate statutes with different requirements,

1-4. Exceptions to prerequisites to recording

Notwithstanding the prerequisites to recording in section 1-3, the following may be recorded:

a. Trust documents under which a fiduciary has acquired real estate if accompanied by an affidavit of the fiduciary that the document is an original trust document;

b. Ancient documents that cannot be acknowledged or proved because of the death or other disability of the grantors and subscribing witnesses, accompanied by an affidavit made by a person claiming to derive title from the document stating that the affiant truly believes that quiet, continuous, adverse and undisturbed possession of the real estate has been enjoyed by virtue of the document for the period applicable for adverse possession;

c. Cancellations of mortgages where the cancellation is by an endorsement on the original mortgage bearing the receipt of the county recording officer. The endorsement shall be signed by the mortgagee or, if the mortgage has been assigned, by the last assignee. If the

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mortgagee or assignee is a corporation or other entity, the endorsement may be signed by any person authorized by the corporation or entity;

d. Other documents that by their nature cannot be acknowledged or proved, accompanied by an affidavit made by a person claiming to derive title to the real estate stating that the document is genuine and how the document relates to title to the real estate;

e. Notices of Federal tax liens, liens arising from the federal "Comprehensive Environmental Response, Compensation and Liability Act of 1980," Pub.L.96-510 (42 *U.S.C.* § 9601 et seq.), and other federal liens, which any Act of Congress or regulation adopted pursuant to it provides for filing of notice in the recording office designated by a state, and certificates discharging such liens;

f. Maps as provided by this act;

g. Notices of settlement executed by an attorney at law or authorized representative of a party in accordance with this act;

h. Certified copies of:

(1) Judgments, decrees, orders or minutes of any court of record and petitions filed in a United States Bankruptcy Court;

(2) Public documents affecting title to real estate;

(3) Documents recorded or filed in any public recording office in the United States; and

i. Any other document that is permitted to be filed without acknowledgement.

Source: 46:16-1.1; 46:16-4.1; 46:16-4.2; 46:16-4.3; 46:16-5.1; 46:16-7; 46:16-9; 46:16-9; 46:16-13; 46:16-14; 46:16-15; 46:16-17.

COMMENT

This section assembles the exceptions to the ordinary prerequisites for recording and does not make any substantive change in those exceptions. Subsection (g) provides for the kinds of public documents that may not comply with every requirement. This subsection continues the substance of 46:16-1.1, 46:16-4.1, 46:16-4.2, 46:16-4.3, and 46:16-14. Although current law does not provide for recording of public documents, subsection (g)(2) reflects current practice. Subsection (g)(3) is a generalization of 46:16-9 and 46:16-10. Subsection (a) contains the substance of 46:16-5.1. Subsection (b) contains the substance of 46:16-7. Subsection (c) has no direct source but enacts current practice. Subsection (d) contains the substance of 46:16-13, 46:16-15 and 46:16-17. Subsection (f) is identical in substance to 46:16A-2.

1-5. Form of documents and maps

a. To be accepted for recording, a document shall be either:

(1) Legibly printed on paper no larger than 8½ inches by 14 inches; or

(2) In compliance with regulations on the form of documents promulgated by the Division of Archives and Records Management in the Department of State.

b. Every document accepted for recording shall be accompanied by a cover sheet. The cover sheet may be separate from the document, or if the document is an electronic document, the cover sheet may be integrated with the document. The Division of Archives and Records Management in the Department of State shall establish forms for separate cover sheets and

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formats for integrated cover sheets. The form for a separate cover sheet shall be available at every recording office and on a web site maintained by the Division of Archives and Records Management. If the person submitting the document for recording does not include a cover sheet, the recording office shall prepare the cover sheet and charge an additional fee of ten dollars for its preparation. The cover sheet shall include:

- (1) The nature of the document;
- (2) The date of the document;
- (3) The names of the parties to the document and any other names by which the document is to be indexed;
- (4) If the document is a deed conveying title to real estate:
 - (A) the address of the real estate conveyed,
 - (B) the lot and block number or other real property tax designation of the real estate conveyed or a statement that the information is not available; and
 - (C) the consideration for the conveyance;
- (5) If the document is an assignment, release or satisfaction of a mortgage or an agreement respecting a mortgage, it states the book and page number or the document identifying number of the mortgage to which it relates if the mortgage has been given such a number; and
- (6) Any other information required by Division of Archives and Records Management.

c. To be accepted for recording, a map shall be either:

- (1) Clearly and legibly drawn in black ink on translucent tracing cloth, translucent mylars at least 4 mils thick or its equivalent, of good quality, with signatures in ink, or as an equivalent reproduction on photographic fixed line mylar 4 mils thick with signatures in black ink or its equivalent and accompanied by a cloth print or photographic fixed line mylar 4 mils thick duplicate; and one of six standard sizes: 8 1/2" x 13", 30" x 42", 24" x 36", 11" x 17", 18" x 24" or 15" x 21" as measured from cutting edges. If one sheet is not of sufficient size to contain the entire territory, the map may be divided into sections to be shown on separate sheets of equal sizes, with references on each sheet to the adjoining sheets; or
- (2) In compliance with regulations on the form of documents promulgated by the Division of Archives and Records Management in the Department of State.

d. The regulations of the Division of Archives and Records Management specifying the form of documents and maps shall comply with rules, standards and procedures authorized by the State Records Committee pursuant to its authority under section 6 of P.L.1994, c.140 (C.47:1-12) and the "Destruction of Public Records Law (1953)," P.L.1953, c.410 (C.47:3-15 et seq.).

Source: New.

COMMENT

Currently, the only form restriction in the statutes is 46:19-4. It requires: "where photographic methods are used, all instruments presented for recording shall be typed, written or printed on paper not to exceed 8 1/2" x 14 " of sufficient quality to avoid bleed-through, and shall be legible and clear to produce a good, clear, legible photo recording." However, as a practical matter, that form restriction is generally

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applicable, since every recording office uses some kind of photographic method. Of course, even before recording offices used photographic methods, there were restrictions that did not need to be stated: that every document must be in writing, on paper and of a size that allowed its binding into the record books. The current form restriction is continued as a "safe harbor" provision in subsection (a)(1).

While the section preserves unchanged the ability to file a document on paper, it allows for later acceptance of electronic documents. If recording offices are to accept documents in electronic form, other restrictions will be necessary. To avoid confusion that would result from 21 separate sets of requirements for electronic recording, authority is given to the Division of Archives and Records Management to establish statewide form requirements. Despite any new systems of electronic recording that are allowed, the section provides that documents still may be recorded on paper.

The section has been expanded to include the form requirements for maps. Currently, these form restrictions are in 46:23-9.11 along with content requirements. The current form restrictions are continued unchanged as a "safe harbor" provision in subsection (b)(1).

1-6. Duty to record; recording officer's books, methods

a. The county recording officer shall record any document or map affecting the title to real estate located in the county, delivered for recording, provided the document:

- (1) Is in the form required by this act,
- (2) Appears to comply with requirements for recording specified in this act, and
- (3) Is accompanied by payment of any required fee.

b. Every document or map shall be recorded and indexed not later than two days after its receipt.

c. A document or map that is rejected shall be returned to the person who delivered it for recording with a statement of all grounds for its rejection within two days after its receipt.

d. When a document is recorded, a document identifying number shall be assigned to it.

e. Recording shall be done by a method that:

- (1) Produces a clear, accurate and permanent image of a document,
- (2) Allows the document to be found by use of the indexes maintained,
- (3) Is authorized by R.S.47:1-5 and is in conformance with rules, standards and procedures promulgated by the Division of Archives and Records Management in the Department of State and approved by the State Records Committee pursuant to its authority under section 6 of P.L.1994, c.140 (C.47:1-12) and the "Destruction of Public Records Law (1953)," P.L.1953, c.410 (C.47:3-15 et seq.).

f. The Division of Archives and Records Management and the State Records Committee shall consult with the Office of Telecommunications and Information Systems in the Department of the Treasury in the development of technical standards for record keeping. Despite this section, the State Records Committee may adopt rules and regulations to authorize pilot programs for various individual counties in order to evaluate alternative technologies for the preservation of records.

Source: 46:19-1; 46:19-3; 46:8B-1; 46:8D-4.

COMMENT

This section contains the portions of 46:19-1 that relate to methods of recording generally. The parts of the source section that refer specifically to “well-bound books” and to the systems of books of documents have been deleted as unnecessary. Subsection (b) reflects the settlement of litigation between the county recording officers and the New Jersey Land Title Association. Current statutes assume that every document will be recorded and indexed on the day received. All parties to the litigation agreed that that time requirement was impractical. Subsection (e) is derived from 46:19-3, but has been generalized to allow any kind of recording method that allows the search and use of the documents. As such, it provides for an identifying number rather than a book and page, and sets out general requirements for recording standards.

The section allows for new methods of recording but preserves the practical effect of the present system: every document is required to be recorded and indexed so that the whole text of the document and appended notations may be found by the use of standard indexes.

The section adds time limits for recording or rejection of a document. A time limit for recording is now in effect by court orders against recording officers. A time limit for rejection is fairly implied by those court orders.

To the extent that the Cooperative Recording Act, the Condominium Act or other statutes require the county recording officer to maintain separate books and indexes, this act supersedes them and allows a single set of books and indexes.

1-7. Receipts for documents presented for record

Upon request, the county recording officer shall:

- a. Furnish a receipt for the document and fees paid; and
- b. Return a copy of the document endorsed with the date and time it was received for recording, the fee paid, and the document identifying number assigned to the document.

Source: 46:19-5.

COMMENT

This section replaces sections 46:19-4 and 46:19-5, which provide that the recording officer give receipts for documents lodged for record and, on request, return a copy of the document with recording information endorsed on it. The reference to a receipt for the fee is new but reflects current practice.

The section allows an identifying number other than the traditional book and page to be used.

1-8. Indexes; entries

a. The county recording officer shall maintain one index of all recorded documents and may make other separate, classified, analytical or combination indexes.

b. A deed or other conveyance shall be indexed by the names of its grantors and grantees, and also shall be indexed by the name of:

(1) The testator or intestate if a deed or other conveyance is made by executors or administrators;

(2) The person granting the power of attorney if a deed is made under power of attorney;

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(3) The defendants in the execution for which the sale was made if a deed is made by a sheriff; or

(4) The person whose property has been conveyed if a deed is made by a person appointed to convey property by a court.

c. A mortgage shall be indexed by the names of the mortgagors and mortgagees.

d. An assignment, extension, postponement, modification or discharge of a mortgage shall be indexed by the names of the mortgagors, assignors and assignees.

e. A trust instrument shall be indexed by the names of the parties to the instrument and in the names of beneficiaries if they appear.

f. Any other document shall be indexed by the names of the parties to it.

g. A document shall also be indexed by additional names requested by the person submitting the document for recording.

h. A document shall be indexed from the information supplied on its cover sheet. A recording officer shall not be liable for differences between the cover sheet prepared by the person submitting the document and the document.

Source: 46:20-1; 46:20-3; 46:20-5; 46:19-2.

COMMENT

This section, for the most part, simplifies section 46:20-1. Subsection (b) is derived from 46:20-3. The provision in subsection (a) allowing other indexes is derived from 46:20-5. Subsection (f) has been added to provide for indexing of unusual documents in accord with common practice.

1-9. Sequence of recording

The county recording officer shall record and index documents in the order received. If two documents affecting the same property are received at the same time, the county recording officer shall record and index them:

a. If the documents are submitted for recording by the same person, in the order requested by that person;

b. Otherwise, according to the priority of the date the document was first acknowledged; and if the document is not acknowledged, the date of the document.

Source: 46:20-2.

COMMENT

This section is new in allowing a person who submits a group of documents to determine the order in which they are recorded. Otherwise it is substantially identical to 46:20-2 which provides for the sequence of index entries and to the second paragraph of 46:19-3 which provides for the sequence of recording.

1-10. Notices of settlement

a. A party, or the authorized representative of a party, to a settlement which will convey an interest in real estate, a mortgage on real estate, or both, may execute a document titled "notice of settlement" and record it in the county recording office of the county in which the real

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estate is located. The county recording officer may charge a fee not to exceed the fee charged for the recording of notices of Federal tax liens. For the purposes of this section, the phrase "authorized representative" shall include a licensed title insurance producer.

b. The notice of settlement shall be signed by a party to the settlement or a party's authorized representative and shall state the names of the parties to the settlement and a description of the real estate. If the notice is executed by anyone other than an attorney at law of this State, the execution shall be acknowledged or proved in the manner of acknowledgement or proof of deeds.

c. A notice of settlement shall be in substantially the following form:

Name

Address

(Seller or Mortgagor)

NOTICE OF SETTLEMENT

Name

Address

(Purchaser or Mortgagee)

NOTICE is hereby given of a(contract, agreement or mortgage commitment) between the parties.

THE lands to be affected are described as follows:

Premises in the of, (municipality) County of and State of New Jersey, commonly known as (street address) and more particularly described as follows:

(legal description)

Name of party or authorized representative

Address

(acknowledgement)

d. A notice of settlement shall be effective for 60 days from the date of recording, unless it is terminated by the recording of a "discharge of notice of settlement." The effective period of a notice of settlement may be extended for one period of 60 days by recording an "extension of notice of settlement" before the expiration or discharge of the notice of settlement.

e. A discharge of notice of settlement and an extension of notice of settlement shall be substantially in the form prescribed for a notice of settlement and shall be recorded by the party or authorized representative who recorded the notice of settlement. The recording officer shall record and index each discharge or extension in the same fashion as a notice of settlement.

f. Any person who claims an interest in or lien on the real estate described in the notice of settlement arising during the time that a notice of settlement is effective shall be deemed to have acquired the interest or lien with knowledge of the anticipated settlement and shall be subject to the estate or interest created by the deed or mortgage described in the notice of settlement provided the deed or mortgage is recorded within the time that the notice is effective.

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Source: 46:16A-1through 46:16A-5.

COMMENT

This section is substantially similar to 46:16A-1 through -5. Subsection (a) has been reworded and clarified to indicate that a single notice of settlement can be recorded for both a conveyance and mortgage. Most sales of real property involve both. The form in subsection (c) has been simplified slightly. Subsection (d) clarifies the method for extending a notice of settlement and limits the total time that the notice and extension may be effective to 120 days. The section has been reworded to reflect its intended effect more accurately.

1-11. Effect of recording

a. Any recorded document affecting the title to real estate is, from the time of recording, notice to all subsequent purchasers, mortgagees and judgment creditors of the execution of the document recorded and its contents.

b. A claim under a recorded document affecting the title to real estate shall not be subject to the effect of a document that was later recorded or was not recorded unless the claimant was on notice of the later recorded or unrecorded document.

c. A deed or other conveyance of an interest in real estate shall be of no effect against subsequent judgment creditors without notice, and against subsequent bona fide purchasers and mortgagees for valuable consideration without notice and whose conveyance or mortgage is recorded, unless that conveyance is evidenced by a document that is first recorded.

Source: 46:21-1; 46:22-1.

COMMENT

Subsection (a) is closely based on its 46:21-1, but one important substantive change has been made. While the source section gives notice effect to any document “lodged for record with the county recording officer,” subsection (a) limits that effect to documents that are actually recorded. As provided by section 1-2, a document is not recorded unless it has been indexed. It is assumed that a person will protect the position between the time a document is executed and the time it is recorded with an earlier recording of a notice of settlement.

There is one other difference between subsection (a) and its source. The source section does not give the effects of recording to documents that have not been acknowledged or proved. Another section, 46:21-2, limits those effects to any document that has been on record for six years despite defects in acknowledgment. This distinction serves no modern purpose. If a document has been actually recorded, a prospective purchaser should have notice of it.

Subsection (b) contains the rule that is implied by subsection (a) and its source, 46:21-1. The first recorded document takes precedence over later recorded documents unless the claimant under the first recorded document has notice of the documents that are recorded later at the time that he gave value and acquired his interest. See e.g., *Lieberman v. Arzee Mid-State Supply*, 306 N.J. Super. 335, 341 (App. Div. 1997). To the extent that this rule is stated explicitly in the statutes, it is part of 46:22-1. It has been separated from subsection (c), the provision directly derived from 46:22-1, for clarity. Otherwise, Subsection (c) is closely based on 46:22-1. The only substantive changes are those noted in the comment to the previous section.

Subsection (c) is based on 46:22-1. It embodies one of the basic principles underlying the recording statutes, that an unrecorded document is ineffective against later claimants who have no notice of it. See, e.g. *Cox v. RKA Corp.*, 164 N.J. 487, 496 (2000). However, case law is not consistent on this point. One reported case, *Michalski v. U.S.*, 49 N.J. Super. 104 (Ch. Div. 1958), held that a conveyance, which was unwritten and so could not be recorded, is effective against a creditor without notice. See also, *In re L.D.*

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Patella Construction Co., 114 B.R. 53, 58-59 (Bankr. D.N.J. 1990). Subsection (c) reverses that rule. If a party makes a conveyance in a form that does not permit it to be recorded, then a subsequent bona fide purchaser, mortgagee or creditor who could not learn of the conveyance from the land records is not bound by the conveyance absent actual knowledge of it at the time he acquired the interest for value or docketed the judgment. This principle is in accord with the statute of frauds, 25:1-11, which makes unwritten conveyances enforceable as conveyances only in some cases where possession is transferred. Transfer of possession frequently is notice to prospective purchasers or mortgagees.

CHAPTER 2 -- FEES

2-1. Realty transfer fees

In addition to the recording fees imposed by section 2 of P.L.1965, c.123 (C.22A:4-4.1), a fee is imposed upon grantors, at the rate of \$3.50 for each \$1000 of consideration or fractional part thereof recited in the deed; provided however, that on and after the tenth day following a certification by the Director of the Division of Budget and Accounting in the Department of the Treasury pursuant to subsection b. of section 2 of P.L.1992, c.148 (C.46:15-10.2), the fee imposed shall be \$1.00 for each \$1000 of consideration or fractional part thereof recited in the deed, which fee shall be collected by the county recording officer at the time the deed is offered for recording. For each \$1000 of consideration or fractional part thereof recited in the deed in excess of \$150,000 an additional fee is imposed of \$1.50; provided however, that on and after the tenth day following a certification by the Director of the Division of Budget and Accounting in the Department of the Treasury pursuant to subsection b. of section 2 of P.L.1992, c.148 (C.46:15-10.2), no such fee shall be imposed.

Every deed subject to the additional fee required by this act, which is in fact recorded, shall be conclusively deemed to have been entitled to recording, notwithstanding that the amount of the consideration shall have been incorrectly stated, or that the correct amount of such additional fee, if any, shall not have been paid, and no such defect shall in any way affect or impair the validity of the title conveyed or render the same unmarketable; but the person or persons required to pay the additional fee at the time of recording shall be and remain liable to the county recording officer for the payment of the proper amount thereof.

Source: 46:15-7.

COMMENT

This section is identical to its source except that the fees have been expressed per \$1000 of value.

2-2. County, State sharing of fee proceeds

The proceeds of the fees collected by the county recording officer, as authorized by this act, shall be accounted for and remitted to the county treasurer. An amount equal to 28.6% of the proceeds from the first \$3.50 for each \$1000 of consideration or fractional part thereof recited in the deed so collected shall be retained by the county treasurer for the use of the county and the balance shall be paid to the State Treasurer for the use of the State; provided however, that on and after the tenth day following a certification by the Director of the Division of Budget and Accounting in the Department of the Treasury pursuant to subsection b. of

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section 2 of P.L.1992, c.148 (C.46:15-10.2), 100% of the proceeds from the first \$1.00 for each \$1000 of consideration or fractional part thereof recited in the deed so collected shall be retained by the county treasurer for the use of the county and no amount shall be paid to the State Treasurer for the use of the State. Payments shall be made to the State Treasurer on the tenth day of each month following the month of collection. Amounts, not in excess of \$25,000,000, paid during the State fiscal year to the State Treasurer from the payment of fees collected by the county recording officer other than the additional fee of \$1.50 for each \$1000 of consideration or fractional part thereof recited in the deed in excess of \$150,000 shall be credited to the "Shore Protection Fund" created pursuant to section 1 of P.L.1992, c.148 (C.13:19-16.1), in the manner established under that section. All amounts paid to the State Treasurer in payment of the additional fee of \$1.50 for each \$1000 of consideration or fractional part thereof recited in the deed in excess of \$150,000 shall be credited to the Neighborhood Preservation Nonlapsing Revolving Fund established pursuant to P.L.1985, c.222 (C.52:27D-301 et al.), in the manner established under section 20 thereof (C.52:27D-320).

Source: 46:15-8.

COMMENT

This section is identical to its source except that the fees have been expressed per \$1000 of value.

2-3. Falsifying consideration; penalty

Any person who knowingly falsifies the consideration recited in a deed or in the proof or acknowledgment of the execution of a deed or in an affidavit annexed to a deed declaring the consideration therefor or a declaration in an affidavit that a transfer is exempt from recording fee is guilty of a crime of the fourth degree.

Source: 46:15-9.

COMMENT

This section is identical to its source.

2-4. Exemptions from realty transfer fee

The fee imposed by this act shall not apply to a deed:

- a. For a consideration of less than \$100;
- b. By or to the United States of America, this State, or any instrumentality, agency, or subdivision thereof;
- c. Solely in order to provide or release security for a debt or obligation;
- d. Which confirms the estate or interest previously acquired by the grantee by operation of law or which corrects a deed previously recorded;
- e. On a sale for delinquent taxes or assessments;
- f. On partition;
- g. By a receiver, trustee in bankruptcy or liquidation, or assignee for the benefit of creditors;

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- h. Eligible to be recorded as an "ancient deed" pursuant to R.S.46:16-7;
- i. Acknowledged or proved on or before July 3, 1968;
- j. Between husband and wife, or parent and child;
- k. Conveying a cemetery lot or plot;
- l. In specific performance of a final judgment;
- m. Releasing a right of reversion;
- n. Previously recorded in another county and full realty transfer fee paid or accounted for, as evidenced by written instrument, attested by the grantee and acknowledged by the county recording officer of the county of such prior recording, specifying the county, book, page, date of prior recording, and amount of realty transfer fee previously paid;
- o. By an executor or administrator of a decedent to a devisee or heir to effect distribution of the decedent's estate in accordance with the provisions of the decedent's will or the intestate laws of this State;
- p. Recorded within 90 days following the entry of a divorce decree which dissolves the marriage between the grantor and grantee; and
- q. Issued by a cooperative corporation, as part of a conversion of all of the assets of the cooperative corporation into a condominium, to a shareholder upon the surrender by the shareholder of all of the shareholder's stock in the cooperative corporation and the proprietary lease entitling the shareholder to exclusive occupancy of a portion of the property owned by the corporation.

Source: 46:15-10.

COMMENT

This section is identical to its source except for a clarification in subsection (d) which clarifies current practice. NJAC 18:16-5.11.

2-5. Partial fee exemptions

a. The following transfers of title to real property shall be exempt from payment of \$2.50 per \$1000 of consideration or fractional part thereof of the fee imposed upon grantors by this act:

(1) The sale of any one- or two-family residential premises which are owned and occupied by a senior citizen, blind person, or disabled person who is the seller in such transaction; provided, however, that except in the instance of a husband and wife no exemption shall be allowed if the property being sold is jointly owned and one or more of the owners is not a senior citizen, blind person, or disabled person.

(2) The sale of low and moderate income housing.

b. Transfers of title to real property upon which there is new construction shall be exempt from payment of \$2.00 for each \$1000 or fractional part thereof not in excess of \$150,000.

c. The director shall promulgate rules, regulations and forms of certification necessary to carry out the provisions of this section. No transfer shall be eligible for more than one

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exemption under this section. All fees collected on transfers subject to exemption under subsection a. of this section shall be remitted to the county treasurer for the use of the county. An amount equal to 66 2/3% of the proceeds from the fee imposed upon the consideration not in excess of \$150,000 for transfers of real property upon which there is new construction, and an amount equal to 20% of the proceeds of the \$5.00 fee imposed upon each \$1000 of consideration or fractional part thereof in excess of \$150,000 for transfers of real property upon which there is new construction, shall be remitted to the county treasurer for the use of the county.

d. The balance of the fees collected on transfers subject to exemption under subsection b. of this section shall be remitted to the State Treasurer and shall be credited to the Neighborhood Preservation Nonlapsing Revolving Fund established pursuant to P.L.1985, c.222 (C.52:27D-301 et al.), to be spent in the manner established under section 20 thereof (C.52:27D-320).

e. Subsections a. through d. of this section shall be without effect on and after the tenth day following a certification by the Director of the Division of Budget and Accounting in the Department of the Treasury pursuant to subsection b. of section 2 of P.L.1992, c.148 (C.46:15-10.2).

Source: 46:15-10.1.

COMMENT

This section is identical to its source except that the fees have been expressed per \$1000 of value.

2-6. Required provisions of annual appropriations act; funding duty of county

a. The annual appropriations act for each State fiscal year shall, without other conditions, limitations or restrictions on the following:

(1) Credit amounts paid to the State Treasurer, if any, in payment of fees collected pursuant to section 3 of P.L.1968, c.49 (C.46:15-7), to the "Shore Protection Fund" created pursuant to section 1 of P.L.1992, c.148 (C.13:19-16.1), and the Neighborhood Preservation Nonlapsing Revolving Fund established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320), pursuant to the requirements of section 4 of P.L.1968, c.49 (C.46:15-8);

(2) Appropriate the balance of the "Shore Protection Fund" created pursuant to section 1 of P.L.1992, c.148 (C.13:19-16.1), for the purposes of that fund; and

(3) Appropriate the balance of the Neighborhood Preservation Nonlapsing Revolving Fund established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320), for the purposes of that fund.

b. If the requirements of subsection a. of this section are not met on the effective date of an annual appropriations act for the State fiscal year, or if an amendment or supplement to an annual appropriations act for the State fiscal year should violate any of the requirements of subsection a. of this section, the Director of the Division of Budget and Accounting in the Department of the Treasury shall, not later than five days after the enactment of the annual appropriations act, or an amendment or supplement thereto, that violates any of the requirements of subsection a. of this section, certify to the Director of the Division of Taxation that the requirements of subsection a. of this section have not been met.

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c. The county government shall provide sufficient funds to the office of the County Clerk or Register of Deeds to allow that office to record and index documents within the time limits provided by law.

Source: 46:15-10.2.

COMMENT

This section is identical to its source.

2-7. Rules and regulations

a. The Director of the Division of Taxation of the Department of the Treasury may prescribe such rules and regulations as the director may deem necessary to carry out the purposes of this act.

b. Any person aggrieved by any action of the Director of the Division of Taxation or county recording officer under P.L.1968, c.49 (C.46:15-5 et seq.), may appeal therefrom to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq.

c. The Director of the Division of Taxation shall, no later than five days after certification by the Director of the Division of Budget and Accounting in the Department of the Treasury pursuant to subsection b. of section 2 of P.L.1992, c.148 (C.46:15-10.2), that the requirements of subsection a. of section 2 of P.L.1992, c.148 (C.46:15-10.2), have not been met or have been violated by an amendment or supplement to the annual appropriations act, notify the county recording officers and county treasurers of the several counties of such certification.

Source: 46:15-11.

COMMENT

This section is identical to its source.

2-8. Payment of recording fees

a. A recording office shall accept payment for recording fees in any form approved by the Department of the Treasury.

b. If a document is submitted for recording with payment of an amount exceeding the recording fee by \$20 or less, the recording officer shall record the document and refund the surplus amount.

c. A recording office may allow a person to establish an account with the office to be used for recording fees. When a person submits a document for recording, the recording officer shall deduct the amount of fees due from the account and notify the person of the amount deducted and the amount remaining in the account.

Source: New.

COMMENT

Subsection (a) allows the Department of the Treasury to regulate the forms of payment. Its purpose is to allow the use of credit cards if certain technical problems can be solved. Subsection (b) is intended to prevent the return of documents when the person who submits the document includes an incorrect payment that exceeds the recording fees. To avoid having the Clerk's office required to cash

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checks that might not be honored, a limit of \$20 was imposed on the permissible overage. Subsection (c) allows persons who record documents frequently to establish an account to cover fees rather than to pay each fee separately. Both provisions are intended to prevent the return of documents for mistakes as to the amount of fee due. The complications of the current fee structure result in documents being submitted with incorrect fees. In such a case, recording is delayed and the recording office must notify the recorder of the correct fee. This provision would prevent this problem for frequent recorders establish accounts with the recording office.

2-9. Fees for electronic documents.

a. The fee for recording an electronic document shall be the same as that for recording a paper document unless the fee for recording the document is based on the number of pages in that document.

b. If the fee for recording a paper document is based on the number of pages in that document, the following shall be the fees for recording electronic documents:

(1) Mortgages: the fee for a 10-page mortgage;

(2) Discharges of mortgage, tax sale certificates and redemption of tax sale certificates: the fee for recording a one-page document; and

(3) Deeds and other documents: the fee for a 4-page document.

Source: New.

COMMENT

Filing fees for many kinds of documents are now calculated based on the number of pages in the document. The size of a digital document cannot be expressed in a number of pages. Moreover, unlike a paper document, the size of a digital document is unrelated to the cost of recording it. This section imposes a flat fee for recording digital documents designed to be roughly equivalent to that now charged for average-sized paper documents.

As an alternative, the Commission is considering abandoning the current system of calculating filing fees based on the number of pages and adopting a system of flat fees based on the kind of document. The Commission will base its decision in the issue on the comments received to this tentative report.

CHAPTER 3 -- MAPS

3-1. Definitions

As used in this act:

a. "Condominium plan" means a survey of the condominium property in sufficient detail to identify the location and dimensions of units and common elements, which shall be filed in accordance with the requirements of section 3 of P.L.1960, c.141 (C.46:23-9.11). A condominium plan shall bear a certification by a land surveyor, professional engineer or architect authorized to practice in this State that the plan is a correct representation of the improvements described.

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b. "Entire tract" means all of the property that is being subdivided including lands remaining after subdivision.

c. "General property parcel map" means a right of way parcel map showing a group of parcel and easement acquisitions for part of a highway or street project.

d. "Land Surveyor" means a person who is legally authorized to practice land surveying in this State as provided by P.L.1938, c.342 (C.45:8-27 et seq.).

e. "Map" includes a map, plat, condominium plan, right of way parcel maps of the State, county or municipality, chart, or survey of lands presented for approval to a proper authority or presented for filing as provided by this act, but does not include a map, plat or sketch required to be filed or recorded under the provisions of P.L.1957, c.130 (C.48:3-17.2) or a subdivision plat for a subdivision that was granted final approval by a municipal approving authority on or prior to July 1, 1999.

f. "Municipal Engineer" means the official licensed professional engineer appointed by the proper authority of the municipality in which the territory shown on a map is located.

g. "Professional Engineer" means a person who is legally authorized to practice professional engineering in this State as provided by P.L.1938, c.342 (C.45:8-27 et seq.).

h. "Proper authority" means the chief legislative body of a municipality or other agencies to which the authority for approval of maps has been designated by ordinance.

i. "Right of way parcel map" means any general property parcel map which shows highways or street acquisitions and any associated easements for highway or street rights of way.

Source: 46:23-9.10.

COMMENT

All of the definitions in 46:23-9.10 have been retained. Language has been simplified slightly and the definitions have been put into alphabetical order. The first exclusion in the definition of maps, subsection (e), has been retained even though it is unnecessary in that it duplicates a provision in 48:3-17.3(d). The second exclusion in the definition of map continues the substance of 46:23-9.18.

3-2. Requirements for approval or filing of a map

a. A map shall not be approved by a proper authority unless it meets the requirements of this section specified for the kind of map involved. The following kinds of maps shall meet the following requirements:

(1) Major subdivision plats shall meet all of the requirements of this section.

(2) Right of way parcel maps shall meet the requirements of subsections (b) (1), (2), (4), (5), (6), (7), (11) of this section.

(3) Minor subdivision maps shall meet all of the requirements of this section except for the outside tract line monuments requirement of subsection (b)(8).

(4) Condominium plans shall meet the requirements of subsections (b)(1), (4), (5), (6), (7) and (11).

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b. No map requiring approval by law or that is to be approved for filing with a county, shall be approved by the proper authority unless it conforms to the following requirements:

(1) A map shall show the scale, which shall be inches to feet and be large enough to contain legibly written data on the dimensions, bearings and all other details of the boundaries, and it shall also show the graphic scale.

(2) A map shall show the dimensions, square footage of each lot to the nearest square foot or nearest one hundredth of an acre. Bearings and curve data shall include the radius, delta angle, length of arc, chord distance and chord bearing sufficient to enable the definite location of all lines and boundaries shown, including public easements and areas dedicated for public use. Non-tangent curves and non-radial lines shall be labeled. Right of way parcel maps shall show bearings, distances and curve data for the right of way or the center line or base line and ties to right of way lines if from a base line.

(3) Where lots are shown thereon, those in each block shall be numbered consecutively. Block and lot designations shall conform with the municipal tax map if municipal regulations so require. In counties which adopt the local or block system of indices pursuant to sections 46:24-1 to 46:24-22 of the Statutes, the map shall show the block boundaries and designations established by the board of commissioners of land records for the territory shown on the map.

(4) The reference meridian used for bearings on the map shall be shown graphically. The coordinate base, either assumed or based on the New Jersey Plane Coordinate System, shall be shown on the plat.

(5) All municipal boundary lines crossing or adjacent to the territory shall be shown and designated.

(6) All natural and artificial watercourses, streams, shorelines and water boundaries and encroachment lines shall be shown. On right of way parcel maps all easements that affect the right of way, including slope easements and drainage, shall be shown and dimensioned.

(7) All permanent easements, including sight right easements and utility easements, shall be shown and dimensioned.

(8) The map shall clearly show all monumentation required by this chapter, including monuments found, monuments set, and monuments to be set. An indication shall be made where monumentation found has been reset. For purposes of this subsection "found corners" shall be considered monuments. A minimum of three corners distributed around the tract shall indicate the coordinate values. The outbound corner markers shall be set pursuant to regulations promulgated by the State Board of Professional Engineers and Land Surveyors.

(9) The map shall show as a chart on the plat any other technical design controls required by local ordinances, including minimum street widths, minimum lot areas and minimum yard dimensions.

(10) The map shall show the name of the subdivision, the name of the last property owners, the municipality and county.

(11) The map shall show the date of the survey and shall be in accordance with the minimum survey detail requirements of the State Board of Professional Engineers and Land Surveyors.

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(12) A certificate of a land surveyor or surveyors, shall be endorsed on the map as follows:

(A) I certify that to the best of my knowledge and belief this map and land survey dated meet the minimum survey detail requirements of the State Board of Professional Engineers and Land Surveyors and the map has been made under my supervision, and complies with the "map filing law" and that the outbound corner markers as shown have been found, or set.

(Include the following, if applicable)

I further certify that the monuments as designated and shown have been set.

.....
Licensed Professional Land Surveyor and No.

(Affix Seal)

(13) If the land surveyor who prepares the map is different from the land surveyor who prepared the outbound survey, the following two certificates shall be added in lieu of the certificate above.

(A) I certify to the best of my knowledge information and belief that this land survey dated has been made under my supervision and meets the minimum survey detail requirements of the State Board of Professional Engineers and Land Surveyors and that the outbound corner markers as shown have been found, or set

.....
Licensed Professional Land Surveyor and No.

(Affix seal)

(B) I certify that this map has been made under my supervision and complies with the "map filing law."

(Including the following if applicable)

I further certify that the monuments as designated and shown have been set.

.....
Licensed Professional Land Surveyor and No.

(Affix seal)

(C) If monuments are to be set at a later date, the following requirements and endorsement shall be shown on the map.

The monuments shown on this map shall be set within the time limit provided in the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) or local ordinance.

I certify that a bond has been given to the municipality, guaranteeing the future setting of the monuments as designated and shown on this map.

.....

Municipal Clerk

(D) If the map is a right of way parcel map the project surveyor need only to certify that the monuments have been set or will be set.

(14) A certificate of the municipal engineer shall be endorsed on the map as follows:

I have carefully examined this map and to the best of my knowledge and belief find it conforms with the provisions of "the map filing law," resolution of approval and applicable municipal ordinances and requirements.

.....

Municipal Engineer (Affix Seal)

(15) An affidavit setting forth the names and addresses of all the record title owners of the lands subdivided by the map and written consent to the approval of the map of all those owners shall be submitted to the proper authority with the map.

(16) If the map shows highways, streets, lanes or alleys, a certificate shall be endorsed on it by the municipal clerk that the municipal body has approved the highways, streets, lanes or alleys, except where such map is prepared and presented for filing by the State of New Jersey or any of its agencies. The map shall show all of the street names as approved by the municipality.

Source: 46:23-9.11.

COMMENT

The substance of 46:23-9.11 has not been changed; language has been simplified slightly. Subsection (r) of 46:23-9.11 has been separated as a new section on monumentation.

Format requirements, limitations on the size of maps and the materials from which they may be made, from 46:23-9.11 (a) and (b), have been moved to a separate section.

3-3. Monumentation

a. A map shall not be approved by a proper authority unless it meets the monumentation requirements of this section specified for the kind of map involved. The following kinds of maps shall meet the following requirements:

- (1) Subdivision plats shall meet all of the requirements of this section.
- (2) Right of way parcel maps shall meet the requirements of subsection (b) (12).

b. Monuments are required on one side of the right of way only and shall be of metal detectable durable material at least 30 inches long. The top and bottom shall be a minimum of 4 inches square; if concrete, however, it may be made of other durable metal detectable material

specifically designed to be permanent, as approved by the State Board of Professional Engineers and Land Surveyors. All monuments shall include the identification of the professional land surveyor or firm. They shall be firmly set in the ground so as to be visible at the following control points; provided that in lieu of installation of the monuments, the municipality may accept bond with sufficient surety in form and amount to be determined by the governing body, conditioned upon the proper installation of the monuments on the completion of the grading of the streets and roads shown on the map.

(1) At each intersection of the outside boundary of the whole tract, with the right-of-way line of any side of an existing street.

(2) At the intersection of the outside boundary of the whole tract with the right-of-way line on one side of a street being established by the map under consideration.

(3) At one corner formed by the intersection of the right-of-way lines of any two streets at a T-type intersection.

(4) At any two corners formed by the right-of-way lines of any two streets in an "X" or "Y" type intersection.

(5) If the right-of-way lines of two streets are connected by a curve at an intersection, monuments shall be as stipulated in (3) and (4) of this subsection at one of the following control points:

(A) The point of intersection of the prolongation of said lines,

(B) The point of curvature of the connecting curve,

(C) The point of tangency of the connecting curve,

(D) At the beginning and ending of all tangents on one side of any street,

or

(E) At the point of compound curvature or point of reversed curvature where either curve has a radius equal to or greater than 100 feet. Complete curve data as indicated in subsection d. of this section shall be shown on the map, or

(F) At intermediate points in the sidelines of a street between two adjacent street intersections in cases where the street deflects from a straight line or the line of sight between the adjacent intersections is obscured by a summit or other obstructions which are impractical to remove. This requirement may necessitate the setting of additional monuments at points not mentioned above. Bearings and distances between the monuments or coordinate values shall be indicated.

(6) In cases where it is impossible to set a monument at any of the above designated points, a nearby reference monument shall be set and its relation to the designated point shall be clearly designated on the map; or the plate on the reference monument shall be stamped with the word "offset" and its relation to the monument shown on the filed map.

(7) In areas where permanency of monuments may be better insured by off-setting the monuments from the property line, the municipal engineer may authorize such procedure; provided, that proper instrument sights may be obtained and complete off-set data is recorded on the map.

APPENDIX C

(8) By the filing of a map in accordance with the provisions of “the map filing law,” reasonable survey access to the monuments is granted, which shall not restrict in any way the use of the property by the landowner.

(9) On right of way parcel maps, the monuments shall be set at the points of curvature, points of tangency, points of reverse curvature and points of compound curvature or the control base line or center line, if used, and be intervisible with a second monument.

(10) On minor subdivisions a monument shall be set at each intersection of an outside boundary of the newly created lot(s) with the right of way line of any side of an existing street.

Source: 46:23-9.11(r).

COMMENT

The substance of 46:23-9.11 has not been changed; language has been simplified slightly. Subsection (r) of 46:23-9.11 has been separated as a new section on monumentation.

3-4. Approval of maps

a. The proper authority shall approve or disapprove a map within 45 days from its receipt.

b. The approval of a map under this law by the proper authority shall not be construed as acceptance of any street or highway indicated on the map; nor shall approval obligate the State of New Jersey or any county or municipality, to maintain or exercise jurisdiction over those streets or highways.

Source: 46:23-9.12; 46:23-9.13.

COMMENT

Subsection (a) continues the substance of 46:23-9.12 unchanged. Subsection (b) continues the substance of 46:23-9.13 unchanged. Language has been simplified slightly.

3-5. Additional prerequisites to filing

The county recording officer shall not accept for filing any map unless it has endorsed on it a certificate by the municipal clerk or secretary of the planning board stating:

a. That the proper authority has approved the map or stating its exemption from approval;

b. That the map complies with the provisions of this law; and

c. The date by which the map is required to be filed by the applicable law.

Source: 46:23-9.14.

COMMENT

This section continues the substance of 46:23-9.14 unchanged. The final sentence of the source has been deleted as unnecessary; section TR-5 makes reference to all of the requirements for recording.

3-6. Filing and indexing of maps, fee

a. The county recording officer shall file a map if an original and a copy of the map are presented for filing, the map complies with all the requirements for filing and is accompanied with the fees for filing and indexing that are provided by law. No fee shall be charged when the map is presented by the State of New Jersey, or any of its agencies.

b. The original map and a duplicate shall be endorsed by the recording office with a receipt indicating the date of filing.

c. The original map shall be retained by the recording office in an appropriate manner for preservation and use for reproduction purposes.

c. Copies of filed maps shall be made available to the public at a reasonable cost.

Source: 46:23-9.15.

COMMENT

This section continues the substance of 46:23-9.15 with little change. References to the way that a map should be stored and the format of a map and its copies have been deleted to allow any technological method that serves the purposes of map filing: preservation and use. The section has also been rearranged and substantially reworded.

3-7. Duplicates of maps in cities having atlases or block maps

Whenever a map is filed in the office of the county recording officer of land in a municipality that has an atlas, or block map, on which is plotted the lots or subdivision of lots of lands, the person filing the map shall file a duplicate of the map, and the recording officer shall indorse on the duplicate the time of recording and filing of the original and deliver the duplicate to the officer of the city having charge of the atlas or block map.

This section shall have no application to maps filed by commissioners appointed to assess benefits derived from the construction of sewers, drains or other municipal improvements.

Source: 46:23-10.

COMMENT

This section continues the substance of 46:23-9.15 with no change. The section has been reworded slightly.

3-8. Approval and filing of duplicates of filed maps

Whenever a map has been filed in the office of the county recording officer, and copies of it have been made that differ from the original only in title or style, and there have been made conveyances or liens, under which the lands intended to be conveyed or liened have been described by reference to the unfiled copy, the governing body of the municipality in which the land is located, by resolution, may approve the copy for filing in the manner prescribed by law. This approval and filing shall not constitute a dedication of the streets or lot locations as therein delineated; and shall be merely for the identification of the lands conveyed or liened.

Source: 46:23-11.

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COMMENT

This section continues the substance of 46:23-11 with no change. The section has been condensed and clarified.

APPENDIX C

CHAPTER 4 -- GENERAL AND TRANSITIONAL

4-1. Regulations

a. The Division of Archives and Records Management in the Department of State shall adopt regulations to establish format and technical requirements for recorded documents to establish state-wide uniformity in title recordation and otherwise to implement this Act.

b. Regulations shall be adopted within 12 months after the effective date of this Act.

4-2. UETA superseded

To the extent that this Act conflicts with Sections 17 and 18 of the Uniform Electronic Transactions Act (NJS 12A:12-17 and 18) this Act supersedes UETA.

State of New Jersey

N J L R C

New Jersey Law Revision Commission

SECOND TENTATIVE REPORT

relating to

AVIATION

OCTOBER 2003

This tentative report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the tentative report, please inform the Commission so that your approval can be considered along with other comments.

Please send comments concerning this tentative report or direct any related inquiries, to:

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Introduction

In 1989, in conjunction with the Department of Transportation, the New Jersey Law Revision Commission began a project to revise the laws of New Jersey relating to the subject of transportation. The project is large, involving consideration of Titles 27 (Highways) and 6 (Aviation), as well as parts of other titles; it includes statutes on subjects as diverse as the construction and operation of state highways, and the regulation of billboards, railroads, buses, and aviation. The result of the project will be a new Title 27A containing a revision of the law on transportation.

This Report on Aviation is the first completed part of the project. The three chapters in the report, chapters 41 through 43 of Title 27 A, replace all of Title 6, Aviation. The first contains the general state law regulating aeronautics. It replaces an accumulation of statutes on aviation dating back to the 1920's and 1930's. The second and third chapters are substantial re-enactments of the New Jersey Air Safety and Hazardous Zoning Act of 1983 (as amended) and the New Jersey Airport Safety Act of 1983.

The following report updates one completed approximately a decade ago by Commission staff. No action was taken by the Legislature on that prior report, and it is the goal of Commission staff to completely update the earlier project and resubmit it to the Legislature for action.

CHAPTERS 41. AERONAUTICS

27A:41-1. Definitions

When used in chapters 41,42 and 43:

a. "Aeronautics" means aviation; air instruction; the operation, repair or maintenance of aircraft, aircraft power plants and accessories; and the design, construction, repair, maintenance, operation or management of airports, and other aviation facilities.

b. "Aviation" means the operation, directing, or managing of aircraft in or through the air and on the ground or water.

c. "Aircraft" means any contrivance now known or hereafter invented, used or designed for flight in the air, ~~except moored balloons and gliders~~. However, a seaplane, while at rest on water and while being operated on or immediately above water, shall be governed by rules regarding water navigation, but while being operated through the air otherwise than immediately above water shall be treated as an aircraft.

d. "Public aircraft" means an aircraft used exclusively in the service of any government or of any political subdivision thereof, including the government of the United States, or of its states, territories, possessions or districts, but not including any government-owned aircraft engaged in carrying for hire persons or goods.

e. "Civil aircraft" means any aircraft other than a public aircraft.

f. "Airport" means any area of land, water, or both, which is used or made available for the landing and take-off of aircraft.

g. "Fixed base operator" means a person engaged in giving, or holding himself out as giving, instruction in aviation to the public, or a person operating a flying club; sport parachute center; aircraft maintenance or repair shop; intrastate air carrier; air taxi, scheduled or charter; or engaging in aerial advertising, aerial photography, pipe or power line patrol, fish spotting, dusting, spraying and seeding by aircraft, or parachute repair and rigging; but, the term "fixed base operator" shall not include air carriers operating under a certificate of public convenience and necessity issued by an agency of the federal government.

Source: 6:1-21.

Comment

These definitions are substantially identical to its source. Other definitions in the source sections, 6:1-2, 6:2-1 and 6:5-1 were duplicative or unnecessary.

27A:41-2. Purpose

The purpose of this chapter is to provide in the interest of public safety and of aeronautic progress for the regulation of aviation in this State; to require that aviation facilities and persons engaged in aviation in this State, conform to standards of safety and sound practice as prescribed by the laws and rules of this State, and for uniformity with the laws and rules of the United States Government.

Source: 6:1-1; 6:1-20.

Comment

This section is substantially identical to its sources.

27A:41-3. Powers and duties of the Commissioner; adoption of rules

Except as otherwise specifically provided by law, the Commissioner shall promote progress and education in and shall have supervision over aeronautics within this State, including, but not limited to, aviation,

the establishment, maintenance, and use of airports, sport parachuting centers, air markings and other aeronautical facilities, and the establishment, operation, management and equipment of fixed base operators. The Commissioner may adopt rules for air traffic and establish minimum standards for aircraft, person's engaged in aeronautics, fixed base operators, airports, sport parachuting centers, air markings and aeronautical facilities within the State, establish standards to protect the safety of persons operating or using aircraft and of persons and property on the ground, and to develop and promote aeronautics within this State. The Commissioner may adopt rules to effectuate the purposes of this chapter in the interest of public safety and the development of aeronautics in this State.

The rules of the Commissioner shall be in conformity with the laws and rules of the United States Government concerning aeronautics. The Commissioner, the administrators of any divisions or bureaus assigned duties under this chapter, the supervisory inspector and other designated members of those divisions and bureaus shall be peace officers and have authority to make arrests and file complaints for violations of the provisions of this chapter, or of any rules established under it.

Source: 6:1-9; 6:1-29.

Comment

This section is substantially identical to its sources.

27A:41-4. Hearings; information; investigations

The Commissioner may hold public hearings on matters affecting aeronautics; conduct investigations, inquiries and hearings concerning matters covered by the provisions of this chapter; advise the Legislature upon legislation and recommend legislation for the improvement of aeronautical safety and the promotion of aeronautical progress; co-operate with the Federal authorities and the authorities of other States; collect and disseminate information concerning aeronautics and the safeguarding of the interests of the general public and of those engaged in all phases of aeronautics; advise communities and groups in preparing and prosecuting projects for the development of aviation, airports and all other facilities for the promotion of aeronautics within this State; advise law enforcement agencies in the enforcement of aeronautical laws and rules; investigate accidents or injuries arising out of the operation of aircraft within this State; and keep a record of proceedings and official acts.

Source: 6:1-31.

Comment

This section is similar to its source, but is phrased in permissive rather than mandatory terms.

27A:41-5. Periodic inspections

The Commissioner may adopt rules providing for the periodic inspection of aircraft, airports, fixed base operators and other aeronautical facilities, aircraft power plants, accessories and other equipment. The rules may require disclosure concerning the design and the calculations upon which the design is based and of the materials and methods used in the construction and operation of such aircraft, airports, fixed base operators or other aeronautical facilities, aircraft power plants, accessories and other equipment.

Source: 6:1-48.

Comment

This section is substantially identical to its source.

27A:41-6. Aircraft exempt from taxation

All aircraft, regardless of registration under State or federal law, shall be exempt from taxation under chapters 4 and 11A of Title 54 of the Revised Statutes or any other law of this State that imposes a personal property tax.

Source: 6:1-97.

Comment

This section is substantially identical to its source.

27A:41-7. Licenses; aeronautic facilities and airports

The Commissioner shall provide for the licensing of airports and other aeronautical facilities by ~~conducting a public hearing~~ to protect the public health and safety and the safety of those participating in aviation activities. In the event there is a valid pending renewal application for the license to operate an existing airport or other aeronautical facility, the continued use and operation that airport or other aeronautical facility shall be permitted pending the decision for renewal. Any airport or aeronautical facility not constructed, equipped and operated in accordance with the standards and requirements fixed by the rules shall be rejected for license. Whenever the Commissioner rejects any application for license under the provisions of this section, the Commissioner shall state in writing the reasons for rejection.

Source: 6:1-44.

Comment

This section is substantially identical to its source. Underling added to incorporate case law. See Trenton Aviation, Inc. v. Gerard, 113 N.J.Super. 253, 273 A.2d 592 (A.D. 1971), certification denied 58 N.J. 331, 277 A.2d 388.

27A:41-8. Licenses; aeronautical activities

The Commissioner may provide for the licensing of specific aeronautical activities or persons engaged in specific types of aeronautical activities, or operations by rules adequate to protect the public health, safety and welfare and the safety of those participating in aeronautics. Licenses or certificates (except those issued on a temporary basis) required by the rules for operation of aeronautical facilities and fixed base operations are issued for a period of one year. Licenses shall be annually renewed upon satisfaction of requirements set by the rules appropriate to the license or certificate sought. Licenses or certificates issued on a temporary basis shall be valid for a period of less than one year and continue in effect until a specified expiration date or until terminated by order of the Commissioner.

Source: 6:1-44.1.

Comment

This section is substantially identical to its source.

27A:41-9. Aircraft licenses

The Commissioner may provide for the licensing of civil aircraft by reasonable rules adequate to protect the public safety and the safety of those participating in aviation and to ensure the satisfactory and safe performance of aircraft in accordance with their design or contemplated use.

Source: 6:1-35.

Comment

This section is substantially identical to its source.

27A:41-10. Licenses; aerial exhibitions

It shall be unlawful to conduct an air meet, air race or aerial exhibition or to operate a civil aircraft in an air meet, air race or aerial exhibition in this State without a license or permit for the air meet, air race or aerial exhibition issued by the Commissioner.

Source: 6:1-17; 6:1-42.

Comment

This section is substantially identical to its sources.

27A:41-11. Fees and procedure for licenses and certificates

Procedures, application fees, and fees for licenses and certificates shall be established by the Commissioner by rule. All fees shall be paid to the State Treasurer by the department for deposit in the Airport Safety Fund established by chapter 42 of this title.

Source: 6:1-44.1.

Comment

This section is substantially identical to the relevant portions of its source.

27A:41-12. Licenses: modification; suspension; revocation

Any license issued pursuant to the provisions of this chapter may be modified, suspended or revoked in the interest of public safety or the safety of those participating in aeronautical activities, or for violation of any provision of this chapter or any rule issued under it.

Source: 6:1-45.

Comment

This section is substantially identical to its source.

27A:41-13. Licenses of operators of aircraft; aircraft

a. No person may operate a civil aircraft in this state without all licenses or permits required by this chapter, by rules issued under it, or by applicable federal law. A certificate of the license shall be kept in the personal possession of the licensee while operating aircraft in this state, and must be presented for inspection upon demand of the Commissioner, the Commissioner's representative, any police officer of this state, or any official, manager or person in charge of any airport used by the aircraft.

b. No person shall operate a civil aircraft in this State unless the aircraft has all licenses or permits required by this chapter, by rules issued under it, or by applicable federal law; and unless the aircraft properly displays its appropriate identification, license, or registration numbers.

Source: 6:1-12; 6:1-13; 6:1-34; 6:1-37; 6:1-38; 6:1-40.

Comment

Subsection (a) amalgamates the requirements of 6:1-12, 6:1-38 and 6:1-40. Subsection (b) amalgamates the requirements of 6:1-13, 6:1-34 and 6:1-37.

27:41-14. Aerobatic stunts; low flying; dropping objects

a. It shall be unlawful for any person to operate an aircraft to engage in aerobatic flying or in any acrobatic feat while in flight over an inhabited area or over a gathering of persons.

b. It shall be unlawful for any person to operate an aircraft at such a low level as to endanger the persons on the surface beneath except while landing or taking off.

c. It shall be unlawful for any person to drop any object from an aircraft except loose sand or water ballast.

Source: 6:2-11.

Comment

This section is substantially similar to its source but penalizes only the operator of the aircraft, not passengers.

27A:41-15. Use of emergency or government or unlicensed facility

a. It shall be unlawful for any person operating an aircraft to use any airport or other aviation facility intended for use only in the case of emergency or intended for the exclusive use of public aircraft of the Government of the United States, except as provided for in this chapter or in the rules issued pursuant to it.

b. It shall be unlawful for any person operating an aircraft to land or take off from any area of land or water, unless that area is licensed or approved for that activity, except as provided for in department rules or in the case of an emergency.

Source: 6:1-43.

Comment

This section is substantially identical to the relevant portions of 6:1-43.

27A:41-16. Safety devices and facilities; markings; hazards to aviation

To protect the public safety and the safety of those participating in aeronautical activities, the Commissioner may adopt reasonable rules requiring safety devices and other aviation facilities for aircraft and airports; and require obstructions which may be hazardous to aviation to be suitably marked by lights, signs or otherwise as the Commissioner may provide. The Commissioner may proceed by appropriate legal action to cause any obstruction to flight in and about any airport or other aeronautical facility to be removed or abated.

Source: 6:1-32.

Comment

This section is substantially identical to its source.

27A:41-17. Interference with aviation facilities

Repealed by L. 1998, c. 54 § 5, eff. July 10, 1998.

It shall be unlawful for any person purposely to interfere or tamper with any aircraft, airport or any other aviation facility, or its equipment.

Source: 6:1-49.

Comment

This section continues the prohibition of 6:1-49 as an administrative violation under the jurisdiction of the Department of Transportation. The forbidden activity is made criminal by 2C:17-3.

27A:41-18. Killing of birds and animals from aircraft

It shall be unlawful for a person, while on an aircraft in flight in this state, to purposely kill or to attempt to kill any birds or animals. This section should not be construed to forbid the aerial application of pesticides.

Source: 6:2-12.

Comment

This section continues the prohibition of 6:2-12.

27A:41-19. Operating aircraft while under influence of alcohol or controlled substance

No person shall operate an aircraft while under the influence of or using intoxicating liquor or controlled dangerous substance as defined by L.1970, c.226, §2 (C. 24:21-2)

Source: 6:1-18

Comment

This section is broader than its source in that it includes all controlled dangerous substances, and narrower in that it does not apply to passengers.

27A:41-20. Investigations and hearings

The Department may conduct investigations, and hearings concerning the safety of aeronautical facilities and accidents or injuries incident to the operation of aircraft occurring within this State, and for this purpose the department may take possession of any wreckage or aircraft damaged in accidents and hold it until it releases possession or unless any properly authorized paramount Federal agency requests possession. In investigations and hearings, the Commissioner shall have the power to administer oaths, compel the attendance and testimony of witnesses and the production of papers, books, and documents. If any person fails to comply with an order issued under authority of this section, the Commissioner may suspend any license issued to that person by the department, bar the person from the use of any airport licensed by the department, or bring an action, ex parte, in the Superior Court to compel compliance.

Source: 6:1-51; 6:1-62.

Comment

This section is similar in substance to its source sections, but it has been focused on matters concerning safety and accidents. Hearing as to other matters are covered by 27A:41-4.

27A:41-21. Evidence regarding safety of methods of operation of aircraft and airports

Any person who operates an aircraft or causes an aircraft to be operated or otherwise engages in aeronautics in this State thereby submits himself to the authority of the State to investigate the safety of the methods of operation of aircraft and airports within the State and agrees to appear and testify at any investigation or hearing held by the Commissioner in connection with the safety of the operation of any aircraft or airport within this State and further agrees to produce any books and records, which may be relevant to the subject matter of the investigation, after reasonable notice given in person or by registered mail, which notice shall designate the person or persons required to appear and testify and the books and records required to be produced.

Source: 6:1-61.

Comment

This section is substantially identical to its source.

27A:41-22. Examination and inspection; persons engaged in aeronautics and aircraft

The Commissioner may examine and inspect any person engaged in aeronautics, aircraft, airport, fixed base operator or other aeronautical facility, and upon finding a violation of any of the provisions of this chapter or of the rules issued pursuant to it, may prevent aviation or operation of an aeronautical facility by any person until the violation is removed. Within twenty-four hours after the taking of action the Commissioner shall file a written report setting forth the reasons for it. Any person aggrieved by the action may demand a hearing before the Commissioner. The hearing shall be held within five days from the receipt of a demand for it.

Source: 6:1-46.

Comment

This section is substantially identical to its source.

27A:41-23. Police and departmental co-operation

It shall be the duty of all departments of state or local government and all officers charged with the enforcement of State and municipal laws to assist in the enforcement of the provisions of this chapter and the rules issued pursuant to it. Airport regulations adopted by any local subdivisions operating an airport shall be inoperative in so far as the regulations are inconsistent with the provisions of this chapter or with the Department rules issued pursuant to it.

Source: 6:1-33.

Comment

This section is substantially identical to its sources.

27A:41-24. Penalties

Any person violating any provisions of this chapter or any rule issued pursuant to it shall be liable to a penalty of up to \$1,000.00, which may be enforced in an action by the Commissioner in the name of the State in the Superior Court or in any municipal court in accordance with the procedure prescribed in the "penalty enforcement law" (N.J.S. 2A:58-1 et seq.). All penalties and costs collected shall be credited to the Airport Safety Fund established by chapter 42 of this title.

Source: 6:1-59, 6:1-59.1.

Comment

This section is similar in substance to its sources.

27A:41-25. Liability for injuries to person or property; lien on aircraft

The owner of any aircraft operated in this State is absolutely liable for injuries to persons or property on the land or water beneath caused by the take off, landing or flight of the aircraft; or the dropping or falling of any object from it; whether the owner was negligent or not, unless the injury is caused by the negligence of the person injured, or of the owner or bailee of the property injured. If the aircraft is leased at the time of the injury to person or property, both owner and lessee shall be liable, and they may be sued jointly or separately. The operator of an aircraft who is not the owner or lessee shall be liable only for the consequences of his own negligence. The injured person, or owner or bailee of the injured property, shall have a lien on the aircraft causing the injury to the extent of the damage caused by the aircraft or object falling from it. A chattel mortgagee, conditional vendor or trustee under an equipment trust, of any aircraft, not in possession of the aircraft, shall not be deemed an owner within the provisions of this section.

Source: 6:2-7.

Comment

This section is substantially identical to its source.

27A:41-26. Service of process on nonresidents extended

This chapter shall be construed as providing for additional methods of service of process upon nonresidents, and not as limiting any other lawful manner for service.

Source: 6:5-2.

Comment

This section is substantially identical to its source.

27A:41-27. Secretary of State as agent for acceptance of process

Any person or corporation, not a resident of this State, not incorporated under the laws of this State and not duly authorized to transact business in this State, who operates or causes to be operated in this State an aircraft, which is not registered in this State, constitutes the Secretary of State as agent for the acceptance of process in any civil action against the person arising out of any accident occurring in this State in which the aircraft is involved.

Source: 6:5-3.

Comment

This section is similar in substance to its sources.

27A:41-28. Manner of service upon Secretary of State; notice

Service of process upon the Secretary of State shall be made by leaving the original and a copy of the summons and two copies of the complaint, with a fee of \$20.00 with the Secretary of State. That service shall be sufficient on the nonresident, if:

a. Notice of service and a copy of the summons, with a copy of the complaint, are forthwith sent by registered or certified mail to the defendant by the Secretary of State, and defendant's return receipt and the affidavit of the Secretary of State, or a person acting for the Secretary of State, of the compliance with the requirements of this section, including a statement of the date of mailing and of the receipt of the return card, are appended to the original of the summons and filed with the complaint in the office of the clerk of the court where the action is pending; or

b. Two copies of notice of service, the summons, and the complaint, are forthwith sent by registered mail by the Secretary of State, or a person acting for the Secretary of State, to the sheriff or other process server in the jurisdiction in which the defendant resides, with directions that the sheriff or process server cause them to be served on the defendant in the same manner as that in which service is legally effected in that jurisdiction, and the return of the sheriff or process server, or the person acting for the sheriff or process server is appended to or endorsed on a copy of the summons and complaint, and returned to the Secretary of State, and thereafter filed with the clerk of the court where the action is pending in this State; or

c. Notice of service and a copy of the summons and complaint are served on the defendant, personally, by an official or private individual, wherever service may be made, and an affidavit of the person effecting service, showing the person served and the time and place of service, is appended to the summons and complaint, and returned to the Secretary of State, and be thereafter filed with the clerk of the court where the action is pending in this State; or

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d. Notice of service and a copy of the summons and complaint are served on the defendant in any other manner, which the court where the case is pending finds sufficient and expedient.

If, by direction of plaintiff, notice of service is given as provided by subsection (b) of this section, plaintiff shall, in addition to the fee of \$20.00 required by this section, deposit with the Secretary of State sufficient money to effectuate service. If notice of service is given as provided by subsection (d) of this section, plaintiff shall pay the cost that service.

Source: 6:5-4.

Comment

This section is substantially identical to its sources, but has been reorganized in the interest of clarity.

27A:41-29. Fee

The fee of \$20.00 paid by the plaintiff to the Secretary of State at the time of service and the cost of giving notice shall be taxed as costs if the plaintiff prevails in the action.

Source: 6:5-6.

Comment

This section is substantially identical to its source.

27A:41-30. Record of processes served

The Secretary of State shall keep a record of processes served pursuant to the provisions of this act showing the day and hour of service.

Source: 6:5-7.

Comment

This section is substantially identical to its source.

27A:41-31. Continuances

If process is served on a nonresident by any of the methods provided in this chapter, the court in which the action is pending may order continuances necessary to afford the defendant reasonable opportunity to defend the action.

Source: 6:5-5.

Comment

This section is substantially identical to its sources.

27A:41-32. Service of process upon nonresident owner of aircraft involved in accident

Civil process in any civil action arising out of an accident involving an aircraft owned by a nonresident may be served upon the nonresident owner by service in this State on an operator of any aircraft owned by that nonresident owner. Process may be also lawfully served on a nonresident owner by posting a copy of process in a conspicuous place on the aircraft and serving it on any person, over the age of fourteen years, who has custody of the aircraft, whether the person is operating the aircraft or holding it as security.

Source: 6:5-9.

This section is substantially identical to its source, but it has been reorganized in the interest of clarity.

CHAPTER 42. AIRPORT SAFETY FUND

27A:42-1. Definitions

When used in this chapter:

a. "Unrestricted public use airport" means any facility for the take-off and landing of aircraft, either publicly or privately owned, that does not have restrictive covenants on operational use by the general public for reasons other than safety.

b. "General aviation airport" means any area of land or water, or both, used or made available for the landing and take-off of civil aircraft, licensed for that purpose, and which has further been determined by the Commissioner not to be an international airport either by classification or service characteristics.

c. "Turbine fuel" means any liquid or gaseous fuels used for the propulsion of jet or turbo-shaft aircraft through the air, as determined by the Commissioner.

d. "Aviation enterprise" means any business or enterprise which is principally located within a New Jersey unrestricted public use airport whether the Commissioner has determined such business or enterprise has a direct economic or operational benefit to the airport.

Source: 6:1-91.

Comment

These definitions are substantively identical to definitions in the source section. Other definitions in the source section were duplicative or unnecessary. Underlining amended by L. 1997, c. 231, § 2, eff. Aug. 25, 1997.

27A:42-2. Legislative findings and declarations

a. The Legislature finds and declares that:

(1) New Jersey's public use, general aviation airports are an integral part of the State's transportation network and promote mobility and economic activities of common public benefit. These public use, general aviation transportation facilities are deteriorating and must be improved as to safety and their economic vitality in order to realize their full public benefit.

(2) There is a growing need to upgrade the safety of general aviation airports, which require such improvements and equipment as radar, instrument landing aids and weather-reporting equipment to enable them to safely handle modern general aviation aircraft.

(3) Many publicly owned, general aviation airports are unable to obtain all of the federal funds available to them for airport development because they are unable to raise money for their local matching requirements.

(4) Many privately owned, public use, general aviation airports which are essential to the State's economic development are in danger of conversion to nonaviation uses, and it is in the public interest to provide State assistance to county and municipal efforts to preserve these airports, through acquisition or other means.

(5) Users of general aviation airports have contributed substantial amounts to the State treasury through fees and fuel taxes, and this money should be used to establish an airport assistance program.

(6) The long term stability and viability of unrestricted public use airports are greatly dependent upon the economic stability and vitality of the aviation enterprises which are located within them.

(7) It is in the public interest for the Department of Transportation to undertake activities which promote aviation safety, provide for the promotion of aeronautics.

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b. The Legislature therefore finds and declares that it is in the public interest to establish an Airport Safety Fund, impose a two cent per gallon tax on fuel distributed to general aviation airports, and authorize the Commissioner of Transportation to establish assistance programs to improve the safety and economic vitality of general aviation airports, to promote aviation safety and education, and to provide for the promotion of aeronautics.

Source: 6:1-90.

Comment

This section is substantially identical to its source. Underlining amended by L.1997, c. 231, § 1, eff. Aug. 25, 1997.

27A:42-3. Airport safety fund

a. There is established in the general fund a separate special account to be known as the "Airport Safety Fund." Notwithstanding any provisions of law to the contrary and except as otherwise provided in this act, revenues from the taxes imposed on the sale of fuel used in aircraft, pursuant to chapter 39 of Title 54 of the Revised Statutes, revenues from the taxes imposed on the sale of aircraft fuels sold for distribution to general aviation airports, pursuant to this chapter, and fees related to aviation imposed under this title shall be credited to the fund.

b. Money shall be appropriated from the fund, notwithstanding the provisions of P.L.1976, c. 67 (C. 52:9H-5 et seq.).

c. Money in the fund shall be appropriated to the department and shall be used only for authorized activities related to aeronautics.

d. All revenue generated by the taxes imposed on the sale of aircraft fuels, pursuant to chapter 39 of Title 54 of the Revised Statutes, the taxes imposed on the sale of aircraft fuels sold for distribution to general aviation airports, pursuant to this chapter, and fees related to aviation imposed under the provisions of this title shall be collected and invested by the Treasurer. Earnings received from the investment or deposit of revenues in the fund shall become part of the fund.

e. Any revenue credited to the fund but not appropriated to the department shall remain in the fund exclusively for the purposes set forth in this chapter.

f. The Director of the Division of Budget and Accounting may transfer funds from the fund necessary to compensate the Division of Taxation for the cost incurred in administering the tax provisions in this chapter.

g. Moneys paid back to the State pursuant to loans made from the fund shall be paid back into and become part of the fund.

Source: 6:1-92.

Comment

This section is substantially identical to its source. Underling amended by L.1997, c. 231, § 3, eff. Aug. 25, 1997.

27A:42-4. Assistance to general aviation airports from airport safety fund

The Commissioner is authorized to expend money from the Airport Safety Fund established by this chapter, for the following purposes:

a. To provide grants to publicly and privately owned, unrestricted, public use airports to obtain federal funds for airport assistance. The Commissioner is authorized to provide up to 50% of the required local match; except that the Commissioner is authorized to provide up to 100% of the required local match, when an emergency situation exists.

b. To provide grants or loans, or both, to publicly owned and private, unrestricted, public use airports for safety projects, including but not limited to engineering, planning, construction and rehabilitation of lighting, runways, aprons, airport approach aids and obstruction removals.

c. To provide grants or loans, or both, to publicly owned airports or counties or municipalities to acquire airports or lands, rights in land and easements, including aviation easements necessary for clear zones or clear areas, which are owned, controlled or operated, or to be owned, controlled or operated by municipalities, counties or other political subdivisions of this State.

d. To acquire lands or rights in lands adjacent to privately owned, public use airports, which are found necessary for airport or air safety purposes, and while retaining title to that land or rights in land, the Commissioner may lease those lands or rights to airports or airport authorities for use in the furtherance of airport, air safety, or air transportation purposes. The Commissioner shall establish terms in any lease to protect the State's interest in the promotion of aviation and the State's investment in lands and property.

~~e. To provide loans to unrestricted public use airports and New Jersey based aviation enterprises, in amounts not to exceed \$200,000 per loan, for such specific purposes and on such terms and conditions as determined by the Commissioner pursuant to this subsection. Loans pursuant to this subsection may be provided for revenue or nonrevenue generating capital construction, capital development, or equipment acquisition purposes. In providing such loans, the Commissioner shall establish loan security terms so as to protect the State's interests. Loans shall not be provided pursuant to this subsection to airports or enterprises for the purpose of expanding, preparing for an expansion or completing an expansion of the runways, to support a greater number of flights or larger aircraft than that which the airport at the time of the loan application, except that a loan may be provided to restore the physical capabilities of an airport, which capabilities have been reduced as a result of insufficient maintenance and repair, to the capabilities that existed when the airport was in a state of full repair and fully maintained.~~

~~f. To establish, operate, or provide any program or activity which promotes aviation safety, promotes aviation education, or provides for the promotion of aeronautics. In no fiscal year shall the amount of moneys expended pursuant to this subsection exceed 10 percent of the total amount of moneys appropriated in that fiscal year to the Airport Safety Fund, established in the General Fund pursuant to section 4 of "New Jersey Airport Safety Act of 1983," P.L.1983, c. 264 (C. 27A:42-3).~~

Source: 6:1-93.

Comment

This section is substantially identical to its source. Underlining amended by L.1997, c. 231, § 4, eff. Aug. 25, 1997.

27A:42-5. Qualifications for assistance from airport safety fund

Any airport, to qualify for assistance under this chapter, shall not be an international airport, either by classification or service characteristics, as determined by the Commissioner of Transportation, and shall be included in the New Jersey State Airport System Plan, as prepared or revised from time to time by the department.

In considering an application for financial assistance, the Commissioner shall consider, in addition to the requirements of eligibility under the provisions of this chapter and other eligibility criteria that the Commissioner may promulgate by rule to effectuate the purposes this chapter, the scope and cost of the improvement required, availability of local funds for airport development, the capture of federal funds, the relative value of that improvement to the other needs of the particular airport, the present and future public service levels in regard to operations, based aircraft, passenger service, freight service, Statewide distribution of services, and local and State economic development, the impact on the area surrounding the airport, the extent to which the improvement will contribute to the welfare of the citizens of the State and the local area, and the relative value to the State airport system as a whole.

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The Commissioner shall also establish certification requirements to ensure that:

a. The airport will be publicly owned or will be effectively controlled, operated, repaired and maintained adequately during the improvement's full useful life, for the benefit of the public;

b. In connection with the operation of the airport, during the improvement's full useful life, the public will not be deprived of its rightful, fair, equal and uniform use of the airport;

c. The airport will adhere to State and federal laws and rules. If an airport received financial assistance under this chapter and ceases operations or fails to continue to comply with the provisions of this section before the predetermined life of the financially assisted improvements, as the life is determined by the Commissioner at the time the financial assistance is granted, the State shall be reimbursed for the unused portion of the predetermined life and, if not fully reimbursed, the claim shall be a first lien on the airport property to the extent of the unpaid balance; and

d. If a county or municipality or other public body received financial assistance under this chapter for acquisition of real property, that property shall not be sold or used for any nonaviation purpose without the approval of the Commissioner.

Source: 6:1-94.

Comment

This section is substantially identical to its source.

27A:42-6. Department of Transportation approval

No county, municipality, public agency, authority or private airport owner in this State, whether acting alone or jointly with another shall submit to the Administrator of the Federal Aviation Administration of the United States any project application for federal funding under the provisions of section 501 of the Act of Congress approved September 3, 1982, being Public Law 248, 97th Congress, known as the " Airport and Airway Improvement Act of 1982," or any amendment thereof and supplement thereto, or under any other federal law, unless the project and the project application have been first approved by the Commissioner. An airport sponsor shall accept no grant offer or amended grant offer without approval by the Commissioner.

Source: 6:3-1.

Comment

This section is substantially identical to its source.

27A:42-7. Powers of Commissioner

a. The Commissioner may acquire airports or lands or rights therein, including aviation easements necessary for clear zones or clear areas when it is deemed to be necessary for the safe operation of the airport and the general public safety or necessary for the continued operations of an airport which is deemed to be necessary for a safe and efficient air transportation system in the State. ~~In addition, the Commissioner may acquire the development rights associated with any privately owned and any county or municipally owned unrestricted public use airport, as long as a covenant providing that the airport shall remain an unrestricted public use airport in perpetuity is included in the instrument recoding the development rights purchase. Development rights may be acquired immediately, or over such time as may be negotiated, by contract, between the airport owner and the Commissioner. [The Commissioner may contract for the operation of these facilities on a temporary basis or retain ownership of the facilities without operating them.~~

~~b. If the Commissioner acts to acquire development rights pursuant to subsection (a) of this section, at least 30 days prior to submitting a summary of the terms and conditions of such proposed purchase~~

of development rights to the Legislature for approval pursuant to section 2 of P.L.2000, c. 165 (C.27A:42-8), the Commissioner shall:

(1) Acquire and consider at least two independent appraisals of the value of the development rights to be purchased;

(2) Hold a public hearing on the proposed purchase of the development rights at a site in or convenient to the municipality or municipalities in which those development rights are proposed to be acquired; and

(3) Provide notice of the public hearing, notice of the intent to acquire development rights, a summary of the proposed terms and conditions of the proposed purchase of the development rights, and a copy of any appraisals made pursuant to paragraph (1) of the subsection to the governing bodies of the municipality and count in which the Legislature representing the district in which the development rights are proposed to be acquired.

c. If the Commissioner acquires an airport, the Commissioner may contract for the operation of the airport or retain ownership without operating it. The Commissioner may also sell any airport or airport land so acquired to a county, municipality or other public body on the condition that it operate the facility as an airport and that it not sell the land without the Commissioner's approval.

d. Every contract for the transfer of a public use airport in connection with which the development rights have been sold pursuant to this section shall contain a provision providing for the operation of that airport as an unrestricted public use airport in perpetuity.

e. As used in this section, the term "unrestricted public use airport" shall only mean unrestricted public use airport as the term is defined in section 3 of P.L.1983, c. 264 (C.27A:42-8) and shall be used in this section for airport license classification purposes pursuant to Title 27 and 27A of the Revised Statutes.

f. The Legislature shall, addition to the appropriation made pursuant to section 3 of P.L.2000, c. 165, make such other annual appropriations in future years as shall be necessary to effectuate the purposes of P.L.2000, c. 165 (C.27A:42-8 et al.) in future years.

Source: 6:1-95.

Comment

This section is substantially identical to its source. Underlining amended by L.2000, c. 165, § 1, eff. Dec. 14, 2000.

27A:42-8. Legislative oversight of purchases

The Commissioner of Transportation shall submit to the Legislature for approval a summary of the terms and conditions of each purchase of development rights and the purchase price thereof, as authorized pursuant to section 11 of P.L.1983, c. 264 as amended by section 1 of P.L.2000, c. 165 (C.27A:42-7). The Commissioner shall make the submission to the President of the Senate and the Speaker of the General Assembly on a day when both houses are meeting. The President and the Speaker shall cause the date of submission to be entered upon the Senate Journal and the Minutes of the General Assembly, respectively.

Unless the purchase, as described in the submission, is disapproved by adoption of a concurrent resolution to that effect by the affirmative vote of a majority of the authorized membership of both houses within the time period prescribed in this section, the purchase shall be deemed approved and the Commissioner shall be authorized to undertake the purchase. The time period shall commence on the day of submission and expire on the forty-fifth day after submission or for a house not meeting on the forty-fifth day, on the next meeting day of that house.

Source: New

Comment

This section was added by L.2000, c. 165, § 1, eff. Dec. 14, 2000.

27A:42-9. Rules

The Commissioner may make rules necessary to effectuate the purposes of this chapter.

Source: 6:1-96.

Comment

This section is substantially identical to its source.

CHAPTER 43. AIRPORT HAZARDS

27A:43-1. Definitions

When used in this chapter:

a. "Airport hazard" means (1) any use of land or water, or both, which creates a dangerous condition for persons or property in or about an airport or aircraft during landing or taking-off at an airport, or (2) any structure or tree which obstructs the air space required for the flight of aircraft in landing or taking-off at an airport.

b. "Airport safety zone" means any area of land or water, or both, upon which an airport hazard might be created or established, if not prevented as provided in this chapter.

c. "Structure" means any object constructed or installed by man, including, but not limited to, a building, tower, smokestack, chimney, and overhead transmission line.

Source: 6:1-82.

Comment

These definitions are substantially identical to their sources. Other definitions in the source section were duplicative or unnecessary.

27A:43-2. Legislative findings and declarations

It is found and declared by the Legislature that an airport hazard endangers the lives and property of the users of the airport and of occupants of land in its vicinity, and also, if the hazard is an obstruction, it reduces the size of the area available for landing, taking-off and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public benefit therein. Accordingly, it is declared:

a. That the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question; therefore, it is necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented; and

b. That the prevention of the creation or establishment of airport hazards should be accomplished, to the extent legally possible, by the exercise of the police power of the State, without compensation.

Source: 6:1-80.

Comment

This section is substantially identical to its source.

27A:43-3. Airports subject to this chapter

a. The airports subject to this chapter are those, whether publicly or privately owned, which are:

Used by the public for the landing and taking-off of fixed wing aircraft, and

(2) Licensed by the Commissioner as a public use airport or landing strip, or the subject of a complete license application and designated by the Commissioner as likely to be licensed as a public use airport or landing strip within one year of this designation.

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b. Notwithstanding subsection (a), an airport shall not be subject to this chapter if it is owned and operated by a federal or military authority, or by the Port Authority of New York and New Jersey, or if it is located within the Port of New York District as defined in R.S. 32:1-3.

Source: 6:1-82.

Comment

This section is substantially identical to its source.

27A:43-4. Rules

After public hearing upon notice, including notice to each affected municipality, and pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.), the Commissioner shall adopt rules that delineate airport safety zones for all airports subject to this chapter. The rules shall describe the method used to make the delineation and may delineate subzones.

Source: 6:1-83.

Comment

This section is substantially identical to its source.

27A:43-5. Standards

The Commissioner shall adopt rules, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.), promulgating standards which specify permitted and prohibited land uses, including the specification of the height to which structures may be erected and trees allowed to grow, within airport safety zones. These standards shall be uniform for all airport safety zones, except that, where the Commissioner determines that local conditions require it, the Commissioner may adopt an amended or special standard. No standard adopted under this chapter shall be construed to require the removal, lowering or other change or alteration of any structure or tree not conforming to the standard when adopted or amended, or otherwise interfere with the continuance of any nonconforming use, except by acquisition of an interest of property rights as provided in this chapter.

Source: 6:1-84.

Comment

This section is substantially identical to its source.

27A:43-6. Notice of zones; Ordinance incorporating standards

a. Each municipality containing within its boundaries any part of a delineated airport safety zone, shall notify in writing each owner of record of property within the zone of the boundaries of the zone. The municipality shall make a copy of this notification with the county recording officer for recordation in the same manner as a deed or other instrument of conveyance. No cause of action against the States, a county or a municipality shall arise out of a failure to give the notice required by this subsection.

b. A metes and bounds description of airport safety zones shall be incorporated into the municipal maps used for tax purposes and prepared pursuant to R.S. 54:1-15 and P.L.1939 c.167 (C. 40:146-27 et seq.).

c. Each municipality, which contains within its boundaries any part of a delineated airport safety zone shall enact an ordinance or ordinances incorporating the standards promulgated by the Commissioner pursuant to this chapter and providing for their enforcement. A copy of this ordinance or ordinances, and any amendments, shall be transmitted to the Commissioner.

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Source: 6:1-85; 6:1-85.1.

Comment

This section is substantially identical to its sources.

27A:43-7. Notice to buyers of property

Any person who sells or transfers a property in an airport safety zone delineated and appearing in a municipal tax map as provided by this chapter, shall notify a prospective buyer that the property is located in an airport safety zone prior to the signing of a contract of sale. Failure to provide notice required by this section by a person subject to the jurisdiction of the New Jersey Real Estate Commission may result in the suspension or revocation of the person's license to engage in real estate sales or in other appropriate disciplinary action by that Commission.

Source: 6:1-85.2.

Comment

This section is substantially identical to its source.

27A:43-8. Nonconforming use

On request by a municipality and submission of required information, if it is in the public interest, the Commissioner may issue permits allowing the establishment of a nonconforming use that would be prohibited under the standards promulgated pursuant to this chapter. The Commissioner shall adopt rules, providing for the issuing of these permits and setting appropriate fees for their issuance.

Source: 6:1-86.

Comment

This section is substantially identical to its source.

27A:43-9. Injunctions

The Commissioner may institute an action in the name of the State, in any court of competent jurisdiction, to prevent or correct any violation of any provision of this act. The court shall grant relief, by way of injunction or otherwise, as is proper in all the circumstances of the case, to effectuate the purposes of this chapter.

Source: 6:1-87.

Comment

This section is substantially identical to its source.

27A:43-10. Acquisition of interest in property or nonconforming structure

In any case in which it is desired to remove, lower, or otherwise terminate a nonconforming use; or in which the necessary protection from an airport hazard cannot, because of constitutional limitations, be provided by zoning regulations; or if it appears advisable that the necessary protection from an airport hazard be provided by acquisition of property rights rather than by zoning regulations, the Commissioner may acquire air rights, easements, or any other estate or interest in the property, including a fee simple estate, as may be necessary to effectuate the purposes of this chapter.

Source: 6:1-88.

Comment

This section is substantially identical to its source.

TABLE OF DISPOSITIONS

CURRENT		PROPOSED	COMMENT
6:1-1		27A:41-2	
6:1-2		deleted	see 27A:41-1
6:1-9		deleted	see 27A:41-3
6:1-11		deleted	see 27A:41-20
6:1-12		27A:41-13	
6:1-13		27A:41-13	
6:1-14		deleted	unnecessary
6:1-15		deleted	see 27A:41-7, 27A:41-15(b)
6:1-16		deleted	see 27A:41-3; 27A:41-16
6:1-17		27A:41-10	
6:1-18		27A:41-19	
6:1-19		deleted	see 27A:41-24
6:1-20		27A:41-2	
6:1-21		27A:41-1	
6:1-29		27A:41-3	
6:1-30		deleted	unnecessary
6:1-31		27A:41-4	
6:1-32		27A:41-16	
6:1-33		27A:41-23	
6:1-34		27A:41-13	
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6:1-43		27A:41-15	see also 27A:41-8
6:1-44		27A:41-7	
6:1-44.1		27A:41-8; 27A:41-11	
6:1-44.2		deleted	unnecessary
6:1-45		27A:41-12	
6:1-46		27A:41-22	
6:1-47		deleted	unnecessary
6:1-48		27A:41-5	
6:1-49		deleted	repealed by L. 1998, c. 54 § 5, eff. July 10, 1998
6:1-50		deleted	unnecessary
6:1-51		27A:41-20	
6:1-52		deleted	unnecessary
6:1-53		deleted	unnecessary
6:1-59		27A:41-24	
6:1-59.1		27A:41-24	
6:1-60		deleted	unnecessary
6:1-61		27A:41-20	
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6:1-80		27A:43-2	
6:1-81		deleted	unnecessary
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6:1-86	27A:43-8	
6:1-87	27A:43-9	
6:1-88	27A:43-10	
6:1-89	deleted	unnecessary
6:1-90	27A:42-2	
6:1-91	27A:42-1	
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6:1-93	27A:42-4	
6:1-94	27A:42-5	
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6:1-97	27A:41-6	
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6:2-2	deleted	unnecessary
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6:2-4	deleted	unnecessary
6:2-5	deleted	unnecessary
6:2-6	deleted	unnecessary
6:2-7	27A:41-25	
6:2-8	deleted	unnecessary
6:2-9	deleted	unnecessary
6:2-10	deleted	unnecessary
6:2-11	27A:41-14	
6:2-12	27A:41-18	
6:3-1	27A:42-6	
6:5-1	deleted	see 27A:41-1
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6:5-7	27A:41-30	
6:5-8	deleted	see 27A:41-27
6:5-9	27A:41-32	

State of New Jersey

N J L R C

New Jersey Law Revision Commission

SECOND TENTATIVE REPORT

relating to

TITLE 27A - TRANSPORTATION

OCTOBER 2003

This tentative report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the tentative report, please inform the Commission so that your approval can be considered along with other comments.

Please send comments concerning this tentative report or direct any related inquiries, to:

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APPENDIX E

INTRODUCTION

This Tentative Report is the largest part of the project to revise the laws relating to transportation. It includes all of subject matter now covered by Title 27 - Highways. All of this material has been recompiled as parts of Title 27A - Transportation. The first six chapters concern the Transportation department and transportation policy generally. The next group of chapters, chapters 11 through 19 concern highway transportation. One of these, Chapter 13 - Traffic Regulation, is the subject of a separate Commission report. The last group of chapters concern a variety of programs administered by the Transportation Department.

The nature of the original revision by the Commission in 1993 varies with the nature of the material revised. In some cases, entirely new statutes have been written. That was the case with Chapter 3 - Property, where the material was fragmented and anachronistic, and with the part of Chapter 11 - State Highways that concerns the mapping of highway routes, where the material does not reflect practice. Where the source material is relatively new, it has been merely edited to make it consistent in form with the other parts of the proposed new Title 27A - Transportation. Examples of that approach include Chapter 14 - Access Management and Chapter 61 - Development Districts.

At present, the most current revision of Title 27A was done to integrate current case law and legislative changes into the revision.

CHAPTER 1 - DEFINITIONS

27A:1-1 Definitions

As used in this title:

- a. "Commissioner" means the Commissioner of the Department of Transportation;
- b. "Department" means the Department of Transportation;
- c. "Public entity" means any division or subdivision established by government;
- d. "Local public entity" means a public entity whose jurisdiction is limited to a county or smaller area.
- e. "Highway" means any road under the jurisdiction of a public entity and intended for use by motor vehicles; "highway" includes structures such as bridges carrying the road or other ways over the road, and areas and facilities ancillary to the road such as rest areas, and margins. Sidewalks though not intended for motor vehicle use are included.
- f. "Person" includes any corporation, authority or other organization;

Source: New

COMMENT

The definitions in this chapter are limited to terms frequently used in this Title. The term "public entity" in subsection (c) includes any governmental body.

The definition of highway is new. A highway is defined to include not only the roadway but all ancillary structures, facilities and spaces. The breadth of the definition obviates statutory provisions such as those separately authorizing the construction of sidewalks and curbs (27:7-39) and those providing particularly for bridges (27:7-45 to 7-48). The term "highway" in subsection (e) includes any kind of public roadway. This breadth of definition is consistent with that applicable to Title 39 - Motor Vehicles and Traffic Regulation. N.J.S. 39:1-1. Note however that subsequent chapters define highway more narrowly to make the term relevant in those contexts.

CHAPTER 2 - DEPARTMENT OF TRANSPORTATION

APPENDIX E

27A:2-1. Establishment of department; purpose

a. There is hereby established in the Executive Branch of the State Government a principal department that shall be known as the Department of Transportation.

b. The main office building of the Department of Transportation in the township of Ewing in the county of Mercer is designated as the "David I. Goldberg Transportation Building."

c. The purposes of the Department are to solve transportation problems; to promote an efficient transportation system; to prepare and implement transportation development; to manage transportation systems; and to coordinate transportation activities among State agencies, State-created public authorities, and other public agencies.

Source: 27:1A-1; 27:1A-2; 27:1A-2.1

COMMENT

This section is substantially identical to its sources. Subsection (a) is based on 27:1A-2. Subsection (b) is based on 27:1A-2.1, which became effective August 14, 2002 and was enacted to honor David I. Goldberg, the first Commissioner of Transportation, for the many in addition to many duties he performed within the Department of Transportation. Subsection (c) is based on 27:1A-1.

27A:2-2. Commissioner

The head of the Department shall be the Commissioner of Transportation. The Commissioner shall be a person qualified by training and experience to perform the duties of that office.

Source: 27:1A-4

COMMENT

This section is derived from 27:1A-4. Other provisions of 27:1A-4 concerning the appointment of the Commissioner is deleted as unnecessary. See, N.J. Const. Art.5, §IV, ¶2.

Article 1. Authority of Commissioner

27A:2-3. Powers and duties of Commissioner

The Commissioner shall:

a. develop, maintain and revise at least every five years, a comprehensive master plan for all modes of transportation development, with special emphasis on public transportation;

b. develop, promote and operate programs, systems, and facilities providing efficient and economical transportation;

c. prepare plans for the preserving, improving and expanding the public transportation system, with special emphasis on coordinating transit modes and using rail rights of way, highways and public streets for public transportation;

d. contract with the New Jersey Transit Corporation and other public entities for the construction, improvement and maintenance of transportation projects;

e. coordinate Department transportation activities with those of other public entities ;

f. promulgate regulations authorizing the Department to set and charge fees for services it performs and permits it issues where appropriate;

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g. develop and promote programs for the preservation and improvement of freight railroads, with special emphasis on using rail rights of way to provide rail freight service;

h. ensure the safety and continued operation of aviation facilities; and

i. cooperate with interstate Commissions and authorities, State agencies, federal agencies, and interested private individuals and organizations in the coordination of plans and policies for the development of air commerce and air facilities;

j. make an annual report to the Governor and to the Legislature on the Department's operations, and make other reports as the Governor requests;

k. annually compile and make available to the public information submitted to the Division of Motor Vehicles, pursuant to R.S. 39:4-131, concerning cellular telephones in motor vehicles involved in traffic accidents where the operator of the motor vehicle was using a cellular telephone at the time of the accident; and

l. effect the purposes of the Department.

Source: 27:1A-5; 27:7-11, 27:7-19; 27:7-21; and 27:1A-5.19.

COMMENT

Subsection (c) gives the Commissioner the authority to build and improve state highways. This authority derives from former sections 27:7-11, 27:7-19 and 27:7-21. The second sentence of subsection (d) is new and replaces a number of specific contracts to operate and maintain transportation and programs; provisions allowing the Department to contract with federal, county and municipal agencies. See e.g. N.J.S. 27:8-1 and 27:9-5. Subsection (k) is based on 27:1A-5.19 which became effective January 1, 2002.

27A:2-4. Organization of department

a. The Commissioner may: (1) organize the Department, establishing necessary divisions; (2) adopt regulations and prescribe duties for work and administration of the Department; and (3) delegate powers to officers or employees.

b. Delegated power shall be exercised under the Commissioner's supervision and direction.

Source: 27:1A-6(a)

COMMENT

This section is substantially identical to its source.

27A:2-5. Acting Commissioner

The Commissioner shall designate an employee in the Department as Acting Commissioner, to perform the powers and duties of the Commissioner during absence or disability of the Commissioner. This designation shall be in writing, filed with the Secretary of State and subject to approval of the Governor. During a vacancy in the Commissioner's office, the Acting Commissioner shall perform the powers and duties of the Commissioner until a new Commissioner is appointed and qualifies.

Source: 27:1A-6(b)

COMMENT

This section is substantially identical to its source.

27A:2-6. Assistant and Deputy Commissioners and other officers

a. The Commissioner may appoint Assistant and Deputy Commissioners, directors of divisions and programs within the Department, and other administrative officers from among persons qualified by training and

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experience to perform the duties of office. These officers shall serve at the pleasure of the Commissioner, and receive the salary established by the Commissioner with the approval of the Department of Personnel and the Director of the Division of Budget and Accounting.

b. In the event that any of the officers named in this section is appointed from persons employed in the classified service of the State, that officer shall retain any rights or protection provided by Title 11A, of the New Jersey Statutes or any law relating to pension or retirement during tenure in the appointed office.

Source: 27:1A-8; 27:1A-10; 27:1A-12; 27:1A-13; 27:1A-14

COMMENT

Subsection (a) grants general authority to appoint administrative officers. It replaces sections that provided for particular officers. Subsection (b) is substantially identical to 27:1A-14.

27A:2-7. Maintenance and expenditure of funds

a. The Commissioner shall maintain special funds established for transportation purposes and may make expenditures from those funds consistent with the restrictions and purposes of the funds.

b. The Commissioner may accept funds from the federal government or other public entities and may expend those funds for transportation purposes.

Source: New

COMMENT

This section gives the department general authority to expend funds other than those derived from yearly appropriations. Subsection (a) replaces a number of provisions giving particular authority over the proceeds of various bond issues. See 27:11-1 et seq. Subsection (b) provides specifically for the acceptance of federal and other government transportation funds. That subsection replaces sections allowing the Department to accept funds from the federal government (e.g. 27:8-1 et seq.) and from local governments (e.g. 27:9-1 et seq.). An additional source of transportation funds, the Transportation Trust Fund, is the subject of Chapter 5.

27A:2-8. Grants

The Commissioner may apply for and accept grants from the Federal Government, or from any foundation or person. The Department may expend grant money upon warrant of the Director of the Division of Budget and Accounting of the Department of the Treasury on vouchers certified and approved by the Commissioner.

Source:27:1A-7

COMMENT

This section is substantially identical to its source.

27A:2-9. Geodetic markers and information

The Commissioner shall:

a. receive, preserve and make available all records relating to bench marks, plane coordinate monuments and triangulation stations;

b. periodically inspect these marks, monuments and stations and replace any of them which have been destroyed; and

c. erect new marks, monuments and stations in the public interest.

Source: 27:1A-5.5

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COMMENT

This section is substantially identical to its source but eliminates a separate provision for establishing a schedule of fees for supplying copies of maps etc. as unnecessary in view of 27:2-3(h).

27A:2-10. Atlantic City Airport project

The Department and the Commissioner are authorized to expend funds appropriated by L.1991 c.185 from funds of the Transportation Trust Fund Authority for the Atlantic City International Airport project and related activities. Notwithstanding other law, the Commissioner may convey land acquired for that project to the South Jersey Transportation Authority with or without consideration.

Source: 27:1A-5.6

COMMENT

This section is substantially identical to its source.

27A:2-11. Monorail projects

The Commissioner, in consultation with other state agencies, shall coordinate plans for monorail systems. Any authority or public entity proposing a monorail project which is not subject to regulation as a railroad shall report the proposal to the Commissioner.

Source: 27:27-1 et seq.

COMMENT

This section consolidates the remaining effective sections of chapter 27 of Title 27. The Commission established by that chapter went out of existence in 1991. See L.1985 c.538 §12.

27A:2-12. Blue Star Memorial Highway Council established; members

~~a. The Legislature finds that the Blue Star Memorial Highway Council was created by Joint Resolution No. 13, approved October 6, 1948, to plan for and advise the Department of Transportation concerning the development of the landscaping, arboreal ornamentation, and incidental facilities of the Blue Star Memorial Highway system. The New Jersey Department of Transportation, in cooperation with the Garden Club of New Jersey, landscapes, plants, and maintains the roadsides of Blue Star Memorial Highways. These highways serve as living memorials in tribute to the men and women of New Jersey who have served in the armed forces.~~

~~Therefore, the Legislature declares that the time has come to incorporate the council within the permanent statutes, update the membership of the Council to reflect current State department designations, and include an officer or employee of the Department of Military and Veterans' Affairs as a member of the Council in place of an officer and employee of the Department of Health.~~

~~b. a. There is hereby established in the Department of Transportation a Blue Star Memorial Highway Council that shall consist of seven members, each of whom shall be appointed by the Governor.~~

~~One of the members shall be designated by the Governor from the officers and employees of the Department of Transportation, one from among the officers and employees of the Department of Environmental Protection, and one from among the officers and employees of the Department of Military and Veterans' Affairs, each of whom shall serve at the pleasure of the Governor.~~

~~The remaining four members of the council shall be appointed by the Governor from among the persons recommended to the Governor for appointment to the council by the Garden Club of New Jersey, each of whom shall serve for a period of four years and until his or her successor is appointed and has qualified, and each of who shall be eligible for reappointment to membership of the council.~~

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c. The Blue Star Memorial Highway Council shall plan for and advise the Department of Transportation concerning the development of the landscaping, arboreal ornamentation, and incidental facilities of the Blue Star Memorial Highway system.

Source: 27:1A-5.16

COMMENT

This section is substantially identical to its source.

Article 2. Transportation Executive Council

27A:2-13. Council established

a. There is hereby established the New Jersey Transportation Executive Council which shall advise the Commissioner on transportation policies, priorities and progress. The Council through its chairperson shall make recommendations to the Governor on overall transportation policy, capital and operating investments and related fiscal matters.

b. The Commissioner shall serve as the Council's chairperson and shall represent the Department and the New Jersey Transit Corporation on the Council. The Council shall also include the Chairpersons of the New Jersey Turnpike Authority, the New Jersey Highway Authority, the New Jersey Expressway Authority, the Delaware River Port Authority, the Port Authority of New York and New Jersey, the Delaware River and Bay Authority, the Delaware River Joint Toll Bridge Commission, the Palisades Interstate Park Commission, the Atlantic County Transportation Authority, the Cape May County Bridge Commission and the Burlington County Bridge Commission, the Commissioners of Commerce and Economic Development and Environmental Protection, the State Treasurer, the Governor's Director of Policy, the Director of the Governor's Authorities Unit and the Governor's Counsel for Legislation and Policy.

c. The Council shall be aided in its deliberations by a Technical Advisory Group which shall have the Assistant Transportation Commissioner for Policy and Planning as its chairperson and shall include the Executive Director of New Jersey Transit, the Director of New Jersey Transit, Hudson River Waterfront Transportation Office, and the Executive Directors of the New Jersey Turnpike Authority, the New Jersey Highway Authority, the New Jersey Expressway Authority, the Port Authority of New York and New Jersey, the Delaware River Port Authority, the Delaware River and Bay Authority, the Delaware River Joint Toll Bridge Commission, the Palisades Interstate Park Commission, the Atlantic County Transportation Authority, the Cape May County Bridge Commission and the Burlington County Bridge Commission.

d. The Chairperson of the Council may establish committees to carry out the functions of the Council and shall name the members of the committees.

Source: New

COMMENT

This provision is new to the statutes. It is substantially identical to a portion of Executive Order #10 issued June 6, 1990.

27A:2-14. Strategic Business Plans

a. The following agencies and authorities shall complete strategic business plans:

- (1) The Department of Transportation;
- (2) The New Jersey Turnpike Authority;
- (3) The New Jersey Highway Authority;

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- (4) The New Jersey Expressway Authority;
- (5) The New Jersey Transit Corporation;
- (6) The Cape May County Bridge Commission;
- (7) The Burlington County Bridge Commission; and
- (8) The Atlantic County Transportation Authority.

b. In addition, the Commissioner shall request the following agencies and authorities to complete strategic business plan:

- (1) The Port Authority of New York and New Jersey;
- (2) The Delaware River Port Authority;
- (3) The Delaware River and Bay Authority;
- (4) The Palisades Interstate Park Commission; and
- (5) The Delaware River Joint Toll Bridge Commission.

c. The Commissioner shall define the requirements for each strategic business plan. Plans shall be filed annually at the time set by the Commissioner.

d. Each strategic business plan shall be submitted to the Commissioner, who shall review it and return the plan or a portion of it for revision if the plan is determined to be incomplete or unsatisfactory.

Source: New

COMMENT

This provision is new to the statutes. It is substantially identical to a portion of Executive Order #10 issued June 6, 1990.

27A:2-15. Reports to the Governor

The Commissioner shall periodically report to the Governor on the activities and recommendations of the Transportation Executive Council and on the results of the capital investment and strategic business planning process.

Source: New

COMMENT

This provision is new to the statutes. It is substantially identical to a portion of Executive Order #10 issued June 6, 1990.

27A:2-16. Requests for assistance

The Commissioner is authorized to call upon any department, office, division or agency of this State to supply data, information, personnel or assistance necessary to discharge duties relating to the Transportation Executive Council. Each department, office, division or agency shall comply with requests consistent with law.

Source: New

COMMENT

This provision is new to the statutes. It is substantially identical to a portion of Executive Order #10 issued June 6, 1990.

Article 3. Miscellaneous

27A:2-17. References to other departments or agencies.

Any reference in a law, regulation, contract, or document, to a State department or agency relating to a subject transferred to the authority of the Department of Transportation shall be deemed a reference to the Department of Transportation.

Source: 27:1A-60

COMMENT

This section is substantially identical to its source.

CHAPTER 3 - PROPERTY

27A:3-1. Acquisition of property

a. The Department may acquire any property or interest in property that is necessary for:

- (1) constructing, facilitating the construction of or maintaining a transportation project,
- (2) relocating residents displaced by the construction,
- (3) disposing of any property or interest in property which is not needed by the Department,
- (4) relocating structures acquired with other property,
- (5) protecting or restoring the scenic beauty of areas adjacent to highways or,
- (6) improving or protecting environmental conditions associated with Department projects or facilities.

b. Acquisition may be made by condemnation proceedings as provided by Title 20 of the statutes, by purchase or by other lawful means.

c. If the property needed for a purpose set forth in subsection (a) is less than fee ownership or less than an entire tract of land, the Department may acquire fee ownership or may acquire the whole tract of land if that acquisition is in the financial interest of the State.

Source: 27:7-22, 27:7-22.2, 27:7-22.3, 27:7-22.4, 27:7-22.6, 27:7-44.3, 27:7-44.6

COMMENT

This section establishes the power of the Department to acquire or condemn property necessary for its use. It replaces a number of overly particular sections as to the acquisition of property and the nature of the property rights acquired. The section states specific purposes for which property may be acquired. Subsection (b) restricts the use of condemnation to the acquisition of property needed for immediate or planned use. The condemnation standard is stricter than that for ordinary methods of acquisition of property. The Department is accorded less discretion under the condemnation standard. Title 20 of the statutes provides other protections, chiefly procedural, to persons whose property is condemned. Subsection (c) is derived from 27:7-22.2 and 27:7-22.6 and recognizes situations where it is less expensive to acquire more of an interest or more property than that needed.

27A:3-2. Acquisition from local public entity

When the Department intends to acquire property owned by a local public entity, it shall notify the local public entity. The local public entity may object in writing to the intended acquisition within 60 days of the notice. The Commissioner may not acquire the property unless it is established in a hearing conducted pursuant to the

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Administrative Procedure Act that the purpose for which the Department intends to acquire the property outweighs the local public use of the property.

Source: 27:7-23

COMMENT

This section continues the rule of 27:7-23 that land owned by a municipality shall not be taken for transportation use without a specific finding that the transportation use outweighs the use the municipality has for the property. The source section provides specific procedures for arriving at that finding; this section substitutes the generally applicable procedures established by the Administrative Procedure Act.

27A:3-3. Annual inventory of property held for construction

The Department shall annually prepare, and submit to the Governor and the Legislature, an inventory of the properties owned by the State of New Jersey and held for transportation projects, which are not under construction. The inventory shall include the location and size of the property, the date and cost of acquisition, the purpose for which the land was acquired and the reasons why the property has not been used for that purpose.

Source: 27:1A-5.15.

COMMENT

This section is substantially identical to its source.

27A:3-4. Release of use restrictions

When the Department acquires property subject to use restrictions, they may be abolished by the grantor, successor in title to the grantor or all owners of the property subject to the same restrictions.

Source: 27:7-22.1

COMMENT

This section is substantially identical to its source. It provides a method for abolishing use restrictions without bringing an eminent domain action.

27A:3-5. Disposition of property

The Department may dispose of property only by:

- a. using property as consideration to acquire other property required by the Department,
- b. private sale to a public entity for transportation purposes,
- c. private sale to a public entity for public use, at a price not less than that paid by the Department for acquisition of the property,
- d. private sale to the record owner from whom the property was purchased by the Department,
- e. public sale to the highest bidder, or
- f. lease in accord with law and Department regulations.

Source: 27:7-44.8; 27:12-1

COMMENT

This section establishes the authorized methods of disposition of unneeded property. It is based on 27:12-1 with the addition of subsection (d) which recognizes that the prior owners of the property may have rights to re-acquire it under 52:31-1.4. Subsection (f) provides that the property may be leased as authorized by 27A:3-7. Otherwise, subsection (e) provides for public sale and subsections (a) through (d) authorize private disposition in limited circumstances.

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27A:3-6. Sale of real property for State highway improvement

a. If the Commissioner of Transportation determines, pursuant to this section, that real property acquired for the use of the State in the improvement, betterment, reconstruction or maintenance of a State highway is no longer required for such use, the Commissioner shall first offer to sell such property or any right or interest at private sale to the owner of the real property whose frontage is contiguous to the real property being sold; provided that the property being sold is less than the minimum size required for development under the municipal zoning ordinance of the municipality in which the property is located and is without any capital improvement. When there is more than one owner with real property whose frontage is contiguous, the property shall be sold to the highest bidder from among all such owners. Any such sale shall be for not less than the fair market value of the real property.

b. The sale of real property permitted by subsection (a) of this act may only occur after the owners of record of the property at the time of acquisition have been notified and provided the right to repurchase their interest pursuant to section 1 of P.L.1985, c. 201 (C.52:31-1.4).

c. The provisions of this act shall not affect the right of the Commissioner to sell at private sale to a municipal corporation or to any public board or Commission any real estate or any right or interest as provided in subsection (a) of this act.

Source: 27:12-1.1; 27:12-1.2, 27:12-1.3.

COMMENT

This section is substantially identical to its sources.

27A:3-7. Leases

a. The Department may lease or license property in accord with its regulations. The Commissioner may terminate lease or license agreements by giving 30 days written notice to the lessee. No person shall remain in possession beyond the date of termination fixed in the lease or in the notice of termination.

b. The Commissioner shall lease property in the following order to:

- (1) the prior owner or person in possession of the property at the time of acquisition,
- (2) a public entity for public use,
- (3) a person in need of temporary relocation facilities as the result of displacement by any public action, or
- (4) persons exempt from tax pursuant to article 2 of Title 54 or other statutes.

c. The Commissioner shall choose among persons holding the same class of preference in the way that best serves the State.

Source: 27:7-21.4; 27:7-21.5; 27:7-21.6; 27:7-44.8

COMMENT

Subsection (a) of this section is derived from 27:7-21.4. It allows the Department to lease property for interim use, which will be needed for transportation purposes in the future. The subsection continues the policy of terminating leases on short notice.

Subsections (b) and (c) establish priorities for choice of persons to whom property is to be leased. The classes of persons given priority are taken from lists in 27:7-21.6 and 27:7-44.8. The requirement of competitive bidding in 27:7-44.8 is deleted as inconsistent with the provision for private negotiation in 27:7-21.6 and as impractical given the system of priorities and the indefinite term of leases.

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27A:3-8. Payment in lieu of taxes

When the Department leases property, other than to a person or for a use exempt from taxation pursuant to the provisions of Title 54 of the statutes, it shall charge a monthly fee, in addition to rent, equal to 1/12 of the annual municipal tax on the property for the year in which the Department acquired it. These monthly fees shall be paid to the municipality in which the property is located, except that no fees shall be paid for any period in which taxes on the property have been paid.

Source: 27:7-21.7

COMMENT

This section is substantially identical to its source.

27A:3-9. Definitions

As used in this subchapter:

a. "Agency" means a public or private entity, including the Department that is using State or federal funds under a program administered by the Department or the New Jersey Transit Corporation.

The Department may exercise the powers granted to a county or municipality by this subchapter on behalf that agency.

b. "Displaced person" means, except as otherwise provided in this section, the following:

(1) A person who moves from real property, or moves his or her personal property from real property as a direct result of: (a) a written notice of intent to acquire, or the acquisition of, the real property, in whole or part, for a program or project undertaken by an agency; or (b) rehabilitation, demolition, or other displacing activity by the agency of property on which the person is a residential tenant or conducts a small business, a farm operation or a business under a program or project undertaken by the agency if the agency determines that the displacement is permanent, and,

(2) Solely for the purposes of subsections (a) and (b) of 27A:3-10 and section 27A:3-13 of this chapter, a person who moves from real property or moves his or her personal property from real property as a direct result of (a) a written notice of intent to acquire, or the acquisition of, other real property, in whole or in part, on which the person conducts a business or farm operation, for a program or project undertaken by an agency; or (b) rehabilitation, demolition or other displacing activity by the agency, of other real property on which the person conducts a business or farm operation, under a program or project undertaken by the agency, if the agency determines that the displacement is permanent.

c. The term "displaced person" does not mean:

(1) a person who has been determined, according to criteria established by the Commissioner, either to be in unlawful occupancy of the displacement property or to have occupied the property for the purpose of obtaining assistance under this chapter; or

(2) a person, other than a person who was an occupant of the property at the time it was acquired by the agency, who occupies the property on a rental basis for a short term or subject to termination when the property is needed for the program or project.

d. "Business" means any lawful activity, excepting a farm operation, conducted primarily: (1) for the purchase, sale, lease and rental of personal and real property and for the manufacture, processing or marketing of products, commodities, or any other personal property, (2) for the sale of services to the public, (3) by a nonprofit organization; (4) for the purposes of 27A:3-10, for assisting in the purchase, sale, resale, manufacturing, processing or marketing of products, commodities, personal property or services by the erection and maintenance

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of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

e. "Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

f. "Mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of real property, together with credit instruments, if any, secured thereby.

g. "Comparable replacement dwelling" means any dwelling that meets the criteria established by the Commissioner in accordance with federal standards with respect to safety, sanitation, size, affordability, functionality, environmental conditions, and location.

h. "Dwelling" means a structure, or portion thereof, which serves primarily as a residence for one or more persons.

Source: 27:7-74

COMMENT

Sections 27A:3-9 through 27A:3-17 are a re-enactment of the Uniform Transportation Replacement Housing and Relocation Act, L.1972 c. 47, amended L.1989 c. 50, C. 27:7-73 through 27:7-88. The wording of these sections was kept nearly identical to that of the Uniform Act to avoid the necessity of federal administrative approvals as a prerequisite to continued funding.

This section is substantially identical to its source, but three definitions: "Person," "Commissioner" and "Department" have been deleted. The first of these definitions is unnecessary and the other two repeat definitions applied generally to Title 27A.

27A:3-10. Payments to displaced persons

a. When a program or project to be undertaken by an agency will result in the displacement of any person, the agency shall provide for a relocation expense payment to the displaced person of:

(1) Actual reasonable expenses in moving the person, family, business, farm or other personal property;

(2) Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm but not to exceed an amount equal to the reasonable expenses that would have been required to relocate the property, as determined by the agency;

(3) Actual reasonable expenses in searching for a replacement business or farm; and

(4) Actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site, in an amount to be determined according to criteria and limits as established by the Commissioner in accordance with federal standards.

b. Any person who is displaced from a dwelling and is eligible for payments under subsection (a) of this section may elect to accept an expense and dislocation allowance, according to a schedule established by the Commissioner in lieu of payments authorized by subsection (a) of this section.

c. Any person eligible for payments under subsection (a) of this section who is displaced from the of business or farm operation and who is eligible under criteria established by the Commissioner may elect to accept a payment authorized by this subsection in lieu of the payment authorized by subsection (a) of this section. Such payment shall consist of a fixed payment in an amount to be determined according to criteria and limits established by the Commissioner. A person whose sole business at the displacement dwelling is the rental of such property to others shall not qualify for a payment under this subsection. All criteria and determinations made pursuant to this section shall be in accordance with applicable federal standards.

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Source: 27:7-75

COMMENT

This section is substantially identical to its source.

27A:3-11. Additional payments to homeowners

a. In addition to payments otherwise authorized by this subchapter, the agency shall make a homeowner payment, within limits established by regulations of the Commissioner, in accordance with federal standards, to a person who is displaced from a dwelling actually owned and occupied by the person for a period as established by regulations of the Commissioner, in accordance with federal standards. The homeowner payment shall include the following elements:

(1) The amount which when added to the acquisition cost of the dwelling acquired by the agency, equals the reasonable cost of a comparable replacement dwelling. Determinations required to determine this amount shall be made pursuant to regulations of the Commissioner, in accordance with federal standards.

(2) The amount which will compensate the displaced person for any increased interest costs and other debt service costs which the person is required to pay for financing the acquisition of any comparable replacement dwelling. The amount shall be paid only if the dwelling acquired by the agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for a period as established by regulations of the Commissioner, in accordance with federal standards.

(3) Reasonable expenses incurred by the displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

b. The additional payment authorized by this section shall be made only to such a displaced person who purchases and occupies a replacement dwelling which is decent, safe and sanitary, within one year after the date on which the person receives final payment from the displacing agency for the acquired dwelling or the date on which the displacing agency's obligation under section 27A:3-14 of this chapter is met, whichever is later, except that the agency may extend the period for good cause. If the period is extended, the payment under this section shall be based on the costs of relocating the person to a comparable replacement dwelling within one year of the extended date.

Source: 27:7-76

COMMENT

This section is substantially identical to its source.

27A:3-12. Other displaced occupants

a. In addition to payments otherwise authorized by this subchapter, an agency shall make a displacement payment to any person not eligible to receive a homeowner payment who is displaced from a dwelling actually and lawfully occupied by the displaced person for a period of time and under circumstances as prescribed by regulations of the Commissioner, in accordance with federal standards. This payment shall be consistent with the computation of amounts, periods of time, and accommodation of income as set forth in those regulations. At the discretion of the agency, a payment under this subsection may be made in periodic installments.

b. Any person eligible for a payment under subsection (a) of this section may elect to apply the payment to a down payment on, and other incidental expenses pursuant to, the purchase of a decent, safe and sanitary replacement dwelling. This person may, at the discretion of the agency, be eligible under this subsection for maximum amounts established, and under conditions specified, by regulations of the Commissioner, in accordance with federal standards.

Source : 27:7-77

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COMMENT

This section is substantially identical to its source.

27A:3-13. Relocation assistance advisory program

a. Whenever the acquisition of real property by the agency will result in displacement, the agency shall provide a relocation assistance advisory program for displaced persons, which shall offer the services prescribed in this section. If the agency determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, it may offer such person relocation advisory services under such program.

b. Each relocation assistance program required by subsection (a) shall include such measures, facilities or services consistent with regulations of the Commissioner, in accordance with federal standards.

c. The agency shall coordinate its relocation activities with other federal, State or local governmental actions in the community that could affect the efficient and effective delivery of relocation assistance and related services.

d. In any case in which an agency acquires property, any person who occupies the property on a rental basis for a short term or a period subject to termination when the property is needed, shall be eligible for advisory services to the extent determined by the agency.

Source: 27:7-78

COMMENT

This section is substantially identical to its source.

27A:3-14. Comparable replacement dwelling assurance

a. Whenever the acquisition of a dwelling by an agency will result in the displacement of any person, the agency shall assure that within a reasonable amount of time prior to displacement, there will be available a comparable replacement dwelling, except that the Commissioner may prescribe by regulation situations where these assurances may be waived.

b. If a project cannot proceed on a timely basis because comparable replacement dwellings are not available, and the agency determines that these dwellings cannot otherwise be made available, the agency may take appropriate action to provide such housing by use of funds authorized for the project. This shall be done on a case-by-case basis for good cause as determined in accordance with regulations issued by the Commissioner. The regulations shall be consistent with applicable federal program requirements.

c. No person shall be required to move from his or her dwelling because of any program or project undertaken by any agency, unless the agency is satisfied that a comparable replacement dwelling is available to that person.

Source: 27:7-79; 27:7-80

COMMENT

Subsection (a) of this section is substantially identical to 27:7-79; subsections (b) and (c) are substantially identical to subsections (a) and (b) of 27:7-80.

27A:3-15. Payment deemed not income, resources

No payment or relocation assistance received by a displaced person under this subchapter shall be considered as income or resources for the purpose of determining the eligibility or extent of eligibility of any

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person for assistance under any State law or for the purposes of the State's corporation tax law, State income tax or other tax laws. Such payment or relocation assistance shall not be considered as income or resources of any recipient of public assistance, and such payment shall not be deducted from the amount of aid to which the recipient would otherwise be entitled.

Source: 27:7-81

COMMENT

This section is substantially identical to its source.

27A:3-16. Coordination with other programs

Relocation expense, homeowner and displacement payments shall not be construed as creating in any condemnation proceeding brought under the power of eminent domain any element of damages not in existence previously and the payments are to be in addition to the just compensation established in the condemnation proceedings but only to the extent that they are not otherwise included within the condemnation award. No payment or assistance shall be required to be made to any person or included as a program or project cost if the person receives a payment required by federal or State law, or local ordinance, which is determined to have substantially the same purpose and effect as the relocation expense, homeowner and displacement payments.

Source: 27:7-82

COMMENT

This section is substantially identical to its source.

27A:3-17. Rules and regulations

a. The Commissioner is authorized to make such rules and regulations as the Commissioner may determine to be necessary to assure

(1) that the payments and assistance authorized by this subchapter shall be fair and reasonable and as uniform as practicable;

(2) a displaced person who makes proper application for a payment is paid promptly after a move, or in hardship cases, is paid in advance; and

(3) that any person aggrieved by a determination as to eligibility for a payment, or the amount of the payment, may have his or her application reviewed by the Commissioner or the Commissioner's designated appointee.

b. The Commissioner may make such other rules and regulations consistent with the provisions of this subchapter as he or she deems necessary or appropriate to carry out this subchapter.

c. The Commissioner, to achieve a uniform administration of related federal and State laws, may adopt all or any part of applicable federal law, rules and regulations.

d. Department regulations will assure as is practicable:

(1) that a uniform program for the fair and equitable treatment of displaced persons is established,

(2) that this program complies with the rules and regulations of the Federal Highway Administration and the United States Department of Transportation relating to relocation assistance so as to fully qualify the New Jersey Department of Transportation and the New Jersey Transit Corporation for federal aid reimbursement under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, including the Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub.L. 100-17 (23 U.S.C. §101 et al.), and any successor or supplementary federal law, and

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(3) that this program is uniform as to (a) relocation payments, (b) advisory assistance, (c) assurance of availability of standard housing and (d) State reimbursement for local relocation payments under State assisted and local programs.

Source: 27:7-83, 27:7-84, 27:7-85

COMMENT

This section is substantially identical to its source.

27A:3-18. Certain property prohibited from storing or handling radioactive-contaminated material

a. The Commissioner of Transportation shall not permit any property of the Department of Transportation to be used for the storage or handling of radioactive-contaminated material.

b. Nothing in this act shall be construed as prohibiting the Department from engaging in any activity on department property for which there is appropriate regulatory oversight.

Source: 27:1A-5.18.

COMMENT

This section is substantially identical to its source.

CHAPTER 4: WORK, CONTRACTS AND BIDDING

27A:4-1. Contracts for work; bidding

a. The Commissioner shall comply with the contract and bidding procedures in this chapter when work is to be performed by other than a public entity or Department employees and the estimated cost of the work exceeds \$7,500, as adjusted pursuant to subsection (b) of this section.

b. No later than March 1 of each odd-numbered year, the Governor shall adjust the threshold amount set forth in subsection (a), or the threshold amount resulting from any adjustment under this subsection or section 17 of P.L. 1985, c. 469, in direct proportion to the rise or fall of the Consumer Price Index for all urban consumers in the New York City and the Philadelphia areas as reported by the United States Department of Labor. The Governor shall consult the Department of Treasury when making this adjustment. The adjustment shall become effective on July 1 of each odd-numbered year.

Source: 27:2-1

COMMENT

While subsection (a) is worded differently from 27:2-1(a), it is substantially the same, except that it has been broadened to apply to all work of the Department. Subsection (b) is substantially identical to 27:2-1.

27A:4-2. Advertisement for bids

a. The Commissioner shall advertise for bids on the work and materials covered by the plans and specifications for each project subject to contract and bidding requirements.

b. For at least three weeks before the closing date for the receipt of bids, the Commissioner shall publish the advertisement at least once a week in each of two newspapers printed in the county or counties where the projects are located, and in one other newspaper in Trenton. The advertisement may also be published in engineering journals.

c. The advertisements shall describe the work and materials required, specify where plans and specifications are located and can be reviewed, and indicate the time, place and date where the sealed proposals

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will be received, publicly opened and read. The Commissioner may include other pertinent information in the advertisement.

Source: 27:7-29

COMMENT

This section is substantially identical to its source.

27A:4-3 Classification of prospective bidders

The Commissioner shall classify all persons proposing to submit bids according to the character and amount of work on which the person is qualified to submit bids. The Commissioner shall accept bids only from persons qualified in accordance with that classification.

Source: 27:7-35.2

COMMENT

This section is substantially identical to its source.

27A:4-4. Regulations on qualifications of bidders

The Commissioner may establish reasonable regulations for controlling the qualifications of prospective bidders. The regulations may fix the qualification requirements for bidders according to available capital, experience and records of past performance and all other pertinent and material facts. The qualification of any bidder shall not be influenced by irrelevant factors such as nationality or place of residence.

Source: 27:7-35.11

COMMENT

This section is substantially identical to its source. However, the final sentence of 27:7-35.11, which provides for publication of proposed regulations, was deleted. That matter is subject to the requirements of the Administrative Procedure Act. See 52:14B-1 et seq.

27A:4-5. Applications for classification as a bidder

The Commission shall prepare standardized applications for each classification. A person who desires classification as a bidder shall file an application under oath. The application shall state fully the financial ability, plant and equipment capacity, organization and prior experience of the prospective bidder and any other pertinent and material facts.

Source: 27:7-35.3

COMMENT

This section is substantially identical to its source.

27A:4-6. Notice of classification

The Commissioner shall notify prospective bidders of their classification 15 days after receipt of completed applications. The notice shall be sent by first class mail. If the Commissioner requires additional information from the prospective bidder, the Department shall send the notice to the prospective bidder 15 days after the additional information is received.

Source: 27:7-35.4

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COMMENT

This section is substantially identical to its source.

27A:4-7. Effective date of classification

The classification of the prospective bidder shall take effect 15 days after the Commissioner receives the completed application required in section 27A:4-6, and shall expire on the date specified in the regulations. The only persons who may bid on a contract are those who, on the date set for opening of bids, are classified as to the type and amount of work for which they submitted their bid.

Source: 27:7-35.5

COMMENT

This section is substantially identical to its source.

27A:4-8. Request for hearing after classification

a. After notification, the prospective bidder may contest the classification and seek a different classification by making a written request for a hearing before the prequalification committee. One prospective bidder may contest the classification of another. At the hearing, the prospective bidder may present additional evidence concerning financial ability, plant and equipment capacity and prior experience.

b. Where the request for a hearing is related to the classification of another bidder, the person who requested the hearing shall notify the other bidder by registered mail of the time and place of the hearing. At the hearing, the person who requested it shall give the committee evidence that such notice was given.

c. After the hearing, the committee may change or affirm the classification that was the subject of the hearing.

d. The Commissioner shall appoint a prequalification committee.

Source: 27:7-35.6 and 27:7-35.7

COMMENT

This section is substantially identical to its sources.

27A:4-9. Developments subsequent to classification; right to reject bidder

a. The Commissioner may reject a bidder at any time prior to the actual award of a contract if, in the opinion of the Commissioner, developments subsequent to the classification of the bidder affect the responsibility of the bidder. Before the Commissioner rejects the bidder, the Commissioner shall notify the bidder and give the bidder an opportunity to present additional information in support of the bidder's existing classification.

b. The responsibility of the bidder includes the moral integrity of the bidder. The Commissioner may suspend the classification of the bidder for lack of moral responsibility.

Source: 27:7-35.8

COMMENT

This section is substantially identical to its source.

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27A:4-10. Proposal bond; contractor's bond

A proposal bond in an amount, not to exceed 50% of the bid, to be determined by the Commissioner, executed by the bidder with sureties approved by the Commissioner shall be submitted with each bid to assure the faithful performance of the contract. The bidder who is awarded the contract shall execute the contract, secure it by satisfactory bonds in accordance with the provisions of N.J.S. 2A: 44-143 to N.J.S. 44-147 and specifications for the project and deliver the contract to the Commissioner within 10 working days after the award. The Commissioner may require additional evidence of the ability of the contractor to perform the work required by the contract.

Source: 27:7-31

COMMENT

This section is substantially identical to its source. Underlining reflects changes effective December 23, 1993.

27A:4-11. Failure to provide bond; rejection of bid

If the contractor fails to provide a satisfactory proposal bond as provided in section 27:7-31 of this Title, the bid shall be rejected.

Source: 27:7-32

COMMENT

This section is substantially identical to its source.

27A:4-12. Time for awarding of contract; extension; return of proposal bonds

The Commissioner shall award the contract or reject the bids within 30 working days after the bids are received. However, the Commissioner and all bidders may agree to extend this time period. The Commissioner shall return all proposal bonds which have been delivered with the bids, except those of the two lowest responsible bidders, within 3 working days after the closing date of receipt of the bids or extension of that date.

Source: 27:7-33

COMMENT

This section is substantially identical to its source.

27A:4-13. Award of contract; rejection of bids

a. The Commissioner may reject any bid that does not accord with the advertisement of specifications; exceeds the estimated cost of the work and materials; or contains any other irregularity. The Commissioner may reject a bid for good cause or when it is in the public interest to do so. The Commissioner shall prepare a list of bids, including rejected bids and the reason for rejection.

b. The Commissioner shall award the contract to the lowest responsible bidder.

Source: 27:7-30 and 27:7-33

COMMENT

This section is substantially identical to 27:7-30 except for the authority to reject bids where the public interest so requires. That provision is derived from 27:7-33.

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27A:4-14. Payment

a. Contracts shall provide for partial payments as the work progresses. The Commissioner shall withhold 5% of the amount due on partial payments on the first 50% of the total contract price pending completion of the contract. The Commissioner shall pay the partial payments on the full remaining 50% of the total contract price.

b. The Commissioner shall make partial payments after substantial completion of the contract defined by regulations and after the general contractor certifies that all subcontractors have been paid in the same proportion that the general contractor has been paid. However, if the amount owed by a general contractor to a subcontractor is disputed, the Commissioner may advance to the general contractor the amount in dispute as determined by the Commissioner.

c. When the contract is completed to the satisfaction of the Commissioner, the contractor shall be paid the money withheld from the first 50% of the total contract price.

d. The Commissioner shall not withhold any percent of the total contract price on service contracts.

e. Contracts may provide for partial payments as the work progresses on materials suitable for the use and execution of the contract that are placed on the construction site, or stored at other approved locations. Partial payment for materials shall be made only if the contractor delivers releases of liens for the materials with the request for payment. The partial payments shall not exceed the cost of the materials.

f. When the contract provides that a portion of the work may be deferred with the Commissioner's approval, the Commissioner shall withhold at least 25% of the value of the work.

Source: 27:7-34

COMMENT

This section is a simplified version of 27:7-34. Some of the language of that source is ambiguous; for example, it provides for payments "at least once each month or from time to time", and refers to the amount withheld both as 5% of 50% and as 2%. As a result, in drafting this section, it was necessary to make some substantive choices. However, in general, the section is very similar to 27:7-34.

27A:4-15. False statements

a. A person who makes a false or deceptive statement in an application for classification as a bidder, or in the course of a hearing related to the qualification of the bidder or the award of contract, is subject to a civil penalty in the amount of \$1,000.00 which may be collected pursuant to the Penalty Enforcement Law, N.J.S. 2A:58-1 et seq.. The penalty shall not preclude prosecution under applicable criminal law.

b. A person subject to a penalty under this section shall be disqualified from bidding on all public work in this State for a period of five years. A business in which the person subject to a penalty is a partner, officer or director, and a corporation in which this person owns more than 25% of the stock shall be disqualified from bidding on all public work in this State for a period of five years.

c. In compliance with the Administrative Procedure Act, the Commissioner may forfeit as damages to the State a certified check or certificate of deposit deposited by a person who makes a false or deceptive statement in the questionnaire required to be submitted or in the course of a hearing.

Source: 27:7-35.9; 27:7-35.10

COMMENT

Subsections (a) and (b) are similar to 27:7-35.9 except in regard to criminal penalty. The source section defines a misdemeanor that now would be considered a disorderly persons offense. See N.J.S. 2C:1-4(c). Since Title 2C criminalizes the submission of false statements, 27:7-35.9 is unnecessary. N.J.S. 2C:28-2.

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Subsection (c) is substantially identical to 27:7-35.10. However, subsection (c) requires the Commissioner to comply with the Administrative Procedure Act before the Commissioner causes the forfeiture of property. This protects the due process rights of the person subject to the forfeiture.

27A:4-16. Renegotiation of contract

If a contract requires the disposal of solid waste, the person awarded the contract shall have the right to renegotiate the contract to reflect any increase in solid waste disposal costs whenever:

a. the increase occurred as a result of compliance with an order issued by the Department of Environmental Protection, in conjunction with the Board of Public Utilities, directing that the solid waste be disposed at a solid waste facility other than the facility previously used by the contractor; or

b. the increase in solid waste disposal costs occurred as a result of lawful increases in the rates, fees or charges imposed on the disposal of solid waste at the solid waste facility used by the contractor.

Source 27:2-9

COMMENT

This section is substantially identical to its source.

CHAPTER 5 - TRANSPORTATION TRUST FUND

27A:5-1. Legislative findings and declarations

The Legislature finds and declares that:

a. A sound, balanced transportation system is vital to the future of the State and is a key factor in its continued economic development.

b. The transportation infrastructure of the State is among the most heavily used in the nation and has deteriorated alarmingly in recent years, with parts of the highway system reaching the end of their useful lives. This deterioration has been caused, in part, because New Jersey, unlike most states and the federal government, has not provided a stable source of transportation funding.

c. There exists an urgent need for a stable and assured method of financing the planning, acquisition, engineering, construction, reconstruction, repair, maintenance and rehabilitation of the State's transportation system, including the financing of the State's share under federal aid highway laws of the cost of planning, acquisition, engineering, construction, reconstruction, repair, resurfacing, and rehabilitation of public highways and of the State's share of the planning, acquisition, engineering, construction, reconstruction, repair and rehabilitation of public transportation projects and other transportation projects in the State, that will enable the State to construct and maintain the safe, balanced, sound and efficient transportation system necessary for the well-being of the State's citizens.

d. Unless additional State funding is provided immediately for the State's transportation system, the cost of repair and reconstruction will increase geometrically and the economic well-being and safety of users of the State's transportation system will be endangered.

e. Transportation facilities under the jurisdiction of counties and municipalities form an integral and vital part of the State's transportation system. Without State aid, counties and municipalities will be unable to meet the cost of maintaining, rehabilitating and improving these facilities.

f. The State's commitment to the payment for and financing of the State transportation system in a stable fashion, thus ensuring a predictable and continuing public investment in transportation and allowing the State to take full advantage of funds provided by the federal government, is a public use and public purpose for which public money may be expended and tax exemptions granted. The powers and duties of the New Jersey

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Transportation Trust Fund Authority and the other measures hereinafter described are necessary and proper for the purpose of achieving the ends herein recited.

g. Mass transit passenger service is a vital component of the transportation system in the northern part of the State. Because transit service is of such importance to that region it is paramount that an essential group of related transit projects be constructed. These projects, known as the Circle of Mobility, would add connections to and between urban centers, ease the movement of people, goods, and services within and through the State, and enhance the economic growth of the State. However, these significant benefits cannot be completely realized unless all projects comprising the Circle of Mobility are undertaken and completed in a timely manner.

Source: 27:1B-2

COMMENT

This section is substantially identical to its source. Underlining represents Legislative changes effective April 12, 1995.

27A:5-2. Definitions

As used in this chapter, unless a different meaning clearly appears from the context:

- a. "Authority" means the New Jersey Transportation Trust Fund Authority created by this chapter.
- b. "Bonds" means bonds issued by the authority pursuant to the chapter.
- c. "Federal aid highway" means any highway within the State in connection with which the State receives payment or reimbursement from the federal government under the terms of Title 23, United States Code or any successor.
- d. "Notes" means the notes issued by the authority pursuant to the chapter.
- e. "Public highways" means highways, and includes bridges, tunnels, overpasses, underpasses, interchanges, rest areas, express bus roadways, bus pullouts and turnarounds, park-ride facilities, traffic circles, grade separations, traffic control devices, the elimination or improvement of crossings of railroads and highways, whether or not at grade, bicycle and pedestrian pathways and bridges traversing public highways and any facilities, equipment, property, or interests in property needed for the construction, improvement and maintenance of highways.
- f. "Public transportation project" means, in connection with public transportation service, passenger stations, shelters and terminals, automobile parking facilities, ferries and ferry facilities, including capital projects for ferry terminals, approach roadways, pedestrian accommodations, parking, docks, and other necessary land-side improvements, ramps, track connections, signal systems, power systems, information and communication systems, roadbeds, transit lanes or rights of way, equipment storage pedestrian walkways and bridges connecting to passenger stations and servicing facilities, bridges, grade crossings, rail cars, locomotives, motorbuses and other motor vehicles, maintenance and garage facilities, revenue handling equipment and any other equipment, facility or property useful for or related to the provision of public transportation service.
- g. "Toll road authorities" means the New Jersey Turnpike Authority, the New Jersey Highway Authority and the New Jersey Expressway Authority.
- h. "Transportation project" means, in addition to public highways and public transportation projects, any equipment, facility or property useful or related to the provision of any ground, waterborne or air transportation for the movement of people and goods including rail freight infrastructure.
- i. "Transportation system" means public highways, public transportation projects, other transportation projects, and all other surface, airborne and waterborne methods of transportation for the movement of people and goods.

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j. "Maintenance Permitted maintenance" means, in relation to public transportation projects, direct costs of work necessary for preserving or maintaining the useful life of public transportation projects, provided the work performed is associated with the acquisition, installation and rehabilitation of components which are not included in the normal operating maintenance of equipment and facilities or replaced on a scheduled basis. The work shall ensure the useful life of the project for not less than four years and shall not include routine maintenance or inspection of equipment and facilities that is conducted on a scheduled basis. This definition shall not apply to the term "maintenance" as used in subsection e. of this section. For purposes of this subsection, "permitted maintenance" means, in relation to public highways, the direct costs of work necessary for preserving or maintaining the useful life of public highways, provided the work is not associated with the regular and routine maintenance of public highways and their components. The work shall ensure the useful life of the project for not less than five years.

k. "Circle of Mobility" means an essential group of related transit projects that include:

(1) the New Jersey Urban Core Projects, as defined in section 3031 of the "Intermodal Surface Transportation Efficiency Act of 1991," Pub.L.102-240, and consisting of the following elements: Secaucus Transfer, Kearny Connection, Waterfront Connection, Northeast Corridor Signal System, Hudson River Waterfront Transportation System, Newark-Newark International Airport-Elizabeth Transit Link, a rail connection between Penn Station Newark and Broad Street Station, Newark, New York Penn Station Concourse, and the equipment needed to operate revenue service associated with improvements made by the projects; and

(2) the modification and reconstruction of the West Shore Line in Bergen County connect to Allied Junction/Secaucus Transfer Meadowlands Rail Center; the construction of a rail station and associated components at the Meadowlands Sports Complex; the modification and reconstruction of the Susquehanna and Western Railway, as defined and provided in section 3035 (a) of the "Intermodal Surface Transportation Efficiency Act of 1991"; the modification and reconstruction of the Lackawanna Cutoff Commuter Rail Line connect Morris, Sussex and Warren Counties to the North Jersey region terminating at the proposed Lakewood Transportation Center in Ocean County or other location, as determined by the Board of the New Jersey Transit Corporation, pursuant to a resolution of the board providing for the achievement of a consensus among the interested parties as to the direction of the proposed rail line; provided, however, that this 2000 amendatory act shall not be construed as affecting any priorities which may have been assigned to any other project in the Circle of Mobility.

Source: 27:1B-3

COMMENT

This section is substantially identical to its source. Underlining represents Legislative changes effective May 30, 1995 and July 20, 2000.

27A:5-3. Transportation Trust Fund Authority

a. There is hereby established in the Department a public corporation to be known as the "New Jersey Transportation Trust Fund Authority." Notwithstanding the allocation to the Department of Transportation, the authority shall be independent of any supervision or control by the Department. The authority shall be an instrument of the State, exercising public and essential governmental functions; no part of the authority's revenues shall accrue to the benefit of any individual, and the exercise by the authority of the powers conferred by the chapter shall be deemed to be an essential governmental function of the State.

b. The authority shall consist of ~~five~~ seven members as follows: the Commissioner and the State Treasurer, who shall be members ex officio, and ~~three~~ five public members, ~~one~~ three of whom shall be appointed by the Governor, with the advice and consent of the Senate, one of whom shall represent the interests of trade unions that work on the construction of public highways and the other shall represent the interests of owners of

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~~frms that are eligible to submit bids for the construction of public highways. and the~~ The two remaining public members ~~to~~ shall be appointed by the Governor, one of whom upon recommendation of the President of the Senate and the other upon recommendation of the Speaker of the General Assembly. No more than ~~three~~ four members of the authority shall be of the same political party. The public members shall serve a four-year term, except that the public member appointed by the Governor upon recommendation of the Speaker of the General Assembly shall serve for a two-year term.

The Governor shall have 10 days to accept or reject in writing the recommendations of the President and Speaker. ~~With respect to the two additional public members to be appointed by the Governor pursuant to P.L.2000, c. 73 (C.27A:5-32 et al.), the Senate shall advise and consent to the appointment of the members, such appointments having been sent by the Governor to the Senate within 20 days following the date of enactment of P.L.2000, c. 73 (C.27A:5-32 et al.).~~

Each public member shall hold office for the term of appointment and until a successor has been appointed and qualified. A member shall be eligible for reappointment. Any vacancy in the membership occurring other than by expiration of term shall be filled in the same manner as the original appointment but for the unexpired term only.

c. Each public member, except those appointed upon recommendation of the President of the Senate and the Speaker of the General Assembly may be removed from office by the Governor, for cause, after public hearing, and may be suspended by the Governor pending the completion of the hearing. All members before beginning their duties shall take and subscribe an oath to perform the duties of their office faithfully, impartially and justly to the best of their ability. A record of these oaths shall be filed in the Office of the Secretary of State.

d. The Commissioner shall serve as chairperson of the authority. Members shall annually elect one of their members as vice chairperson. The members shall elect a secretary and a treasurer, who need not be members, and the same person may be elected to serve both as secretary and treasurer. The powers of the authority shall be vested in its members in office and ~~three~~ four members of the authority shall constitute a quorum at any meeting. The authority at any meeting may take action by the affirmative vote of at least ~~three~~ four members of the authority. No vacancy in the membership of the authority shall impair the right of a quorum of the members to exercise all the powers of the authority.

e. The members of the authority shall serve without compensation, but the authority shall reimburse its members for actual expenses necessarily incurred in the discharge of their duties. Notwithstanding the provisions of any other law, no member shall forfeit office or employment or any benefits of office or employment by reason of ex officio membership of the authority.

f. An ex officio member may designate an employee of the member's department or agency to represent the member at meetings of the authority. All designees may lawfully vote and otherwise act on behalf of the member for whom they constitute the designee. The designation shall be in writing delivered to the authority and shall continue in effect until revoked or amended in writing delivered to the authority.

g. The minutes of every meeting of the authority shall be forthwith delivered by and under the certification of the secretary to the Governor. No action taken at the meeting by the authority shall have force or effect until 15 days after the minutes have been so delivered, unless during this 15-day period the Governor approves the action in writing, in which case the action shall become effective upon approval. If, in the 15-day period, the Governor returns a copy of the minutes with his veto of any action taken by the authority at the meeting, the action shall be void. If the last day of the 15-day period is a Saturday, Sunday or legal holiday, then the 15-day period shall be deemed extended to the next following business day. The powers conferred in this paragraph upon the Governor shall be exercised with due regard for the rights of the holders of bonds, notes or other obligations of the authority at any time outstanding, and nothing in, or done pursuant to, this paragraph shall in any way limit, restrict or alter the obligation or powers of the authority or any representative or officer of the authority to perform in every detail every covenant, agreement or contract at any time made or entered into by or on behalf of

the authority with respect to its bonds, notes or other obligations or for the benefit, protection or security of the holders thereof.

h. The authority shall continue in existence until dissolved by act of the Legislature, except that it shall not continue in existence beyond 22 years unless the Legislature prescribes otherwise by law. However, any dissolution of this authority, by act of the Legislature or otherwise, shall be on condition that the authority has no debts, contractual duties or obligations outstanding, or that provision has been made for the payment, discharge or retirement of these debts, contractual duties or obligations. Upon any dissolution of the authority, all of its assets shall pass to the State.

Source: 27:1B-4

COMMENT

This section is substantially identical to its source. Underlining represents Legislative changes effective July 20, 2000.

27A:5-4. Purpose of authority

It shall be the sole purpose of the authority to provide for all, or part, of the costs incurred by the Department for the planning, acquisition, engineering, construction, reconstruction, repair and rehabilitation of the State's transportation system, including, without limitation, the State's share (including State advances with respect to any federal share) under federal aid highway laws of the costs of planning, acquisition, engineering, construction, reconstruction, repair, resurfacing and rehabilitation of public highways, the State's share (including State advances with respect to any federal share) of the costs of planning, acquisition, engineering, construction, reconstruction, repair, permitted maintenance and rehabilitation of public transportation projects and other transportation projects in the State, and State aid to counties and municipalities for transportation projects, all in furtherance of the public policy declared in this chapter, in the manner provided for in the chapter.

Source: 27:1B-5

COMMENT

This section is substantially identical to its source. Underlining reflects the definitional change.

27A:5-5. Powers of authority

In addition to all other powers granted to the authority in the chapter, the authority shall have power:

- a. To sue and be sued;
- b. To have an official seal and alter it at its pleasure;
- c. To make and alter bylaws and rules for its organization, internal management, and the conduct of its affairs and business;
- d. To maintain an office at a place or places within the State as it may determine;
- e. To acquire, hold, and use its funds;
- f. To acquire, own, use, and dispose of real or personal property for its purposes;
- g. To borrow money and to issue bonds, notes or other obligations and to secure them by its revenues, other funds or otherwise and to provide for the rights of the holders of its obligations, all as provided in the chapter;
- h. To issue subordinated indebtedness and to enter into bank loan agreements, lines of credit, letters of credit and other security agreements as provided for in the chapter;

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i. In its own name or in the name of the State, to apply for and accept appropriations or grants of property, money, services or reimbursements for money previously spent and other assistance made available to it by any person, or any public and private entity whatever for any lawful corporate purpose of the authority, including, without limitation, grants, appropriations or reimbursements from the State or federal government with respect to their respective shares under federal aid highway laws of the costs of planning, acquisition, engineering, construction, reconstruction, repair, ~~permitted~~ maintenance and rehabilitation of public highways or the costs of planning, acquisition, engineering, construction, reconstruction, repair and rehabilitation of public transportation projects and other transportation projects, in the State and the authority's operating expenses upon terms and conditions required or as the authority may determine to be desirable;

j. Subject to any agreement with the holders of bonds, notes or other obligations, to invest money of the authority not required for immediate use, including proceeds from the sale of any bonds, notes or other obligations, in obligations, securities and other investments as the authority deems prudent;

k. Subject to any agreements with holders of bonds, notes or other obligations, to purchase bonds, notes or other obligations of the authority out of any money of the authority available, and to hold, cancel or resell the bonds, notes or other obligations;

l. For its sole purpose as established in this chapter, to employ an executive director and any additional officers, and staff as it may require, at an annual expense not to exceed \$100,000.00, all without regard to the provisions of Title 11A, Civil Service, of the New Jersey Statutes;

m. To perform any acts authorized by this chapter by means of its officers, agents or employees or by contract with any person, or public body;

n. To procure insurance against any losses in connection with its property, operations, assets or obligations in amounts and from insurers as it deems desirable;

o. To make contracts and agreements which the authority determines are desirable to the performance of its duties and the execution of its powers under this chapter; and

p. To do things desirable to carry out its purposes and exercise the powers given in this chapter.

Source: 27:1B-6

COMMENT

This section is substantially identical to its source.

27A:5-6. Power to use funds appropriated and paid by state

The authority shall have the power to accept and use any funds appropriated and paid by the State to the authority, including, without limitation, payments from the Transportation Trust Fund Account established pursuant to the chapter, for the purposes for which the payments are made.

Source: 27:1B-7

COMMENT

This section is substantially identical to its source.

27A:5-7. Contracts with toll road authorities or state agencies

The authority may enter into contracts (or take an assignment of contracts entered into by the treasurer or Commissioner) with each toll road authority or other State agency to provide for payments to it by each toll road authority or other State agency from available revenues of the amounts that may be determined in accordance

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with the contract; provided however, that no such contract shall contain specific provisions which direct such toll road authority or other State agency to increase tolls. Subject to that restriction, each contract may contain conditions and covenants as are agreed to by the authority and the toll road authority or other State agency and, in the case of an assignment, as agreed to by the treasurer or Commissioner. Conditions and covenants may include those desirable to facilitate the issuance and sale of bonds, notes and other obligations of the authority. The authority may receive and use, and contract for the use of, the amounts paid to it pursuant to the contracts for of its purposes.

Source: 27:1B-8

COMMENT

This section is substantially identical to its source.

27A:5-8. Issuance of bonds

a. The authority may issue its bonds, notes or other obligations in amounts as in the opinion of the authority are necessary to provide for its purposes, including the payment, funding or refunding of the principal of, or interest or redemption premiums on, any bonds, notes or other obligations issued by it, whether or not they have become due; and to provide for security and for the establishment or increase of reserves to secure or to pay the bonds, notes or other obligations or interest on them and other reserves and expenses of the authority. In addition to its bonds, notes and other obligations, the authority may issue subordinated indebtedness, which shall be subordinate in lien to the lien of any or all of its bonds or notes. No resolution or other action of the authority providing for the issuance of bonds, refunding bonds or other obligations shall be adopted or otherwise made effective by the authority without the prior approval in writing of the Governor and either the State Treasurer or the Director of the Division of Budget and Accounting in the Department of the Treasury.

b. Except as may be otherwise expressly provided in the chapter or by the authority, every issue of bonds or notes shall be general obligations payable out of any revenues or funds of the authority, subject only to agreements with the holders of particular bonds or notes pledging any particular revenues or funds. The authority may provide the security and payment provisions for its bonds or notes as it may determine, including (without limitation) bonds or notes as to which the principal and interest are payable from and secured by all or any portion of the revenues of and payments to the authority, and other money as the authority shall determine. In addition, the authority may, in anticipation of the issuance of the bonds or the receipt of appropriations, grants, reimbursements or other funds, including without limitation grants from the federal government for federal aid highways or public transportation systems, issue notes, the principal of or interest on which, or both, shall be payable out of the proceeds of notes, bonds or other obligations of the authority or appropriations, grants, reimbursements or other funds or revenues of the authority. The authority may also enter into bank loan agreements, lines of credit and other security agreements and obtain for or on its behalf letters of credit for the purpose of securing its bonds, notes or other obligations or to provide direct payment of any costs which the authority is authorized to pay by this chapter and to secure repayment of any borrowings under the loan agreement, line of credit, letter of credit or other security agreement by its bonds, notes or other obligations or their proceeds or by any or all of the revenues of and payments to the authority or by any appropriation, grant or reimbursement to be received by the authority and other money as the authority shall determine.

c. Whether or not the bonds and notes are negotiable instruments under the terms of Title 12A, Commercial Transactions, New Jersey Statutes, the bonds and notes are hereby made negotiable instruments within the meaning of and for all the purposes of Title 12A.

d. Bonds or notes of the authority shall be authorized by resolutions of the authority and may be issued in one or more series and shall bear the dates, mature at the times, bear interest at the rates, be in the denominations, be in the form, carry the conversion or registration privileges, have the rank or priority, be executed in the manner, be payable from the sources, in the medium of payment, at the places, and be subject to the terms of redemption, with or without premium, as the resolutions provide. Bonds or notes may be further

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secured by a trust indenture between the authority and a corporate trustee within or without the State. All other obligations of the authority shall be authorized by resolution containing terms and conditions as the authority shall determine.

e. Bonds, notes or other obligations of the authority may be sold at public or private sale at prices and in the manner that the authority determines. ~~Every bond, or refunding bond, issued on or before January 19, 1988 after the effective date of P.L. 1995, c. 108 (C.27:1B-25.1 et al.) shall mature and be paid no later than 17 21 years from the its date. Every bond issued after July 19, 1988 shall mature and be paid no later than 11 years from its date. However, every bond, note and other obligation and the refunding of every bond, note and other obligation shall mature and be paid no later than July 10, 2006.~~

~~Notes, the initial series of bonds and bonds issued for refunding purposes of the authority may be sold at public or private sale at prices and in the manner that authority determines.~~

~~Except as noted above, all bonds of the authority shall be sold at prices and in the manner that the authority determines, after notice of sale, published at least three times in at least three newspapers published in the State of New Jersey, and at least once in a publication carrying municipal bond notices and devoted primarily to financial news, published in New Jersey or the City of New York, the first notice to be at least five days prior to the day of bidding. The notice of sale may contain a provision to the effect that any or all bids may be rejected. In the event of such rejection or of failure to receive any acceptable bid, the authority, at any time within 60 days from the date of the advertised sale, may sell the bonds at private sale upon terms not less favorable to the State than the terms offered by any rejected bid. The authority may sell all or part of the bonds of any series as issued to any State fund or to any federal government agency, at private sale, without advertisement.~~

f. Bonds or notes may be issued and other obligations incurred under the provisions of this chapter without obtaining the consent of any agency of the State, other than the approval as required by subsection (a) of this section, and without any other proceedings or conditions than those proceedings or conditions which are specifically required by the chapter.

g. Bonds, notes and other obligations of the authority issued or incurred under the provisions of the chapter shall not be in any way a debt or liability of the State or of any of its political subdivisions other than the authority and shall not be any obligation of the State or of any political subdivision or be a pledge of the faith and credit of the State or of any political subdivision but all bonds, notes and obligations, unless funded or refunded by bonds, notes or other obligations of the authority, shall be payable solely from revenues or funds pledged or available for their payment as authorized in this chapter. Each bond, note or other obligation shall contain on its face a statement to the effect that the authority is obligated to pay the principal and interest only from revenues or funds of the authority and that neither the State nor any political subdivision is obligated to pay the principal or interest and that neither the faith and credit nor the taxing power of the State or any political subdivision is pledged to the payment of the principal of or the interest on the bonds, notes or other obligations. For the purposes of this subsection, political subdivision does not include the authority.

h. All expenses incurred in carrying out the provisions of this chapter shall be payable solely from the revenues or funds provided under the provisions of the chapter and nothing in the chapter shall be construed to authorize the authority to incur any liability on behalf of or payable by the State or any political subdivision.

~~i. The aggregate principal amount of bonds, notes or other obligations outstanding at any one time, including subordinated indebtedness of the authority, may not exceed \$1,700,000,000. If in any fiscal year appropriations by the Legislature to the authority, and amounts received in accordance with contracts entered into with the toll road authorities, if those amounts are not included in legislative appropriations, are in excess of \$331,000,000.00, the aggregate principal amount of \$1,700,000,000.00 shall be reduced by an amount equal to the excess. In computing the foregoing limitations there shall be excluded all the bonds, notes or other obligations, including subordinated indebtedness of the authority, which are issued for refunding purposes, provided that the refunding is determined by the authority to result in a debt service savings.~~

~~The authority shall minimize debt incurrence by first relying on appropriations and other revenues available before incurring debt to meet its statutory purposes.~~

~~The authority shall not incur debt at any time in any fiscal year in excess of the difference between the amount of appropriations and other revenues in that fiscal year and the amount which the Department of Transportation is permitted to commit for transportation projects in that fiscal year as indicated in the budget, plus reasonably necessary expenses, required debt reserve funds, debt service and outstanding financial obligations from prior fiscal years of the authority.~~

~~Debt which would have been incurred pursuant to this section, which is not incurred in any fiscal year, may be issued in subsequent years.~~

~~The authority shall minimize debt incurrence by first relying on appropriations and other revenues available before incurring debt to meet its statutory purposes. The authority shall not incur debt in any fiscal year in excess of \$650,000,000, except that if that permitted amount of debt, or any portion, is not incurred in a fiscal year it may be incurred in a subsequent fiscal year. Any increase in this limitation shall only occur if so provided by law. In computing the foregoing limitation as to the amount of debt the authority may incur, the authority may exclude any bonds, notes or other obligations, including subordinated obligations of the authority, issued for refunding purposes.~~

~~j. Upon the decision by the authority to issue refunding bonds pursuant to this section, and prior to the sale of those bonds, the authority shall transmit to the Joint Budget Oversight Committee, or its successor, a report that a decision has been made reciting the basis on which the decision was made, including an estimate of the debt service savings to be achieved and the calculations upon which the authority relied when making the decision to issue refunding bonds. The report shall also disclose the intent of the authority to issue and sell the refunding bonds at public or private sale and the reasons therefore.~~

~~k. The Joint Budget Oversight Committee, or its successor, shall have authority to approve or disapprove the sale of refunding bonds as included in each report submitted in accordance with subsection (j) of this section. The committee shall approve or disapprove the sale of refunding bonds within 10 business days after physical receipt of the report. The committee shall notify the authority in writing of the approval or disapproval as expeditiously as possible.~~

~~l. No refunding bonds shall be issued unless the report has been submitted to and approved by the Joint Budget Oversight Committee, or its successor, as set forth in subsection (k) of this section.~~

~~m. Within 30 days after the sale of the refunding bonds, the authority shall notify the Joint Budget Oversight Committee, or its successor, of the result of that sale, including the prices and terms, conditions and regulations concerning the refunding bonds, and the actual amount of debt service savings to be realized as a result of the sale of refunding bonds.~~

~~n. The Joint Budget Oversight Committee, or its successor, shall review all information and reports submitted in accordance with the section and may make observations and recommendations to the authority or to the Legislature, or both, as it deems appropriate.~~

Source: 27:1B-9

COMMENT

This section is substantially identical to its source. Underlining represents Legislative changes effective May 30, 1995 and November 30, 2001.

27A:5-9. Covenants with holders of obligations

In any resolution of the authority relating to the issuance of bonds, notes or other obligations or in any indenture securing the bonds, notes or other obligations, the authority, in order to secure the payment of the

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bonds, notes or other obligations may by provisions in the bonds, notes or other obligations, which shall constitute covenants by the authority and contracts with the holders:

- a. Pledge all or any part of its revenues or receipts to which its right exists or may afterwards exist and other funds as the authority determines, and the proceeds of any bonds, notes or other obligations;
- b. Pledge any agreement, including, without limitation, contracts with the Commissioner or State Treasurer, contracts with the toll road authorities or other State agencies, and any grant, contract, or agreement with the federal government or the revenues, payments and proceeds of such a contract;
- c. Covenant against pledging all or any part of its revenues or receipts or its agreements and other money as the authority determines or against permitting any lien on any of the foregoing;
- d. Covenant with respect to limitations on any right to dispose of any property of any kind;
- e. Covenant as to any bonds, notes and other obligations to be issued and their limitations, terms and conditions, and as to the custody, application, investment, and disposition of the their proceeds;
- f. Covenant as to the issuance of additional bonds, or notes or other obligations or as to limitations on the issuance of additional bonds, notes or other obligations and on the incurring of other debts;
- g. Covenant as to the payment of the principal of or interest on the bonds, notes, or other obligations, as to the sources and methods of payment, as to the rank or priority of any bonds, notes or obligations with respect to any lien or security or as to the acceleration of the maturity of any bonds, notes or obligations;
- h. Provide for the replacement of lost, stolen, destroyed or mutilated bonds, notes or other obligations;
- i. Covenant against extending the time for the payment of bonds, notes or other obligations or their interest;
- j. Covenant as to the redemption of bonds, notes or other obligations and their privileges of exchange for other bonds, notes or other obligations of the authority;
- k. Subject to the rights and security interests of the holders of bonds, notes or other obligations of the toll road authorities or other State agencies, covenant as to the enforcement of any term in any agreement entered into pursuant to this chapter, to which the authority is a party or an assignee, fixing amounts of funds of the toll road authorities or other State agencies to be paid to the authority, including any term concerning the fixing of tolls and other charges by the toll road authorities or other State agencies, at rates as shall be necessary to provide the amounts of funds;
- l. Covenant to create or authorize the creation of funds to be held in pledge or otherwise for payment or redemption of bonds, notes, or other obligations, reserves for other purposes and as to the use, investment, and disposition of the money held in the funds;
- m. Establish a procedure by which the terms of any contract or covenant with or for the benefit of the holders of bonds, notes or other obligations may be amended or abrogated, the amount of bonds, notes or other obligations the holders of which must consent, and the manner in which the consent may be given;
- n. Provide for the release of property, agreements, or revenues and receipts from any pledge and to reserve rights and powers in property that is subject to a pledge;
- o. Provide for the rights and liabilities, powers and duties arising upon the breach of any covenant, condition or obligation and prescribe the events of default and the terms and conditions upon which any or all of the bonds, notes or other obligations of the authority shall become or may be declared due and payable before maturity and the terms and conditions upon which any declaration and its consequences may be waived;
- p. Vest in trustees any property, rights, powers and duties in trust as the authority may determine;
- q. Execute bills of sale, conveyances, deeds of trust and other instruments necessary or convenient in the exercise of its powers or in the performance of its covenants or duties;

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r. Pay the costs incident to the enforcement of the bonds, notes or other obligations or of the provisions of the resolution or of any covenant or agreement of the authority with the holders of its bonds, notes or other obligations;

s. Limit the rights of the holders of any bonds, notes or other obligations to enforce any pledge or covenant securing the bonds, notes or other obligations; and

t. Make covenants, in addition to the covenants expressly authorized in this section as may be desirable, in order to better secure bonds, notes or other obligations or which in the absolute discretion of the authority will tend to make bonds, notes or other obligations more marketable.

Source: 27:1B-10

COMMENT

This section is substantially identical to its source.

27A:5-10. Pledge of revenues, money, or other property

Any pledge of revenues, money, or other property made by the authority shall be valid and binding from the time when the pledge is made; the revenues, money or other property pledged shall immediately be subject to the lien of the pledge without any physical delivery or further act, and the lien of any pledge shall be binding as against all parties having claims of any kind against the authority, irrespective of whether the parties have notice thereof. Any instrument that creates a pledge of revenues, money, or other property shall be filed or recorded in the records of the authority.

Source: 27:1B-11

COMMENT

This section is substantially identical to its source.

27A:5-11. Immunity from personal liability

Neither the members of the authority nor any person executing bonds, notes or other obligations issued pursuant to this chapter shall be liable personally on the bonds, notes or other obligations by reason of their issuance.

Source: 27:1B-12

COMMENT

This section is substantially identical to its source.

27A:5-12. Reserves, funds or accounts

The authority may establish reserves, funds or accounts, as it deems desirable to accomplish the purposes of the authority or to comply with the provisions of any agreement made by the authority.

Source: 27:1B-13

COMMENT

This section is substantially identical to its source.

27A:5-13. Pledge of State not to alter rights or powers of authority

The State hereby pledges to the holders of any bonds, notes or other obligations issued pursuant to this chapter that it will not alter the rights or powers of the authority in any way that would jeopardize the interest of the holders or inhibit or prevent performance or fulfillment by the authority of the terms of any agreement made with the holders of the bonds, notes or other obligations, or prevent the authority from obtaining sufficient revenues which, together with other available funds, shall be sufficient to meet all of its expenses and fulfill the terms of agreements made with the holders of the bonds, notes or other obligations, with interest, including interest on any unpaid installments of interest, and including all costs and expenses in connection with any action or proceedings on behalf of the holders, or from receiving payment of funds of the toll road authorities or other State agencies, as provided in any agreement provided for in the chapter, until the bonds, notes or other obligations, together with interest, are fully met and discharged or provided for. The standards required to be followed by the State in complying with the foregoing covenant shall be no more or less restrictive than the standards required to be followed by the State under its covenants with the toll road authorities in section 7 of P.L.1948, c. 454 (C. 27:23-7), section 11 of P.L.1952, c. 16 (C. 27:12B-11) and section 41 of P.L.1962, c. 10 (C. 27:12C-41). The failure of the State to appropriate moneys for any purpose of the chapter shall not be a violation of this section.

Source: 27:1B-14

COMMENT

This section is substantially identical to its source.

27A:5-14. Bonds or notes as legal investments

The State and all public officers, governmental units and agencies thereof, all banks, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees and other fiduciaries may legally invest any funds within their control in any bonds or notes issued pursuant to this chapter, and the bonds or notes shall be authorized security for public deposits.

Source: 27:1B-15

COMMENT

This section is substantially identical to its source.

27A:5-15. Tax exemption; property of authority; bonds, notes or other obligations

All property of the authority is declared to be public property devoted to an essential governmental purpose and shall be exempt from all taxes and special assessments of the State. All bonds, notes or other obligations issued pursuant to this chapter are hereby declared to be issued by a public body of the State and for an essential governmental purpose and the bonds, notes and other obligations, and the interest and income from them and all money received by the authority and available to pay or secure the payment of the bonds, notes and other obligations, or interest on them, shall be exempt from taxation, except for transfer inheritance and estate taxes.

Source: 27:1B-16

COMMENT

This section is substantially identical to its source.

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27A:5-16. Annual report

On or before the first day of September in each year the authority shall make an annual report of its activities for the preceding fiscal year to the Governor and Legislature. In addition, the authority shall respond to other requests for reports made by the Legislature. Each annual report shall set forth a complete operating and financial statement covering the authority's operations during the year. The authority shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants and the cost shall be considered an expense of the authority and a copy of the audit shall be filed with the Comptroller of the Treasury.

The State Auditor or his legally authorized representative may also examine the accounts and books of the authority.

The Department shall, not less than every six months, report to the Senate Transportation and Communications Committee and the Assembly Transportation, Communications and High Technology Committee on the status of each project financed pursuant to this chapter. The report shall also include information on major changes in project status or major impediments to the accomplishment of the planned projects.

Source: 27:1B-17

COMMENT

This section is substantially similar to its source. The requirement for a report to the Legislature five years after the effective date of the source section has been deleted as executed.

27A:5-17. Services to authority by other governmental units; payment of costs

All agencies of the State are authorized to render services to the authority within the area of their respective governmental functions, if requested by the authority. Insofar as possible, the cost of any services shall be met by the agencies.

Source: 27:1B-18

COMMENT

This section is substantially identical to its source.

27A:5-18. Regulations

The Commissioner is authorized to adopt regulations, in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.), as are deemed necessary to effectuate the purposes of this chapter.

Source: 27:1B-19

COMMENT

This section is substantially identical to its source.

27A:5-19. Transportation Trust Fund Account

There is hereby established in the General Fund an account entitled "Transportation Trust Fund Account." During any fiscal year in which the authority has bonds, notes or other obligations outstanding, the treasurer shall credit to this account:

~~a. Commencing with the last business day of each calendar month, an amount not less than \$7,333,333.00, provided that the amount credited shall be an amount equivalent to the revenue derived from \$0.025 per gallon from the tax imposed on the sale of motor fuels pursuant to chapter 39 of Title 54 of the~~

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~~Revised Statutes, as provided in Article VIII, Section II, paragraph 4 of the State Constitution, provided; however, such amount during any fiscal year shall not be less than \$88,000,000.00;~~

~~a. An amount equivalent to the revenue derived from \$0.09 per gallon from the tax imposed on the sale of motor fuels pursuant to chapter 39 of Title 54 of the Revised Statutes, as provided in Article VIII, Section II, paragraph 4 of the State Constitution, provides that such amount during any fiscal year shall not be less than \$405,000,000.00;~~

~~b. In addition to the amount credited in subsection (a) of this section, for each fiscal year, on the last business day of each calendar month, an amount equivalent to the revenue derived from \$0.045 per gallon from the tax imposed on the sale of motor fuels pursuant to chapter 39 of Title 54 of the Revised Statutes, provided; however, such amount during any month shall not be less than \$14,812,500.00, nor less than \$177,750,000.00 during any fiscal year; and~~

~~c. b. An amount equivalent to money received by the State in accordance with contracts entered into with toll road authorities or other State agencies, provided that the amount so credited shall not be less than \$24,500,000.00 in any fiscal year.~~

The treasurer also shall credit to this account, in accordance with a contract between the treasurer and the authority, an amount equivalent to the sum of the revenues due from the increase of fees for motor vehicle registrations collected pursuant to the amendment to R.S. 39:3-20 made by L. 1984, c. 73 and from the increase of fees for motor fuels user identification markers collected pursuant to the amendment to section 10 of P.L. 1963, c. 44 (C. 54:39A-10) made by L. 1984, c. 73 and from the increase in the tax on diesel fuels imposed pursuant to the amendment to R.S. 54:39-27 made by L. 1984, c. 73 and by P.L. 1987, c. 460, provided that the total amount credited during a fiscal year shall not be less than \$30,000,000.00.

~~c. In addition to the amounts credited to the account by this section every fiscal year, there shall be appropriated from the General Fund such additional amounts as are necessary to carry out the provisions of this act and the fees collected pursuant to subsection (a) of section 68 of P.L. 1990, c. 8 (C.17:33B-63) shall be credited to the account for the purposes of this act, provided the amount credited from such fees during any fiscal year shall not be less than \$60,000,000.~~

~~d. After approval by the voters of the constitutional amendment proposed in Senate Committee Substitute for Senate Concurrent Resolution No. 1 of 2000 or Assembly Concurrent Resolution No. 116 of 2000, in addition to the amount credited in subsection (a) of the this section, beginning January 1 following approval by the voters an amount equivalent to the revenue derived from the tax imposed on the sale of petroleum products pursuant to P.L. 1990, c. 42 (C.54:15B-1 et seq.), provided that such amount shall not be less than \$100,000,000 in the period January 1 through June 30 following approval by the voters and shall not be less than \$200,000,000 in any fiscal year thereafter and for the fiscal year commencing July 1, 2001 and for each fiscal year followin an amount equivalent to the revenue derived from the tax imposed under the "Sale and Use Tax Act," P.L. 1966, c. 30 (C.54:32B-1 et seq.) on the sale of new motor vehicles, provided that such amount shall not be less than \$80,000,000 for the fiscal year commencing July 1, 2001, not less than \$140,000,000 for the fiscal year commencing July 1, 2002, and no less than \$200,000,000 fro the fiscal year commencing July 1, 2003 and for each fiscal year following, as provided in Article VIII, Section II, paragraph 4 of the State Constitution.~~

No later than the fifth business day of the month following the month in which a credit has been made, the treasurer shall pay to the authority, for its purposes, the amounts then credited to the Transportation Trust Fund Account, provided that the payments to the authority shall be subject to and dependent upon appropriations being made by the Legislature.

Source: 27:1B-20

COMMENT

This section is substantially identical to its source. Underlining represents Legislative changes effective July 19, 1995 and July 1, 2000.

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27A:5-20. Special Transportation Fund

a. There is hereby established a separate fund entitled "Special Transportation Fund." This fund shall be maintained by the State Treasurer and may be held in depositories selected by the treasurer and invested as other funds in the custody of the treasurer. The Commissioner, not more frequently than monthly, may certify to the authority an amount necessary to fund payments by or on behalf of the Department, from appropriations to the Department from funds of the authority. The Commissioner's certification shall be deemed conclusive for purposes of this chapter. The authority, within 15 days of receipt of the certificate, shall transfer the amount certified to the treasurer for deposit in the Special Transportation Fund from available funds of the authority. Funds transferred shall be expended by the Department only pursuant to appropriations made by the Legislature for the purposes of this chapter.

b. The Department shall not expend any money except as appropriated by law, and shall not expend any funds except as are appropriated by specific projects identified by a description of the projects, the county or counties within which they are located, and amounts to be expended on each project in an appropriations act.

c. No funds appropriated, authorized or expended pursuant to this chapter shall be used to finance the resurfacing of highways by Department personnel, where that resurfacing would require the use of more than ~~150,000~~ 100,000 tons of bituminous concrete for that purpose in any calendar year, except that the Commissioner may waive this provision when he determines the existence of emergency conditions requiring the use of Department personnel for the resurfacing of highways, after the Department has effectively reached the ~~150,000~~ 100,000 ton limit.

d. In order to provide the Department with flexibility in administering the specific appropriations by project identified in the annual appropriations act, the Commissioner may transfer a part of any item to any other item subject to the approval of the Director of the Division of Budget and Accounting and of the Joint Budget Oversight Committee or its successor. Upon approval of the director and the committee, the transfer shall take effect.

~~e. Any federal funds which become available to the State for transportation projects which have not been appropriated to the department in the annual appropriations act, shall be deemed appropriated to the department and may, subject to approval by the Joint Budget Oversight Committee and the State Treasurer, be expended for any purpose for which such funds are qualified.~~

~~f. There shall be no appropriations from the revenue and other funds of the authority for regular and routine maintenance of public highways and its components, or operational activities of the department unrelated to the implementation of and indirect costs associated with, the capital program. The Commissioner shall include in his annual budget request sufficient funding to effectuate the purposes of P.L.2000, c. 73 (C.27A:5-32 et al.).~~

~~g. To the extent that salaries or overhead of the department or the New Jersey Transit Corporation are charged to transportation projects, each agency shall keep adequate and truthful personnel records, and time charts to adequately justify each such charge and shall make those records available to the external auditor to the authority.~~

~~h. The Commissioner shall annually, on or before January 1 of each fiscal year, report to the Governor and the Legislature how much money was expended in the previous fiscal year for salaries and overhead of the department and the New Jersey Transit Corporation. However, the amount expended from the revenues and other funds of the authority for salaries and overhead of the department and the New Jersey Transit Corporation for the fiscal years beginning July 1, 2001, July 1, 2002 and July 1, 2003 shall not exceed 13 percent of the total funds appropriated from the revenues and other nonfederal funds of the authority for those fiscal years.~~

Source: 27:1B-21

COMMENT

This section is substantially identical to its source. Underlining represents Legislative changes effective May 30, 1995 and July 20, 2000.

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27A:5-21. Annual funding maximums

~~a. The amount reported by the Commissioner for proposed projects to be financed shall not exceed \$900,000,000 and for the fiscal year beginning July 1, 2001 through the fiscal year beginning July 1, 2003 the annual amounts shall not exceed \$950,000,000 all amounts exclusive of federal funds.~~

~~b. For fiscal years beginning on July 1, 1990 2000 and through the fiscal year beginning on July 1, 1994 the amount authorized to be appropriated from the revenues and other nonfederal funds shall not exceed \$565,000,000 \$900,000,000 exclusive of federal funds, except as provided herein for the fiscal year beginning July 1, 2001 through the fiscal year beginning July 1, 2003 the annual amounts shall not exceed \$950,000,000, all amounts exclusive of federal funds. If, in any fiscal year, a greater amount is determined to be necessary to meet the financing requirements, the amount appropriated may be in excess of \$565,000,000 exclusive of federal funds; provided that in any such year: (1) in no event shall there be appropriated an amount greater than 105% of that \$565,000,000, and provided further, that (2) if, pursuant to paragraph (1) of this subsection, (i) a greater fiscal year appropriation is authorized in excess of the \$565,000,000 limit for a fiscal year, the ensuing fiscal year appropriation is to be reduced by the same amount that the appropriation for that fiscal year exceeds \$565,000,000.~~

~~b. c. The State Auditor shall develop procedures for the a unified annual auditing of expenditures made by the Department and the New Jersey Transit Corporation from the Special Transportation Fund, established by section 21 of P.L.1984, c. 73(C. 27:1B-21), funds appropriated for transportation projects from the revenues of the authority and shall cause a semi-annual audit to be made of these expenditures in order to determine the extent to which these funds are expended for costs directly related to the projects, including but not limited to salaries and other administrative expenses that these funds are expended for costs eligible for funding from the authority and in a manner consistent with appropriations made by the Legislature. The findings of such audits shall be transmitted to the presiding officer of each House of the Legislature, and to the Chair of the Senate Budget and Appropriations Committee, the Senate Transportation Committee, the Assembly Appropriations Committee, and the Assembly Transportation and Communications Committee or their successors. In addition, the State Auditor shall audit expenditures made for maintenance of public transportation projects every six months and shall transmit the findings of these audits to the Chairs of the Senate Transportation Committee and the Assembly Transportation and Communications Committee.~~

~~c. Until the filing of a public issuer's annual report by the Transportation Trust Fund Authority pursuant to section 12 of the "New Jersey Bond Review Board Act," P.L., c. (C.) (now pending before the Legislature as Assembly Bill No. 1199 of 1992),~~

~~d. The State Auditor shall review bond issuances of the authority and report to the Joint Budget Oversight Committee and to the members of the Senate Budget and Appropriations Committee and the Assembly Appropriations Committee, or their successors, on the status of the bonds of the authority and projects financed from the proceeds of the bonds. The report shall include the investment status of all unexpended bond proceeds and provide a description of any bond issues expected during a fiscal year, including type of issue, estimated amount of bonds to be issued and the expected month of sale.~~

Source: 27:1B-21.1

COMMENT

This section is substantially identical to its source. Underlining represents Legislative changes effective May 30, 1995 and July 20, 2000.

27A:5-22. Use of State appropriation

~~a. The State amount appropriated from the revenues and other funds of the Transportation Trust Fund Authority for transportation projects for any fiscal year may be used for the costs of salaries, wages and related~~

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payroll expenses incurred for periods of time public employees are actively engaged, either directly or indirectly, in the following transportation project-related activities:

~~(1) Preliminary engineering, which means location, design, and related work preparatory to the advancement of a project to physical construction.~~

~~(2) Construction engineering, which means the supervision and inspection of construction activities; additional staking functions considered necessary for effective control of the construction operation; testing material incorporated into construction; checking shop drawings and measurements needed for the preparation of pay estimates.~~

~~(3) Acquisition of rights-of-way, which means the preparation of right-of-way plans; making economic studies and other related preliminary work; appraisal for parcel acquisition; review of appraisals; preparation for and trial of condemnation cases; management of properties acquired; furnishing of relocation advisory assistance; and other related labor expenses.~~

~~(4) Highway and public transportation planning which means the orderly and continuing assembly and analysis of information about highways and public transportation, such as the history of development and their extent, dimensions and conditions, use, economic and social effects, costs and future needs.~~

~~(5) Research and development which means the search for more complete knowledge of the characteristics of the highway and public transportation systems and the translation of the results of research into practice.~~

~~(6) Administrative settlement costs - contract claims which means services related to the review and defense of claims against transportation projects.~~

~~(7) The costs incurred for analysis and award of contracts and agreements, auditing, environmental and bridge inspection work directly chargeable to, and for the benefit of, specific transportation projects.~~

~~b. The State amount appropriated from the revenues and other funds of the Transportation Trust Fund Authority for transportation projects for any fiscal year may be used for the cost of commercial transportation, the use of privately owned automobiles, and per diem or subsistence which is essential to the prosecution of the project and that is incurred in conformance with established policy of the Department or the corporation or of a county or municipality, as appropriate.~~

~~c. The cost of annual, sick, military, jury and other leave that is earned, accounted for, and used in accordance with established procedures may be considered payroll cost provided that the cost of leave is equally distributed to all activities, and the pro rata costs are representative of the amount that is earned and accrued while working on the project. Compensatory leave granted in lieu of payment of overtime to eligible employees may be considered payroll cost if it is accrued and granted under established policies on a uniform basis and the leave costs meets the other criteria of this subsection.~~

~~d. General administration, supervision and other unallowable overhead costs of a transportation project, which are not to be funded from State revenues of the authority, are those considered necessary for the management, supervision and administrative control of the Department and the corporation. Examples of such unallowable costs include the following types of personnel, related payroll benefit costs and other administrative or support services:~~

~~(1) Directors, department heads, legal, accounting, budgeting, personnel, and procurement units.~~

~~(2) Related clerical, secretarial, and other support services for personnel listed in paragraph (1) of this subsection.~~

~~(3) Management, supervision and administrative overhead costs incurred by other units or departments of State, county or municipal governmental organizations.~~

e. ~~Cost incurred for services rendered by employees generally classified as administrative may, however, be funded from the revenues of the authority for:~~

~~(1) A highway or transportation planning unit and a research and development unit, in the ratio of time spent on the participating portion of work in the unit to the total unit's working hours, and~~

~~(2) Other operating units if those employees are assigned for specific identifiable periods of time to perform project-related activities in the same manner as operating personnel.~~

Source: 27:1B-21.2

COMMENT

This section was repealed by L.1995, c. 108, § 18, eff. May 30, 1995.

~~27A:5-23. Public transportation projects, maintenance, expenses not included in reported amounts~~

~~Notwithstanding the provisions of any other law to the contrary, the amount required to be reported pursuant to section 27A:5-24 and the amount appropriated in any fiscal year commencing on or after July 1, 1993 pursuant to section 27A:5-20 shall not include any amount for the maintenance of public transportation projects:~~

Source: 27:1B-21.3

COMMENT

This section was repealed by L.1995, c. 108, § 18, eff. May 30, 1995.

~~27A:5-22. Utilization of funds; allocation of costs~~

~~The State amount appropriated from the revenues and other funds of the authority for any fiscal year may be utilized for any cost incurred in direct or indirect support or advancement of transportation projects authorized by the annual appropriations act, except that indirect costs shall not include the cost of routine operation and routine maintenance of a transportation project, or costs associated with the non-capital programs of the department and the New Jersey Transit Corporation. Costs which directly or indirectly support or advance more than one transportation project may be allocated among those projects in a manner the Commissioner finds reasonable, provided such costs are equitable and uniformly distributed among all work that was performed during the fiscal year or accounting period. The rate of indirect costs appropriated from the State amount in any fiscal year shall not exceed the indirect cost at additive, as calculated pursuant to the United States Office of Management and Budget Circular A-87, "Cost Principles Applicable to Grants and Contracts with State and Local Governments," applicable to federal funds.~~

Source: 27:1B-21.4

COMMENT

This section is identical to its source.

~~27A:5-23. Authority of Commissioner; loans; approval; annual reports~~

~~a. The Commissioner is authorized to enter into agreements with public or private entities or consortia for the loan of federal funds appropriated to the department for the purpose of financing all, or a portion of, the costs incurred for the planning, acquisition, engineering, construction, reconstruction, repair and rehabilitation of a transportation project by that public or private entity or consortia.~~

~~b. The Commissioner, with the approval of the State Treasurer, shall establish rules and regulations governing the qualifications of the applicants, the application procedures, the criteria for awarding loans, and the~~

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standards for establishing the amount, terms and conditions of each loan. The rules and regulations shall provide that the term of the loan agreement shall be consistent with terms and conditions as provided by applicable federal law.

c. Loans granted pursuant to this section shall be considered an investment or reinvestment of Special Transportation Fund funds within the meaning of subsection (a) of section 21 of P.L.1984, c. 73 (C.27A:5-20). Payments of interest and principal on loans granted pursuant to this section shall be credited to a special subaccount of the Special Transportation Fund and may be used for financing authorized projects. Monies appropriated from the special subaccount pursuant to this section shall be in addition to the total State amount authorized to be appropriated in a fiscal year pursuant to section 8 of P.L.1987, c. 460 (C.27A:5-21).

d. Each loan made pursuant to this section shall require the specific approval of the Joint Budget Oversight Committee, except for those loans agreed to by the Commissioner as part of an agreement for a demonstration project approved pursuant to P.L.1997, c. 136 (C.27A:16-15 et al.). The Chairman of the Joint Budget Oversight Committee may request periodic reports from the Commissioner on the status of any or all loans. The Commissioner shall provide reports so requested on a timely basis.

e. Transportation projects which are the subject of a loan agreement entered into pursuant to this section shall be included in the annual report of proposed projects prepared pursuant to section 22 of P.L.1984, c. 73 (C.27A:5-39) for the fiscal year in which the loan amount for those projects is to be appropriated.

Source: 27:1B-21.5

COMMENT

This section is identical to its source.

27A:5-24. Funding agreements for transportation projects

The Commissioner or the board of the New Jersey Transit Corporation with the approval of the Commissioner is authorized to enter into agreements for a period of year for the advancement of a transportation project to be funded by future year appropriations to the authority, except that, in the case of a transportation project involving appropriations in excess of \$100,000,000 in any fiscal year, the agreement shall be subject to approval of the Joint Budget Oversight Committee.

The Commissioner or the board of the New Jersey Transit Corporation may pledge grant monies or funds anticipated to be appropriated to those transportation projects in those agreements, provided that payment of monies pledged is subject to the availability of funds in the year in which the funds are to be appropriated.

Any transportation project which is the subject of an agreement authorized by this section shall appear in the annual report of proposed projects prepared pursuant to section 22 of P.L.1984, c. 73 (C.27A:5-39) for each fiscal year in which the agreement is in effect and the report shall indicate the amount to be appropriated, if any, to the project in the upcoming fiscal year.

Source: 27:1B-21.6

COMMENT

This section is substantially identical to its source.

27A:5-25. Closing accounts; expenditure of remaining funds

a. After the Commissioner has determined that a project financed through the authority has been completed, the Commissioner may direct that any account established for such project be closed, provided that the funds in any such account are less than \$1,000,000. The Commissioner may further direct that any appropriated funds remaining in such closed accounts be credited to a special subaccount of the Special Transportation Fund. In the event that an account for a project that has been completed exceeds \$1,000,000,

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the account shall not be closed and the funds credited to the special subaccount unless the Joint Budget Oversight Committee approves such action.

b. Subject to approval by the State Treasurer, the Commissioner may expend funds from the special subaccount established pursuant to subsection (a) of this section for any purpose for which the Legislature has previously appropriated funds and which the authority is authorized to undertake pursuant to section 5 of P.L.1984, c. 73 (C.27A:5-4). Any claims or costs which would have been paid from an account closed pursuant to this section may be paid from the special subaccount established pursuant to subsection (a) of this section, or from any other funds appropriated for such purposes.

Source: 27:1B-21.7

COMMENT

This section is substantially identical to its source.

27A:5-26. Credits to airport safety fund

Each year a nonlapsing sum of money shall be appropriated from funds held in the Special Transportation Fund, established pursuant to section 21 of P.L.1984, c. 73 (C.27A:5-20), and credited to the Airport Safety Fund, established in the General Fund pursuant to section 4 of P.L.1983, c. 264 (C.6:1-92), for use for any purpose pursuant to the "New Jersey Airport Safety Act of 1983," P.L.1983, c. 264 (C.6:1-89 et al.) and that sum shall be included in the annual report of projects prepared pursuant to section 22 of P.L.1984, c. 73 (C.27A:5-39). Funds so appropriated shall no longer be subject to the provisions and limitations of chapter 5 of Title 27A of the Revised Statutes, but instead shall be subject to the provisions and limitations of P.L.1983, c. 264 (C.6:1-89 et al.).

Source: 27:1B-21.8

COMMENT

This section is substantially identical to its source.

27A:5-27. Appropriation for operating expenses of New Jersey transit corporation

Any fiscal year in which the amount allocated by the Federal Government to the New Jersey Transit Corporation for public transportation operating expenses is less than in the previous fiscal year, an amount equal to the diminution may be appropriated from the revenues and other funds of the authority, excluding bond proceeds, to the department for the operating expenses of the New Jersey Transit Corporation, subject to approval provided in the annual appropriations act.

Source: 27:1B-21.9

COMMENT

This section is substantially identical to its source.

27A:5-28. Definitions

As used in this act:

a. "Federal infrastructure bank program" means the United States Department of Transportation State Infrastructure Bank Program provided for in section 350 of Pub.L.104-59 and Pub.L.102-240 as amended or superseded.

b. "Other assistance" means forms of financial assistance, in addition to loans, authorized by the federal infrastructure bank program, including but not limited to, use of funds to: provide credit enhancements; serve as a

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capital reserve for bond or other debt instrument financing; subsidize interest rates; ensure the issuance of letters of credit and credit instruments; finance purchase and lease agreements with respect to transit projects; and provide bonds or other debt financing instrument security.

Source: 27:1B-21.10

COMMENT

This section is substantially identical to its source.

27A:5-29. State Transportation Infrastructure Bank established

a. There is hereby established a special non-lapsing, revolving subaccount of the Special Transportation Fund to be known as the "State Transportation Infrastructure Bank" which shall be credited with: State and federal funds appropriated to the State Transportation Infrastructure Bank, monetary donations made available to the State to support the State Transportation Infrastructure Bank program and any monies received as repayment of the monies loaned or otherwise provided pursuant to this act. The Commissioner may establish subaccounts of the State Transportation Infrastructure Bank as may be required by the federal infrastructure bank program. The Commissioner shall administer and maintain the State Transportation Infrastructure Bank in accordance with the provisions of the federal infrastructure bank program.

b. Monies in the State Transportation Infrastructure Bank shall be used to provide loans or other assistance to public or private entities or consortia thereof for the purpose of financing all or a portion of the costs incurred for the planning, acquisition, engineering, construction, reconstruction, repair and rehabilitation of a transportation project or for any other purpose permitted under the federal infrastructure bank program.

c. Loans or other assistance granted pursuant to this section shall be considered an investment or reinvestment by the State Transportation Infrastructure Bank consistent with the federal infrastructure bank program and not a loan within the meaning of section 12 of P.L. 1995, c. 108 (C.27A:5-23).

Source: 27:1B-21.11

COMMENT

This section is substantially identical to its source.

27A:5-30. Commissioner; authority to enter into agreements; mandatory reports

a. The Commissioner is authorized to enter into agreements with public or private entities or consortia thereof for the use of monies from the State Transportation Infrastructure Bank to provide loans or other assistance for the purpose of financing all or a portion of the costs incurred for the planning, acquisition, engineering, construction, reconstruction, repair and rehabilitation of a transportation project or for any other purpose permitted under the federal infrastructure bank program. The terms of the agreements shall be consistent with the requirements of the federal infrastructure bank program.

b. The Commissioner shall report periodically, and at least annually, on the status of the State Transportation Infrastructure Bank program to the Joint Budget Oversight Committee or its successor.

Source: 27:1B-21.12

COMMENT

This section is substantially identical to its source.

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27A:5-31. Adoption of rules and regulations

The Commissioner shall adopt rules and regulations, pursuant to the "Administrative Procedure Act," P.L. 1968, c.410 (C.52:14B-1 et seq.), governing the State Transportation Infrastructure Bank Program.

Source: 27:1B-21.13

COMMENT

This section is substantially identical to its source.

27A:5-32. Legislative findings

The Legislature hereby finds and declares that:

- a. A balanced and improved transit and goods movement and highway system is of key importance to our State's continued prosperity and to the quality of life of our citizens.
- b. The State's citizens and businesses require a transportation system which provides adequate mobility to all of its citizens utilizing all modes.
- c. The State should consider and utilize, where appropriate, transportation approaches and concepts to reduce congestion, enhance mobility, discourage sprawl, and assist in the redevelopment of our cities, enhance suburbs and town centers, and otherwise improve the quality of life of our citizens.
- d. Stable and adequate dedicated funding is a prerequisite to the sensible planning of transportation projects, most of which are conceived, planned, designed and built over a span of several years.
- e. Additional investment is needed to bring the public highway and bridge system into a state of good repair, to reduce the backlog of infrastructure repair jobs, to maximize rail freight capacity, to promote bicycle and pedestrian safety, and to promote cycling and walking trips by providing and financing appropriate infrastructure.
- f. Ferries and ferry facilities, including those providing interstate service to points in New Jersey, are an increasingly important component of the State's intermodal transportation system and should be eligible for transportation assistance from the State.
- g. The system of financing under the New Jersey Transportation Trust Fund Authority has provided a stable source of funds to keep our transportation system in good repair and to provide funding for important new projects, which have enhanced that system.
- h. The renewal and improvement of the system of financing under the New Jersey Transportation Trust Fund Authority and a significant increase in the funding of that system are necessary to achieve the aforementioned goals and can be achieved without the necessity of increasing taxes.

Source: 27:1B-21.15

COMMENT

This section is substantially identical to its source.

27A:5-33. Use of best available technology

The Commissioner shall establish and implement a program to employ the best available technology to improve traffic signal operation throughout the State so as to avoid unnecessary delays, reduce air pollution, and allow traffic to move sequentially through signals on roads and highways throughout the State without stopping, to the greatest extent practicable without endangering or limiting pedestrian travel.

Source: 27:1B-21.16

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COMMENT

This section is substantially identical to its source.

27A:5-34. Report; recommended incentives

No later than March 31, 2001, the Commissioner shall submit a report to the Legislature containing recommended incentives to businesses to encourage a reduction in single occupancy trips.

Source: 27:1B-21.17

COMMENT

This section is substantially identical to its source.

27A:5-35. Report, identification of telecommuting opportunities

No later than January 1, 2001, the Chief Executive Officer and Secretary of the New Jersey Commerce and Economic Growth Commission, in consultation with the Commissioner and the State Treasurer, shall submit a report to the Legislature containing a program to identify sectors of the economy, or specific occupations, which are appropriate for telecommuting to increase telecommuting in the State.

Source: 27:1B-21.18

COMMENT

This section is substantially identical to its source.

27A:5-36. State highways; context sensitive design

Many State highways run through fully developed cities and suburban towns. In addition, many small villages in rural areas have State highways which pass through built-up residential areas or village centers. The traffic on many of these State highways, particularly large truck and speeding traffic, prevents these residential areas, town centers and future town centers from functioning as intended. The Commissioner shall study this issue and develop a departmental program which authorizes context sensitive design and examines the functional classifications of State highways running through developed cities and suburban towns. As used in this section, "context sensitive design" means a planning technique that embraces a collaborative, interdisciplinary process and recognizes the uniqueness of the community in planning transportation projects.

Source: 27:1B-21.19

COMMENT

This section is substantially identical to its source.

27A:5-37. Report; measures to improve safety of large trucks

The Commissioner shall report to the Legislature not later than January 1, 2001, on measures undertaken by the department and measures it recommends as necessary to improve the safety or to mitigate adverse impacts of large trucks which travel on New Jersey State and local roadways.

Source: 27:1B-21.20

COMMENT

This section is substantially identical to its source.

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27A:5-38. Installation of LED lighting in traffic signals

The Commissioner shall install light emitting diodes lighting ("LED lighting"), or lighting similar in energy and life cycle savings, in traffic signals on the State highway system from the amounts appropriated from the revenues and other funds of the New Jersey Transportation Trust Fund Authority. It is anticipated that this lighting will result in operational energy savings for State, county and municipal governments and provide congestion relief because the diodes have a 10-year life cycle as compared to the one year replacement cycle for regular light bulbs. The State shall develop a program to assist local governments to install LED lighting or lighting similar in energy and life cycle savings, in approved local traffic signals throughout the State. The Commissioner may consult with the State's public utility companies for assistance where appropriate to implement this program.

Source: 27:1B-21.21

COMMENT

This section is substantially identical to its source.

27A:5-39. Payment Preservation and Preventative Maintenance Program

There is hereby established in the Department of Transportation, a Pavement Preservation and Preventive Maintenance Program. In furtherance of this program, the Commissioner shall utilize cost-effective road materials, surface treatments and base rehabilitation methodology including, but not limited to, micro-surfacing, white topping and cold-in-place recycling. These cost-effective materials, surface treatments and methodologies shall be used in conjunction with standard road materials and surface treatments including, but not limited to, superpave, asphalt milling, asphalt overlays and crack sealing. The Commissioner shall authorize the use of cost-effective materials, surface treatments and methodologies where deemed appropriate by the department, but they shall be utilized as a regular and integral part of the road preservation and maintenance program, and in a manner sufficient to provide for safe roads as provided for in this act.

Source: 27:1B-21.22

COMMENT

This section is substantially identical to its source.

27A:5-40. Evaluation of roadway pavements; assignment of numerical ratings

The Commissioner shall continue to evaluate roadway pavements on the State highway system and assign numerical ratings to roads for maintenance and repair similar to any nationally recognized method.

Source: 27:1B-21.23

COMMENT

This section is substantially identical to its source.

27A:5-41. Report; numerical ranking of pavements

The Commissioner shall issue a report to the Governor and the Legislature at the end of each fiscal year containing the numerical ranking of pavements for roads needing maintenance and repair in accordance with the method developed in section 10 of this act. The report shall also identify the repair and maintenance projects that were completed during the fiscal year, including an estimate of the cost impact to the department for each maintenance and repair project that utilized road surface material or treatment.

Source: 27:1B-21.24

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COMMENT

This section is substantially identical to its source.

27A:5-42. Life cycle cost analysis and report

The Commissioner shall conduct a life cycle cost analysis of pavement surfaces and report the findings of the analysis to the Governor and the Legislature no later than one year after the date of enactment of this act. The analysis shall compare equivalent designs and shall be based upon New Jersey's actual historic project maintenance, repair and resurfacing schedules and costs as recorded by the Department of Transportation, and shall include estimates of user costs throughout the entire life of the pavement. As used in this section, "life cycle cost" means the total cost of the initial project and all anticipated costs for subsequent maintenance, repair or resurfacing over the life of the pavement.

Source: 27:1B-21.25

COMMENT

This section is substantially identical to its source.

27A:5-43. Congestion Buster Task Force; members; organization; study; hearings; dissolution

a. There is created in the Department of Transportation a task force to be known as the "Congestion Buster Task Force" to study and make recommendations concerning the reduction of traffic congestion in the State.

The members of the task force shall be appointed by the Commissioner in such number as the Commissioner shall designate from the Department of Transportation, the New Jersey Transit Corporation, business organizations, Transportation Management Associations, the counties, and members of the public.

b. The task force shall organize as soon as may be practicable after the appointment of its members and shall select a chairperson from among the members. The members shall select a secretary, who need not be a member of the task force.

The task force shall meet at the call of the chairperson.

The task force shall be entitled to call to its assistance and avail itself of the services of the employees of any State department, board, bureau, Commission or agency, as it may require and as may be available for its purposes, and to employ stenographic and clerical assistance and incur traveling and other miscellaneous expenses as may be necessary in order to perform its duties, within the limits of funds appropriated or otherwise made available to it for its purposes.

c. The task force shall conduct a study of highway traffic congestion in the State and develop a commuter options plan that would result in peak hour vehicle trips being "capped" at 1999 levels.

In developing the plan, the task force shall review relevant information and findings from other jurisdictions, both national and international. The plan shall include, but not be limited to, resources and incentives for public transportation, ridesharing, telecommuting and other travel reduction strategies. In making its recommendations for the plan, the task force shall include funding proposals, an implementation of the plan, and a method of evaluating progress toward the realization of the goal of the plan to cap peak hour vehicle trips at 1999 levels.

The task force shall also be charged with identifying the top 10 projects which can be quickly implemented to relieve congestion or improve safety.

d. The task force may meet and hold public hearings at such place or places as it shall designate and shall issue a final report containing its findings and recommendations, including any recommendations for legislation that

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it deems appropriate, no later than one year after the task force organizes, to the Governor, the President of the Senate and the Speaker of the General Assembly, and the members of the Senate Transportation Committee and the Assembly Transportation Committee, or the successor committees.

e. The task force shall dissolve one year following organization of the task force.

Source: 27:1B-21.26

COMMENT

This section is substantially identical to its source.

27A:5-44. Report; establishment or expansion of park-and-ride facilities

No later than July 1, 2001, the Commissioner shall report to the Governor and the Legislature on steps which the Commissioner recommends to provide for the establishment or expansion of park-and-ride facilities in areas of traffic congestion throughout the State and shall establish a goal of establishing or expanding at least two park-and-ride facilities in each of the successive 2001-2002, 2002-2003, 2003-2004 and 2004-2005 fiscal years. In the event that the department does not establish or expand at least two park-and-ride facilities in each of the preceding fiscal years, the Commissioner shall report to the Governor and the Legislature the reasons for the failure to establish or expand such facilities.

Source: 27:1B-21.27

COMMENT

This section is substantially identical to its source.

27A:5-45. Savings; funding of transportation projects

Any savings in the amount of debt service realized as a result of the sale of refunding bonds by the authority shall be used only to fund transportation projects.

Source: 27:1B-21.28

COMMENT

This section is substantially identical to its source.

27A:5-46. Other credit

In addition to those funds to be credited to the "Transportation Trust Fund Account" pursuant to section 20 of P.L.1984, c.73 (C.27A:5-19), the State Treasurer shall also credit to the account any and all additional funds which may now or hereafter be dedicated to transportation purposes by the State Constitution.

Source: 27:1B-21.29

COMMENT

This section is substantially identical to its source.

27A:5-47. Specific authorization by joint resolution

No new State highway route shall be constructed using the revenues and other funds of the authority unless specifically authorized by joint resolution. Nothing in this section shall impair the Commissioner's authority to modify, extend or widen existing State highway routes.

Source: 27:1B-21.30

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COMMENT

This section is substantially identical to its source.

27A:5-48. Transportation trust Fund Advisory Board established

a. There is hereby established a Transportation Trust Fund Advisory Board to be comprised of seven members. The Governor shall appoint three public members and the President of the Senate and the Speaker of the General Assembly shall each appoint one public member. The Commissioner or the Commissioner's designee and the State Treasurer or the State Treasurer's designee shall serve as ex officio members of the board. All of the public members shall have some experience in the field of transportation or finance. Each public member shall serve for a term of three years and shall serve until the member's successor is appointed and has qualified. Of the public members first appointed pursuant to this act, one member appointed by the Governor shall serve one year, two members so appointed shall serve two years, and the remainder of the public members shall serve three years. The Governor shall designate one of the public members to serve as chairperson of the board. The board shall meet a minimum of four times each year. The department shall provide staff to support the board.

b. The purpose of the Advisory Board shall be to review the department's long range capital planning, master plan and Capital Investment Strategy, including the overall program and to make recommendations to the Governor and the Legislature concerning the department's capital investment strategies and the continuation of the funding of the State's transportation system under the New Jersey Transportation Trust Fund Authority.

Source: 27:1B-21.31

COMMENT

This section is substantially identical to its source.

27A:5-49. Use of reclaimed asphalt pavement; state highways

a. Notwithstanding any law, rule or regulation to the contrary, the Commissioner of Transportation shall permit for public highways under the jurisdiction of the Department of Transportation the use of reclaimed asphalt pavement that constitutes a maximum of 25 percent by weight of the total pavement mixture for base and intermediate pavement courses and a maximum of 15 percent by weight of the total pavement mixture for surface pavement courses.

b. The Commissioner shall permit for public highways under the jurisdiction of the department the use of reclaimed asphalt pavement that constitutes from 25 to 50 percent by weight of the total pavement mixture for base and intermediate pavement courses, after an evaluation of the material properties of the reclaimed asphalt pavement in a "closed system" project. A "closed system" project is defined as a project on which the asphalt millings from the project are recycled back into the hot mix asphalt on that same project.

c. Reclaimed asphalt pavement shall not be used for open-graded and modified open-graded friction courses, or any other special purpose or premium asphalt mix required in specific projects to increase pavement skid resistance.

Source: 27:1B-21.32

COMMENT

This section is substantially identical to its source.

27A:5-50. Master plan; annual reports

a. To the end that the transportation system of the State shall be planned in an orderly and efficient manner and that the Legislature shall be advised of the nature and extent of transportation projects contemplated

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to be financed under this chapter, the Department shall submit a master plan for a period of five years to the Commission on Capital Budgeting and Planning, the Chairman of the Senate Transportation and Communications Committee and the Chairman of the Assembly Transportation, Communications and High Technology Committee, or their successors, and the Legislative Budget and Finance Officer, and the metropolitan planning organizations, at five year intervals commencing ~~December 15, 1984~~ March 1, 2001. The master plan shall set the direction for the Department's overall Capital Investment Strategy and subsequent annual Transportation Capital Programs submitted to the Legislature for approval pursuant to this section.

b. ~~The Department of Transportation, in conjunction with the New Jersey Transit Corporation, shall prepare a "Capital Investment Strategy" for at least a five-year period which shall contain, at a minimum, a statement of the goals of the department and the corporation in major selected policy areas and the means by which the goals are to be attained during that period, using quantitative measures where appropriate. The Capital Investment Strategy may be updated and submitted no later than March 1 of each year. The Capital Investment Strategy shall provide for a multi-modal, intermodal, seamless and technologically advanced transportation system. It shall recommend investment for major program categories, set overall goals for investment in the State's infrastructure, and develop program targets and performance measures. It may rely on infrastructure management systems as developed by the department to assess bridge conditions, pavement conditions, bridge, traffic and pedestrian safety, traffic congestion and public transit facilities. With respect to pavement conditions, the department shall set as a priority the utilization of efficient cost-effective materials and treatments as stated in section 9 of P.L.2000, c.73 (C.27A:5-39). In the event that there exist appropriate circumstances for the use of micro-surfacing and cold-in-place recycling, the department shall establish as a special priority the use of these materials and surface treatments. The goals of the Capital Investment Strategy shall include, but not be limited to, reduction of vehicular and pedestrian accidents, reduction in the backlog of projects, including one-half of the structurally deficient bridge repair projects and pavement deficiencies, and an increase in lane miles of bicycle paths, with a goal of constructing an additional 1,000 lane miles of bicycle paths in five years to reduce traffic congestion and for recreational uses. The construction of bicycle and pedestrian lanes, paths and facilities shall be subject to no stricter environmental requirements than are provided pursuant to federal law and regulations for such lanes, paths and facilities, notwithstanding the provisions to the contrary of State law and regulations, including State Executive Order No. 215 of 1989. With respect to the New Jersey Transit Corporation, the plan shall deal with the corporation's goals in the area of bus transportation and present a strategy and a preliminary timetable for the replacement of the current diesel bus fleet with a fleet of buses which have reduced emission of air pollutants. The corporation shall consider the feasibility of buses with improved pollution controls and that reduce particulate emissions and buses powered by fuel other than conventional diesel fuel, such as compressed natural gas vehicles, hybrid vehicles, fuel cell vehicles, biodiesel vehicles, vehicles operated on ultra low sulfur fuel, vehicles operated on any other bus fuel approved by the United States Environmental Protection Agency, and the like. The corporation may consider as part of its strategy, cooperative efforts with bus manufacturers, and the solicitation of federal support, in developing a "clean bus" with air pollution controls superior to currently available technology. For the fiscal year beginning July 1, 2007 and each fiscal year thereafter, all buses purchased by the New Jersey Transit Corporation shall be buses with improved pollution controls and that reduce particulate emissions or buses powered by fuel other than conventional diesel fuel, such as compressed natural gas vehicles, hybrid vehicles, fuel cell vehicles, biodiesel vehicles, vehicles operated on ultra low sulfur fuel, vehicles operated on any other bus fuel approved by the United States Environmental Protection Agency, and the like. In the event that the corporation is not able to meet the bus purchase requirements set forth in this section with respect to any fiscal year, prior to the commencement of the fiscal year the board of the corporation shall by resolution submit a report to the Legislature detailing its inability to meet the requirements and the reasons therefore and shall submit the report to the Senate and General Assembly when both houses are in session, including therein a request to be exempted from the bus purchase requirements of this section with regard to the fiscal year in question. The President of the Senate and the Speaker of the General Assembly shall cause the date of submission to be entered upon the Senate Journal and the Minutes of the General Assembly. If a joint resolution approving the exemption is passed by the Legislature and signed by the Governor prior to the commencement of the fiscal year in question, the corporation shall be exempt from the requirements for that fiscal year.~~

The plan shall also detail the planned investment of capital funds for public transportation projects of companies other than the New Jersey Transit Corporation engaged in the business of providing motor bus transportation. The plan shall demonstrate that such investment adequately addresses the finding in section 2 of P.L.1979, c.150 (C.27:25-2) that in the provision of public transportation services it is desirable to encourage to the maximum extent feasible the participation of private enterprise.

c. On or before March 1 of each year, the Commissioner shall submit a report of proposed projects to be financed in the ensuing fiscal year, including a description of the projects, the county or counties within which they are to be located, a distinction between State and local projects, and the amount estimated to be expended on each project and also including a financial plan designed to implement the financing of the proposed projects. This report shall be known as the "Annual Transportation Capital Program" for the upcoming fiscal year. It shall include proposed projects of both the Department of Transportation and the New Jersey Transit Corporation. The program shall be consistent with, and reflective of, the goals and priorities of the Capital Investment Strategy and the program shall include an explanation, which demonstrates how it is consistent with, and reflective of, the goals and priorities.

d. On or before March 1 of each year, the Commissioner shall also submit a "Transportation Trust Fund Authority Financial Plan" designed to implement the financing of the proposed projects. The financial plan shall contain an enumeration of the bonds, notes or other obligations of the authority, which the authority intends to issue, including their amounts and conditions. The financial plan shall set forth a complete operating and financial statement covering the authority's proposed operations during the ensuing fiscal year, including amounts of income from all sources, including the proceeds of bonds, notes or other obligations to be issued, as well as interest earned. In addition, the plan shall contain proposed amounts to be appropriated and expended, as well as amounts which the Department anticipates to obligate during the ensuing fiscal year for any future expenditures.

The report e. The Capital Investment Strategy, the Annual Transportation Capital Program, and the Transportation Trust Fund Authority Financial Plan shall be submitted to the Senate and General Assembly. Within 30 days of its receipt, the Senate or the General Assembly may object in writing to the Commissioner in regard to any project or projects in the Annual Transportation Capital Program it disapproves or which it is of the opinion should be modified or added to or any additional or alternative projects considered or in regard to any element of the financial plan. The Commissioner shall consider the objections and recommendations and resubmit the report within 10 days, containing any modifications based upon the Commissioner's consideration of the objections or recommendations.

Source: 27:1B-22

COMMENT

This section is substantially identical to its source. Underlining represents Legislative changes effective May 30, 1995 and July 20, 2000.

27A:5-51. Projects necessary for completion of circle of mobility; appropriations; schedule for completion

a. The Commissioner of Transportation shall annually include in the list of proposed projects submitted to the Legislature pursuant to section 22 of P.L.1984, c.73 (C.27A:5-39) annual funding for such projects as are necessary to complete the Circle of Mobility, as defined in section 3 of P.L.1984, c.73 (C.27A:5-2). The Legislature shall annually appropriate from the revenues and other funds of the New Jersey Transportation Trust Fund Authority such sums as are necessary to effect this completion.

b. The New Jersey Transit Corporation shall proceed expeditiously to complete the Circle of Mobility. To insure adherence to this requirement, the corporation shall provide a schedule for this completion, as well as periodic progress reports on the status of the various projects comprising the Circle of Mobility, including but not limited to project descriptions, the construction status to date of each project, additional work required, together with related time schedules to complete each project, the amounts and sources of funds appropriated to date and

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the estimated additional amounts and sources of funds needed to complete each project, and any modification to the original scope of a project, to the Senate Transportation Committee, the Assembly Transportation and Communications Committee, the Senate Legislative Oversight Committee, and the Assembly Regulatory Oversight Committee, with the schedule due 60 days after the effective date of this act and the progress reports at six month intervals thereafter.

Source: 27:1B-22.1

COMMENT

This section is substantially identical to its source.

27A:5-52. Urban transportation supplement to the State Transportation Plan

a. The Department in conjunction with the New Jersey Transit Corporation and after consultation with the Department of Labor, the Office of State Planning, the New Jersey Commission on Capital Budgeting and Planning and any other interested federal, State, regional or local agency shall prepare an urban transportation supplement to the State Transportation Plan. The supplement shall address the current and projected transportation needs of the Atlantic City, Camden, Elizabeth, Jersey City, Newark, Paterson and Trenton urban areas and shall make recommendations for meeting these needs with particular emphasis on the transportation problems of the State's inner city residents who are employed by or who are seeking employment with employers located in suburban areas of the State.

b. The urban transportation supplement shall include descriptions of the current and projected transportation needs of these urban areas and the plans and recommendations for meeting those needs. The supplement shall include recommendations for consideration by the Legislature of public highways, public transportation services and transportation projects to meet the needs and projected needs of the designated urban areas and address the transportation problems faced by the inner city residents commuting to suburban areas for the purposes of employment.

c. The requirement of an urban transportation supplement to the State Transportation Plan required by this act shall be in addition to the requirement of a master plan and shall be separate from those transportation plans required to be prepared by existing metropolitan planning organizations.

d. The urban transportation supplement to the State Transportation Plan shall be submitted to New Jersey Commission on Capital Budgeting and Planning, the Chairman of the Senate Transportation and Public Utilities Committee and the Chairman of the Assembly Transportation Committee. The supplement shall be updated by the Department of Transportation as a supplement to each five-year State Transportation Plan.

Source: 27:1A-5.8; 27:1A-5.9; 27:1A-5.10; 27:1A-5.11; 27:1A-5.12

COMMENT

Subsection (a) is substantially identical to 27:1A-5.8. Language has been added to the subsection continuing the substance of 27:1A-5.10. Subsection (b) is substantially identical to 27:1A-5.9. Subsection (c) is substantially identical to 27:1A-5.11. Subsection (d) is substantially identical to 27:1A-5.12. The provision in 27:1A-5.12 concerning the time of first filing has been deleted as executed.

27A:5-53. Construction of park-and-ride lots and facilities

The Commissioner of Transportation may, pursuant to subsection (b) of section 5 of P.L.1966, c.301 (C.27A:2-3):

a. Acquire by purchase, condemnation, lease, gift or otherwise, on terms and conditions and in the manner the Commissioner deems proper, any land or property, real or personal, tangible or intangible, for the purpose of establishing a park-and-ride lot or facility;

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b. Plan, design, construct, equip, operate, improve or maintain, either directly or by contract with any public or private entity, a park-and-ride lot or facility;

c. Approve a park-and-ride lot or facility for use in whole or in part for public park-and-ride purposes, provided that there is a written agreement between the Commissioner and the owner of the lot or facility in which the owner agrees to the use of the lot or facility for public park-and-ride purposes.

Nothing in this section may be construed as affecting the power or authority of any public or private entity to establish a park-and-ride lot or facility without the approval of the Commissioner to the extent otherwise provided or permitted by law.

Source: 27:1A-5.13

COMMENT

This section is substantially identical to its source.

27A:5-54. Indemnification of owners, operators and maintainers of approved park-and-ride lots and facilities

The Commissioner of Transportation, or the Commissioner's designee, may agree to defend and indemnify any person, who, pursuant to a written agreement with the Commissioner entered into pursuant to subsection c. of section 1 of this amendatory and supplementary act, owns, operates, or maintains an approved park-and-ride lot or facility, against claims, causes of action, demands, costs or judgments against that person arising as a direct result of the operation, ownership or maintenance of that approved park-and-ride lot or facility. The Commissioner is authorized to reach an agreement to defend and indemnify a person upon the terms and limitations the Commissioner deems reasonable and appropriate.

An agreement to defend and indemnify pursuant to this section does not bar, reduce, limit or affect any remedies which the Commissioner may have to enforce the Commissioner's agreement or to assert a claim for damages to which the Commissioner may be entitled arising out of the person's failure to perform the agreement, or for the recovery of funds expended for the defense of a person if the defense was undertaken in response to a claim or cause of action brought against the person which is proven to have arisen from gross negligence, willful misconduct, fraud, intentional tort, bad faith or criminal conduct.

No one other than the person owning, operating, or maintaining the approved park-and-ride lot or facility pursuant to an agreement with the Commissioner has the right to enforce any agreement for defense or indemnification between that person and the Commissioner.

Source: 27:1A-5.14

COMMENT

This section is substantially identical to its source.

27A:5-55. Contracts by treasurer, Commissioner and authority

In order to implement the arrangement provided for in this chapter, the treasurer, the Commissioner and the authority may enter into contracts. The contracts shall provide for the credit to the Transportation Trust Fund Account in the amounts provided for in this chapter and for the payment to the authority of the amounts credited to the Transportation Trust Fund Account. The contracts shall also provide for the payment by the authority of the amounts provided for in section 20 of this chapter and for expenditures from the Special Transportation Fund. The contracts shall be on terms and conditions determined by the parties and may contain terms and conditions desirable to secure the bonds, notes and other obligations of the authority, provided, however, that the incurrence of any obligation by the State under the contract or contracts, including any payments to be made from the

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Transportation Trust Fund Account or the Special Transportation Fund, shall be dependent upon appropriations being made by the Legislature.

Source: 27:1B-23

COMMENT

This section is substantially identical to its source.

27A:5-56. Expenditures with firms owned and controlled by socially and economically disadvantaged individuals and by women

Subject to definitions and procedures as the Commissioner prescribes by regulation, not less than 10% of the money appropriated or authorized pursuant to this chapter and expended with private firms for construction and professional services, shall be expended, either directly or through subcontracting requirements, with business concerns owned and controlled by socially and economically disadvantaged individuals and, in addition to and exclusive of this requirement, not less than 4% of the money shall be expended, either directly or through subcontracting requirements, with business concerns owned and controlled by women.

Source: 27:1B-24

COMMENT

This section is substantially identical to its source.

27A:5-57. No limit, alteration or impairment of rights or security of holders under contracts

Nothing in this chapter shall be construed to alter in any way the contract rights, security or obligations of the holders of bonds and notes now issued or to be issued in the future by toll road authorities or by other State agencies.

Source: 27:1B-28

COMMENT

This section is substantially identical to its source.

CHAPTER 6 - AID TO LOCAL TRANSPORTATION

27A:6-1. County, municipal projects

a. The Commissioner, pursuant to appropriations or authorizations by the Legislature, may allocate to counties and municipalities funds for the planning, acquisition, engineering, construction, reconstruction, repair, resurfacing and rehabilitation of public highways and the planning, acquisition, engineering, construction, reconstruction, repair, maintenance and rehabilitation of public transportation projects and of other transportation projects which a county or municipality is authorized by law to undertake. The Commissioner shall make no allocation to a county or municipality without certification:

(1) that a comprehensive plan or plans for the effective allocation, utilization and coordination of available federal and State transportation aid has been approved by the Commissioner with respect to that county or municipality, and

(2) that the county or municipality has agreed that State aid provided under this section is provided in lieu of federal aid for the federal aid urban system program and that any federal aid for the federal aid urban system program attributable to the area will be programmed by the Department of Transportation for projects of regional significance. In any year in which insufficient funds have been appropriated to meet the minimum county allocations established in this section, the Commissioner shall determine on a prorated basis the amount of the

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deficiency for each county having a minimum allocation and allocate from funds available under the federal aid urban system program sufficient funds to meet the minimum allocations.

b. The Commissioner, pursuant to appropriations or authorizations by the Legislature and pursuant to the provisions of subsection (d) of this section, shall allocate discretionary State aid to municipalities for highways under their jurisdiction and for emergency transportation projects, except that the amount to be appropriated for this program shall be 15% of the amount appropriated pursuant to the provisions of paragraph (2) of subsection (d) of this section.

c. The Commissioner, pursuant to appropriations or authorizations by the Legislature and pursuant to the provisions of subsection (d) of this section, shall allocate State aid to municipalities for highways under their jurisdiction, except that the amount to be appropriated for this purpose shall be 85% of the amount appropriated pursuant to the provisions of paragraph (2) of subsection (d) of this section. The amount to be appropriated shall be allocated on the basis of the following distribution factor:

$$DF = \frac{Pc}{Ps} + \frac{Cm}{Sm}$$

Where, DF equals the distribution factor

Pc equals county population

Ps equals State population

Cm equals municipal road mileage within the county

Sm equals municipal road mileage within the State.

After the amount of aid has been allocated based on the above formula, the Commissioner shall determine priority for the funding of municipal projects within each county, based upon criteria relating to volume of traffic, safety considerations, growth potential, readiness to obligate funds and local taxing capacity. In addition to the above criteria used in determining priority of funding of municipal projects in each county, the Commissioner shall consider whether a project is intended to remedy hazardous conditions as identified for the purposes of providing transportation pursuant to N.J.S. 18A:39-1.2 for school pupils.

For the purposes of this subsection, (1) "population" means the official population count as reported by the New Jersey Department of Labor; and (2) "municipal road mileage" means that road mileage under the jurisdiction of municipalities, as determined by the Department.

d. There shall be appropriated at least \$30,000,000 in each fiscal year for the purposes provided in this section.

(1) Of that appropriation, the Commissioner shall allocate \$5,000,000 as State aid to any municipality qualifying for aid pursuant to the provisions of P.L. 1978, c. 14 (C. 52:27D-178 et seq.). The Commissioner shall allocate the aid to each municipality in the same proportion that the municipality receives aid under P.L. 1978, c. 14.

(2) The remaining amount of the appropriation shall be allocated pursuant to the provisions of subsections b. and c. of this section.

Source: 27:1B-25

COMMENT

This section is substantially identical to its source. Underlining reflects Legislative changes effective May 9, 1995.

27A:6-2. State aid to counties and municipalities; basis of aid

State aid to counties and municipalities pursuant to section 25 of P.L. 1984, c. 73 (C. 27A:5-42), may, at the discretion of the Commissioner, be disbursed to any individual county or municipality on a grant basis or on a cost reimbursement basis.

Source: 27:1B-25.1

COMMENT

This section is substantially identical to its source.

27A:6-3. Use of reclaimed asphalt pavement; public highways

Notwithstanding any law, rule or regulation to the contrary, counties and municipalities receiving State funds for transportation projects shall permit for public highways under their jurisdiction the use of reclaimed asphalt pavement that constitutes a maximum of 25 percent by weight of the total pavement mixture for base and intermediate pavement courses and a maximum of 15 percent by weight of the total pavement mixture for surface pavement courses.

Source: 27:1B-25.2

COMMENT

This section is substantially identical to its source.

27A:6-4. Evaluation of reclaimed asphalt pavement in closed system projects

Counties and municipalities receiving State funds for transportation projects shall permit for public highways under their jurisdiction the use of reclaimed asphalt pavement that constitutes from 25 to 50% by weight of the total pavement mixture for base and intermediate pavement courses, after an evaluation of the material properties of the reclaimed asphalt pavement, in a "closed system" project. A "closed system" project is defined as a project on which the asphalt millings from the project are recycled back into the hot mix asphalt on that same project.

Source: 27:1B-25.3

COMMENT

This section is substantially identical to its source.

27A:6-5. Prohibited uses

Reclaimed asphalt pavement shall not be used for open-graded and modified open-graded friction courses, or any other special purpose or premium asphalt mix required in specific projects to increase pavement skid resistance.

Source: 27:1B-25.4

COMMENT

This section is substantially identical to its source.

27A:6-6. Inclusion of state aid in local budgets

Upon notification by the Commissioner of the amount of State aid approved for a project, it shall be lawful for a county or municipality to:

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a. include that amount in its budget, and to make commitments against the amounts so included in its budget; and

b. borrow money on temporary loan not exceeding the amount of the State aid approved for the project, and apply the proceeds of the loan to the payment of the cost of the project. The county or municipality shall repay the temporary loan upon receipt of the State aid.

Source: 27:1B-26; 27:1B-27

COMMENT

This section is substantially identical to its sources. The introductory material is found in both 27:1B-26 and 27:1B-27. Subsection (a) is derived from 27:1B-26. Subsection (b) is derived from 27:1B-27.

CHAPTER 11 - STATE HIGHWAYS

27A:11-1. Definitions

As used in this chapter:

- a. "Construction" means the original building of a highway.
- b. "Improvement" means any work on a highway subsequent to its original construction.
- c. "State Highway" means a highway under the jurisdiction of the Commissioner.

Source: 27:7-1

COMMENT

This section replaces 27:7-1 which contains more than 20 definitions. A number of factors explain the difference between the former and revised statute. Many former definitions are unnecessary, defining terms not important to the subject matter of this chapter or used only in their common meaning. Other definitions make distinctions that are not significant in this context such as the distinction between "road" and "street."

The distinction between "construction" and "improvement" is derived from the definitions in 27:7-1 of "betterment," "extraordinary repairs," "improvement," "maintenance," "reconstruction," "repairs" and "resurfacing." The distinction is retained only because "construction" of a highway requires certain preliminary steps not required for "improvement." See N.J.S. 27A:11-3.

The definition of "state highway" is substantially identical to that contained in 27:7-1. The phrase is used frequently and identifies the highways over which the Commissioner has special authority and responsibility. "Highway" is defined in 27A:1-1.

27A:11-2. Routes of state highways

a. The state highway system shall consist of the routes of existing state highways, routes established by statute, and routes established by administrative regulation as of the date of this enactment.

b. For each route, the Commissioner shall adopt a regulation stating a general description of the route, including its end points and the municipalities through which it passes and whether or not the highway has been built.

c. The Commissioner may add a route to the state highway system by adoption of a regulation as provided by subsection (a). The Commissioner may remove any route from the state highway system by regulation. No action may be taken to construct a highway on a route established by regulation until the regulation has been in effect for 60 days.

Source: 27:6-1; 27:6-1.1; 27:6-2; 27:6-3

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COMMENT

In theory, the routes of state highways are established by statute. See, N.J.S. 27:6-1. However, the statutory description of routes does not provide an accurate picture of the state highway system. Many highways described have never been built. See, N.J.S. 27:6-1 Route #2-N approved May 25 1938. Others, while built, follow different routes than those described. See, N.J.S. 27:6-1 Route #3 (both as in statute as compiled and as changed by L.1949 c.292). Nor can the statutory routes be considered the exclusive authority for establishment of state highways. See Route #19 beginning at exit 155P of the Garden State Parkway and ending at I-80 west of Paterson. N.J.S. 27:1A-5 is used as the authority for highways not on routes established by statute.

This section abandons the approach of statutory route descriptions. It provides that the Commissioner establishes new routes by regulation. The Administrative Procedure Act will give an opportunity for interested parties to be heard. See, 52:14B-4. That process will provide a reasonable middle course between legislative oversight and unregulated administrative decision. The final sentence of subsection (c) delays construction of routes established by regulation to allow time for legislative review.

Subsection (a) continues the routes now authorized by statute or built as part of the system. However, the Commissioner is given the duty of placing accurate descriptions of these routes in the regulations.

27A:11-3. Procedure for laying out highway

a. When the Commissioner proposes to establish the line of a highway for construction, the proposal shall be considered an administrative regulation and shall be subject to the Administrative Procedure Act. The Commissioner shall afford residents of a municipality affected by the proposed highway a full and fair hearing to express their views concerning the highway and the proposed alignment. The Commissioner shall hold the hearings at convenient locations and times and shall provide thirty days' notice of the hearings in the newspapers used for notice of proposed amendments to the land use master plan in each municipality and county through which the proposed highway will pass.

b. The line of a highway shall be established only when the objective of the proposed highway is not reasonably achievable by:

(1) improvements in highway maintenance and safety;

(2) projects that modify existing highways but provide for minimal relocation or new highway construction; or

(3) improvements in, or adoption of transit alternatives, including mass transit alternatives.

Source: 27:7-66

COMMENT

The requirement for hearings prior to the establishment of the line of a new highway is derived from 27:7-66. That section does not specify the nature of the hearing or of the decision process, but the nature of the decision and its effect on residents in the area make the process for adoption of administrative rules under 52:14B-4 appropriate. The notice requirement is derived generally from 40:55D-13, which governs notice of hearings concerning a municipal land use master plan. Like a master plan, the route of a highway has the capacity to affect the use of a large number of properties. Subsection (b) is new. It establishes the principle that not only must the particular line of the highway be justified over other possible lines, but also the new highway itself must be justified over other alternatives.

27A:11-4. Map, plan or report indicating proposed highway; filing

a. When the Commissioner approves a proposed line of any new state highway, the Commissioner shall file a certified copy of a map, plan or report setting forth the proposed line of the highway with the county clerk of each county in which the proposed highway is located, and with the municipal clerk, planning board and building inspector of each municipality in which the proposed highway is located.

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b. The Commissioner may amend any map, plan or report filed pursuant to this section by filing certified copies of a map, plan or report indicating the changes to be made in the proposed line of the highway, and filing the amended map, plan or report in the manner set forth in subsection (a).

c. When the Commissioner approves a proposed line of any new state highway, the Commissioner shall indicate whether he is vacating any portion of a previously established route. Upon the request of an interested person and the payment of a fee established by the Commissioner, the Commissioner shall certify the fact of the vacated portion of the highway.

Source: 27:7-21.3, 27:7-66

COMMENT

Subsections (a) and (b) require the filing of a map of the line rather than permitting it. This filing requirement differs from the source section 27:7-66. The limitation on the width of the highway is deleted as unnecessary. Subsections (a) and (b) also delete the required certification that residents have been given an opportunity to be heard in favor of the more precise hearing requirements found in 27A:11-3.

Subsection (c) is substantially similar to 27:7-21.3.

27A:11-5. Effect of filing; recommendation of the Commissioner

a. A municipality that receives any application for a building permit or approval of a subdivision plat for land that abuts or is located wholly or partially within the proposed line of the new highway shall refer the application and the site plan to the Commissioner for review.

b. The municipality may not issue a building permit or approve a subdivision plat on an application made after the filing of a map, plan or report without the recommendation of the Commissioner until 45 days have elapsed from the Commissioner's receipt of the application and site plan. Within the 45 day period, the Commissioner may:

(1) notify the municipality and the owner of the land of the Commissioner's probable intention to acquire the land or part of it. The municipality shall not take any further action for an additional period of 120 days following the receipt of the Commissioner's notice. If the Commissioner has not acquired, agreed to acquire, or filed a petition to condemn the property within the additional 120 day period, then the municipality may act upon the pending application in accordance with law;

(2) modify the application and notify the municipality and owner of the land that the Commissioner does not object to the granting of the application or approval of the subdivision plat as modified. Within 20 days of receipt of the notice, the municipality may, with the consent of the applicant, grant the permit or approval of the subdivision plat incorporating the Commissioner's modifications; or

(3) notify the municipality and owner of the land that the Commissioner does not object to the granting of the permit or approval of the subdivision plat. On receipt of this notice, the municipality may act on the application.

c. This section shall not limit the authority of a municipality from incorporating a proposed line of a new State highway in the master plan or official map of the municipality or from taking any action with respect thereto as may be authorized by law.

Source: 27:7-67

COMMENT

This section is substantially similar to its source.

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27A:11-6. Taking over highway by agreement

a. The Commissioner may take over any highway, or portion thereof, as a state highway by entering into an agreement with the public entity which, or person who, controls the highway. The agreement shall: (1) transfer the jurisdiction of the highway to the Commissioner, (2) transfer the title of the property on which the highway is located to the Commissioner, (3) allocate costs of maintaining the highway, (4) allocate rights and duties in regard to consents, grants or contracts to use highway property for tracks, pipes, wires and the like, and (5) resolve all other issues between the parties.

b. If the highway is a toll road, the agreement shall transfer to the Commissioner any bonds for the road issued prior to the take-over of the highway. If the Commissioner takes over a portion of a toll road, the agreement shall indicate what percentage of the toll road the Commissioner has taken over from the prior public entity in control of the toll road, and shall transfer to the Commissioner the percentage of the total value of the bonds corresponding to the percentage of the toll road taken over by the Commissioner.

Source: New

COMMENT

N.J.S. 27:7-4 through 27:7-10 governs the process of state take-overs of local roads. While those sections are fairly detailed, they fail to cover one common situation: the take-over of a road by agreement. This section fills that gap. Subsection (a) provides for agreements and outlines the subjects that should be included in a take-over agreement. Subsection (b) deals with the problem of toll roads. Where bonds outstanding would have been paid from toll receipts, it is appropriate to transfer the bonds with the toll road. In other circumstances, the section does not require the Commissioner to pay the public entity for the take-over of a road. The issue of payment is best left to agreement between the parties. Compare N.J.S. 27:7-9 with N.J.S. 27:7-10.

27A:11-7. Taking over highway without agreement

a. When the Commissioner intends to take over a highway, or a portion of a highway, from a public entity, and the public entity controlling the highway objects to the take-over, the proposal to take over the highway shall be considered an administrative regulation and shall be subject to the Administrative Procedure Act. The Commissioner shall not take over the highway, unless the take-over of the highway is found at a hearing to advance the public interest in efficient and economical transportation. The Commissioner shall give written notice of the hearing to the public entity and publish the notice in a manner appropriate to inform those most likely to be affected by the take-over of the highway.

b. When the Commissioner takes over a highway without the agreement of the public entity which, or person who, controls the highway, the Commissioner shall reimburse the public entity or person for actual losses sustained as a result of the take-over of the highway. The order issued by the Commissioner shall contain the provisions required for an agreement taking over a highway.

Source: 27:7-4; 27:7-5; 27:7-9

COMMENT

Subsection (a) is substantially similar to sections 27:7-4 and 27:7-5 but extends the source sections by specifying the kind of hearing and the nature of the findings that must be made before the Commissioner may take over a highway without the agreement of the person or public entity controlling the road. Subsection (b) states the policy of section 27:7-9.

27A:11-8. Existing contracts unaffected

If at the time the Commissioner intends to take over a highway, a contract for work has been awarded for work on the highway, but the work has not been completed, the provisions of this chapter shall be suspended until the work is completed.

Source: 27:7-8

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COMMENT

This section is substantially identical to its source.

27A:11-9. Location of state highways in county parks

a. When the Commissioner intends to lay out or improve a highway that is located in a park under the jurisdiction of the park Commission organized under sections 40:37-96 to 40:37-174, the Commissioner first shall obtain the consent of the park Commission.

b. The consent of the park Commission shall be set forth in an agreement between the Commissioner and the park Commission. The agreement shall contain the terms of the construction or improvement of the highway. The park Commission may convey lands to the Commissioner under the agreement. Until the Commissioner obtains the consent of the park Commission, the Commissioner may enter the park only to survey and examine the property.

c. If the park Commission does not consent, the highway may be laid out or improved only when the Commissioner finds that the highway is not reasonably achievable by an alternative and that the design of the highway minimizes its effects upon the park.

Source: 27:7-36

COMMENT

This section continues the general purpose of the source statute. That statute has been held to provide that county park land may not be condemned for highway purposes without an agreement from the park Commissioners on the route of the highway. State v. Union County Park Commission, 48 N.J. 246 (1966). However, the park Commissioners may not withhold their agreement arbitrarily. Id. at 253.

This section, like its source, provides for consent of the park Commissioners. It requires that the consent be set out in an agreement defining the terms for the construction of the highway. In the absence of agreement, the park may be taken for highway only when the Commissioner finds that there is no alternative to the taking and that the proposed lay out or improvement of a highway minimizes damage to the park.

27A:11-10. Requirements for constructing or improving highways

a. The Commissioner shall construct and improve state highways in accordance with accepted standards for the construction and improvement of roads.

b. Work on state highways may be done by employees of the Commissioner, or persons or public entities under contract with the Commissioner. When the Commissioner contracts with a public entity for work on state highways, the contract shall provide for the allocation of the costs of the work.

Sources: 27:7-11, 27:7-19 and 27:7-25

COMMENT

Subsection (a) establishes the general principle that highways should conform to accepted standards for highways. While the principle is in accord with practice, no single statute now states it. The subsection replaces provisions with specific requirements such as section 27:7-14 requiring that highways have a hard surface and be 18 feet wide.

Subsection (b) states the options for the performance of work on highways. It provides for use of Department employees permitted by section 27:7-11, use of contracts with other public bodies permitted by section 27:7-19, and use of contracts with private parties permitted by section 27:7-11 and 27:7-25. No mention is made of the use of inmates in correctional institutions permitted by section 27:7-25. The latter practice is not common.

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27A:11-11. Vacation of highways

The Commissioner may vacate part or all of any state highway. When the vacation of a highway as a state highway results in the transfer of the road to a public entity, the Commissioner and the public entity shall enter into an agreement regarding the terms of the transfer.

Source: 27:7-21(f)

COMMENT

The power to vacate a public highway is now given by 27:7-21(f). The second sentence of the section recognizes that vacation of a highway already built will often result in the transfer of the highway to the authority of some other public authority.

27A:11-12. Transfer of jurisdiction of State Highway Route No. 42

The department transfers jurisdiction of State Highway Route No. 42, or a portion, to the South Jersey Transportation Authority. The department shall provide that after the transfer of such highway, or portion, the highway shall remain forever free of tolls or other charges. The department shall issue a statement containing the conditions of the transfer, including a prohibition of the imposition of tolls or other charges for use of the highway, to be attached to and recorded with the deed of the land. These restrictions and conditions shall run with the land and shall be binding upon the landowner and every successor in interest.

Source: 27:1A-5.17

COMMENT

This section is substantially identical to its source.

27A:11-13. Maintenance and beautification

The Commissioner shall maintain all state highways in good order, and may improve and beautify state highways. Highway beautification includes the establishment and maintenance of footpaths, bridle paths or horse trails and bicycle trails.

Sources: 27:7-11, 27:7-42

COMMENT

The requirement that highways be maintained in good order continues section 27:7-11. Authority for highway beautification is now found in 27:7-42. The last sentence of the section is new. The Department now does establish paths. While authority for the practice is not completely clear, it is fairly encompassed in the authority for beautification of highways.

27A:11-14. Highway Beautification Fund

In each calendar year, the Commissioner shall set apart, from the amount subject to expenditure in that year for state highway construction, a sum not exceeding one percent of the amount expended by the Commissioner in the preceding calendar year for the construction of state highways. The Commissioner shall use this money, together with additional amounts contributed voluntarily by private parties, to beautify the highways. The Commissioner shall employ a landscape architect who shall supervise the expenditure of funds and the landscape work.

Source: 27:7-42

COMMENT

This section is substantially identical to its source except that it authorizes the expenditure of private funds contributed for the purpose of highway beautification.

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27A:11-15. Roads on state property

a. The Commissioner shall supervise the construction of all roads, parking areas and driveways on land owned by the State, and all improvements to roads, parking areas and driveways already constructed on land owned by the State. The Commissioner shall prepare all necessary plans and specifications and advertise for bids for the work.

b. The Commissioner shall pay for construction and improvement of roads, parking areas and driveways out of appropriations made for that purpose.

Sources: 27:7-53, 27:7-54 and 27:7-56

COMMENT

Subsection (a) is substantially identical to 27:7-53 and 27:7-56. Subsection (b) is substantially identical to 27:7-54.

27A:11-16. Improved roads for state institutions

a. A public entity managing a state institution may construct or improve any portion of a public road connected to an improved road located on the lands of the State occupied by the institution, providing the public entity receives an appropriation for the work.

b. The Commissioner shall approve the plans and specifications for the road and shall supervise the construction or improvement of the road.

Sources: 27:7-55 and 27:7-56

COMMENT

Subsection (a) is substantially identical to 27:7-55 and 27:7-56. Subsection (b) is substantially identical to 27:7-56.

27A:11-17. Imbedded reflectorized lane markers

Whenever the Commissioner constructs or improves a state highway, the Commissioner shall, wherever practical and subject to available funding, imbed reflectors into the surface of that road to be used as lane markers.

Source: 27:7-11.1

COMMENT

This section is substantially identical to its source.

27A:11-18. Eradication of rats and other harmful rodents on state highways

The Commissioner shall devise and implement programs to eradicate rats and other harmful rodents from state highways. The Commissioner shall pay special attention to state highways adjacent to residential areas.

Source: 27:7-21.8

COMMENT

This section is substantially identical to its source

27A:11-19. Application to the Commissioner for consent to use property

a. A public entity or person may apply to the Commissioner for consent to lay tracks, conduits, pipes, wires or the like on, under, over or along any highway property, right of way or bridge within a state highway

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system. The Commissioner may allow a public entity or person to use the property under his jurisdiction by consent, grant, franchise or contract and may establish reasonable conditions for the use.

b. The Commissioner may not refuse consent to a public utility to lay tracks, conduits, pipes, wires or the like on, under, over or along a bridge within a state highway system. The public utility shall comply with reasonable regulations established for the use of the bridge. The public utility shall not be required to pay more than an amount sufficient to compensate the State for the extra burden imposed upon the State by the use of the bridge.

c. The consent, grant, franchise or contract shall not operate as a waiver of liability for damage resulting from the use of state highway property.

Source: 27:7-12, 27:7-13, 27:7-44.1; 27:7-44.9 and 27:7-68

COMMENT

This section is substantially identical to its sources.

27A:11-20. Unlawful encroachment upon state highway property

a. When a public entity or person encroaches upon a state highway, right of way or bridge within a state highway system without the consent, grant or franchise of the Commissioner, the Commissioner shall notify the Attorney General, who shall act to have the encroachment removed.

b. Any person who violates this section shall pay damages and a penalty not exceeding \$200 per day for the period of violation, and the costs of prosecution. The Commissioner may bring a civil action to recover the penalty and costs of suit pursuant to the Penalty Enforcement Law, N.J.S. 2A:58-1 et seq.

Source: 27:7-44.1

COMMENT

This section is substantially identical to its sources.

27A:11-21. Public utility facilities located on highway property

a. When the Commissioner determines that any facility owned by a public utility shall be relocated or removed because of a highway project, the public utility owning or operating the facility shall relocate or remove the facility in accordance with the order of the Commissioner.

b. The Commissioner shall ascertain and pay the cost of relocating or removing the facility. The cost of relocation or removal includes: (1) the installation of the facilities in a new location, (2) the purchase of lands, rights or interests in lands required to relocate or remove the facility and (3) the purchase of other rights necessary for relocation or removal.

Source: 27:7-44.9

COMMENT

This section is substantially identical to its source.

27A:11-22. Destruction or contamination of water supply

a. When the construction or improvement of a state highway destroys or contaminates water necessary for the use or enjoyment of private or public property, and when the state highway engineer certifies that the construction or improvement of the state highway ordered by the Commissioner was the primary cause of the destruction or contamination of the water, then the Commissioner shall compensate the owner for the destruction or contamination of the water.

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b. The State Highway Engineer shall certify to the Commissioner the primary cause of the destruction or contamination of the water within 45 days of the receipt of the claim for compensation. The Commissioner shall determine whether to pay the claim for compensation within 90 days of its receipt. If the Commissioner fails to make a determination within 90 days, the claim for compensation shall be deemed approved.

c. If a potable water supply is destroyed or contaminated, then the Commissioner shall pay the cost of constructing a new, or providing a substitute, potable water supply. The Commissioner is authorized to make such payment only in the event that a new or substitute potable water supply is actually constructed or otherwise provided. The Commissioner shall not pay more than the actual cost of constructing a new, or providing a substitute, potable water supply. Alternatively, in lieu of constructing a new potable water supply, the Commissioner may pay the cost of extending a water main from a nearby private or municipal water company to any affected property.

d. If the Commissioner denies a claim for compensation, the Commissioner of the Department of Environmental Protection, upon request of the owner, shall cause a geological investigation to be made by the state geologist. The Commissioner of the Department of Environmental Protection shall certify the results of the investigation to the Commissioner. If it is certified that the state highway construction or improvement damaged the water, the Commissioner shall pay compensation.

e. Funds appropriated to the Department for the purpose of acquiring right-of-ways may be used to make payments under this section. Contracts subject to this section shall comply with the contract and bidding procedures of this chapter. However, if immediate relief is required to abate a nuisance or condition detrimental to the health of the persons using the potable water supply, the Commissioner may award the contract without compliance with the contract and bidding procedures of this chapter.

Source: 27:7-21.1

COMMENT

This section is substantially identical to its source.

27A:11-23. Claims between state and public entities

The Commissioner may settle any claim of the State against a public entity or person arising out of the obligation of the public entity or person to contribute toward the laying out, construction or improvement of a state highway or bridge, or a part thereof, when the settlement of the claim would serve the interests of the State better than litigation of the claim.

Source: 27:7-19.1

COMMENT

This section is substantially identical to its source.

27A:11-24. Entry without trespass

The Commissioner and his authorized agents and employees may enter upon any property in this state, after giving written notice to the record owner at least three days prior to the entry, for the purpose of making surveys, soundings, drillings, borings and examinations. This entry shall neither constitute a trespass nor an entry under any condemnation proceeding then pending. The Commissioner shall reimburse the record owner for actual damages to the property caused by the entry.

Source: 27:7-21(g)

COMMENT

This section is substantially identical to its source.

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27A:11-25. Entry upon land to protect highway from damage by water

When the Commissioner determines that it is necessary to prevent water from coming in contact with and damaging a state highway, he may enter upon the property adjacent to the highway. The Commissioner may reconstruct the banks or equivalent structures, or construct drains to prevent damage to the highway from the water. The entry shall not constitute a trespass and the work performed on the property shall not constitute a taking for public use unless the property is damaged and loses value as a result of the work. The work shall be consistent with the character and use of the property.

Source: 27:7-41

COMMENT

This section is substantially identical to its source. The last sentence provides that the work must be consistent with the character of the property.

27A:11-26. Removal of motor vehicle standing on highway

a. The Commissioner, his authorized agents and employees may move any motor vehicle or other object standing wholly or partially upon the roadway of a state highway to another place off the highway to facilitate the removal of snow or the making of repairs upon the highway.

b. The owner of the motor vehicle or object removed from the highway shall pay for the reasonable cost of removing and storing the motor vehicle or object. The Commissioner shall compile a schedule of charges for removal and storage of motor vehicles and other objects, and shall furnish a copy of the schedule to the owner at the owner's request.

c. When the Commissioner, his authorized agents and employees act under the authority of this section, they shall not be liable to any person for any claim arising out of or resulting from the removal or storage of a motor vehicle or object except for intentional destruction of property.

Source: 27:7-21.9, 21.10 and 21.11

COMMENT

Subsections (a), (b), and (c) are substantially identical to their sources.

27A:11-27. Injurious substances on highway

a. A person shall not place or let fall upon state highway property any object or substance injurious to the surface of the road, or to the health, safety or property of persons on or along the highway.

b. A person who violates this provision of this section shall pay damages and a penalty not exceeding \$200 for each offense together with the costs of prosecution. The Commissioner may bring an action to recover the penalty pursuant to the Penalty Enforcement Law, N.J.S. 2A:58-1 et seq.

Source: 27:7-44

COMMENT

This section is similar to its source, but is broadened to include "any object" rather than only a "sharp object." It also increases the penalty from the ten dollar amount in section 27:7-44 and deletes the provision covering willful infliction of damage to highway property since 2C:17-3 applies to that offense.

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27A:11-28. State right-of-way or real property; leases, licenses or contracts for placement of motorist service signs

a. The Commissioner of Transportation may lease, license or contract the use, management or operation of any State right-of-way or any real property of the department for the purpose of placing motorist service signs and tourist-oriented directional signs in such manner as to produce revenue for the support of the State.

b. In entering into a lease, license or contract pursuant to this section, the Commissioner either shall set a fee for the lease, license or contract which shall yield at least a fair rental value for the use of the right-of-way or real property, or award the lease, license or contract on the basis of competitive public bids or proposals to the responsible bidder or proposer whose bid or proposal is determined to be in the best interest of the State, price and other factors considered.

c. Any sign placed on departmental property pursuant to a lease, license or contract entered into pursuant to this section shall conform to the Manual on Uniform Traffic Control Devices issued by the Federal Highway Administration, United States Department of Transportation.

Source: 27:7-21.12

COMMENT

This section is substantially identical to its source.

CHAPTER 14 - ACCESS MANAGEMENT

27A:14-1. Definitions

As used in this chapter:

a. "Driveway" means a private roadway providing access to a highway.

b. "Limited access highway" means a highway designed for through traffic over which owners of property whose land abuts the highway do not have an easement or right of light, air or direct access.

c. "Access permit" means a permit issued by the Commissioner for the construction and maintenance of a driveway or highway connected to a state highway.

d. "Major access permit" means a permit for an area where the daily two-way traffic volume is expected to be at least 500 cars.

e. "Minor access permit" means a permit for an area where the daily two-way traffic volume is expected to be less than 500 cars.

Source: 27:7A-1; 27:7-91

COMMENT

Subsection (b) is substantially identical to 27:7A-1(a). The definitions in subsections (a) are new. The term, "driveway" is used frequently in current statutes but is not defined. The definition is intended to assure that "driveway" is interpreted to include every kind of private road or driveway providing access from a piece of property to a highway.

27A:14-2. Findings

The Legislature finds and declares that:

a. Every owner of property that abuts a public highway has a right of reasonable access to the general system of highways in the State, but not to a particular means of access. The right of access is subject to regulation for the purpose of protecting the public health, safety and welfare.

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b. Governmental entities may not eliminate all access to the general system of highways without providing just compensation.

c. A State highway characterized by extensive commercial activity should not be classified because of that activity as an urban environment for access management purposes. The Department of Transportation should manage state highways with excessive driveway openings to mitigate traffic congestion, accidents and slow rates of speed.

d. The Commissioner, in implementing access management programs, should avoid placing undue burdens on property owners and should incorporate mitigation measures.

Source: 27:7-90

COMMENT

This section streamlines the source.

27A:14-3. Access code

a. The Commissioner shall adopt a State highway access management code (hereinafter, "access code") providing for the regulation of access to state highways as a regulation under the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.). The Commissioner shall notify the Senate Transportation and Communications Committee, or its successor, and the Assembly Transportation and Communications Committee, or its successor, of any proposed revisions to the access code at the time these revisions are proposed for adoption under the provisions of the "Administrative Procedure Act."

b. The access code shall establish a general classification system for the state highway system. The classification system shall be based upon the following criteria: (1) the function that segments of state highway serve and are planned to serve within the state highway system and within the general system of highways, (2) the environment in which highways are located, including but not limited to the urban or rural character of the environment, (3) the appropriate and desirable balance between facilitating safe and convenient movement of through traffic and providing direct access to abutting property, and (4) the desirable rate of speed and the degree to which through traffic should be protected from major variations in speed. Each state highway segment shall have its classification identified in the access code.

c. For each highway classification identified, the access code shall establish standards for: (1) the geometric design of driveways and of intersections and interchanges with other highways, (2) the desirability of constructing driveways and interchanges with grade separations, and (3) minimum and desirable spacing of driveways and intersections and interchanges. The access code also shall set forth alternative design standards for each highway classification which, combined with limits on vehicular use, can be applied to lots which were in existence prior to the adoption of the access code and which cannot meet the standards of the access code.

d. The access code shall set forth administrative procedures for the issuance of access permits. The code shall include a provision providing for a period of time for the renewal, issuance, modification or denial of these permits, not to exceed 200 days from the date of receipt of the completed application for a major access permit and not to exceed 45 days from the date of receipt of the completed application for a minor access permit.

e. The access code shall contain standards suitable for adoption by counties and municipalities for the management of access to highways under their jurisdiction.

f. The Commissioner may adopt, as supplements to the access code, site-specific access plans for individual segments of a State highway. Any access plan adopted in accordance with this subsection shall be developed jointly by the Department of Transportation and the municipality in which the highway segment is located and, where a county highway intersects the State highway, by the county in which the state highway segment is located. Prior to incorporating a site-specific access plan into the access code, the Commissioner shall determine: (1) that the access plan conditions have been incorporated into the master plan and development

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ordinances of the municipality, (2) that the access plan complies with or exceeds the standards established in the access code, and (3) that an appropriate means of access has been identified for every lot currently having frontage on the highway segment.

g. The access code shall include provision under which any person may submit to the Commissioner, in writing, a request for a change in the classification of a specified segment of State highway. This provision shall also require the Commissioner to notify affected counties and municipalities of such a request, to respond in writing to the request within a specified time, to specify what data, evidence, information, comments, or arguments the Commissioner is to consider in evaluating the request, and affirm that any request made by any person is in addition to, and not in lieu of, any other administrative or other remedy that person may have under the "Administrative Procedure Act" or any other law.

h. The access code may require financial contributions toward the cost of constructing public improvements of highways but a permit applicant shall not be required to contribute an amount that exceeds the fair share of the costs of off-site improvements that have a rational nexus with the proposed development on the property for which the permit is requested. The "fair share" shall be based upon the added traffic growth attributable to the development.

Source: 27:7-91

COMMENT

The first sentence in subsection (a), stating that the access code is to be adopted as an administrative regulation, remains the only part of 27:7-91(a) with continuing authority. The other provisions of that section referred to special procedures for promulgating the first access code. Those special procedures recognized that the access code is an important regulation requiring special procedures. The second sentence of subsection (a) carries forward that policy in requiring that the Legislature be notified of any proposals to amend the access code. Subsections (b) through (h) are identical to subsections (b) through (h) of 27:7-91. Subsection (i) of 27:7-91 has been executed and is not continued in this section.

27A:14-4. Access permit

a. A person seeking to construct or open a driveway or highway entering into a state highway shall first obtain an access permit from the Commissioner.

b. Every access permit, including street opening permits, in effect on June 14, 1989, shall remain valid and effective until revoked or replaced.

c. Every state highway that prior to January 1, 1970 intersected with a driveway or highway shall be assumed to have been constructed in accordance with an access permit.

d. Access permits may contain whatever terms and conditions the Commissioner finds necessary and convenient. The permit may contain the condition that it will expire upon changed circumstances specified by the Commissioner. An increase in traffic that adds the greater of 100 movements during the peak hour, or 10 percent of the previously anticipated daily movements constitutes changed circumstances.

e. When the Department receives a completed application for an access permit which has received preliminary site plan approval or subdivision approval from the municipal approval authority pursuant to "The Municipal Land Use Law," P.L. 1975, c. 291 (C. 40:55D-1 et seq.), as of the date of the adoption of the access code, the Department shall review and approve that permit application according to the permit requirements in effect immediately prior to that date.

f. A person constructing, maintaining or opening a driveway or highway entering into a state highway, except as authorized by law, is subject to a civil penalty of \$100. Each day in which an unauthorized driveway or highway entering into a state highway is open, following written notice from the Commissioner that the driveway or highway is not authorized by law, is a separate violation. The Commissioner may, in addition to initiating a civil action for collection of this penalty, initiate an action in the Superior Court for injunctive relief.

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Source: 27:7-92

COMMENT

Subsections (b) (c) and (f) are substantially identical to subsections (a) through (e) of 27:7-92. Subsection (a) is new; a definition of an access permit is missing from the source section. Subsection (d) streamlines the source statute and provides that the Commissioner may establish terms and conditions for access permits. The streamlined language is not intended to reduce the Commissioner's authority, but to provide flexibility to the Commissioner. The term "changed circumstances" in subsection (d) includes increased traffic such as an increase of more than 100 movements during the peak hour, or 10 percent of the previously anticipated daily movements.

27A:14-5. Nonconforming lot access permit

The Commissioner shall issue a nonconforming lot access permit for a property after finding that: (1) the property otherwise would not be eligible for an access permit under the access code because of insufficient frontage or other reason; (2) the lot on which the property is located was in existence prior to adoption of the access code; and (3) denial of an access permit would leave the property without reasonable access to the general system of highways. Every nonconforming lot access permit shall specify limits on the maximum permissible vehicular use of any driveway constructed or operated under that permit.

Source: 27:7-93

COMMENT

This section is substantially identical to its source.

27A:14-6. Revocation of permit; alternative access

a. The Commissioner may, upon written notice and hearing, revoke an access permit if the Commissioner finds that alternative access meeting the standards provided in subsection (c) of this section is available for the property served by the access permit and that the revocation would be consistent with the purposes of this chapter.

b. At least 90 days prior to the hearing, the Commissioner shall provide to affected property owners and lessees a plan setting forth the alternative access, and the improvements to land the Department intends to make to provide the alternative access to affected property owners or lessees. A copy of the plan shall be filed with the appropriate municipal clerk and the planning board secretary of the municipality.

c. For the purposes of this section, a property owner has alternative access if the property owner enjoys reasonable access to the general system of highways in the state and, if applicable, the following conditions are met:

(1) For property zoned or used for commercial purposes, access onto any parallel or perpendicular highway, easement, service road or common driveway, which is of sufficient design to support commercial traffic to the business or use, and is so situated that motorists will have a convenient, direct, and well-marked means of both reaching the business or use and returning to the highway. For the purposes of this subsection, "property used for commercial purposes" shall include property used for wholesale facilities, retail facilities, service establishments or office or research buildings, and property used for residential purposes consisting of developments in excess of four residential units per acre with a total acreage of 25 or more acres.

(2) For property zoned or used for industrial purposes, access onto any improved highway or access road or an easement across an industrial access road, provided that the highway or access road is of sufficient design to support necessary truck and employee access as required by the industry.

(3) For property zoned or used for residential or agricultural purposes, except as provided in paragraph (1) of this subsection, access onto any improved highway.

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d. If property is used for a purpose other than that for which it is zoned, the property shall be classified in accordance with the higher use. If the use or zoning of a property changes, the owner may apply for a new access permit, which may not be unreasonably withheld.

e. Necessary assistance includes payment for improvements made to the affected property to establish the alternative access, the cost of relocation and removal associated with engineering, installation of access drives in a new location or locations, removal of old drives, on-site circulation improvements to accommodate changes in access drives, landscaping, replacement of directional and identifying signs and the cost of lands, or rights or interests in lands, and other rights required to accomplish the relocation or removal.

f. When the Commissioner revokes an access permit, the Commissioner shall provide necessary assistance to the property owner in establishing the means of alternative access. The Commissioner shall not revoke the permit until the alternative access is constructed and available for use. The Commissioner shall erect on the state highway and on connecting local highways suitable signs directing motorists to the new access location. The Commissioner may enter into agreements with property owners for phased development. The provisions of this subsection shall not supersede these agreements.

Source: 27:7-94

COMMENT

This section is substantially identical to its source.

27A:14-7. Expansion, change in use

a. A property owner who expands or changes the use of property subject to an access permit issued before June 14,1989 shall file an application for a new access permit if the expansion or change in the use will result in a significant increase in traffic. An increase in traffic that adds the greater of 100 movements during the peak hour, or 10 percent of the previously anticipated daily movements is a significant increase in traffic. A property owner not granted a new access permit is subject to the penalties provided in this chapter.

b. When the Commissioner denies an application for an access permit or revokes an existing permit because alternative access is available, the decision of the Commissioner as to the appropriate location for an access driveway shall be final, despite the contrary action of a local public entity. In a subsequent review of the development, the local public entity shall abide by the Commissioner's decision. The local public entity may require additions or changes in the design of the development in accordance with any applicable provisions of its development review ordinances; provided that the additional requirements do not conflict with the Commissioner's decision.

Source: 27:7-95

COMMENT

This section is substantially identical to its source. The term "local public entity" used in subsection (b) means a county or smaller unit of state government. It is defined in 27A:1-1.

27A:14-8. New subdivisions

After adoption of the access code, property abutting a state highway shall not be subdivided to create additional lots abutting the state highway unless each abutting lot conforms to the standards established in the access code.

Source: 27:7-96

COMMENT

This section is substantially identical to its source.

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27A:14-9. Provision of alternative access

The Commissioner and each county and municipality may build new highways or acquire access easements to provide alternative access to existing developed lots which have no other means of access except to a state highway.

Source: 27:7-97

COMMENT

This section is identical to its source, except the term "highways" is used instead of "roads" since the term "highway" defined in 27A:1-1 means a road.

27A:14-10. Acquisition of right of access

The Commissioner may acquire any right of access to any highway upon determining that the public health, safety and welfare require it.

Source: 27:7-98

COMMENT

This section is identical to its source.

27A:14-11. Limited access highway

a. Every state highway, or portion thereof, located on new alignment shall be constructed as a limited access highway unless the Commissioner determines that the public interest requires otherwise.

b. When the Commissioner or the governing body of a public entity constructs a limited access highway, the Commissioner or governing body, at the time of purchase of the rights-of-way for the highway, may arrange with landowners for the control of public or private access or for complete exclusion of direct access of abutters to the highway. These arrangements shall be part of the purchase contract. If the parties cannot agree, the Commissioner or the governing body of the public entity shall have the power to acquire rights of access by condemnation.

c. Unless the construction of a highway constructed on new alignment results in the creation of a remainder parcel of property lacking access to a highway, no right of access to the highway shall exist. Arrangements made with landowners for exclusion of direct access by the Commissioner, or by the governing body of a public entity under subsection (b) of this section, shall not be subject to compensation unless it is determined that the construction of the highway has had the effect of eliminating all reasonable access to the system of highways from the remainder parcel of land.

Source: 27:7A-2

COMMENT

This section is substantially identical to its source.

27A:14-12. Necessary property

a. Property needed for any limited access highway encompasses any interests in land necessary or desirable for service, maintenance and protection of present and future use of the highway, including those for grade separations, connecting roadways at intersection with other highways, land between roadways, occasional parking areas, borders and landscape areas, recreational facilities, service roads, railroad crossing eliminations or relocations, and service areas.

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b. Except as provided in subsection (c) of this section, access shall be permitted only from infrequently spaced intersections with highways. Intersections shall be especially designed to minimize interference with through traffic and shall be located in a manner which facilitates regional access to the highway.

c. The Commissioner or public entity controlling a highway may allow the construction or continuation of driveway access to land, an agricultural building, or a remote or isolated facility owned or operated by a public entity or public utility, if the Commissioner or public entity determines that the driveway would be infrequently used and would not endanger or inconvenience the public. No driveway access shall be provided to a facility, which consists of an establishment providing employment to more than five persons.

Source: 27:7A-3

COMMENT

This section is substantially identical to its source.

27A:14-13. Existing state highway

After a public hearing the Commissioner may order that any portion of an existing state highway be designated a limited access highway. The Commissioner shall have authority to acquire property rights necessary to make the highway a limited access highway.

Source: 27:7A-5

COMMENT

This section is substantially identical to its source.

27A:14-14. Restricted use

The Commissioner and public entities shall have the authority to restrict the use of roadways in limited access highways to passenger motor vehicles, and to prohibit the use of any roadway in limited access highways by certain classes of vehicles, motorized bicycles or motorcycles or by pedestrians, bicycles or other non-motorized traffic. However, these restrictions do not apply to highways used by buses.

Source: 27:7A-6

COMMENT

This section is substantially identical to its source.

27A:14-15. Service facility sales, leases

a. The Commissioner or other public entity shall neither conduct nor authorize commercial enterprises or activities on the property of a limited access highway, except as provided in this section. The lawful operation of buses is not a commercial enterprise or activity under the terms of this chapter.

b. The Commissioner may acquire suitable areas for establishment of fuel or other service facilities for the users of a limited access highway, and may sell, lease or license portions of these areas. The Commissioner shall provide a sufficient number of separate premises to encourage free and open competition among all suppliers furnishing of services along each limited access highway. Premises shall not normally be sold, leased or licensed to a person who, directly or indirectly, owns or holds under lease or license any premises in the same service area on the same side of a limited access highway used for a similar purpose.

c. The Commissioner shall have the right to incorporate into any deed covenants running with the land that require the purchasers, their grantees, and successors to: (1) erect and maintain any buildings in conformity with specified exterior design, (2) provide services reasonably required by the users of the limited access highway

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subject to usual sanitary and health standards, and (3) conduct only the business for which the property was originally sold, unless the Commissioner otherwise consents in writing.

d. Each purchaser or lessee may arrange to have the services for which the premises were sold or leased performed through third persons, provided that those persons remain liable for failure to comply with the covenants contained in the deed or lease from the state.

e. The Commissioner shall provide access roads from the limited access highway to the service areas, the location of and shall indicate their location by appropriate signs.

Source: 27:7A-8

COMMENT

Subsection (a) is substantially identical to the introductory language of 27:7A-8. Subsection (b) encompasses elements of subsections (d) and (e) of 27:7A-8, but differs in that it does not totally forbid sale or lease of more than one site to a single operator. That ban has proved impractical. Subsection (c) is substantially identical to 27:7A-8(c). Subsection (d) is substantially identical to 27:7A-8(g). Subsection (e) is substantially identical to 27:7A-8(f). Subsections (a) and (b) of 27:7-8 have no analog in this section. The former, requiring the Commissioner to sell or lease only to residents of this state is abandoned as unwise. The latter, requiring public bidding, is made unnecessary by general regulation of the subject in 27A:3-4.

27:14-16. Designation of limited access highways as part of national system of interstate highways

The Commissioner may designate a limited access highway as a part of the interstate highway system in the National System of Interstate Highways.

Source 27:7A-10

COMMENT

This section is substantially identical to its source.

CHAPTER 16 - HIGHWAY SAFETY

27A:16-1. Establishment of a state highway traffic safety program

There is established a statewide highway traffic safety program which, under the Governor's direction, shall coordinate state and local efforts to reduce highway deaths and injuries.

Source: 27:5F-19

COMMENT

This section streamlines the source provision.

27A:16-2. First aid, rescue and ambulance squad

As used in this chapter, "first aid, rescue and ambulance squad" means an organization that provides emergency medical services including volunteer and non-volunteer services.

Source: 27:5F-20

COMMENT

This section is substantially identical to its source.

27A:16-3. Coordination by Governor

a. The Governor shall coordinate the highway traffic safety activities of State and local agencies, other public and private agencies, and interested organizations and individuals and shall be ultimately responsible for

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dealing with the federal government with respect to the State highway traffic safety program. In order to effectuate the purposes of this chapter the Governor shall:

(1) Prepare the New Jersey Highway Traffic Safety Program which shall be a comprehensive plan in conformity with the laws of this State to reduce traffic accidents and deaths, injuries, and resulting property damage.

(2) Promulgate regulations establishing standards and procedures relating to the content, coordination, submission, and approval of local highway traffic safety programs.

(3) Do all things necessary to insure that all departments of State Government and local public entities secure the full benefits available under the "U.S. Highway Safety Act of 1966," Pub.L. 89-564 (23 U.S.C. §§401-404), and any amendments or supplements to it.

(4) Establish training programs, guidelines and standards for members of non-volunteer first aid, rescue and ambulance squads providing emergency medical service programs.

b. The New Jersey Highway Traffic Safety Program, and regulations, training programs, guidelines, and standards shall comply with uniform standards promulgated by the United States Secretary of Transportation in accordance with the "U.S. Highway Safety Act of 1966," Pub.L. 89-564 (23 U.S.C. §§401-404), and any amendments or supplements to it.

Source: 27:5F-21

COMMENT

This section is substantially identical to its source.

27A:16-4. Training programs

a. The New Jersey Highway Traffic Safety Program shall include training programs for police, teachers, students, public employees, and others, which comply with the uniform standards promulgated by the United States Secretary of Transportation in accordance with the "U.S. Highway Safety Act of 1966," Pub.L. 89-564 (23 U.S.C. §§401-404), and any amendments or supplements to it.

b. In addition, the New Jersey Highway Traffic Safety Program shall include the training program for members of volunteer first aid, rescue and ambulance squads, adopted by the New Jersey State First Aid Council, which complies with the uniform standards promulgated by the United States Secretary of Transportation in accordance with the "U.S. Highway Safety Act of 1966," Pub.L. 89-564 (23 U.S.C. §§401-404) and any amendments or supplements to it.

Source: 27:5F-22

COMMENT

This section is substantially identical to its source.

27A:16-5. Qualification for federal funds

A public entity qualifies for receipt of federal funds upon application to the Governor, provided that:

a. The public entity submits to the Governor a local highway traffic safety program in accordance with and meeting the standards established and the rules and regulations promulgated pursuant to this chapter.

b. The public entity submits to the Governor any other information as may be required to carry out the purposes of this chapter.

Source: 27:5F-23

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COMMENT

This section is substantially identical to its source.

27A:16-6. Grants to Treasury Department

The Department of the Treasury shall receive any grants of money awarded to the State and its political subdivisions under the "U.S. Highway Safety Act of 1966," Pub.L. 89-564 (23 U.S.C. §§401-404), and amendments and supplements to it. All money received shall be deposited by the Department of the Treasury and shall be used exclusively for establishing, administering and fulfilling highway traffic safety programs pursuant to the provisions of this chapter. The money shall be paid from the fund or funds upon audit and warrant of the Director, Division of Budget and Accounting, on vouchers of or certification by the Governor.

Source: 27:5F-24

COMMENT

This section is substantially identical to its source.

27A:16-7. Emergency medical service programs

The Governor may also accept applications from public entities made on behalf of hospitals, volunteer and non-volunteer first aid, rescue and ambulance squads, or other local entities serving a public purpose for grants of money to implement emergency medical service programs. A public entity shall submit all such applications to the Governor.

Source: 27:5F-26

COMMENT

This section is identical to its source.

27A:16-8. Certification

The officers of each first aid, rescue and ambulance squad providing emergency medical service programs shall be responsible for the training of its members and shall notify the governing body of the public entity in which the squad is located, or the person designated for this purpose by the governing body, that particular applicants for membership, ambulances, and ambulance equipment meet the standards required by this chapter. Upon receipt of this notification the governing body or person designated shall certify the applicant, ambulances, and ambulance equipment as being qualified for emergency medical service programs, and shall issue a certificate to that effect at no charge. Each member and piece of equipment of a first aid, rescue and ambulance squad shall comply with the requirements for certification annually. Any person who is a member of a first aid, rescue and ambulance squad providing emergency medical service programs on the effective date of this chapter shall, if application is made to the appropriate municipality within 90 days of the effective date, be certified by the governing body or designated person as being qualified for emergency medical service programs for a period of two years. At the end of that period, the person shall comply with the requirements for certification annually.

Source: 27:5F-27

COMMENT

This section is substantially identical to its source.

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27A:16-9. Allocation of federal funds

a. The federal funds apportioned and allocated to the State pursuant to the "U.S. Highway Safety Act of 1966," Pub.L. 89-564 (23 U.S.C. §§401-404), or any other federal law, rule or regulation shall be utilized for such highway traffic safety purposes as the Governor shall deem appropriate.

b. In the event that federal funds are allocated to the State pursuant to the "U.S. Highway Safety Act of 1966," Pub.L. 89-564 (23 U.S.C. §§401-404), on the basis of existing State and local highway safety traffic programs and activities, the Governor is authorized, in his discretion and subject to the approval of the appropriate federal agency with respect to the allocation and payment of the local share of such federal funds, to do whatever must be done to avail the State of the federal funds.

c. At least the percent of the federal funds received as is required by federal law to be expended by or for the benefit of local public entities shall be expended.

Source: 27:5F-25; 27:5F-28

COMMENT

Subsections (a) and (b) are substantially identical to 27:5F-28. Subsection (c) is substantially identical to 27:5F-25.

27A:16-10. Office of Highway Traffic Safety

a. There is hereby created an Office of Highway Traffic Safety in the Department of Law and Public Safety.

b. The office shall be under the immediate supervision of a director who shall be qualified to direct the work of the office. The director shall be appointed by, and serve at the pleasure of, the Governor.

c. The director shall:

(1) Administer the work of the office under the direction and supervision of the Governor and the Attorney General;

(2) Perform any functions, in addition to the work of the office, that the Governor prescribes;

(3) Organize and reorganize the office;

(4) Assign and reassign personnel to employment within the office;

(5) Perform or cause to be performed the work of the office in the manner, and pursuant to a program, that the director deems appropriate;

(6) Employ as necessary the services of departments and agencies, in a manner and to an extent, as may be agreed upon by the chief executive officer of a department or agency and the Governor;

(7) Assist the localities in the development and formulation of local highway traffic safety programs;

(8) Receive and process applications from local and State agencies for highway traffic safety project grants; and

(9) Cause to be made a periodic review of local highway traffic safety programs, including training programs of first aid, rescue and ambulance squads, to insure they comply with the standards, guidelines, rules and regulations provided for by this chapter.

Source: 27:5F-29

COMMENT

This section is substantially identical to its source.

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27A:16-11. Ban on first aid squad restrictions

a. This chapter shall not be construed to grant to the Governor or any other State or local official any power to promulgate regulations, which may restrict a volunteer and non-volunteer first aid, rescue or ambulance squad of the State in the proper performance of its duties. The provisions of this section may not be waived despite any other language of this chapter.

b. A law enforcement officer shall permit any first aid, rescue or ambulance squad member or licensed physicians to provide medical aid that the member or physician considers appropriate to an injured person, unless in the judgment of the officer, considerations of public health, safety and welfare are of overriding concern in a particular situation.

Source: 27:5F-13.1; 27:5F-30

COMMENT

Subsection (a) is substantially identical to 27:5F-30. Subsection (b) is substantially identical to the central provisions of 27:5F-13.1.

27A:16-12. Advisory council

a. The Governor shall establish a Highway Traffic Safety Policy Advisory Council. The council shall consist of the following 21 members appointed by the Governor: The Director of the Office of Highway Traffic Safety, who shall serve as chairperson of the council; one representative of the Department of Education; one representative of the Department of Health; one representative of the Department of Transportation; one representative each of the Division of Motor Vehicles, the Division of State Police, and the Police Training Commission in the Department of Law and Public Safety; one representative of the Administrative Office of the Courts; two representatives of county or municipal law enforcement agencies; two representatives of county or local governments; two members of the Governor's Advisory Council on Emergency Medical Services; one representative of the New Jersey State First Aid Council; three private sector corporate representatives; and three members of the general public.

b. The Highway Traffic Safety Policy Advisory Council shall make recommendations to the Governor to assist in preparing the New Jersey Highway Traffic Safety Program and the rules and regulations and standards, guidelines and other programs provided for by this chapter.

Source: 27:5F-31

COMMENT

This section is substantially identical to its source.

27A:16-13. Governor's representative

The Director of the Office of Highway Traffic Safety is hereby appointed as the Governor's representative to the National Highway Traffic Safety Administration of the United States Department of Transportation.

Source: 27:5F-32

COMMENT

This section is identical to its source.

27A:16-14. Report to Legislature

On or before December 31st each year, the Governor shall submit a report to the Legislature including a detailed presentation of the New Jersey Highway Traffic Safety Program, a statement concerning the progress

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made implementing the program, and recommendations concerning possible legislative action deemed necessary or desirable to implement the program.

Source: 27:5F-33

COMMENT

This section is substantially identical to its source.

27A:16-15. Legislative findings

The Legislature finds and declares that:

a. A safe and efficient transportation system is essential to the economic and social well being of the State and its people, and is a sound economic investment opportunity for both private and public resources.

b. The use of public-private transportation initiatives would enhance the ability of the State to provide a safe and efficient transportation system through use of alternate funding sources and private sector efficiencies; supplement the State's transportation resources in order to allow the State to use its limited resources for other needed projects; and encourage and promote business and employment opportunities for the citizens of New Jersey.

Source: 27:1D-1

COMMENT

This section is substantially identical to its source.

27A:16-16. Definitions

"Corporation" means the New Jersey Transit Corporation.

"Demonstration project" means a transportation project selected by the Commissioner pursuant to section 17 of this chapter.

"Developer" means a public or private entity or consortia thereof selected by the public partner from among proposers to develop a demonstration project.

"Intelligent transportation systems" mean the equipment, facilities, property, information management and communications resources which are necessary or desirable for the advancement, management, or operation of a multi-modal transportation network.

"Project agreement" or "demonstration project agreement" means a contract or agreement entered into by the Commissioner with a developer providing the terms and conditions under which the developer shall undertake a demonstration project.

"Public highways" means public roads, streets, expressways, freeways, parkways, motorways and boulevards, including bridges, tunnels, overpasses, underpasses, interchanges, rest areas, express bus roadways, bus pullouts and turnarounds, park-ride facilities, traffic circles, grade separations, intelligent transportation systems, traffic control devices, the elimination or improvement of crossings of railroads and highways, whether at grade or not at grade, and any facilities, equipment, property, rights of way, easements and interests therein needed for the construction, improvement and maintenance of highways or intelligent transportation systems.

"Public partner" means the Department of Transportation or the New Jersey Transit Corporation, as the case may be.

"Public transportation project" means, in connection with public transportation service, passenger stations, shelters and terminals, automobile parking facilities, ramps, track connections, signal systems, power systems, information and communication systems, roadbeds, transit lanes or rights of way, equipment storage and servicing

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facilities, bridges, grade crossings, rail cars, locomotives, motorbuses and other motor vehicles, maintenance and garage facilities, revenue handling equipment and any other equipment, facility or property useful for or related to the provision of public transportation service.

"Transportation project" means, in addition to public highways and public transportation projects, any equipment, facility or property useful or related to the provision of any ground, waterborne or air transportation for the movement of people and goods.

Source: 27:1D-2

COMMENT

This section is substantially identical to its source except where terms that have a common meaning have been deleted.

27A:16-17. Selection of demonstration projects

a. Commencing with the fiscal year beginning after the effective date of this act and for the next four succeeding fiscal years, the Commissioner is authorized to select up to seven transportation projects from the list of transportation projects for which monies have been appropriated in the annual appropriations acts for those five fiscal years to serve as demonstration projects. No more than seven demonstration projects shall be selected by the Commissioner pursuant to this chapter.

b. Selection by the Commissioner of demonstration projects pursuant to subsection a. of this section, which are public transportation projects, shall be made with the approval of the board of the corporation.

c. If a transportation project is not listed in the annual appropriations acts, the Commissioner may submit that project as a demonstration project to the Legislature for approval. The Commissioner shall make the submission to the Legislature to the President of the Senate and the Speaker of the General Assembly on a day when both houses are meeting. The President and the Speaker shall cause the date of submission to be entered upon the Senate Journal and the Minutes of the General Assembly, respectively. Unless the project as described in the submission is disapproved by adoption of a concurrent resolution to this effect by the affirmative vote of a majority of the authorized membership of both houses within the time period prescribed in this subsection, the project shall be deemed approved and the public partner shall be authorized to undertake the project. The time period shall commence on the day of submission and expire on the forty-fifth day after submission or for a house not meeting on the forty-fifth day, on the next meeting day of that house.

d. Notwithstanding the provisions of this section to the contrary, demonstration projects shall be subject to the approval of the Joint Budget Oversight Committee or its successor.

Source: 27:1D-3

COMMENT

This section is substantially identical to its source.

27A:16-18. Project agreements; proposals, selection and publication

a. A public partner is authorized to solicit proposals in the five fiscal years after the effective date of this chapter, as provided in subsection a. of section 17 of this chapter, from developers to plan, design, construct, equip, operate, finance, improve and maintain, or any combination thereof, demonstration projects selected by the Commissioner pursuant to section 17 of this chapter.

b. A public partner shall select proposals for negotiation of demonstration project agreements based on the overall benefit to the State, the qualifications and financial strength of the proposer, the proposer's responsiveness to the public partner's requirements, the total project cost to be incurred by the public partner, the nature of project financing, the revenues to be generated by the project on behalf of and in support of the State, the impact of any direct or indirect user fees and any other evaluation criteria the public partner deems

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appropriate. The public partner shall negotiate with one or more proposers to reach a project agreement in the best interests of the State, except that in the event that a private developer, private entity or private consortia benefits from the use of public monies for the construction of a demonstration project pursuant to this act, the project agreement with the developer shall provide that any construction contract entered into by the developer, a private entity or private consortia, to effectuate the agreement shall conform to those requirements concerning advertisement, pre-qualification, bid and award provided for by law for construction contracts entered into by the department or corporation, as the case may be.

c. Any power possessed by a public partner pursuant to this act or any other act or any function performed by the department or the corporation, as the case may be, with respect to transportation projects may be used by that public partner to facilitate the planning, designing, construction, equipment, financing, improvement, maintenance and operation, or any combination thereof, of demonstration projects selected pursuant to this act. Project agreements entered into pursuant to this act may provide for full reimbursement to the State for services rendered by the public partner or other State entities or agencies or for the provision of revenues generated to the State. The public partner is authorized to enter into financing, funding, and credit agreements on such terms as the Commissioner deems favorable to the State to promote the purposes of this act. All credit agreements entered into by the public partner pursuant to this act shall be subject to concurrence by the State Treasurer.

d. A project agreement entered into pursuant to this act shall provide for a public involvement and information process to apply to each demonstration project. The purpose of the public involvement and information process shall be to disseminate and provide information about the demonstration project to the public, prospective project users, and the residents of communities affected by the project, and to establish a formal means by which interested persons may comment upon the project and make suggestions.

e. Upon entering into a project agreement pursuant to this act, the public partner shall publish a notice in a newspaper circulating in the county in which the demonstration project will be located describing the project and the responsibilities of the developer and the public partner with respect to the project. If a demonstration project will be located in more than one county or have a regional impact, the notice shall also be published in a publication circulating in the region in which the demonstration project will be located.

Source: 27:1D-4

COMMENT

This section is substantially identical to its source.

27A:16-19. Financing of projects; contents of project agreements

a. The department's financial participation in any demonstration project undertaken pursuant to this act shall be subject to legislative appropriation. The corporation's financial participation in any demonstration project undertaken pursuant to this act shall be subject to the availability of funds. Participation by a public partner may take the form of loans or such other financial credit arrangements as may be appropriate to advance an approved project. Agreements entered into pursuant to this act to facilitate such participation shall provide that such loans or other credit arrangements made by the public partner shall yield a reasonable return and be amortized over the term of such agreement, or such lesser period as may be agreed to by the parties.

b. A project agreement entered into pursuant to this act shall provide for the allocation of ownership, leasehold, and other property interests in demonstration projects.c. The project agreement may authorize the developer to set and impose rents, fares or user fees for use of a facility constructed by it and may require that over the term of the agreement, the rent, fare or fee revenues received by the developer be applied to repayment of the developer's capital outlay costs, interest expense, costs associated with operations, fare or user fee.

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collection, facility management, reimbursement of the State's project review and oversight costs, repayment of loans, revenues to the State, technical and law enforcement services, and a reasonable return on investment to the developer.

d. The project agreement shall specify the manner in which rents, fares or user fees are to be established or revised, the procedures for receiving public comment on the establishment or revision of fares or user fees, including the holding of a public hearing thereon, and the procedures by which the public partner shall oversee the establishment or revision of fares or user fees provided, however, that no fares or user fees shall be subject to oversight unless the developer receives public monies for 10 percent or greater of its operating expenses.

Source: 27:1D-5

COMMENT

This section is substantially identical to its source.

27A:16-20. Enforcement of traffic and other laws on project sites

Traffic and other laws applicable on the State transportation system shall be enforceable, as appropriate, on demonstration projects constructed by and leased by a developer pursuant to this act.

Source: 27:1D-6

COMMENT

This section is substantially identical to its source.

27A:16-21. Compliance with environmental, departmental and corporate standards

a. Demonstration projects selected pursuant to this act shall be designed, constructed, operated and maintained in accordance with all applicable environmental requirements and all other applicable State and federal laws and regulations necessary to the protection of the public health, safety and welfare.

b. Unless determined otherwise by the corporation in its sole discretion, the plans and specifications for each demonstration project shall comply with the corporation's standards for public transportation projects.

c. Unless determined otherwise by the Commissioner, in his sole discretion, the plans and specifications for each transportation project other than public transportation projects shall comply with the department's standards for transportation projects.

Source: 27:1D-7

COMMENT

This section is substantially identical to its source.

27A:16-22. Immunities and defenses applicable

All absolute and qualified immunities and defenses provided to public entities and public employees by the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq., the "New Jersey Contractual Liability Act," N.J.S.59:13-1 et seq., and any other law shall apply to all interests held and activities performed by the department, the corporation and other State agencies in connection with the demonstration projects selected pursuant to this act.

Source: 27:1D-8

COMMENT

This section is substantially identical to its source.

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27A:16-23. Defense and indemnification agreements between public partners and developers or other third parties

a. The public partner may agree to defend and indemnify any person, who, pursuant to a written agreement with the public partner entered into in accordance with this act, designs, constructs, operates, maintains, leases or otherwise holds an interest in a demonstration project, against claims, causes of action, demands, costs or judgments against that person arising as a direct result of the design, construction, interest, operation, or maintenance of that demonstration project. The public partner is authorized to reach agreements to defend and indemnify a person upon the terms and limitations the public partner deems reasonable and appropriate.

b. A determination by the public partner to defend and indemnify pursuant to this section does not affect any remedies which the public partner may have to enforce the agreement between the public partner and the developer to assert a claim for damages to which the public partner may be entitled arising out of the developer's failure to perform the agreement, or for the recovery of funds expended for the defense of the developer if the defense was undertaken in response to a claim or cause of action brought against the developer which is proven to have arisen from gross negligence, willful misconduct, fraud, intentional tort, bad faith or criminal conduct.

c. No one other than the person operating, maintaining, leasing or otherwise holding an interest in the demonstration project pursuant to an agreement with the public partner has the right to enforce any agreement for defense or indemnification between that person and the public partner.

Source: 27:1D-9

COMMENT

This section is substantially identical to its source.

27A:16-24. Motorcycle safety education program

a. The Director of the Office of Highway Traffic Safety in the Department of Law and Public Safety, after consultation with the motorcycle safety education advisory committee established under section 3 of P.L.1991, c.452 (C.27:5F-38), shall establish a motorcycle safety education program. The program shall consist of a course of instruction and training designed to develop and instill the knowledge, attitudes, habits, and skills necessary for the safe operation and riding of a motorcycle and shall meet or exceed the standards and requirements of the rider's course developed by the Motorcycle Safety Foundation.

b. The motorcycle safety education course shall be open to any applicant for a New Jersey motorcycle license or endorsement and to any person who has been issued a New Jersey motorcycle license or endorsement. The course shall be scheduled for such times and places as the director shall determine are appropriate to enable interested applicants for, and persons with, motorcycle licenses and endorsements to participate.

c. The director may assign employees of the Office of Highway Traffic Safety to serve as instructors for the course, or may contract with other persons who are certified as motorcycle safety education instructors pursuant to this chapter to serve as instructors for the course. A person with a motorcycle safety education instructor endorsement to an instructor's license issued pursuant to section 5 of P.L.1951, c.216 (C.39:12-5) may also be selected by the director to serve as an instructor for the course.

d. If the money deposited in the Motorcycle Safety Education Fund established pursuant to this chapter not sufficient to cover the costs of the program, the director may impose a registration fee to be paid by the participants in the course.

e. The motorcycle safety education course may also be provided by public and private educational institutions approved by the director to offer the course or by drivers' schools licensed pursuant to P.L.1951, c.216 (C.39:12-1 et seq.).

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Source: 27:5F-36

COMMENT

This section is substantially identical to its source.

27A:16-25. Instructors, certification

- a. To qualify for certification as an instructor of the motorcycle safety education course, a person shall:
- (1) hold a motorcycle operator's license or endorsement issued by any state;
 - (2) have at least two years of motorcycle riding experience;
 - (3) have no record of a suspension or revocation of the driver's license or motorcycle license or endorsement during the past two years;
 - (4) have no convictions for violating the provisions of R.S.39:4-50 during the past five years;
 - (5) have accumulated no more than four points assessed against the driver's license or motorcycle license or endorsement by the director for motor vehicle offenses during the past two years;
 - (6) hold a current Motorcycle Safety Foundation certification as a motorcycle instructor; and
 - (7) meet any other requirements that the Director of the Office of Highway Traffic Safety deems appropriate.

b. Any person who meets the requirements set forth in this section may apply to the Director of the Office of Highway Traffic Safety to be certified as a motorcycle safety education instructor. The application shall be in writing and contain such information as the director shall require. The director shall charge no certification fee. A certification shall be valid as long as the instructor meets the requirements of subsections a. (1) – (7) of this section.

c. A person who holds a valid instructor's license issued pursuant to section 5 of P.L.1951, c.216 (C.39:12-5) may apply to the Director of the Division of Motor Vehicles for a motorcycle safety education instructor endorsement as provided for in section 5 of P.L.1951, c.216 (C.39:12-5).

Source: 27:5F-37

COMMENT

This section is substantially identical to its source.

27A:16-26. Motorcycle safety education advisory committee

a. There is established a motorcycle safety education advisory committee. The committee shall consist of the Director of the Office of Highway Traffic Safety in the Department of Law and Public Safety, a representative designated by the New Jersey State Association of Chiefs of Police, a representative designated by the Driving School Association of New Jersey, a representative designated by the New Jersey Police Traffic Officers Association, the Director of the Division of Motor Vehicles, and four members, appointed by the Governor, who shall include a motorcycle dealer, a motorcycle safety education instructor certified under this chapter and two representatives of American Bikers Aim To Educate.

b. The committee shall assist the Director of the Office of Highway Traffic Safety in developing the motorcycle safety education program and in reviewing proposed changes in that program.

Source: 27:5F-38

COMMENT

This section is substantially identical to its source.

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27A:16-27. Motorcycle Safety Education Fund

There is established a Motorcycle Safety Education Fund in the Office of Highway Traffic Safety. Any registration fees imposed at the discretion of the Director of the Office of Highway Traffic Safety on participants in a motorcycle safety education course, \$5.00 of the fee collected by the Director of the Division of Motor Vehicles for each motorcycle license or endorsement issued under the provisions of R.S.39:3-10, and any other money available for motorcycle safety education shall be deposited in the fund. The money in the fund shall be used exclusively by the Office of Highway Traffic Safety to defray the costs of the motorcycle safety education program established by this chapter and to provide for a full or part-time motorcycle safety education program coordinator.

Source: 27:5F-39

COMMENT

This section is substantially identical to its source.

27A:16-28. Regulations

The Director of the Office of Highway Traffic Safety, pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall promulgate regulations to effect the purposes of this act, including regulations establishing the minimum level of knowledge and skill required for the successful completion of the motorcycle safety education program.

Source: 27:5F-40

COMMENT

This section is substantially identical to its source.

27A:16-29. Curriculum guidelines for driver education courses; beginning driver informational brochure

a. The Director of the Office of Highway Traffic Safety in the Department of Law and Public Safety, after consultation with the Director of the Division of Motor Vehicles in the Department of Transportation and the Review Board on Driver Education established in section 10 of P.L.1998, c.108 (C.27A:16-22), shall develop curriculum guidelines for use by teachers of approved classroom driver education courses. The course of instruction for approved courses shall be no less than 30 hours in length and be designed to develop and instill the knowledge and attitudes necessary for the safe operation and driving of motor vehicles. Defensive driving, highway courtesy, accident avoidance, understanding and respect for the State's motor vehicle laws, insurance fraud and State requirements for and benefits of maintaining automobile insurance shall be emphasized. The incorporation of these curriculum guidelines in these classroom courses and the use of related instructional materials shall be a requirement for approval of the course by the Director of the Division of Motor Vehicles.

b. The Director of the Office of Highway Traffic Safety, in consultation with the Director of the Division of Motor Vehicles, shall produce an informational brochure for parents and guardians of beginning drivers under the age of 18 years. The division shall ensure that the parents or guardians of a permit holder receive these brochures at the time a permit is issued to a beginning driver. The brochures shall include, but not be limited to, the following information:

- (1) Setting an example for the beginning driver;
- (2) Accident and fatality statistics about beginning drivers;
- (3) Causes of accidents among beginning drivers;
- (4) The need to supervise vehicle operation by a beginning driver;

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- (5) Methods to coach a beginning driver on how to reduce accidents;
- (6) A description of the graduated driver's license program; and
- (7) Benefits of classroom and behind-the-wheel driver education under the direction of State certified or licensed driving instructors, as the case may be.

Source: 27:5F-41

COMMENT

This section is substantially identical to its source.

27A:16-30. Graduated driver license fund

a. There is created in the Department of Transportation a special non-lapsing fund to be known as the "Graduated Driver License Fund." There shall be deposited in the fund up to \$5 from each special learner's permit fee and examination permit fee for a passenger automobile that is established pursuant to R.S. 39:3-13 and any other monies that may be made available for graduated license program start-up costs. The Division of Motor Vehicles shall administer expenditures from this fund.

b. Amounts necessary to reimburse the Division of Motor Vehicles in the Department of Transportation and the Office of Highway Traffic Safety in the Department of Law and Public Safety for all costs reasonably and actually incurred in the initial implementation and continuing administration of this act shall be appropriated from the fund. The Division of Motor Vehicles and the Office of Highway Traffic Safety shall certify to the State Treasurer their start-up costs to carry out their responsibilities under this act, and the program's costs annually thereafter. This amount shall be reimbursed to the Division of Motor Vehicles and the Office of Highway Traffic Safety from the Graduated Driver License Fund. In the event the fund's balance is insufficient to fully reimburse these costs, the State Treasurer shall provide to the Graduated Driver License Fund a loan from the General Fund in the amount needed to fully defray these costs. This loan shall be repaid to the General Fund when the balance in the Graduated Driver License Fund exceeds the amount necessary to reimburse these costs.

Source: 27:5F-42

COMMENT

This section is substantially identical to its source.

27A:16-31. State Advisory Committee on Driver Education

a. There is established a State Review Board on Driver Education. The Director of the Office of Highway Traffic Safety or his designee shall be ex officio the chairman of the board. The Governor shall appoint to the board a certified secondary school driver education teacher and representatives from the Department of Education, the Department of Transportation, the AAA Clubs of New Jersey, the Driving School Association of New Jersey, the Insurance Council of New Jersey, the New Jersey Association of Chiefs of Police, the New Jersey State Safety Council and the New Jersey Traffic Safety Officers Association. The board shall make recommendations to the Director of the Division of Motor Vehicles with respect to rules and regulations promulgated under this act including, but not limited to, the development of uniform curriculum guidelines for approved classroom and behind-the-wheel driver education. Any vacancies occurring in the membership shall be filled in the same manner as the original appointments.

b. The course of instruction for behind-the-wheel driver education shall be designed to develop the skills necessary for the safe and lawful operation of a motor vehicle. Defensive driving, highway courtesy, appropriate driving behavior and attitudes, accident avoidance, safe passing and lane changing, and a general understanding of and respect for the State's motor vehicle laws shall be emphasized.

Source: 27:5F-43

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COMMENT

This section is substantially identical to its source.

CHAPTER 17 - BRIDGES

27A:17-1. Findings, declarations

- a. Many bridges in the State are in need of repair, rehabilitation or replacement, which is hampered by the fact that no public or private entity accepts responsibility for them.
- b. As funds become available, the State should continue to devote resources to the rehabilitation and replacement of railroad overhead bridges, including bridges carrying local roads.
- c. The State should establish a mechanism by which each bridge that is to be rehabilitated or replaced, or which is determined to be in a state of good repair can be assigned to the jurisdiction of a public entity.

Source: 27:5G-6

COMMENT

This section is based on 27:5G-6, and the findings have been broadened to encompass bridges other than railroad overhead bridges.

27A:17-2. Definitions

As used in this chapter:

- a. "Jurisdiction" means control and responsibility for maintenance, repair, rehabilitation and replacement, except as may be modified under the provisions of this chapter.
- b. "Bridge" means a structure which carries persons, traffic or moving loads over a depression or an obstruction such as water, highway or a railway. It includes bridge supports and approaches.
- c. "Railroad overhead bridge" means any bridge carrying a highway or private road over a railroad or over the right-of-way of a railroad.

Source: 27:5G-7

COMMENT

The definitions of "jurisdiction" and "railroad overhead bridge," subsections (a) and (c), are substantially identical to the definitions in 27:5G-7. Subsection (b) is new. The definition of "Good repair" has been eliminated as unnecessary. See 27A:17-(b)(3).

27A:17-3. Assignment of jurisdiction

- a. The Commissioner shall adopt a regulation under the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.) providing a procedure for the assignment of jurisdiction over bridges. All parties affected by the assignment may present evidence at the hearing. The regulation shall provide that each assignment shall be made by written order of the Commissioner. The Commissioner may adopt other necessary regulations to achieve the purposes of this chapter.
- b. The Commissioner shall not make an order assigning jurisdiction for a bridge other than a bridge carrying a state highway, unless:
 - (1) the bridge is the subject of an improvement project financed in whole or in part by State funds, in which case the Commissioner may make the order contingent upon satisfactory completion of work; or
 - (2) the order assigns jurisdiction to a party who has requested jurisdiction over the bridge by written petition to the Commissioner; or

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(3) the Commissioner determines that it is in the public interest to accept a written petition for assignment from an affected party other than the party to which jurisdiction would be otherwise assigned, and the Commissioner further determines that the bridge is structurally sound according to accepted engineering standards and Department regulations.

Source: 27:5G-8

COMMENT

Subsection (a) is derived from 27:5G-8(a), but has been broadened to require the establishment of a procedure for the assignment of jurisdiction over bridges other than railroad overhead bridges. Subsection (b) is derived from 27:5G-8(b). Again, the subsection has been broadened making the restrictions on assignment of jurisdiction for a railroad overhead bridge apply to assignment of jurisdiction for any bridge. In addition, subsection (b)(3) has been reworded to remove the necessity of a separate definition of "good repair."

27A:17-4. Standards for assignment of bridges

a. The Commissioner shall assign a bridge carrying a state highway to the jurisdiction of the Department.

b. The Commissioner shall assign a railroad overhead bridge carrying a highway, other than a state highway, over a right-of-way owned by the New Jersey Transit Corporation to the jurisdiction of that

corporation, unless the Commissioner determines, pursuant to the provisions of this section, that the bridge should be assigned to the jurisdiction of another public entity.

c. The Commissioner shall assign a railroad overhead bridge carrying a private road to the jurisdiction of the person owning the road.

d. When the Commissioner determines that a public entity other than the Department or the New Jersey Transit Corporation has assumed effective control or responsibility over a bridge, the Commissioner shall assign the bridge to the jurisdiction of that entity. The Commissioner's determination shall be based on a preponderance of the evidence.

Source: 27:5G-9, 27:5G-10, 27:5G-11, 27:5G-12

COMMENT

Subsection (a) is substantially identical to 27:5G-9. Subsection (b) is substantially identical to 27:5G-11. Subsection (c) is substantially identical to 27:5G-12. Subsection (d) streamlines 27:5G-10.

27A:17-5. Railroad overhead bridges not assignable

When the Commissioner determines that a railroad overhead bridge cannot be assigned under 27A:17-3(b), the Commissioner shall assign the bridge to the jurisdiction of the Department and the bridge shall be treated as if it were a state highway bridge assigned to the Department.

Source: 27:5G-13

COMMENT

This section is substantially identical to 27:5G-13.

27A:17-6. Routine maintenance

Any county or municipality having jurisdiction over a highway carried by a railroad overhead bridge assigned to the jurisdiction of the New Jersey Transit Corporation or to the jurisdiction of the Department shall

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have responsibility for routine maintenance of the surface of the roadway carried by the bridge, including snow removal, sidewalk and guiderail repair, lighting, striping, signing, patching, and resurfacing. These routine maintenance responsibilities shall be accomplished under the regulations, which may be adopted, by the Commissioner or the Board of the New Jersey Transit Corporation or agreements entered into by the Department or the corporation, as appropriate. Routine maintenance responsibilities of a county or municipality shall not extend to the structural support components of any railroad overhead bridge under the jurisdiction of the Department or the New Jersey Transit Corporation.

Source: 27:5G-14

COMMENT

This section is substantially identical to its source.

27A:17-7. Services

a. A person who owns or controls a railroad right-of-way shall provide the following services to the party with jurisdiction for the bridge over the right-of-way:

- (1) sufficient access to railroad property and right-of-way;
- (2) necessary track safety personnel and services;

(3) review of plans and specifications; and

(4) other incidental railroad services required to enable the party with jurisdiction over the railroad overhead bridge to undertake its responsibilities.

b. If the Commissioner holds a public hearing pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.) and determines that a person has failed to provide the services required under subsection (a) of this section with respect to a project in the public interest for the repair, rehabilitation, or replacement of a bridge, the Commissioner, by written order, shall compel the person to provide those services.

Source: 27:5G-15

COMMENT

This section is substantially identical to its source.

27A:17-8. Maintenance contracts

The Commissioner may contract for the maintenance of any railroad overhead bridge assigned under this chapter to the jurisdiction of the Department with any railroad company or any other contractor or party qualified for that work.

Source: 27:5G-16

COMMENT

This section is substantially identical to its source.

27A:17-9. Responsibility for railroad overhead bridges.

This chapter shall govern responsibility for any railroad overhead bridge which has been assigned to a jurisdiction by written order of the Commissioner, and any duty of the railroad to maintain the bridge under the provisions of chapter 12 of Title 48 shall no longer apply.

Source: 27:5G-17

COMMENT

While the wording of this section differs from that of 27:5G-17, its substance is unchanged. The essence of the provision is that an assignment order supersedes R.S.12-49 which requires a railroad to maintain bridges and crossings over its right of way.

27A:17-10. Prior tort, contractual liability

The issuance by the Commissioner of a written order assigning jurisdiction over a railroad overhead bridge shall not relieve any party of any tort or contractual liability existing prior to the issuance of that order.

Source: 27:5G-18

COMMENT

This section is identical to its source.

27A:17-11. Transfer of jurisdiction

Jurisdiction over a railroad overhead bridge assigned under this chapter may be transferred to another party by voluntary agreement between the parties, provided that the Commissioner approves the agreement by written order.

Source: 27:5G-19

COMMENT

This section is substantially identical to its source.

27A:17-12. Clearance under bridges

a. Every bridge over a highway with a clearance of less than 14 feet 6 inches from the roadway beneath shall have: (1) the clearance posted on it in the manner prescribed by the Manual on Uniform Traffic Control Devices for Streets and Highways, and (2) warning signs at the last exit or detour preceding the bridge noting the maximum clearance.

b. The signs and markings required by this section shall be constructed and maintained by the entity that has jurisdiction over the highway underneath the bridge.

c. The provisions of this section shall not apply to the toll road authorities.

Source: 27:5G-1, 27:5G-2, 27:5G-3, 27:5G-4

COMMENT

This section continues a rule expressed in the source sections for clearance over municipal, county and state highways and railroads.

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27A:17-13. Dangerous bridges

a. If there is reason to believe that a bridge may be dangerous to the public, the Commissioner may hold a hearing to consider engineering evidence and other relevant information as to whether the bridge is dangerous, and what action is required to remedy that condition.

b. Notice of the hearing, including a statement of the reasons for belief that the bridge is dangerous shall be given 15 days before the hearing to the person owning or responsible for the bridge. If an owner or person responsible is unknown or disputed, notice shall be given to persons thought to own or be responsible for the bridge and shall be published in the New Jersey Register.

c. If a bridge, or its use, is dangerous to the public, the Commissioner may order the owner or person responsible to remedy the deficiency by removal, closure, repair, or limitation of use of the bridge. The Commissioner may order the closing of any public or private access leading to, under or, near the bridge.

d. If the owner and persons responsible fail to obey the order, or if the owner or a person responsible is unknown or disputed, the Commissioner may bring an action in Superior Court to enforce the order or may direct the Department to carry out the terms of the order and to charge the costs of the actions taken to the owner of and persons responsible for the bridge.

e. The Superintendent of the State Police and local law enforcement officials shall enforce orders of the Commissioner issued under this chapter. In order to close a bridge or limit its use pursuant to court order, the Commissioner may erect any necessary barriers and signs.

f. Where evidence and information relating to the deficiency of the bridge indicates that immediate action is required in the interest of public safety, the Commissioner may order emergency action. This emergency order shall be effective no longer than 90 days.

Source: New

COMMENT

This section is new. It gives the Commissioner power to take action to protect the public from dangerous bridges. The section provides that if after notice and hearing, the Commissioner determines that the bridge poses a danger to the public, the Commissioner may take action to alleviate the situation. In emergencies, the Commissioner is permitted to take temporary action before a hearing.

CHAPTER 18 - CLOSING HIGHWAYS

27A:18-1 Notice of highway closings

a. When a public entity anticipates that a highway under its jurisdiction will be closed to vehicular traffic for any reason for 2 hours or more, it shall place signs at or near the affected area at least 72 hours in advance of the closing. The signs shall name the highway to be closed and the anticipated dates and times of closing. If the public entity closing the highway determines that an emergency exists requiring the immediate dosing of the highway, notice need not be given in advance, but every effort shall be made to notify the public as soon as possible of the closing.

b. When a public entity anticipates that a highway under its jurisdiction will be closed to vehicular traffic for any reason, it shall notify the police departments of the municipalities in which the highway will be closed of the scheduled closing at least one week before the closing occurs. If the public entity expects that the closing will affect other municipalities, it shall notify the police departments of those municipalities as well.

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c. When a public entity anticipates that a construction or maintenance project will restrict vehicular traffic on a highway under its jurisdiction to an extent that local emergency services or traffic on connecting highways will be affected, it shall notify the police departments of the affected municipalities at least one week before the restriction occurs.

Source: 27:3A-2; 27:3A-3

COMMENT

Subsection (a) is based on the public notification provisions of 27:3A-2 and 27:3A-3, but has been broadened to include scheduled closings of less than 48 hours. Subsections (b) and (c) continue the requirement of 27:3A-2 that municipalities be informed of highway closings. These subsections expand the notification requirement. This section provides local police with information necessary to deal with traffic problems on local roads and to assist emergency vehicles to reach their destinations.

27A:18-2. Establishment of detour

a. When a highway is closed or rendered unfit for traffic due to construction or repairs, the public entity authorizing the work shall provide a detour over other highways and shall place signs directing traffic to that detour.

b. The public entity establishing the detour may pay for making the highway selected as a detour suitable for this use if it obtains the consent of the other public entity controlling the highway. The cost of repairing and maintaining the detours may be part of the cost of construction or repairs.

c. When the highway is no longer used as a detour, the public entity that established the detour shall restore it to its pre-detour condition.

Source: 27:3-1; 27:3-2; 27:3-3; 27:3-6; 27:3-9; 27:3-10

COMMENT

Subsection (a) allows a public entity that must close a highway to establish a detour over other highways. The subsection is a generalization of 27:3-1 allowing the state and counties to establish detours and 27:3-6 requiring municipalities to establish detours. This section also replaces 27:3-9 requiring detour signs. Subsection (b) allows the improvement of the highways serving as detours, but only with the approval of the public entity that has jurisdiction over the highways. The subsection is a generalization of 27:3-2 applying only to counties. Subsection (c) requires highways used as detours to be restored after being used as detours. The subsection is based on 27:3-10, which explicitly requires municipalities to restore highways. Other sections imply the same requirement for additional public entities. See e.g. 27:3-3.

CHAPTER 19 – MARINE TRANSPORTATION SYSTEM ACT

27A:19-1. Legislative findings

The Legislature finds and declares that:

a. There should be a single State agency for New Jersey's maritime industry charged with advancing Statewide maritime development initiatives and technologies, planning for maritime systems, enhancing New Jersey's marine environment, fostering maritime education, and providing overall support functions to the maritime industry in close coordination with the Department of Environmental Protection, the New Jersey Commerce and Economic Growth Commission, and other State agencies.

b. New Jersey's maritime industry is a \$50 billion industry supporting more than 300,000 New Jersey citizens. The industry is located along 127 miles of New Jersey shoreline, on 116 State navigation channels, 240

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miles of navigable waterways in New York Harbor, and along 106 miles of the Delaware River and Bay. Throughout the State, warehousing, manufacturing and cargo handling facilities service the commerce taking place along these water highways, and the intermodal connections which service them support local, national and international port commerce. The industry includes boat-building companies, members of the marine trades' associations, marinas, the commercial and recreational fishing industry, science, technology, and educational and related services. It also includes those industries that support waterborne military operations and national security initiatives.

c. The infrastructure required to support New Jersey's commercial and recreational maritime industry is collectively designated as New Jersey's Marine Transportation System. It is a comprehensive system which includes navigable channels, waterborne commerce, dredging and dredged material management technologies, berth, terminal and related structures, intermodal transportation facilities and corridors, shipping, receiving and cargo-movement tracking systems, global positioning systems, vessel traffic and port information systems, physical oceanographic real-time systems, and geographical information systems. Navigation aides, boat building technologies, ocean habitat tracking systems and other new technologies interact to create a seamless system linking all aspects of the maritime industry into a single transportation matrix. The Marine Transportation System provides economic value, State and national security support, environmental protection and recreational opportunity for the State, the region and the nation.

d. Water transportation systems are desirable, necessary and environmentally beneficial means of moving people and goods and such systems will promote the development and redevelopment of the State's urban centers. It is further declared that in a densely settled state such as New Jersey, it should be a priority of the Department of Transportation to promote the development of water transportation systems

and to provide, as necessary for the public safety and welfare, for the coordination and facilitation of water transportation systems.

Source: 27:1A-76

COMMENT

This section is identical to its source.

27A:19-2. Definitions

As used in this act:

a. "Dredging and dredging related projects" means the removal of sand, silt, mud, clay, rock, or other material from the bottom of a waterway in order to maintain or deepen navigation channels and berths, related infrastructure development of such a project, the management of the dredged material through decontamination, acceptable placement or beneficial use, and the potential funding of such projects as necessary to support New Jersey's maritime industry.

b. "Marine transportation system" means navigable channels, berths, terminals and related intermodal transportation infrastructure, facilities and equipment, sediment and dredged materials management programs, shipping, receiving, cargo-movement and tracking, aides to navigation, intelligent and vessel transportation systems, and such related activities which promote the efficient operation, environmental integrity, and economic development of New Jersey's maritime industry.

c. "Maritime industry" means ports and terminals, ship services and boat building, education, science and technology, marine trades and support services, ferries, movement of cargo and waterborne commerce, commercial and recreational fishing, navigation and government support services, including waterborne military

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operations and national security initiatives, and the direct and indirect industries supporting the entire marine transportation system.

d. "Office" means the Office of Maritime Resources in the Department of Transportation.

Source: 27:1A-77

COMMENT

This section is substantially identical to its source. Terms with common meanings have been omitted.

27A:19-3. Office of Maritime Resources

There is hereby established in the Department of Transportation the Office of Maritime Resources. The office shall serve as the lead on all maritime industry matters including, but not limited to, dredging, dredging technologies and dredging related issues, State and federal marine transportation systems, and port development. The office shall be the primary advisor to the Governor and the Commissioner on all matters relating to the mission of the office. The office shall also serve as the point of contact for the maritime industry and shall coordinate maritime planning and policy issues with federal, State and local governments and regional and bi-state agencies, _____ as _____ appropriate.

Source: 27:1A-78

COMMENT

This section is identical to its source.

27A:19-4. Preparation of New Jersey Marine Transportation System Development section in long range transportation plan

In support of the State's long range transportation plan, the office shall be responsible, in collaboration with the Division of Transportation Systems Planning in the department, for the preparation of a "New Jersey Marine Transportation System Development" section of the State's long range transportation plan which shall assess conditions, define future needs and propose recommendations that improve New Jersey's Marine Transportation System, in accordance with the findings and declarations contained in section 2 of this act. The section shall outline strategic initiatives on regional port planning, marine transportation system infrastructure, technology, and economic development related to the maritime infrastructure and capital investment strategies.

Source: 27:1A-79

COMMENT

This section is identical to its source.

27A:19-5. Additional Commissioner powers and duties

In addition to any powers granted to the Commissioner under this act or any other provision of law, the Commissioner shall:

a. Provide inter-agency support, programmatic planning and policy recommendations, promote coordination and cooperation with and among State, multi-state, bi-state, federal and non-governmental agencies in matters affecting the New Jersey Marine Transportation System;

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- b. Engage in public education on maritime issues;
- c. Serve as the primary advisory body and lead agency for support of New Jersey's \$50 billion maritime industry;
- d. Participate in maritime-related technology research and development;
- e. Investigate innovative dredged material management technologies and techniques to ensure continued growth of New Jersey's Marine Transportation System;
- f. Act as the local sponsor for agreements with State and federal agencies in support of dredging and dredging related projects;
- g. Research, facilitate, and act as lead advisory body for grant funding opportunities which enhance and further the mission of the office;
- h. Develop and maintain an interactive educational website on the department's Internet website;
- i. Act as advisor for State and federal entities and non-governmental entities involved in advancing the mission of the New Jersey Marine Transportation System;
- j. Engage in waterborne, dredging, and related infrastructure development projects which enhance the economic, environmental, and efficient nature of maritime and marine trades services;
- k. Operate, lease, or license a dredging processing facility, or contract for the design, construction, use, management or operation of any State dredging processing facility; and
- l. Undertake any additional actions as appropriate to advance the State's maritime roles and responsibilities.

Source: 27:1A-80

COMMENT

This section is identical to its source.

27A:19-6. Investigation and development of alternative funding resources

The Commissioner shall investigate and develop alternative funding resources, establish and budget annual State funding in furtherance of maritime initiatives, improve government coordination with the recreational and commercial fishing and boating industries, create regional dredged material disposal facilities, continue development of beneficial use options for dredged material, develop dredging and dredged material technologies, continue development of waterborne transportation targeting congestion relief from highways and reduced air pollution, and implement public education programs as desirable.

Source: 27:1A-81

COMMENT

This section is identical to its source.

27A:19-7. Commissioner power to operate, lease, license or contract; Maritime Industry Fund

a. The Commissioner, in consultation with the Department of Environmental Protection and the Department of the Treasury, may operate, lease, license or contract the design, construction, use, management or operation of any State dredged material processing facility in such manner as to produce revenue in support of the maritime industry.

b. There is established in the General Fund a separate, non-lapsing, dedicated account to be known as the "Maritime Industry Fund," hereinafter referred to as "the fund." Notwithstanding any provisions of law to the

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contrary and except as otherwise provided in this act, the Maritime Industry Fund shall be utilized to provide for projects that support New Jersey's maritime industry.

c. Each fiscal year, the State Treasurer shall credit all revenues from any State dredged material processing facility to the fund.

d. Each fiscal year, the State Treasurer shall credit all earnings received from the investment or deposit of revenue in the fund, to the fund.

e. All revenues and earnings deposited in the fund shall be appropriated in the same fiscal year to the department exclusively in furtherance of the purposes set forth in this act.

Source: 27:1A-82

COMMENT

This section is identical to its source.

27A:19-8. Governing of certain purchases

Purchases, contracts, or agreements over \$25,000 for dredging and dredging related projects shall be governed as provided in subsections a. and b. below.

a. All purchases, contracts, or agreements, where the cost or contract price exceeds the sum of \$25,000, or, after January 1, 2003, the amount determined pursuant to subsection b. of this section, shall, except as otherwise provided by section 10 of this act, be made, negotiated, or awarded only after public advertisement for bids therefore and shall be awarded to that responsible bidder whose bid, conforming to the invitation for bids, is most advantageous to the office in its judgment, upon consideration of price and other factors. Any bid may be rejected when the office determines that it is in the public interest to do so.

Any purchase, contract, or agreement, where the cost or contract price is less than or equal to \$25,000, or the amount determined pursuant to subsection b. of this section, shall be made, negotiated, or awarded by the office without advertising and in any manner which the office, in its judgment, deems necessary to serve its unique interests and purposes and which promotes, whenever practicable, full and free competition by the acceptance of quotations or proposals or by the use of other suitable methods.

b. The department shall no later than March 1 of each odd-numbered year adjust the threshold amount set forth in subsection a. of this section, or subsequent to 2003 the threshold amount resulting from any adjustment under this subsection, in direct proportion to the rise or fall of the consumer price index for all urban consumers in the New York City and the Philadelphia areas as reported by the United States Department of Labor. The adjustment shall become effective on July 1 of each odd-numbered year.

Source: 27:1A-83

COMMENT

This section is identical to its source.

27A:19-9. Certain purchases, contracts or agreements made without public advertising

Purchases, contracts or agreements over \$25,000 for dredging and dredging related projects may be made, negotiated, or awarded by the office without public advertisement as provided for in subsections a., b. and c. of this section.

a. Any purchase, contract, or agreement, where the cost or contract price exceeds the amount set forth in subsection a. of section 16 of P.L.1998, c.44 (C.52:27C-76), or, after January 1, 2003, the amount calculated by the Governor pursuant to subsection b. of section 16 of P.L.1998, c.44 (C.52:27C-76) may be made, negotiated, or awarded by the office without advertisement for bids under the following circumstances:

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(1) When the subject matter consists of:

The purchase, rental, or lease of such office space, office machinery, specialized equipment, buildings or real property as may be necessary for the use, or incidental to the performance of the office's duties and the exercise of its powers under this act; or

(2) When any one or more of the following circumstances exist:

(a) Standardization of equipment and interchangeability of parts is in the public interest;

(b) Only one source of supply or service is available;

(c) The exigency of the office's duties and responsibilities will not admit of advertisement;

(d) More favorable terms can be obtained from a primary source of supply of an item or service;

(e) Bid prices, after advertising, are not reasonable or have not been independently arrived at in open competition, but no negotiated purchase, contract, or agreement may be entered into under this subsection after the rejection of all bids received unless: (i) notification of the intention to negotiate and reasonable opportunity to negotiate is given to each responsible bidder; (ii) the negotiated price is lower than the lowest rejected bid price of a responsible bidder; and (iii) the negotiated price is the lowest negotiated price offered by any responsible bidder;

(f) The purchase is to be made from, or the contract is to be made with, any federal or State government agency or other entity, or any political subdivision thereof; or

(g) Purchases are made through or by the Director of the Division of Purchase and Property, in the Department of the Treasury, pursuant to section 1 of P.L. 1959, c.40 (C.52:27B-56.1).

b. In any such instances as identified in subsection a. of this section, the office may make, negotiate, or award the purchase, contract or agreement in any manner which the office deems necessary to serve its unique interests and purposes and which promotes, whenever practicable, full and free competition by the acceptance of quotations or proposals or by the use of other suitable methods.

c. In any case in which the office shall make, negotiate, or award a purchase, contract, or agreement without public advertisement pursuant to subsection a. of this section, the office shall specify the subject matter or circumstances set forth in subsection a. which permit the office to take such action.

Source: 27:1A-84

COMMENT

This section is identical to its source.

27A:19-10. Rules and regulations

The Commissioner is hereby authorized to make and issue such rules and regulations in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as the Commissioner may deem necessary or appropriate to effectuate the purposes of this act.

Source: 27:1A-85

COMMENT

This section is identical to its source.

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CHAPTER 61 - TRANSPORTATION DEVELOPMENT DISTRICTS

27A:61-1. Findings, declarations

The Legislature finds and declares that:

a. In recent years, New Jersey has experienced explosive growth in certain regions, often along State highway routes and in urban areas experiencing rapid redevelopment. These "growth corridors" and "growth districts" are vital to the State's future but also present special problems and needs since they do not necessarily reflect municipal and county boundaries.

b. Growth corridors and districts are heavily dependent on the State's transportation system for their current and future development. At the same time, they place enormous burdens on existing transportation infrastructure contiguous to new development and elsewhere, creating demands for expensive improvements, reducing the ability of State highways to provide for through movement of traffic and creating constraints on future development.

c. Existing financial resources and existing mechanisms for securing financial commitments for transportation improvements are inadequate to meet transportation improvement needs which are the result of rapid development in growth areas, and therefore it is appropriate for the State to make special provisions for the financing of needed transportation improvements in these areas, including the creation of special financing districts and the assessment of special fees on those developments which are responsible for the added burdens on the transportation system. Creation of these special financing districts provides a mechanism in which the State, counties and municipalities will have the means to work together to respond to transportation needs on a regional basis as determined by growth conditions rather than upon the pre-existing municipal and county boundaries. The district becomes the framework for a public-private partnership in meeting the transportation needs of New Jersey. Counties are to be the lead agencies in creating these multi-jurisdictional districts, recognizing that in some instances, given growth patterns of a region, that areas from more than one county may be included within a district. Should a county fail to participate in the creation of a needed district, the State or municipality can initiate the creation of a district.

d. Any of these assessments of special fees should be assessed under a statutory plan which recognizes that: (1) the fees supplement, but do not replace, the public investment needed in the transportation system, (2) the costs of remedying existing problems cannot be charged to a new development, (3) the fee charged to any particular development must be reasonably related, within the context of a practicable scheme for assessing fees within a district, to the added burden attributable to that development, and (4) the maximum amount of fees charged to any development by the State or county or municipality for off-site transportation improvements pursuant to this chapter or any other law shall not exceed the property owner's fair share of such improvement costs. In determining the reasonableness of a fee assessed in accordance with the provisions of this chapter, it must be recognized that government must have the flexibility necessary to deal realistically with questions not susceptible of exact measurement. It is furthermore necessary to recognize that precise mathematical exactitude in the establishment of fees is neither feasible nor constitutionally vital.

e. The development of special financial mechanisms to meet the needs of growth corridors and districts should be accompanied by the development of strategies to improve regional, comprehensive planning in these areas, to encourage transportation-efficient land uses, to reduce automobile dependency, and to encourage alternatives to peak-hour automobile trips.

Source: 27:1C-2

COMMENT

This section is identical to its source.

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27A:61-2. Definitions

As used in this chapter:

a. "Development" means "development" as defined in section 3.1 of the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-4).

b. "Public transportation project" means, in connection with public transportation service or regional ridesharing programs, passenger stations, shelters and terminals, automobile parking facilities, ramps, track connections, signal systems, power systems, information and communication systems, roadbeds, transit lanes or rights-of-way, equipment storage and servicing facilities, bridges, grade crossings, rail cars, locomotives, buses and other motor vehicles, maintenance and garage facilities, revenue handling equipment and any other equipment, facility or property useful for or related to the provision of public transportation service or regional ridesharing programs.

c. "Transportation development district" or "district" means a district created under this chapter.

d. "Transportation project" includes public transportation projects, highways, rest areas, express bus roadways, bus pullouts and turnarounds, park-ride facilities, grade separations, traffic control devices, the elimination or improvement of crossings of railroads and highways and any facilities, equipment, and interests in property needed for the construction, improvement and maintenance of highways, any equipment, facility or property useful or related to the provision of any ground, waterborne or air transportation for the movement of people and goods.

Source: 27:1C-3

COMMENT

The definition of "development" in subsection (a) is identical to that in 27:1C-3(d). The definition of "public transportation project" in subsection (b) is identical to that in 27:1C-3(h). The definition of "transportation development district" or "district" in subsection (c) is substantially identical to that in 27:1C-3(i). The definition of "transportation project" in subsection (d) includes the definition of "transportation project" in 27:1C-3(j) and the inclusive definition of "public highways" in 27:1C-3(g). The other definitions in the source section were deleted as unnecessary.

27A:61-3. Designation, delineation of transportation development district

a. The governing body of any county may apply to the Commissioner for the designation and delineation of a transportation development district within the boundaries of the county. The application shall include: (1) proposed boundaries for the district, (2) evidence of growth conditions prevailing in the proposed district which justify creation of a transportation development district in conformity with the purposes of this chapter and the standards established by the Commissioner, (3) a description of transportation needs arising from rapid development within the district, (4) certification that there is in effect for the county a current county master plan adopted under R.S.40:27-2 and that creation of the district would be in conformity both with the county master plan and with the State Development and Redevelopment Plan adopted under the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et al.), (5) certification that municipalities included wholly or partly in the district, or which would be directly affected by it, have been given at least 30 days' advance notice of the application and an opportunity to comment on it, (6) comments offered by any of these municipalities, and the response by the county, and (7) any additional information that the Commissioner may require.

b. The Commissioner shall, within 60 days of receipt of a completed application (1) by order designate a district and delineate its boundaries in conformance with the application, or (2) disapprove the application and inform the governing body of the county in writing of the reasons for the disapproval, or (3) where the Commissioner finds that the creation of a district is critically important and that the application of the county is sufficient in every respect except the appropriateness of the proposed boundaries for the district, by order designate a district and delineate its boundaries and inform the governing body of the county in writing of the reasons for the alteration of the proposed boundaries. If the Commissioner does not act on the application within

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60 days, unless the applicant agrees to an extension of time, the application shall be deemed approved and the Commissioner shall then on the next business day issue an order as required under this subsection. If an application is disapproved, the governing body may resubmit an application incorporating revisions it deems appropriate, taking into consideration the Commissioner's reasons for disapproval.

Source: 27:1C-4(a) and (b)

COMMENT

This section is substantially identical to subsections (a) and (b) of 27:1C-4.

27A:61-4. Petition by municipal governing body

a. The governing body of any municipality or municipalities, by resolution, may petition the governing body of the county to initiate an application for the designation and delineation of a transportation development district. The resolution shall set forth in detail the reasons, which in the judgment of the governing body or bodies justify the creation of a transportation development district in conformity with the purpose of this chapter.

b. The governing body of the county shall, within 90 days of the receipt of a petition submitted under subsection (a) above, respond to the petition by adoption of an ordinance or resolution stating the intention of the governing body to proceed or not to proceed with an application for the designation and delineation of a transportation development district. If appropriate, the ordinance or resolution shall set forth the reasons for not so proceeding. The ordinance or resolution shall be transmitted to the governing body or bodies submitting the petition and to the governing body of each municipality which would, in the judgment of the governing body of the county, be directly affected by the designation and delineation of a transportation development district as proposed in the petition.

c. If the governing body of the county in response to a petition by a municipality under this section determines not to proceed with an application or to proceed with an application but fails to submit an application within 120 days, the governing body of the municipality which submitted the original petition or the governing body of any municipality within the county which would be directly affected by the designation and delineation of a district may petition the Commissioner for the designation and delineation of a district. The Commissioner shall, within 60 days of receipt of a petition, act as in subsection (b) of this section. Where the Commissioner designates a district, the Commissioner shall also designate an appropriate governmental organization to administer the district which permits representation from all participating municipalities and which has sufficient power to administer the district. Where negotiations are underway between the department and the petitioning body the 60 day time limit may be extended by mutual agreement. If an application is disapproved, the petitioning body may resubmit a petition directly to the Commissioner incorporating revisions it deems appropriate, taking into consideration the Commissioner's reasons for disapproval.

d. Failure by a county to adopt a resolution stating its intent to submit an application substantially consistent with the municipal petition within 90 days after its receipt entitles the petitioning municipality or any directly affected municipality to petition the Commissioner for the designation and delineation of a district as set forth in paragraph (1) of this subsection.

Source: 27:1C-4(c); 27:1C-15

COMMENT

Subsections (a) and (b) are substantially identical to 27:1C-15. Subsections (c) and (d) are substantially identical to 27:1C-4(c).

27A:61-5. Request by Commissioner for transportation development district

a. After due examination the Commissioner may find, in accordance with regulations, that certain designated areas of the State are growth corridors or growth areas and that existing financial resources and existing mechanisms for securing financial commitments for transportation improvements are inadequate to meet

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transportation improvement needs which are the result of rapid development in these corridors or areas. Upon this finding and after sufficient time has elapsed for the governing body of the county or counties located within this corridor or area to take action to establish a district or districts, and if they have not done so, the Commissioner may request the governing body of the county or counties to initiate an application for the designation and delineation of a transportation development district. The request shall set forth in detail the reasons, which in the judgment of the Commissioner justify the creation of a transportation development district in conformity with the purpose of this chapter. These reasons may be based upon a comprehensive development plan for the corridor or area issued by the department after notice and public hearings in the area or corridor in question. The finding by the Commissioner that certain areas of the State are growth corridors or growth areas shall not be construed as determining and designating all growth corridors or growth areas in the State and shall not preclude any governing body of a county from establishing a transportation development district within any portion of that county in accordance with the provisions of this chapter.

b. The governing body of the county shall, within 90 days of the receipt of the request submitted under subsection (a), respond to the request by adoption of an ordinance or resolution stating the intention of the governing body to proceed or not to proceed with an application for the designation and delineation of a transportation development district. If appropriate, the ordinance or resolution shall set forth the reasons for not proceeding. The ordinance or resolution shall be transmitted to the governing body of each municipality which would, in the judgment of the governing body of the county, be directly affected by the designation and delineation of a transportation development district as proposed in the request.

c. The Commissioner may, especially in the case of a corridor or area traversed by a State highway, request the governing bodies of two or more counties to establish adjoining transportation development districts in accordance with the procedures provided for in subsections a. and b. of this section.

d. If the governing body of the county or counties has received a request from the Commissioner to initiate an application, or to establish adjoining transportation development districts, and has failed to respond to the Commissioner's request within the time permitted or has stated that it does not intend to proceed with an application or otherwise has failed to take action to establish the requested district or districts, the Commissioner may, after 90 days' notice to the governing bodies of the county and each municipality directly affected by the designation and delineation of the proposed district, and the holding of a public hearing, designate a district and delineate its boundaries where the creation of a district or districts is critically important. The functions and powers of the governing body of the county concerning transportation development districts shall be exercised by the Commissioner through regulations and orders concerning a district created under this subsection in substantially the same manner as would be exercised by the governing body of the county pursuant to this chapter. In a district so created, development fees shall be assessed by order of the Commissioner upon notice and public hearing. These fees shall only be assessed, and disbursed from the transportation development district trust fund, for projects other than county transportation projects. Appeals from assessments shall be referred to the Office of Administrative Law by the Commissioner for a hearing. Notwithstanding that a governing body of the county may not have participated in the establishment of a district, the governing body by ordinance or resolution may request the Commissioner to permit it to participate fully in the operation of the district. Upon the granting of this request by the Commissioner on whatever terms and conditions the Commissioner deems appropriate, the governing body of the county shall assume full responsibility for the operation of the district and the assessment of fees, as if the district were established pursuant to an application by the governing body.

e. In designating and delineating a district, and in establishing district transportation improvement and financial plans, the Commissioner shall act in accordance with regulations adopted.

Source: 27:1C-13

COMMENT

This section is substantially identical to its source.

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27A:61-6. Standards for creation of districts

a. The Commissioner shall adopt as regulations standards to assist in the determination of whether there is sufficient evidence of growth conditions prevailing in an area to justify creation of a development district under this chapter. The standards shall include: (1) an accelerating growth rate for estimated population or employment in excess of 10% in three of the past five years in at least three contiguous municipalities; or, (2) projected local traffic growth in excess of 50% in a five-year period generated from new development; or, (3) commercial/retail development projected at a rate of one million square feet per square mile in a five-year period; or, (4) projected growth in population or in employment in excess of 20% over a 10-year period. The regulations shall specify the application of the time periods under these four criteria. The Commissioner may also include in the regulations additional criteria, which recognize existing traffic congestion, or any other such criteria, which in the Commissioner's judgment, may serve to effect the purposes of this chapter.

b. The Senate Transportation and Communications Committee, or its successor, and the Assembly Transportation and Communications Committee, or its successor, shall be notified by the Commissioner of these standards at the time they are included in a notice of proposed rule-making under the provisions of the "Administrative Procedure Act." In addition, following the adoption of these standards by regulation, the Commissioner shall notify the Senate Transportation and Communications Committee, or its successor, and the Assembly Transportation and Communications Committee, or its successor, of any proposed revisions to these standards at the time these revisions are proposed for adoption under the provisions of the "Administrative Procedure Act."

Source: 27:1C-4(d)

COMMENT

This section is substantially identical to its source.

27A:61-7. Joint planning process

a. Following the Commissioner's designation and delineation of a district, the governing body of the county shall initiate a joint planning process for the district, with opportunity for participation by the State, all affected counties and municipalities and private representatives. Each affected governmental unit shall be notified by the county at the commencement of the joint planning process. The joint planning process shall produce a draft district transportation improvement plan and a draft financial plan.

b. The draft district transportation improvement plan shall establish goals and priorities for all modes of transportation within the district, shall incorporate the relevant plans of all transportation agencies within the district and shall contain a program of transportation projects which addresses transportation needs arising from rapid growth conditions prevailing in the district and which therefore warrants financing in whole or in part from a district trust fund to be established, and shall provide for the assessment of development fees based upon the applicable formula as established by the Commissioner by regulation. The draft district transportation improvement plan shall be in accordance with the State transportation master plan, the county master plan adopted under R.S.40:27-2, and shall be in conformity with the State Development and Redevelopment Plan adopted under the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et al.) and, to the extent appropriate, given the district-wide objectives of the plan, coordinated with local zoning ordinances and master plans adopted pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

c. The draft financial plan shall include an identification of projected available financial resources for financing district transportation projects outlined in the draft district transportation improvement plan, including recommendations for types and rates of development fees to be assessed, and projected annual revenue to be derived.

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d. The governing body of the county shall make copies of the draft district transportation improvement plan and the draft financial plan available to the public for inspection and shall hold a public hearing on them.

Source: 27:1C-5

COMMENT

This section is substantially identical to its source.

27A:61-8. District transportation improvement plan

a. The governing body of any county, which has completed all the requirements of the joint planning process, may adopt a district transportation improvement plan. The district transportation improvement plan shall be derived from the draft developed under 27A:61-7 and shall contain a financial plan for transportation projects intended to be developed over time in whole or in part from a district trust fund. The district transportation improvement plan shall be consistent with any existing capital improvements program and shall be consistent with any transportation improvement program that the county may be required to submit to the department.

b. No district transportation improvement plan or amendment or supplement to a plan shall take effect until approved by the Commissioner. In evaluating the district transportation improvement plan, the Commissioner shall take into consideration: (1) the appropriateness of the district boundaries in light of the findings of the plan, (2) the appropriateness of the content and timing of the program of projects intended to be financed in whole or in part from the district trust fund in relation to the transportation needs stemming from rapid growth in the district, (3) the hearing record of the public hearing held prior to adoption of the ordinance or resolution, (4) any written comments submitted by municipalities or other parties and (5) consistency with the planning requirements of this chapter. The Commissioner shall review the plan and inform the governing body in writing of its approval or disapproval within 90 days of its receipt. Failure by the Commissioner to act in 90 days, unless an extension is mutually approved, shall mean that the submission is deemed approved. The written notice shall be accompanied, in the case of approval, by the Commissioner's estimate of the resources that may be available to support implementation of the plan and, in the case of disapproval, by the reasons for that disapproval. If a plan is disapproved, the governing body may resubmit a plan or amendment incorporating revisions it deems appropriate, taking into consideration the Commissioner's reasons for disapproval.

Source: 27:1C-6

COMMENT

This section is substantially identical to its source.

27A:61-9. Development fees

a. After the effective date of a district transportation improvement plan, the governing body of the county may provide for the assessment and collection of development fees on developments within the district.

b. An ordinance or resolution providing for a development fee shall specify that the fee be assessed on a development at the time that the development receives preliminary approval from the municipal approval authority or, where the municipality has not enacted an ordinance requiring approval of the development, at the time that a construction permit is issued. If the development is to be constructed in phases or there is a substantial modification of preliminary approval as defined in the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.), the fee shall be assessed at the time of the preliminary approval of the respective phase or at the time of modification, as the case may be. For a development that has received preliminary plan approval prior to the establishment of a fee and where final approval is not obtained for that phase of development within three years of preliminary approval, the fee shall be assessed at the time of final approval.

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c. An ordinance or resolution providing for a development fee shall specify whether the fee is to be paid at the time a construction permit is issued or in a series of payments over a period of no longer than 20 years, as set forth in a schedule of payments contained in the ordinance or resolution. The payments due to the county, whether as a lump sum or as balances due, shall be recorded and shall be enforceable as a lien on the land and any improvements to it. The ordinance or resolution shall set forth the procedures for enforcement of the lien in the event of delinquencies, and shall provide for the procedure by which any portion of the land and its improvements may be released from the lien required by this section. Any lien filed in accordance with this section shall contain a provision citing the release procedures. Where a series of payments is to be made, failure to make any one payment within 30 days after receipt of a notice of late payment shall constitute a default and shall obligate the person owing the unpaid balance to pay that balance in its entirety.

d. Any development or phase of a development, which has received preliminary approval prior to the establishment of a development fee, shall not be subject to the development fee but shall be liable for the payment of off-site transportation improvements to the extent agreed upon under the law applicable at the time of the agreement. Any development or phase of a development which receives preliminary approval after the establishment of a development fee shall be subject to the development fee, but shall receive a credit against the fee for the amount paid or obligated to be paid to State, county or municipal agencies for the cost of off-site transportation improvements under agreements entered into under the law applicable at the time of the agreement.

e. All money collected from development fees and any other money available for the purposes of this chapter shall be deposited into the trust fund, which is to be invested in an interest bearing account.

f. An ordinance or resolution providing for a development fee may contain provisions for: (1) delineating a core area within the district within which the conditions justifying creation of the district are most acute and providing for a reduced development fee rate to apply to developments inside that core area; (2) credits against assessed development fees for payments made or expenses incurred which have been determined by the governing body of the county to be in furtherance of the district transportation improvement plan, including but not limited to, contributions to transportation improvements, other than those required for safe and efficient highway access to a development, and costs attributable to the promotion of public transit or ridesharing; (3) exemptions from or reduced rates for development fees for specified land uses which have been determined by the governing body of the county to have a beneficial, neutral or comparatively minor adverse impact on the transportation needs of the district; and (4) a reduced rate of development fees for developers submitting a peak-hour automobile trip reduction plan approved by the Commissioner under standards adopted by the Commissioner by regulation. Standards for the approval of peak-hour automobile trip reduction plans may include, but need not be limited to, physical design for improved transit, ridesharing, and pedestrian access; incorporation of residential uses into predominantly nonresidential development; and proximity to potential labor pools. Development of low and moderate income housing units which are constructed pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et seq.) or under court settlement shall be exempt from all development fees.

g. Any development fees collected, plus earned interest, not committed to a transportation project under a project agreement entered into under this chapter within 10 years of the date of collection shall be refunded under a procedure prescribed by the Commissioner by regulation. If the payer of the fee transfers the development or any portion of it, the payer and the grantee shall agree, subject to Department regulations, who shall receive any refund. Any agreements shall be filed with the designated county officer.

h. An ordinance or resolution establishing a development fee shall be sufficiently clear that every person who may be required to pay a fee can calculate the amount of the fee, which will be assessed against a specific development proposal. Development fees shall be reasonably related to the added traffic growth attributable to the development subject to the fee. The maximum fee that may be charged to any development by the State, county or municipality pursuant to this chapter or any other law shall not exceed the property owner's "fair share" of such improvement costs. "Fair share" means the added traffic growth attributable to the proposed development or phase of development. Approval of a development application by any State, county or municipal

body or agency shall not be withheld or delayed because of the necessity to construct an off-site transportation improvement if the developer has contributed his "fair share" obligation under the provisions of this chapter.

i. Any person who has been assessed a development fee may appeal the assessment by filing an appeal with the Commissioner within 90 days of the receipt of notification of its amount, on the grounds that the assessment was not issued in compliance with this chapter, Department regulations, or the ordinance or resolution establishing the Development fee. Nothing here shall be construed as limiting the ability of any person assessed a fee from filing an appeal based upon an agreement to pay or actual payment of the fee.

Source: 27:1C-7

COMMENT

This section is substantially identical to its source.

27A:61-10. Formula for assessment of fees

An ordinance or resolution providing for the assessment of development fees shall base fees on the formula for that category of district authorized by the Commissioner, by regulation. The formula shall be uniformly applied, with only those exceptions authorized by this chapter or by regulation. The Commissioner may authorize formulas relating the amount of the fee to impact on the transportation system, including, but not limited to, the following factors: vehicle trips generated by the development, the occupied square footage of a developed structure, the number of employees regularly employed at the development, and the number of parking spaces located at the development. In developing the authorized formulas, the Commissioner shall consult with knowledgeable persons in appropriate fields, including land use law, planning, traffic engineering, real estate development, transportation, and local government. No separate or additional assessments for off-site transportation improvements within the district shall be made by the State, or a county or municipality except as provided in this chapter.

Source: 27:1C-8

COMMENT

This section is substantially identical to its source.

27A:61-11. Project agreement

Every transportation project funded in whole or in part by funds from a transportation development district trust fund shall be subject to a project agreement to which the Commissioner is a party. Every transportation project for which a project agreement has been executed shall be included in a district transportation improvement plan. A project agreement may include other parties, including but not limited to, municipalities and the developers of a project. A project agreement shall provide for the assignment of financial obligations among the parties. A project agreement also shall make provision for those arrangements among the parties as are necessary and convenient for undertaking a transportation project. A project agreement may provide that a county may pledge funds in a transportation development district trust fund or revenues to be received from development fees for the repayment of debt incurred under any debt instrument, which the county is authorized to issue. Each project agreement shall be authorized by and entered into by the governing body of each county and municipality, which is a party to the project agreement. A project agreement may be made with or without consideration and for a specified or an unlimited time and on any terms that are approved by the county or municipality and shall be valid whether or not an appropriation required by the agreement is made prior to the execution of the agreement. Any county or municipality which is authorized to undertake a project involving property within the jurisdiction of another public entity may exercise all powers necessary for the project as are permitted by law and agreed to in the project agreement.

Source: 27:1C-9

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COMMENT

This section is substantially identical to its source.

27A:61-12. Appropriation of funds

No expenditure of funds shall be made from a transportation development district trust fund except by appropriation by the governing body of the county or other appropriate governmental organization designated by the Commissioner, and upon certification of the appropriate government financial officer that the expenditure is in accordance with a project agreement.

Source: 27:1C-10

COMMENT

This section is substantially identical to its source.

27A:61-13. Loans

The Commissioner, subject to the availability of appropriations for this purpose and pursuant to a project agreement, may make loans to a party to a project agreement for the purpose of undertaking and completing a State-owned transportation project. If a loan is to be made, the project agreement shall include the obligation of the governing body of the county to repay the loan to the Commissioner according to an agreed schedule. The Commissioner may pay money from these payments, or assign his right to receive the payments, to the New Jersey Transportation Trust Fund Authority, in reimbursement of funds paid by that authority for the purpose of making loans pursuant to this section.

Source: 27:1C-11

COMMENT

This section is substantially identical to its source.

27A:61-14. Adjoining transportation development districts

The governing bodies of two or more counties which have established, or propose to establish, adjoining transportation development districts, and which have determined that joint or coordinated planning or implementation of transportation projects would be beneficial, may enter into joint arrangements under this chapter, including: (1) filing joint transportation development district applications, (2) initiating a coordinated joint planning process, (3) adopting coordinated district transportation improvement plans and (4) entering into joint project agreements.

Source: 27:1C-12

COMMENT

This section is substantially identical to its source.

27A:61-15. Application for dissolution

a. The governing body of a county within which a transportation development district has been designated, by ordinance or resolution, may apply to the Commissioner for the dissolution of the district. The application shall include the reasons for the proposed dissolution and a plan for disbursing any funds remaining in the transportation development district trust fund, whether by refunds to owners of property on which the fees were assessed or otherwise, and for concluding the business of the district.

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b. The Commissioner shall, within 60 days of the receipt of a completed application, (1) dissolve the district and approve the county's plan for concluding the business of the district or (2) disapprove the application and inform the governing body of the county in writing of the reasons for the disapproval and any conditions or changes in the plan for concluding the business of the district which the Commissioner believes to be necessary in the public interest.

Source: 27:1C-14

COMMENT

This section is substantially identical to its source.

27A:61-16. Limitations

a. Approval of a development application by any State, county or municipal body shall not be withheld or delayed because the proposed development is within a proposed or pending transportation development district. The development application shall be considered in accordance with applicable law in effect at the time of application.

b. The provisions of this chapter shall not be construed as affecting municipal reviews and approvals of proposed developments under the provisions of the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

Source: 27:1C-16

COMMENT

This section is substantially identical to subsections (b) and (c) of 27:1C-16. Subsection (a) of that section was deleted as unnecessary.

27A:61-17. Pre-existing districts

a. If a county has, before the effective date of this chapter, established a district or districts for the purpose of consolidating the required contributions of applicants for development and implementing a coordinated program of transportation improvements in an area based on these contributions, the governing body of the county, by ordinance or resolution, may apply to the Commissioner for the designation and delineation of a transportation development district incorporating the district or districts so established. The application shall include, in addition to the information ordinarily required, a full description and account of the operations of the district or districts so established and any recommendations for alterations to the regulations and procedures of the district or districts the governing body finds necessary or appropriate to conform with the purposes of this chapter.

b. If a municipality has established a district or districts prior to the effective date of this chapter, the governing body of the municipality may request the governing body of the county to apply to the Commissioner for designation and delineation of a transportation development district to incorporate that district or districts. If the county rejects a request by a municipality to make application to the Commissioner for approval of a pre-existing district, or fails to respond to a request within 90 days of receipt of the request, the municipality may apply directly to the Commissioner for approval of the district and any transportation improvement and financial plan then in existence.

c. The operation and financing of any pre-existing districts may continue pending action by the Commissioner. The provisions of this chapter requiring project agreements shall not be applicable to projects in pre-existing districts that were the subject of agreements or funding commitments made prior to the effective date of this chapter. However, this exemption for projects in pre-existing districts shall not be construed to exempt any party from compliance with departmental regulations or orders.

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d. The Commissioner shall, within 90 days of receipt of a completed application and upon review of the application as to sufficiency and conformity with the purposes of this chapter, (1) by order designate a district and delineate its boundaries in conformance with the application, or (2) disapprove the application and inform the governing body of the county in writing of the reasons for the disapproval. If the application is disapproved, the governing body may resubmit an application incorporating whatever revisions it deems appropriate, taking into consideration the Commissioner's reasons for disapproval.

e. The Commissioner may, in an order made under subsection (d) of this section designating a district and delineating its boundaries, provide for the waiver or consolidation of any requirements concerning the joint planning process and the district transportation improvement plan where, in the Commissioner's judgment, that waiver or consolidation is justified by the public interest and by the purposes of this chapter. The Commissioner may also include in the order any other provisions, which the Commissioner believes to be necessary and desirable for effecting an orderly transition from the operation of a district or districts previously established to the operation of a transportation development district under this chapter.

Source: 27:1C-17

COMMENT

This section is substantially identical to its source.

27A:61-18. Regulations

a. The Commissioner, upon notice and the holding of a public hearing, shall adopt regulations, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to effect the purposes of this chapter.

b. Any transportation development district trust fund shall be administered in accordance with all of the regulations adopted by the Local Finance Board or the Division of Local Government Services of the Department of Community Affairs which are applicable to county funds generally, and the Local Finance Board, after consultation with the Commissioner, shall have authority to adopt regulations specifically governing the administration of transportation development district trust funds.

Source: 27:1C-18

COMMENT

Though it has been reorganized, this section is substantially identical to its source.

CHAPTER 62 - REDUCED FARE PROGRAM

27A:62-1. Legislative findings

The Legislature finds that:

a. Access to public transportation is essential to the health, safety and welfare of many senior citizens and disabled people.

b. The high cost of transportation services makes it difficult for many senior citizens and disabled people to use them.

c. Transportation services for senior citizens and disabled people can be provided through reduced fare service during offpeak times.

Source: 27:1A-64

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COMMENT

This section streamlines the source provision. Strikethrough reflects Legislative change to remove the time limitation on reduced fares for senior citizens and disabled people.

27A:62-2. Definitions

For this chapter, unless the context clearly indicates otherwise:

- a. "Carrier" means any person or public agency operating buses or rail passenger service on established routes within this state or between points in this state and points in adjacent states.
- b. "Bus" includes jitneys.
- c. "Offpeak times" means the hours from 9:30 a.m. to 4 p.m. and from 7 p.m. to 6 a.m. during the weekdays, and all day on Saturdays, Sundays and holidays.
- d. "Senior citizen" means a person 62 years of age or over.
- e. "Disabled person" means any person who, by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, is unable without special facilities or special planning or design to use mass transportation facilities and services as effectively as persons who are not so affected.

Source: 27:1A-65

COMMENT

This section is substantially identical to its source. The definition of "Commissioner" was deleted as unnecessary. See the definitions in Chapter One.

27A:62-3. Reduced rate program for senior citizens and disabled people

a. The Commissioner shall establish a program ~~to provide motor bus and rail passenger service for senior citizens during offpeak times and to providing~~ provide bus and rail passenger service for senior citizens and disabled people ~~during offpeak times at all times bus or rail service is offered,~~ on regular routes of carriers within this State or between points in this State and adjacent states at one-half of the regular adult rates of fare as set forth in the tariffs of carriers filed with the Interstate Commerce Commission, ~~Board of Public Utilities or the Department of Transportation, or the Commuter Operating Agency except that the reduced fare shall not be available to senior citizens and disabled people traveling on commuter railroad trains operated during peak times which have been designated by the New Jersey Transit Corporation as ineligible for round trip excursion fares.~~

b. The Commissioner may implement this program by any means necessary, including contracting with carriers for the provision of transportation services, purchasing of regular tickets and resale to ~~eligible~~ senior citizens ~~and disabled people~~ at one-half the ordinary fare, or directing payments to carriers for services provided to senior citizens and disabled people.

c. Carriers that receive or are entitled to receive funds for provision of service to senior citizens and disabled people from sources other than the Department may receive reimbursement payments from the Department.

Source: 27:1A-66

COMMENT

This section streamlines the source provision.

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27A:62-4. Procedures for establishment of program

The Commissioner, after consulting with the Commissioner of Community Affairs and the New Jersey State Commission on Aging, shall establish uniform procedures for:

- a. Determining the eligibility of persons to receive the reduced fares;
- b. Making reduced fares available to eligible persons; and
- c. Auditing and accounting to insure that no carrier receives payments in excess of the value of services actually rendered to senior citizens and disabled people.

Source: 27:1A-67

COMMENT

This section is substantially identical to its source.

27A:62-5. Use of resources of other of state agencies

The Commissioner may use the personnel, facilities and resources of any other department or agency of the state or any local public entity, to achieve the purposes of this chapter, in accordance with the terms agreed between the Commissioner and the department, agency, or entity.

Source: 27:1A-69

COMMENT

This section is substantially identical to its source.

27A:62-6. Further reductions in fares by carrier or law

Nothing in this act shall preclude any carrier from providing further fare reductions for senior citizens and disabled people or preclude any municipality from contracting for further reductions.

Source: 27:1A-70

COMMENT

This section is substantially identical to its source.

27A:62-7. Advertisement of program

The Commissioner may expend a sum not to exceed \$50,000.00 annually for advertising to make senior citizens and disabled people aware of the program.

Source: 27:1A-71

COMMENT

This section is substantially identical to its source.

27A:62-8. Authorization for reduced rate for handicapped or senior citizens

Despite any contrary law, a bus carrier may transport, at less than the usual fare charged to one person, any eligible senior or handicapped citizen.

Source: 27:1A-72

COMMENT

This section is substantially identical to its source.

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27A:62-9. Free transportation for travel attendant, guide

Despite any contrary law, a bus or rail carrier operated pursuant to the "New Jersey Public Transportation Act of 1979," P.L. 1979, c. 150 (C. 27:25-1 et seq.) shall transport a disabled person who requires the assistance of a travel attendant or guide in order to use public transportation at the fare charged to one disabled person.

Source: 27:1A-73

COMMENT

This section is substantially identical to its source. The two travel for the price of one handicapped citizen.

27A:62-10. Regulations

After consulting with other relevant departments and agencies, the Commissioner shall adopt reasonable regulations to achieve the purposes of this chapter. The regulations shall include a procedure for issue of an identification card upon certification that a disabled person requires the assistance of a travel attendant or guide in order to use public transportation.

Source: 27:1A-74

COMMENT

This section is based on 27:1A-74. The section has been broadened to include the general regulation authority now found in 27:1A-68.

CHAPTER 63 - RIDESHARING

27A:63-1. Legislative purpose

The purpose of this chapter is to encourage ridesharing programs to reduce traffic congestion, conserve gasoline consumption and promote the public's mobility. The chapter encourages ridesharing arrangements through a program of employer sponsorship and promotional activities in exchange for exempting employers from certain potential liabilities.

Source: 27:26-2

COMMENT

This section streamlines the source provision.

27A:63-2. Ridesharing

As used in this chapter, "ridesharing" means the transportation of persons in a motor vehicle, with a maximum carrying capacity of not more than 15 passengers, including the driver, where such transportation is incidental to the purpose of the driver. The term shall include ridesharing arrangements of persons commuting on a daily basis to and from work.

Source: 27:26-3

COMMENT

This section is based on the definitions found in 27:26-3. The separate definitions of "van-pooling" and "car-pooling" in that section were deleted since the words were used only in the definition of "ridesharing."

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27A:63-3. Employers; immunity from liability

a. An employer shall not be liable for injuries or damages sustained by passengers and other persons resulting from the operation or use of a motor vehicle not owned, leased or contracted for by the employer, when an employee is in a ridesharing arrangement between the employee's place of residence and place of employment or other pick-up or drop-off sites near those places.

b. An employer shall not be liable for injuries or damages sustained by passengers and other persons because he provides information, incentives, or otherwise encourages employees to participate in ridesharing arrangements.

Source: 27:26-4

COMMENT

This section is substantially identical to its source.

27A:63-4. Compensation of employee for travel time

An employee who participates in a ridesharing arrangement between the employee's place of residence and place of employment, or other pick-up or drop-off sites near those places, shall not be entitled to compensation by the employer for that travel time, and the wage provisions in Title 34 shall not apply during this travel period unless the employee is required to participate in the ridesharing arrangement as a condition of employment.

Source: 27:26-5

COMMENT

This section is substantially identical to its source.

CHAPTER 64 - JUNKYARDS

27A:64-1. Declaration of policy

The public policy of this State is to regulate and restrict the establishment, operation, and maintenance of junkyards in areas adjacent to the interstate and primary highway systems within this State.

Source: 27:5E-2

COMMENT

This section streamlines the source provision.

27A:64-2. Definitions

As used in this chapter:

- a. "Junk" means old or scrap metal, paper, material or trash, debris, or waste.
- b. "Automobile graveyard" means any establishment which is used for storing, buying, selling, or disposing of wrecked, scrapped, or dismantled motor vehicles or motor vehicle parts.
- c. "Junkyard" means an establishment which is used for storing, buying, selling, or disposing of junk, or is an automobile graveyard. The term shall also include garbage dumps and sanitary fills.

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d. "Interstate and primary systems" means that portion of the National System of Interstate and Defense Highways and that portion of connected main highways officially so designated by the Commissioner and approved by the Secretary of Transportation, pursuant to the provisions of Title 23 of the United States Code.

Source: 27:5E-3

COMMENT

This section is substantially identical to its source. The definitions of "Interstate system" and "Primary system" have been combined because, in this chapter, the two phrases are always used in conjunction.

27A:64-3. Establishment, operation and maintenance of junkyard

A person shall not establish or maintain a junkyard within 1,000 feet of the nearest edge of the right-of-way of any highway in the interstate and primary systems, except the following:

- a. Those not visible from the main-traveled way of the highway.
- b. Those located within areas zoned for industrial use under authority of law;
- c. Those located within unzoned industrial areas. The Department shall define by regulation unzoned industrial areas on the basis of actual land uses.

Source: 27:5E-4

COMMENT

This section is substantially identical to its source. Subsection (a) replaces both subsections (a) and (d) of 27:5E-4.

27A:64-4. Screening of junkyard; regulations

a. To prevent visibility of junkyards, the Department may screen any junkyard lawfully in existence within 1,000 feet of the nearest edge of the right-of-way and visible from the main-traveled way of any highway in the interstate and primary systems. The Commissioner may acquire lands or interests in lands to provide adequate screening.

b. The Commissioner may promulgate regulations governing the location, planting, construction, maintenance, and materials used in screening or fencing required by this chapter.

Source: 27:5E-5; 27:5E-6

COMMENT

This section combines 27:5E-5 and 27:5E-6.

27A:64-5. Relocation or removal of junkyards

When the Commissioner determines that the topography of the land adjoining the highway will not permit adequate screening of junkyards or determines that the screening would not be economically feasible, the Commissioner may acquire interests in lands as necessary to secure the relocation or removal of the junkyards, and may pay for the cost of the relocation or removal.

Source: 27:5E-7

COMMENT

This section is substantially identical to its source.

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27A:64-6. Penalties

a. Any person who is convicted of establishing or maintaining a junkyard in violation of this chapter shall pay a penalty of between \$500.00 and \$1,000.00 for each violation.

b. Junkyards not conforming to the requirements of this chapter are public nuisances. The Commissioner may apply to the Superior Court for an injunction to abate such nuisance.

Source: 27:5E-8; 27:5E-12

COMMENT

Subsection (a) is substantially identical to 27:5E-12. Subsection (b) is substantially identical to 27:5E-8.

27A:64-7. County and municipal ordinances; effect

This chapter does not abrogate or affect any lawful ordinance, regulation, or resolution of any county or municipality more restrictive than this chapter.

Source: 27:5E-9

COMMENT

This section is substantially identical to its source.

27A:64-8. Federal cooperation

The Commissioner is authorized to enter into agreements with the United States Secretary of Transportation as provided by Title 23, United States Code, relating to the control of junkyards in areas adjacent to highways in the interstate and primary systems, and to take action in the name of the State to comply with the terms of these agreements.

Source: 27:5E-10

COMMENT

This section is substantially identical to its source.

CHAPTER 65 - ADVERTISING

27A:65-1. Findings, declarations

This chapter regulates outdoor advertising on highways to preserve the natural scenic beauty and aesthetic features of the highways and adjacent areas while promoting economic development and protecting commercial speech. The regulations of this chapter are consistent with the public policy declared by the Congress of the United States in Title 23 of the United States Code and reflect statutory enactments and judicial decisions of this State. The Commissioner shall be responsible for implementing this chapter.

Source: 27:5-6

COMMENT

This section streamlines the source provision.

27A:65-2. Definitions

As used in this chapter:

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a. "Advertisement or advertising" means the use of any outdoor display or sign upon real property within public view intended to attract the public to goods, merchandise, property, business, services, entertainment, amusement or other commercial or noncommercial messages.

b. "Interstate System" means those highways constructed within this State and approved by the Secretary of Transportation of the United States as an official portion of the national System of Interstate and Defense Highways, pursuant to the provisions of Title 23 of the United States Code.

c. "Limited access highway" means a highway designed for through traffic over which owners of property whose land abuts the highway do not have an easement or right of light, air or direct access.

d. "Main-traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each separate roadway carrying traffic in opposite directions is a main traveled way. "Main-traveled way" shall not include frontage roads, turning roadways, or parking areas.

e. "Primary System" means any highway so designated by the State of New Jersey and approved by the federal authorities pursuant to Title 23 of the United States Code.

f. "Protected areas" mean all areas inside the boundaries of this state which are adjacent to and within 660 feet of the edge of the right-of-way of highways in the Interstate and Primary Systems and those areas inside the boundaries of this state which are visible from the highway but beyond 660 feet of the edge of the right-of-way of the Interstate and Primary Systems and are outside urban areas.

g. "Public view" means the area visible to persons traveling or operating motor vehicles on a highway.

h. "Sign" means any outdoor display or advertising on real property within public view which is

intended to attract, or which does attract, the attention of pedestrians or the operators, attendants, or passengers of motor vehicles using the roads, highways, and other public thoroughfares and places, and shall include any writing, printing, painting, display, emblem, drawing, sign, or other device whether placed on the ground, rocks, trees, tree stumps or other natural structures, or on a building, structure, signboard, billboard, wallboard, roofboard, frame, support, fence, or elsewhere, and any lighting or other accessories used in conjunction therewith.

i. "Urban area" means a place as designated by the U.S. Bureau of the Census having a population of 5,000 or more within boundaries to be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary of Transportation of the United States. The boundaries shall, at a minimum, encompass the entire place designated by the U.S. Bureau of the Census.

j. "Visible" means capable of being seen and comprehended without visual aid by persons traveling on the highway.

Source: 27:5-7

COMMENT

This section is substantially identical to its source.

27A:65-3. Regulations

a. The Commissioner may adopt regulations pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to achieve the purposes of this chapter. These regulations shall include: license and permit fees; duration of licenses and permits; spacing, size, specifications and lighting of signs; procedures for referral of contested cases to the Office of Administrative Law; and other requirements pertaining to the issuance or denial of licenses and permits or for the erection or maintenance of signs. The Commissioner

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also may adopt regulations governing new or innovative forms of signs so that they may be made to conform with the intent and purposes of this chapter.

b. In adopting regulations pursuant to this chapter, the Commissioner shall consider:

(1) The safety, convenience and enjoyment of travel on the highways and to the public investment in those highways;

(2) The type of information needed by the traveling public when using those highways;

(3) Outdoor advertising industry standards, practices and technological advances;

(4) Promotion of safety and aesthetics through modernization, technological improvements and innovative construction, design and maintenance;

(5) The economic benefit of outdoor advertising to the commerce of this State; and

(6) The needs of the citizens of and travelers within the State to have access to commercial and non-commercial messages and ideas displayed by roadside signs.

Source: 27:5-18

COMMENT

This section is substantially identical to its source.

27A:65-4. License, permit required

Except as provided in this chapter, a person shall obtain a permit from the Commissioner to erect, maintain or make available to another a roadside sign, and, if applicable, shall obtain a license to engage

in the business of outdoor advertising for profit through the rental or other compensation received for the erection, use or maintenance of signs or other objects upon real property for the display of advertising matter on any stationary object within public view. A person required to obtain a license under this chapter may not obtain a permit unless the person has obtained a license which remains in full force and effect.

Source: 27:5-8

COMMENT

This section is identical to its source.

27A:65-5. Requirements for a permit

a. The Commissioner shall establish regulations for the issuance of permits in accordance with this section.

b. A sign may not attempt or appear to attempt to direct the movement of traffic or interfere with, imitate, or resemble any official traffic sign, signal or device, or include or utilize flashing, intermittent or moving lights, or utilize lighting equipment or reflectorized materials which emit or reflect colors, including, but not limited to, red, amber or green, except as may be authorized by the Commissioner or by agreement between the Commissioner and the Secretary of Transportation of the United States. Signs shall not simulate any other official signs erected or maintained by any governmental agencies.

c. A sign may not interfere or be likely to interfere with the ability of the operator of a motor vehicle to have a clear and unobstructed view of the highway ahead or of official signs, signals or traffic control devices.

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d. Illumination of a sign shall be effectively shielded so as to prevent light from being directed at any portion of the main-traveled way of the highway, or, if not shielded, be of a sufficiently low intensity as not to cause glare or impair the vision of persons operating motor vehicles on that highway, or otherwise impair the operation of a motor vehicle.

e. Signs shall be maintained in a safe condition with regard to conditions of climate, weather and terrain; as a condition of continued use or permit renewal, unsafe signs shall be repaired.

f. A sign may not be of a type, size, or character so as to endanger or injure the public or be injurious to property in the vicinity.

g. A sign may not be painted, drawn, erected or maintained upon trees, rocks, other natural features or public utility poles.

h. Signs for which a permit has been issued shall display in a conspicuous position on the sign or its supporting structure, the name of the person holding the permit.

Source: 27:5-9

COMMENT

This section is substantially identical to its source.

27A:65-6. Signs on state right-of-way or real property; compliance with local zoning and building requirements

Any billboard or outdoor advertising sign licensed and permitted pursuant to the "Roadside Sign Control and Outdoor Advertising Act," P.L. 1991, c. 413 (C.27:5-5 et seq.), and proposed to be erected on or above any State right-of-way or any real property of the department shall be subject to local government zoning ordinances, applicable local government building permit requirements, and in the pinelands area, shall be subject to the provisions of the comprehensive management plan prepared and adopted by the Pinelands Commission pursuant to section 7 of P.L. 1979, c. 111 (C.13:18A-8).

Source: 27:5-9.1

COMMENT

This section is substantially identical to its source.

27A:65-7. Signs prohibited in right-of-way of Interstate and Primary Systems

A person shall not erect or maintain a sign within the right-of-way of any portion of the Interstate and Primary Systems except for signs, public notices, or markers, erected, maintained or approved by the Department.

Source: 27:5-10

COMMENT

This section is substantially identical to its source.

27A:65-8. Exceptions for certain roadside signs

a. The Commissioner shall not issue a permit for roadside signs to be erected or maintained in any protected area visible from the main-traveled way of any Interstate or Primary System highway, except as provided below.

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b. Subject to the Commissioner's regulations, only the following signs shall be permitted in protected areas:

(1) Directional and other official signs and notices required or authorized by law which conform to national standards promulgated by the Secretary of Transportation of the United States.

(2) Signs located in zoned and unzoned commercial and industrial areas within 660 feet of the nearest edge of the right-of-way, any part of which was acquired on or before July 1, 1956.

(3) Signs advertising activities conducted on the property on which they are located.

c. The following may also be permitted in portions of protected areas on the Interstate System:

(1) Signs located in commercial or industrial zones within the boundaries of incorporated municipalities as those boundaries existed on September 21, 1959, and all other areas where the land use as of September 21, 1959 was clearly established by State law as commercial or industrial within 660 feet of the nearest edge of the right-of-way.

(2) Signs located in zoned and unzoned commercial and industrial areas within 660 feet of the nearest edge of the right-of-way, any part of which was acquired on or before July 1, 1956.

d. The following signs may also be permitted in protected areas on the Primary System:

(1) Signs located in areas which are zoned industrial or commercial under the authority of state law.

(2) Signs located in areas determined to be industrial or commercial pursuant to state law.

e. The Commissioner shall not issue a permit for signs to be erected or maintained in any other area not covered by subsections (b), (c) and (d) above, except for the following:

(1) Signs located in areas zoned industrial or commercial under the authority of state law.

(2) Signs located in areas determined to be industrial or commercial pursuant to state law.

f. Despite the above, the Commissioner may issue a permit for a sign on any public property when the Commissioner finds it is in the public interest to do so.

Source: 27:5-11

COMMENT

This section is substantially identical to its source.

27A:65-9. Exceptions for certain other signs or devices

Unless this chapter states otherwise, permits are not required for the use, maintenance or erection of a sign or other device to be used solely for any of the following purposes:

a. To advertise exclusively for sale or rent the property upon which the sign or other device is located;

b. For notices required by law to be posted or displayed;

c. For any official sign established pursuant to the provisions of the Manual of Uniform Traffic Control Devices erected on any public highway by the public authority having jurisdiction over that public highway;

d. For signs which are not adjacent to an Interstate or Primary System highway and which advertise activities conducted upon the property on which they are located; or

e. For any sign erected or maintained by the Commissioner.

Source: 27:5-12

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COMMENT

This section is substantially identical to its source.

27A:65-10. Licenses or permits; application, revocation

a. The Commissioner shall prescribe and furnish applications for licenses or permits.

b. A license applicant who is neither a state resident nor a foreign corporation authorized to do business in this State shall:

(1) Authorize the Commissioner to serve process, notice or order issuing out of or by any court, administrative agency or official of this state upon the applicant, and shall agree that such service constitutes personal service. The applicant shall provide in the application the name and address of the agent to receive service on behalf of the applicant. The Commissioner shall give Notice of service of process to the applicant by certified mail, return receipt requested, addressed to the applicant at the address given in the application, or another address of which the Commissioner has been notified in writing by the applicant; and

(2) File a bond satisfactory to the Commissioner as to form and surety running to the State of New Jersey in the sum of \$5,000.00 during such period during such period conditioned upon compliance by the applicant with all the provisions of this chapter. Upon default in the condition of such bond, the Commissioner may enforce collection of the bond in the appropriate court.

c. After notice and hearing, the Commissioner may revoke any permit or license upon finding a materially false statement in the application.

d. After notice and hearing, the Commissioner may revoke a permit upon finding that a sign has been erected or maintained contrary to: (1) the approved application, (2) any provision of this chapter, or (3) any Department regulations promulgated under this chapter, provided that the person to whom the license or permit was issued has not cured the violation within 30 days after receipt of written notification of the intended revocation.

e. If the person to whom the license or permit was issued requests an administrative hearing or commences other legal action within 15 days of the receipt of the notice of the intended revocation, the period of time in which to comply with this chapter and these regulations and cure the violation may be stayed pending a final disposition of the administrative or legal proceeding. If the Commissioner prevails, the person to whom the license or permit was issued shall have 20 days from receipt of the final decision to comply.

Source: 27:5-13

COMMENT

This section is substantially identical to its source.

27A:65-11. Licenses or permits; renewals

a. Renewal of any license or permit issued after January 17,1992 may be refused for any ground sufficient for the revocation of a license or permit.

b. Licenses and permits for signs erected and maintained with a valid license or permit issued before January 17,1992 shall be renewed unless the Commissioner finds that a statement made in the license or permit application is materially false or the sign has been erected or maintained contrary to the terms of the issued license or permit in which case the Commissioner may take appropriate action.

Source: 27:5-14

COMMENT

This section is substantially identical to its source.

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27A:65-12. Violations of chapter; notice; removal

a. The Commissioner shall give written notice to remove any sign or other object used for outdoor advertising not authorized by a valid permit, specifically exempted from the requirement for a permit or in violation of this chapter. The Commissioner shall notify at the last known address the person holding the permit. If no one holds a permit, or if the address of the holder is unknown, the Commissioner shall notify at their last known addresses the owner of the real property on which the sign is located and the owner of the sign. These persons are individually responsible for removal of the sign within 30 days after receiving the notice.

b. The Commissioner may order removal of any sign upon non-compliance with terms of the notice unless a hearing has been requested by the person to whom notice has been given, or other legal action has been commenced restraining this removal.

c. If the Commissioner cannot ascertain the owner of the property or the owner of the sign for which a permit has not been issued, the Commissioner may remove the sign 30 days after posting notice on the sign. Thereafter, the Commissioner may enter upon private property without liability in order to remove the sign and may recover, from the owner or the person who unlawfully erected the sign, the cost of its removal or the amount of \$500.00, whichever is greater.

d. The Commissioner may institute any appropriate action or court proceeding for the removal of a sign if the sign is not brought into compliance within the 30 days following written notification pursuant to subsection (a) of this section.

Source: 27:5-15

COMMENT

This section is substantially identical to its source.

27A:65-13. Penalties

A person who fails to comply with this chapter shall pay a penalty between \$50.00 and \$500.00 for each offense. Each day of violation may be a separate offense. Factors considered in assessing the penalty are the nature and circumstances of the violation, the conduct of the violator and the revenue derived from the violation.

Source: 27:5-16

COMMENT

This section is substantially identical to its source.

27A:65-14. Enforcement by Commissioner

Any penalty imposed pursuant to this chapter may be collected, with costs, in a summary proceeding pursuant to "the penalty enforcement law," N.J.S. 2A:58-1 et seq. The Superior Court or the municipal court in the municipality where the violation occurs or where the violator resides, has a place of business or principal office shall have jurisdiction to enforce the provisions of "the penalty enforcement law" in connection with this chapter. The Commissioner may institute an action in the Superior Court for injunctive relief to prevent and restrain any violation of this chapter, or any order issued, or rule or regulation adopted pursuant to this chapter.

Source: 27:5-17

COMMENT

This section is substantially identical to its source.

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27A:65-15. Fees, penalties for administration of chapter; fees in lieu of other excises

a. Money received from fees and penalties collected pursuant to this chapter shall be deposited with the State Treasurer, and shall be disbursed to the Department to defray the expenses of administering the provisions of this chapter. Moneys received pursuant to the schedule of fees adopted by the Commissioner shall not exceed the cost of administering the provisions of this chapter.

b. The fees for licenses and permits prescribed by this chapter shall be in lieu of all other governmental fees or excises for signs, or the carrying on of the business of outdoor advertising by means of signs.

Source: 27:5-19

COMMENT

This section is substantially identical to its source.

27A:65-16. State, federal agreements

The Commissioner is authorized to enter into agreements with the Secretary of Transportation of the United States, as provided pursuant to Title 23 of the United States Code relating to the control of signs, and to take action in the name of the state to comply with the terms of agreements. The Commissioner is authorized to receive and expend federal or State funds in furtherance of these agreements.

Source: 27:5-20

COMMENT

This section is identical to its source.

27A:65-17. Acquisition of property by the State

The Commissioner is authorized to acquire by gift, lease, purchase or condemnation, real and personal property, or the right to maintain signs for the purpose of implementing this chapter. The cost of the acquisition is a part of the cost of a highway right-of-way. All persons whose sign and property or interest in property is acquired, except those by gift to the State, shall receive just compensation.

Source: 27:5-21

COMMENT

This section is substantially identical to its source.

27A:65-18. Safety rest areas, informational sites

The Commissioner may designate certain roadside areas as "safety rest areas" or "informational sites" and may regulate these sites. Safety rest areas or informational sites are considered "highway purposes" under the laws of this state.

Source: 27:5-22

COMMENT

This section is substantially identical to its source.

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27A:65-19. Duty of law enforcement

a. All departments of State or local government and all county and municipal officers charged with the enforcement of state and municipal laws under the direction of the Commissioner shall assist in enforcing the provisions of this chapter, orders issued, and rules or regulations adopted pursuant to this chapter.

b. The Superintendent of State Police in the Department of Law and Public Safety and the Chief of Police of any municipality are authorized and charged by the Commissioner to enforce the provisions of this chapter and any rules or regulations adopted.

Source: 27:5-23

COMMENT

This section is substantially identical to its source.

27A:65-20. Effect on existing signs

A sign erected and maintained with a valid permit issued before the effective date of this chapter, which does not comply with this chapter or the rules or regulations adopted, may continue to be maintained, repaired and restored at the size, location, height, and setback set forth in the permit without limitation as to time, even if partially destroyed and rebuilt. However, this exemption for existing signs does not apply when the sign is totally destroyed, abandoned, or if the Commissioner revokes the permit pursuant to the authority granted under 27A:65-11(b).

Source: 27:5-25

COMMENT

This section is substantially identical to its source.

27A:65-21. Effect on local ordinances or regulations

This chapter does not limit the powers of any public entity to regulate land, streets, buildings or structures by zoning or other means, or to prohibit the enforcement of local ordinances or regulations consistent with this chapter. In the event of conflict between this chapter and its regulations, and an ordinance or regulation of an incorporated public entity, this chapter or its regulations shall prevail to the extent necessary for the state to carry out this chapter's policies or to permit state compliance with agreements entered into pursuant to this chapter.

Source: 27:5-26

COMMENT

This section is substantially identical to its source.

CHAPTER 66 - NUCLEAR WASTE TRANSPORT

27A:66-1. Findings, declarations

The Legislature of the State of New Jersey, a corridor state on the eastern seaboard through which certain nuclear waste is transported, finds that that it is in the public interest to participate in the process of designating routes for the transport of certain nuclear waste through the State and develop contingency plans to ensure swift response in the event of a transport accident.

Source: 27:5H-1

COMMENT

This section is substantially identical to its source.

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27A:66-2. Definitions

As used in this act:

- a. "Highway route controlled quantity" means the same as it is defined by the United States Department of Transportation at 49 CFR 173.403 or any superseding regulation.
- b. "Radioactive material" means the same as it is defined by the United States Department of Transportation at 49 CFR 173.403 or any superseding regulation.
- c. "State-designated route" means a preferred route selected in accordance with United States Department of Transportation "Guidelines for Selecting Preferred Highway Routes for Large Quantity Shipments of Radioactive Materials" or an equivalent routing analysis which adequately considers overall risk to the public.

Source: 27:5H-2

COMMENT

This section is identical to its source.

27A:66-3. Nuclear Waste Transport Commission

a. There is created in, but not of, the Department of Transportation, the Nuclear Waste Transport Commission. The Commission shall consist of 11 voting members, three of whom shall be the Commissioner of Environmental Protection, the Commissioner of Transportation, and the Superintendent of the Division of State Police in the Department of Law and Public Safety, or their designees, who shall serve ex officio; and eight of whom shall be appointed by the Governor, with the advice and consent of the Senate.

b. Of the appointed members: two shall be county freeholders at the time of their appointments, who shall not be of the same political party and who shall be selected from a list of candidates recommended by the New Jersey Association of Counties; two shall be municipal elected or appointed officials at the time of their appointment, who shall not be of the same political party and who shall be selected from a list of candidates recommended by the New Jersey State League of Municipalities; two shall be members of a local environmental Commission or recognized environmental organization; one shall be a representative of the high level nuclear waste transporting industry; and one shall be a representative of the high level nuclear waste generating industry.

c. Of the appointed members: two shall be residents of either Bergen, Essex, Hudson, Hunterdon, Morris, Passaic, Sussex, or Warren counties; two shall be residents of either Mercer, Middlesex, Monmouth, Somerset, or Union counties; two shall be residents of either Atlantic, Burlington, Camden, Cape May, Cumberland, or Gloucester counties; one shall be a resident of Ocean county; and one shall be a resident of Salem county.

d. Each appointed member shall serve a term of three years, except that of those first appointed, three shall serve for terms of three years, three for terms of two years, and two for terms of one year. Each of these members shall hold office for the term of appointment and until a successor is appointed and qualified. A member shall be eligible for reappointment. Any vacancy in the membership occurring other than by expiration of term shall be filled in the same manner as the original appointment, but for the unexpired term only.

e. Each appointed member may be removed from office by the appointing authority, for cause and after opportunity for a hearing, and may be suspended by the appointing authority pending the completion of the hearing. Each appointed member who shall miss three consecutive meetings of the Commission without being excused for good cause by the chairman shall be deemed to have vacated his office.

f. The Commission shall organize as soon as may be practicable after the appointment of its members. The Governor shall designate a chairman, who shall schedule, convene, and chair Commission meetings, and a vice-chairman, who shall act as chairman in his absence, from the public members who shall serve at the will of the Governor. The members shall select a secretary, who need not be a member of the Commission. The

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Commission may, within the limits of any funds appropriated or otherwise made available to it for this purpose, appoint such other staff or hire such experts as it may require.

g. The powers of the Commission shall be vested in the members thereof in office. A majority of the membership of the Commission shall constitute a quorum for the transaction of business. Action may be taken and motions and resolutions adopted by the Commission at any meeting by the affirmative vote of a majority of the full membership of the Commission.

h. The members of the Commission shall serve without compensation, but the Commission may, within the limits of funds appropriated or otherwise made available to it, reimburse members for actual expenses necessarily incurred in the discharge of their official duties.

Source: 27:5H-3

COMMENT

This section is identical to its source.

27A:66-4. Duties, responsibilities

The duties and responsibilities of the Commission shall be:

a. To establish criteria, in conformity with federal law and in consideration of the unique needs of the State, for selection of State-designated routes for the transport of highway route controlled quantity radioactive materials through the State;

b. To review the general State-designated routes for implementation by the State, the United States Nuclear Regulatory Commission, and the United States Department of Transportation and make recommendations to the Governor, or the Governor's designee, and the Legislature, annually upon the issue of the annual "Construction Program" document or any substantially similar document prepared by the Department of Transportation, or more frequently.

c. Upon each notification of an intent to transport highway route controlled quantity radioactive materials through the State, to designate the specific State-designated route for that shipment, for implementation by the State, the United States Nuclear Regulatory Commission, and the United States Department of Transportation, and to notify immediately the members of the Legislature through whose districts the selected route passes;

d. To consult and cooperate, where appropriate, with the federal government, regional and interstate organizations and agencies, and other state governments in efforts to identify State-designated routes so as to ensure maximum practicable consistency with those of neighboring states;

e. To make recommendations with respect to the transport of radioactive material and the response to ~~resulting accidents resulting therefrom~~ for incorporation by the Department of Environmental Protection in the State Radiation Emergency Response Plan created pursuant to P.L. 1981, c. 302 (C. 26:2D-37 et seq.); and

f. To review and evaluate existing local, county and State public safety personnel training programs for response to radioactive material transport accidents, and to make recommendations on them to the appropriate governmental entities.

Source: 27:5H-4

COMMENT

This section is substantially identical to its source.

27A:66-5. Regulations

In accordance with the provisions of the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.), the Commission shall:

- a. Adopt regulations deemed necessary to effectuate the purposes of this act; and
- b. Conduct public hearings in carrying out its duties under subsections a. and b. of 27A:66-4.

Source: 27:5H-5

COMMENT

This section is substantially identical to its source.

CHAPTER 67 - TRAFFIC DEMAND MANAGEMENT

~~27A:67-1. Findings, declarations~~

The Legislature finds and declares that:

~~a. In recent years New Jersey has experienced tremendous growth in certain regions of the State, often along highway routes. This growth, as well as other factors, has led to an increase in vehicular traffic on the highways of the State, resulting in traffic congestion in various parts of the State, reaching very high levels on certain highways, resulting in "gridlock" conditions. This traffic congestion has generally outpaced the capacity of the highways of this State to deal with it, particularly so in the most highly congested areas. It interferes with the safe and efficient movement of traffic and creates constraints on future economic development.~~

~~b. This high level of traffic congestion, particularly during peak hour periods, results in various economic, social and environmental costs and effects. The direct costs of congestion that affect business production costs include additional labor costs associated with longer trips made by employees during business hours, higher vehicle operating costs, and less than optimal vehicle use. Indirect costs of traffic congestion include increases in accidents and insurance premiums, the degradation or loss of employee productivity, and increases in delivery costs, employee turnover, and recruiting problems. Reliance on the use of single occupancy vehicles for commutation purposes is costly to commuters and increases the consumption of gasoline, thereby rendering this State and Nation more dependent on foreign energy sources. The use of alternative means of commuting will reduce this energy dependence and render the State less vulnerable to possible interruption of gasoline supplies. This would support the national goal of energy conservation.~~

~~There are also various social costs incurred as a result of excessive levels of congestion, particularly as they affect commuters. Excessive amounts of time spent in daily commutation affect the amount of time available to commuters for necessary recreational and family-related activities, and under certain conditions may cause excessive stress leading to increases in heart rate, blood pressure and heart rate irregularities, and may lead to employees arriving at work feeling annoyed and being therefore less productive.~~

~~c. Levels of traffic congestion in this State are related to levels of air pollution, particularly ozone, carbon monoxide and particulate matter. The federal Clean Air Act (42 U.S.C. { 7401 et seq.), as amended in 1990 by Public Law 101-549, sets attainment standards for these various pollutants. New Jersey is considered as a non-attainment area in terms of level of ozone while parts of the State in which there is severe traffic congestion have failed to attain the federally mandated carbon monoxide levels. In New Jersey, 50% of the ozone pollution and almost 90% of the carbon monoxide pollution is caused by mobile sources, such as cars and trucks.~~

~~The major source of elevated concentrations of carbon monoxide in the air is motor vehicle exhaust. Carbon monoxide is a colorless, odorless, and tasteless gas. This gas interferes with oxygen carrying capacity in the blood, and, depending upon the concentration, may cause reduced awareness, dizziness, headache and fatigue, loss of consciousness, and possibly death.~~

~~Ozone is a gas formed when volatile organic substances and nitrogen oxides react in the presence of sunlight. It is a major component of smog. This respiratory irritant causes coughing, chest discomfort, upper respiratory illness, increases asthmatic problems, and reduces pulmonary functions.~~

~~The Clean Air Act:~~

- ~~— (1) Sets deadlines for achieving attainment levels for each pollutant;~~
- ~~— (2) Mandates clean fuel, vehicle, and State Implementation Plan (SIP) requirements for each pollutant; and~~
- ~~— (3) Authorizes the Environmental Protection Agency (EPA) to use sanctions against those states not meeting the requirements or deadlines.~~

d. ~~Section 182(d)(1)(B) of the Clean Air Act requires the states which are in severe non-attainment areas for ozone to submit a revision to their State Implementation Plans (SIPs) by November 15, 1992 requiring that employers in the area implement programs to reduce work related vehicle trips and miles travelled by employees. The revision is to be developed in accordance with guidance issued by the EPA pursuant to section 108(f) of the Clean Air Act, "Transportation Control Measures," and shall, at a minimum, require that each employer of 100 or more persons in such area achieve average passenger occupancy (APO) per vehicle in commuting trips between home and the workplace during peak travel periods of not less than 25% above the average vehicle occupancy (AVO) for all such trips in the area. Every effort should be made to ensure that the minimum federal standards are not exceeded. The State Implementation Plan must document how the State plans to implement the AVO requirement. In addition, the Clean Air Act requires affected employers to submit a plan by November 15, 1994 which "convincingly demonstrates compliance" by November 15, 1996.~~

e. ~~In order to deal with the economic, social and environmental costs and effects enumerated above and to avoid or delay expensive or environmentally costly new highway construction and to preclude the withholding of federal funds for New Jersey's infrastructure, it is in the public interest for the State of New Jersey to develop a comprehensive program of transportation control measures to deal with traffic congestion and air pollution. In furtherance of this policy it is the intent of the Legislature that the Department of Transportation:~~

~~—(1) Take steps to analyze already existing data related to commutation patterns and to engage in or analyze comprehensive traffic congestion studies in order to provide for a more complete and detailed picture of the level and sources of congestion on the State's roads and highways.~~

~~—(2) Place special emphasis on the completion of "missing links" in the State's highway system, the adoption of transportation control measures intended to facilitate the smooth flow of traffic, such as improved signage, synchronization of traffic lights, resurfacing of highways, the use of "intelligent vehicle" highways that incorporate electronic monitoring and traffic warning systems, electronic toll management systems, the maximum possible use of public transportation, and other appropriate measures.~~

~~—(3) Establish by regulation a Travel Demand Management Program, as a result of recommendations made from representatives of government and the private sector which would require employers employing 100 or more persons at one location in affected areas of the State to undertake surveys of the commutation patterns of their employees and to prepare compliance plans. The survey shall, at a minimum, document the employer's average passenger vehicle occupancy rate during designated peak hours. The plan shall identify what transportation demand management strategies are being initiated or are in place by the employer. The employer shall sponsor travel demand management programs and offer incentives as necessary to reduce the number of single occupancy vehicles at the employer's work locations and as a general rule increase the average vehicle occupancy rate by not less than 25% above the average vehicle occupancy for all such trips in the region not later than November 15, 1996. However, as a matter of equity it is the Legislature's intent to give credit to employers who have instituted travel demand management programs prior to the State's institution of such a program and not to penalize them for their current or past travel demand management practices. Therefore, no employer is expected to attain a higher average passenger occupancy (APO) rate greater than 25% above the average vehicle occupancy (AVO) set for the region as a whole.~~

Source: 27:26A-2

COMMENT

This section is repealed by L.1996, c. 121, § 8, effective November 1, 1996.

27A:67-1. Definitions

As used in this chapter:

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a. ~~"Affected area" means a geographic area designated by regulation of the department pursuant to section 5 of this amendatory and supplementary act which is considered a highly congested area or is a non-attainment area for which transportation control measures are required under the Clean Air Act.~~

b. ~~"Affected employer" means an employer which employs 100 or more employees at a work location and which is required by this amendatory and supplementary act to file a compliance plan.~~

c. ~~a. "Alternative means of commuting" means travel between a person's place of residence and place of employment or termini near those places, other than in a motor vehicle occupied by one person. Alternative means of commuting include, but are not limited to, public transportation, car pools, van pools, bus pools, ferries, bicycling, telecommuting and walking, which may be used in conjunction with such strategies as flextime, staggered work hours, compressed work weeks and like measures.~~

d. ~~"Average Passenger Occupancy" or "(APO)" means the average passenger occupancy of vehicles commuting to an employer's worksite during peak periods, as specified by formula or formulas prescribed by regulation of the department.~~

e. ~~"Average Vehicle Occupancy" or "(AVO)" means the average vehicle occupancy of the region as a whole of vehicles commuting to worksites during peak periods, as specified by a formula or formulas prescribed by regulation of the department.~~

f. ~~b. "Clean Air Act" means the federal Clean Air Act, as amended by Pub. L. 101-549 (42 U.S.C. § 7401 et seq.) and as subsequently amended or supplemented.~~

c. ~~"Commuter transportation benefit" means the cost to employers of providing benefits to an employee for utilizing an alternative means of commuting and the cost of providing services and facilities which would encourage or facilitate use by employees of alternative means of commuting. The benefit shall include the costs of parking by employees at park-and-ride lots.~~

d. ~~"Employee" means an employee hired or employed by the employer and who reports to the employer's work location, as specified by regulation of the department.~~

e. ~~"Employer" means any person, partnership, association, corporation, trust, legal representative or any organized group of persons which hires or employs employees and shall also include all public and quasi-public employers, including without limitation the United States and any of its governmental instrumentalities, the State of New Jersey and its instrumentalities and subdivisions, and all State and bi-State authorities, corporations, Commissions, boards and like bodies.~~

g. ~~"Government employer" means the United States and any of its governmental instrumentalities, the State of New Jersey and any of its instrumentalities and subdivisions, except independent government employers.~~

h. ~~"High occupancy vehicle" means a vehicle which is used to transport two or more persons and shall include public transportation, car pool, van pool and other vehicles as determined by regulation of the department."~~

i. ~~"Independent government employer" means an independent or semi-autonomous State authority, corporation, Commission, board or like body which does not receive State appropriations and shall also include any bi-State authority which has work locations within the State and the South Jersey Port Corporation notwithstanding that it may receive a State appropriation.~~

j. ~~"Peak periods" means those hours of peak travel as designated by regulation of the department.~~

f. ~~"Program" means the Travel Demand Management Program established pursuant to section 5 of P.L. 1992, c. 32 (C.27:26A-5) and continued pursuant to P.L. 1996, c. 121 (C.27A:67-3 et al.).~~

k. ~~"Region" means a geographic area in which the level of average vehicle occupancy is determined by the department and may be coterminous or not with an affected area.~~

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† g. "Transportation management association" or "TMA" means a nonprofit corporation approved by the department as coordinating transportation services, including but not limited to public transportation, van pools, car pools, bicycling and pedestrian modes, as well as strategies such as flex-time, staggered work hours, and compressed work weeks, for corporations, employees, developers, individuals and other groups.

‡ h. "Travel demand management" or "TDM" means a system of actions whose purpose is to alleviate traffic-related problems through improved management of vehicle trip demand. These actions, which are primarily directed at commuter travel, are structured to reduce the dependence on and use of single occupancy vehicles, or to alter the timing of travel to other, less congested time periods or both.

~~n. "Work location" or "location" means an area, building, grouping of buildings or set of contiguous buildings or portion thereof, under the ownership, operation, or control of a single employer where employees perform work.~~

Source: 27:26A-3

COMMENT

This section is substantially identical to its source, but definitions of terms that are self-evident, defined in Chapter 1 or are not used in the chapter have been deleted.

27A:67-2. Analysis of data, development of strategy Development of transportation control strategy

a. To the end that the problems of traffic congestion and its attendant economic, social and environmental costs and effects shall be dealt with in a comprehensive manner, the department shall analyze already existing data related to commutation patterns, including origin-destination data; and shall engage in or analyze comprehensive traffic congestion studies in order to provide for a more complete and detailed picture of the level and sources of congestion on State highways, county and municipal roads, as well as toll bridges and toll roads.

b. Based upon this analysis or study, the department shall develop a comprehensive strategy of transportation control measures to deal with congestion and air pollution problems in the State, including but not limited to placing special emphasis on the completion of "missing links" in the State highway system, use of high occupancy vehicle lanes, priority treatment of high occupancy vehicles, the adoption of traffic system management, such as improved signage, synchronization of traffic lights, resurfacing of highway pavements, the use of "intelligent vehicle" highways, the maximum possible use of public transportation and other appropriate measures to facilitate the smooth flow of traffic in the State. No high occupancy vehicle lanes shall be established on a highway unless public transit alternatives are evaluated and marketed for that highway.

Source: 27:26A-4

COMMENT

This section is identical to its source. Title change occurred to conform to the text.

27A:67-3. Removal of mandatory employer trip reduction plan

~~As authorized by Section 182(d)(1) of the Clean Air Act as amended by Pub.L.104-70, the Commissioner of Environmental Protection shall submit a revision of the State Implementation Plan submitted to the Environmental Protection Agency pursuant to the Clean Air Act removing provisions of the State Implementation Plan requiring employers to reduce work-related vehicle trips and miles traveled by employees.~~

Source: 27:26A-4.1

COMMENT

This section is identical to its source.

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27A:67-4. Rules and regulations; voluntary employer trip reduction programs

In order to facilitate compliance with Section 182(d)(1) of the Clean Air Act as amended by Pub.L. 104-70, requiring that the State of New Jersey achieve emission reductions equivalent to those that would have been achieved with the provisions of the State Implementation Plan which are to be removed pursuant to this 1996 amendatory and supplementary act requiring employers to reduce work-related vehicle trips and miles traveled by employees, and to take steps to continue the congestion reduction measures as provided in P.L.1992, c.32 (C.27:26A-1 et seq.):

a. The Commissioner of Transportation, in consultation with the Commissioner of Environmental Protection, is authorized to adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), continuing the Travel Demand Management Program established pursuant to section 5 of P.L.1992, c.32 (C.27:26A-5) but only to the extent authorized by this 1996 amendatory and supplementary act. The program shall continue the studies and transportation control measures provided in section 4 of P.L.1992, c.32 (C.27A:67-2) and in lieu of the mandatory compliance plans required by section 5 of P.L.1992, c.32 (C.27:26A-5), repealed by this 1996 amendatory and supplementary act, the program shall establish a voluntary employer trip reduction program. The regulations may continue or revise the definitions and other provisions contained in the regulations establishing the mandatory employer trip reduction program, N.J.A.C. 16:50-1.1, as appropriate for a voluntary program.

b. The Commissioner of Environmental Protection shall report to the Legislature not later than 180 days after the effective date of this 1996 amendatory and supplementary act, as to what measures the Commissioner proposes to recommend to ensure the State's compliance with the Clean Air Act, in light of the statutory provisions repealed by this 1996 amendatory and supplementary act, accompanying the report with drafts of any legislative bills which the Commissioner proposes for consideration by the Legislature if, in the Commissioner's opinion, any such bills are required for this purpose.

Source: 27:26A-4.2

COMMENT

This section is identical to its source.

27A:67-5. Registration and criteria for voluntary employer trip reduction programs; rules and regulations

In order to certify to the Director of the Division of Taxation, in the Department of the Treasury, eligibility for the tax benefits provided under section 1 of P.L.1993, c.150 (C.27A:67-8) and section 1 of P.L.1993, c.108 (C.54A:6-23), the Commissioner of Transportation shall adopt regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), establishing the procedure by which an employer may register with the Department of Transportation as a participant in a voluntary employer trip reduction program and the criteria to be met by that employer trip reduction program using alternative means of commuting to receive certification for providing commuter transportation benefits.

Source: 27:26A-4.3

COMMENT

This section is identical to its source.

27A:67-6. Transfer of balances to Department of Transportation

All balances remaining in the "Travel Demand Management Program Account" created pursuant to section 9 of P.L.1992, c.32 (C.27:26A-9) are hereby transferred to the Department of Transportation for use by

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~~the department to effectuate the purposes of this 1996 amendatory and supplementary act, including, but not limited to, grants to transportation management associations (TMA's).~~

Source: 27:26A-4.4

COMMENT

This section is identical to its source.

~~**27A:67-8. Travel Demand Management Program established**~~

~~a. Based upon the analysis required by 27A:67-3 and in conjunction with the transportation control measures to be developed pursuant to that section, the department, in consultation with the Department of Environmental Protection and Energy, shall establish by regulations adopted pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), a Travel Demand Management Program to reduce the demand for travel on the State's highway system by reducing the number of trips and mileage traveled by vehicles on that system, and managing their flow on the State's transportation system. A copy of the notice of any proposed regulation shall be submitted to the Senate Transportation Committee and the Assembly Transportation and Communications Committee at least 60 days before it is submitted to the Office of Administrative Law for publication in the New Jersey Register; the committee shall review the proposed regulations and provide written comments thereon within 60 days of its receipt. The program may include the implementation of requirements intended to increase the use by commuters of alternative means of commuting and the management of commuter arrival and departure times by the use of work hours management, telecommuting and other methods. The program shall be designed to bring New Jersey into compliance with the Clean Air Act.~~

~~b. As part of the program, the department, in consultation with the Department of Environmental Protection and Energy and pursuant to provisions of the Clean Air Act, shall, not later than July 1, 1993, designate those affected areas of the State in which the program is to be implemented, determine the average vehicle occupancy level in designated regions in the State and set an average passenger occupancy rate to be achieved by employers in those regions. Those areas and regions designated shall also be listed in the comprehensive master plan required to be developed pursuant to subsection (a) of section 5 of P.L.1966, c.301 (C.27:1A-5). @@~~

~~c. Within 120 days of the designation of affected areas as provided by subsection (b) of this section, the department shall prepare a notice and registration form to be mailed annually to employers. The notice and form may be revised from time to time. The notice and form shall be mailed by the Department of Labor at the request of the department. At least the first annual mailing shall be by certified mail. The Department of Labor shall annually provide the department with the mailing list of notified employers and shall include the name and address of the employer and number of employees employed by the employer at the employer's work locations. The notice shall inform each employer that an employer having 100 or more employees at a work location in an affected area shall submit to the department the following information, or such information as may be required by the department, on the registration form mailed to the employer within 60 days of the receipt thereof:~~

~~—(1) Name and address of the employer.~~

~~—(2) Name and address of a designated person, or persons, to receive the survey form required by subsection (d) of this section, and who may be contacted by the department.~~

~~—(3) The address of each work location employing 100 or more employees and the number of employees at such work location.~~

~~An employer that has not received the notice or form from the Department of Labor, but employs 100 or more employees at a work location shall obtain the form from the department and complete it. The form shall be submitted to the Department of Transportation no later than the time prescribed in a general informational notice~~

to all employers concerning this requirement to be published annually in at least six newspapers having circulation in various parts of the State:

~~d. Within 180 days of the receipt of the initial form, the department shall notify each affected employer that the employer shall cause a survey or surveys to be done of the commutation patterns of the employees at each work location having 100 or more employees. The results of the surveys shall be included as part of a compliance plan submitted to the department. The department shall include with the notification a copy of the survey forms to be used by the employer. The forms shall be as simple as possible, include only information actually required by the program, and not be unduly burdensome to employers filing them. The forms shall be prescribed by the department and shall include the following information:~~

~~—(1) Name and address of the employer.~~

~~—(2) Name and telephone number of a person who may be contacted by the department.~~

~~—(3) Number of employees employed at the location.~~

~~—(4) The number of employees absent from work on the day the survey was done. An absentee count shall not include employees working at home during the time the survey was completed.~~

~~—(5) The mode of travel used by employees in commutation to work, including the use of single occupancy vehicles, car pools, van pools, public transportation, bus pools and other alternative means of commuting. Subject to departmental guidelines, a employer may, in addition to surveying the commutation patterns of employees at each work location, count the number of vehicles entering or leaving the work location during peak periods.~~

~~The department shall prescribe the form of the survey and the method of obtaining the count and the employer shall provide a description of how the count was obtained. Handicapped persons who require the use of a single occupancy vehicle for commutation to work shall not be included in the survey.~~

~~e. The employer shall prepare and submit a compliance plan which shall conform to regulations issued by the department, a copy of which shall be included with the notice required by this subsection. The plan shall include the following, or such information as may be required by the department:~~

~~—(1) A summary of the survey results, including a description of the method used, and the current average passenger occupancy (APO) at each work location.~~

~~—(2) A list of transportation demand management strategies presently used by the employer.~~

~~—(3) Identification of employees' use of telecommuting, flextime, staggered work hours, compressed work weeks, or other techniques employed to reduce traffic congestion or air pollution.~~

~~—(4) A list and description of additional transportation demand management strategies planned.~~

~~The compliance plan shall contain the name, title and signature of the person preparing the plan who shall attest to the correctness of the information supplied. In addition, the plan shall be certified as to its accuracy and efficacy by an employee of a transportation management association who shall be approved by the department as being qualified to certify the accuracy and efficacy of the compliance plan, or by another person or entity independent of the employer who is also so approved.~~

~~The compliance plan shall also contain the name, title and signature of the employer, or of a person designated by the employer, who shall certify that the employer intends to implement the additional transportation demand management strategies planned. The person designated by the employer may be the transportation coordinator required to be appointed pursuant to this chapter or another officer of the employer, as provided by regulation.~~

~~An employer shall return the completed plan to the department not later than November 15, 1994 along with the appropriate filing fee as provided by this chapter. The department shall notify an employer not later than~~

~~May 1, 1994 of the survey and plan requirements. In any event the department shall give each employer at least 180 days to complete the compliance plan upon notification.~~

~~f. Following the submission of the initial plan, each affected employer shall submit a subsequent compliance plan by November 15, 1996 in accordance with regulations issued by the department unless a more frequent submittal is required by federal guidelines. Each such plan shall document the average passenger occupancy at each work location and any other information deemed necessary by the department.~~

~~After November 15, 1996, additional compliance plans shall be required if mandated by the federal Environmental Protection Agency, or if required by the Department of Environmental Protection to comply with the federal Environmental Protection Agency's mandated State Implementation Plan requirements, or if an affected employer is not in compliance with the required average passenger occupancy rate increase. Employers not in compliance by November 15, 1996 shall be required to file an amended plan pursuant to subsection g. of this section and shall be further required to document their average passenger occupancy rate to the department at the end of the year covered by the amended plan in compliance with the regulations established by the department.~~

~~g. Except as otherwise provided in this chapter, within three years of the submission of the initial compliance plan, or by November 15, 1996, whichever is first, each affected employer shall achieve an average passenger occupancy rate of not less than 25% above the average vehicle occupancy rate set for all such trips in the region.~~

~~h. Affected employers submitting a plan shall have the plan evaluated by the department within 180 days of submission, and any plan shall be returned to the employer for resubmission if the department determines that it is incomplete or inconsistent with the regulations promulgated pursuant to this chapter. The department shall specify what aspects of the plan are incomplete or inconsistent. An incomplete or inconsistent plan returned to an employer shall be resubmitted to the department by the affected employer within 60 days of its return.~~

~~A plan may also be returned by the department if the department determines that it is not in compliance with the required average passenger occupancy rate required to be achieved. The plan shall be amended and resubmitted to the department in form within 90 days of its return. The amended plan shall include a full description of the employer's current efforts to achieve the required average passenger occupancy, documenting the employer's "good faith" efforts and shall specifically identify how the employer plans to achieve the required average passenger occupancy rate within one year of the date of submittal. The amended plan shall be certified by a transportation management association employee or another person or entity approved by the department, as in the original plan, and shall be approved by the department.~~

~~A plan not returned within the 180 days shall be deemed approved.~~

~~i. An affected employer may elect to comply with the provisions of this chapter by participating in a consolidated plan with other employers in the surrounding area or in a development or complex, in accordance with guidelines established by the department.~~

~~j. The department is authorized to prescribe what records relating to the program shall be preserved by the employer and for what length of time. The department is authorized to inspect, verify and audit these records, subject to the privacy and confidentiality laws of the State, in order to determine compliance with the program, as provided by regulation.~~

~~k. Employers required to submit compliance plans after November 15, 1996 shall conform to regulations to be adopted by the department dealing with the requirements of the program after that date. An employer which has been found by the department to be in compliance with respect to two successive plan submissions may, after November 15, 1996, certify the plan's accuracy and efficacy itself.~~

~~An employer not required to submit an initial compliance plan by November 15, 1994 but who is required to submit such a plan on or before November 15, 1996 shall receive a grace period of one year before~~

being required to comply with the average passenger occupancy requirements of the program in effect on the date of initial submittal:

~~i. Affected employers shall be encouraged, where feasible, to reduce the number of parking spaces available for employees at work locations and reserve the most desirable parking spaces for high occupancy vehicles. The provisions of this subsection shall not be construed as affecting those spaces reserved for handicapped persons. The department shall work with the Director of the Division of Motor Vehicles in developing regulations which would authorize the issuance of high occupancy vehicle (HOV) license plates for uses and classes of operators to be specified by regulation.~~

Source: 27:26A-5

COMMENT

This section is repealed by L.1996, c. 121, § 8, effective November 1, 1996.

~~27A:67-5. Travel Demand Management Advisory Council established~~

~~a. There is established in the department a Travel Demand Management Advisory Council which shall consist of the following voting members: the Commissioner, the Executive Director of the New Jersey Transit Corporation, the Commissioner of Environmental Protection and Energy, the Commissioner of Commerce and Economic Development, the Commissioner of Labor, and the Commissioner of Personnel, ex officio or their designees, and four representatives from the following: one each from an affected employer having between 100 and 500 employees, an affected employer having more than 500 employees, a labor interest group and an environmental interest group, appointed for a term of five years by the Governor with the advice and consent of the Senate. Any vacancies in the membership of the council from among the appointed members shall be filled in the same manner as the original appointment but for the unexpired term only. The chairman of the council shall be selected by the members. The members of the council shall not receive compensation for their services as members of the council.~~

~~b. It shall be the duty of the council to study and make recommendations to the department concerning the Travel Demand Management Program. The department shall submit preliminary drafts of regulations to be adopted under this chapter to the council for comment. In addition, the council shall receive a copy of any notice of proposed filing of the regulation at least 60 days before it is submitted to the Office of Administrative Law for publication in the New Jersey Register. In its evaluation of the regulations, the council shall consider the environmental and economic interests of the State.~~

~~c. The council shall be dissolved upon the determination of the Commissioner that it has fully discharged its advisory functions but in no event earlier than five years after its establishment.~~

~~d. The council shall establish a Travel Demand Management Technical Advisory Committee to consist of 11 members and may establish such other advisory committees as it deems appropriate. The Travel Demand Management Technical Advisory Committee shall consist of one designee from each of the ex officio members of the Travel Demand Management Advisory Council, a representative of the New Jersey Business and Industry Association, a representative of the New Jersey Chamber of Commerce, and three members chosen by a majority vote of the Travel Demand Management Advisory Council. The chairman of the committee shall be the person serving as the designee of the Commissioner of Transportation. The committee shall advise the department concerning the survey forms and the compliance plans to be developed by the department so that they are kept as simple as possible for the employer and are in compliance with this chapter and the Clean Air Act. The committee shall make recommendations to the department no later than one year after it is constituted.~~

Source: 27:26A-6

COMMENT

This section is repealed by L.1996, c. 121, § 8, effective November 1, 1996.

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27A:67-6. Duties in relation to Travel Demand Management Program

In addition to the duties otherwise provided for these entities in this chapter, The following are the duties of various public and private entities in relation to the Travel Demand Management Program:

a. ~~The Department of Transportation shall serve as the primary implementer of this program and to this end shall ensure that the department's resources are sufficient to meet the demands of the program. The department shall approve transportation management associations, or other persons or entities who would serve as primary resources to employers in carrying out their responsibilities under this program. In the case of State departments and agencies the department may serve as the primary resource, assisted by those departments and agencies of State government whose assistance the department shall deem appropriate.~~

b. ~~Both the Department of Environmental Protection and Energy and the Department of Transportation shall coordinate their policies relating to the State Implementation Plan and any revisions thereto required under the Clean Air Act. The Department of Transportation shall obtain the approval of the federal Environmental Protection Agency, through the Department of Environmental Protection and Energy, on all aspects of the Travel Demand Management Program to avoid potential conflicts with the Clean Air Act and to avoid the imposition of sanctions.~~

c. ~~The Commissioner of Labor, upon request of the Commissioner of Transportation, shall supply information and make mailings as are necessary to assist the Department of Transportation to carry out its responsibilities under this chapter and may make any stipulations as to confidentiality of this information as the Commissioner of Labor deems advisable.~~

d. ~~The New Jersey Transit Corporation, in consultation with the Department of Transportation, shall implement policies to make available, where feasible, public transportation services, programs and activities which support public transportation services, technical assistance, or any other activity authorized by the "New Jersey Public Transportation Act of 1979," P.L.1979, c.150 (C.27:25-1 et seq.) or approved by the Board of Directors of the New Jersey Transit Corporation.~~

e. ~~If a county or municipality has adopted a travel demand management ordinance or similar measure prior to the effective date of this chapter, which is certified by the department as being in substantial compliance with this chapter, an affected employer meeting the requirements of the ordinance or similar measure shall be eligible to apply for exemption from the requirements of this chapter, in accordance with procedures provided for by regulation.~~

f. ~~Transportation management associations, or other persons or entities approved by the department are to serve as primary resources to employers at the employer's request, to assist the employers in carrying out their responsibilities under the program. They also shall be responsible for coordinating any assistance needed from the State, county or municipal government or from the New Jersey Transit Corporation.~~

g. ~~Affected employers shall carry out the compliance plan submitted to and approved by the department in good faith. They shall, in addition, appoint a Transportation Coordinator at each work location employing 100 or more employees, who shall make efforts to inform employees of the travel demand management strategies available to them and to offer them incentives for the use of these strategies. The employer may enter into a contract or agreement with a transportation management association or other approved person or entity to assist in the development and preparation of a plan but the responsibility of submitting and implementing the plan shall be that of the employer. Employers, as well as employees, are encouraged, wherever possible, to utilize alternative fuel vehicles in order to reduce air pollution levels in this State, and that utilization shall receive appropriate recognition in the regulations adopted by the department pursuant to this chapter. The Department of Environmental Protection shall also determine, in consultation with the United States Environmental Protection Agency and the Department of Transportation, whether the use of alternative fuel vehicles may be considered as offsetting any portion of the (APO) rate required by this chapter. As used in this subsection, "alternative fuel~~

~~vehicle" means a vehicle fueled or propelled by energy sources which shall include, but not be limited to, electricity, natural gas, and propane.~~

Source 27:26A-7

COMMENT

This section is repealed by L.1996, c. 121, § 8, effective November 1, 1996.

27A:67-7. Public education program

The department, in cooperation with the Department of Commerce and Economic Development, the Department of Environmental Protection and Energy, and the Department of Education, shall develop a comprehensive public education program on the benefits of travel demand management. The public education program shall focus its efforts on the driving public and it shall be an element of the travel demand management program.

Source 27:26A-8

COMMENT

This section is substantially identical to its source.

~~27A:67-8. "Travel Demand Management Program Account" created~~

~~There is created in the General Fund a special nonlapsing account to be known as the "Travel Demand Management Program Account." All money from penalties and fees collected pursuant to the provisions of this chapter or otherwise appropriated to the account shall be deposited in the account. Money in the account shall be administered exclusively by the department to implement the program and may be used by the department for all costs of implementing the program as well as for grants to transportation management associations or other public or private entities whose activities in the opinion of the department would contribute to the implementation of the program throughout the State.~~

Source 27:26A-9

COMMENT

This section is repealed by L.1996, c. 121, § 8, effective November 1, 1996.

~~27A:67-9. Employers filing compliance plan to pay fee~~

~~a. An affected employer filing a compliance plan as required by this chapter shall pay a fee to the department in accordance with the following schedule:~~

~~For locations with 1,000 or more employees, \$800 for an initial filing and \$1,600 for each subsequent biennial filing:~~

~~For locations with 750 to 999 employees, \$600 for the initial filing, and \$1,200 for each subsequent biennial filing:~~

~~For locations with 500 to 749 employees, \$400 for the initial filing, and \$800 for each subsequent biennial filing:~~

~~For locations with 100 to 499 employees, \$200 for the initial filing, and \$400 for each subsequent biennial filing:~~

~~In the event that subsequent filings are annual rather than biennial, the fee for those filings shall be the same as the initial filing:~~

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b. ~~Notwithstanding the provisions of subsection (a) of this section, for an employer which has more than five locations subject to the filing requirement, the maximum aggregate total amount of the fees that an employer shall be subject to shall not be greater than \$4,000 for the initial or annual filing and \$8,000 for each subsequent biennial filing.~~

c. ~~The department may revise the schedule of fees by regulation after four years.~~

d. ~~Government employers other than independent government employers shall be exempt from the payment of fees under this chapter.~~

Source 27:26A-10

COMMENT

This section is repealed by L.1996, c. 121, § 8, effective November 1, 1996.

~~27A:67-10. Application for exemption, waiver, fee~~

~~The Commissioner is authorized, in consultation with the Commissioner of Environmental Protection and Energy, to establish by regulation procedures for affected employers to make application for exemption from the provisions of this chapter or the regulations issued under it. The regulations shall specify those classifications of affected employers which would be eligible to make application for such relief and may include but not be limited to employers who would suffer extreme hardship or would be unable to comply with the provisions of this chapter or the regulations despite the affected employer's of good faith efforts to comply. The department may charge an application fee not in excess of \$250, a portion of which may be refunded to the applicant in an amount to be determined by the department if the application is favorably acted upon. All fees charged by the department pursuant to this section may be waived, reduced or refunded by the department in its discretion.~~

Source: 27:26A-11

COMMENT

This section is Repealed by L.1996, c. 121, § 8, effective November 1, 1996.

~~27A:67-11. Adoption of regulations for compliance with Clean Air Act~~

~~In the event that any provision of this chapter or any regulation issued under it is determined by the Environmental Protection Agency not to be in compliance with the requirements of the Clean Air Act or the regulations issued under it, the Commissioner is authorized to adopt regulations to the extent required to comply with the Clean Air Act and regulations issued under it. However, this section shall not be construed as permitting the Commissioner to take any action prohibited by law or regulation or as exceeding any commitment made to the federal government in a revised State Implementation Plan.~~

Source: 27:26A-12

COMMENT

This section is repealed by L.1996, c. 121, § 8, effective November 1, 1996.

~~27A:67-12. Penalty for noncompliance~~

a. ~~An employer other than a government employer which fails to comply with the provisions of this chapter or any regulation issued under it shall be subject to a civil administrative penalty of not more than \$250 for each violation except that in the case of the following violations the following penalties are prescribed:~~

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~~—(1) A penalty of not more than \$250 a month for the first two months and not more than \$500 a month thereafter for each work location for which an employer fails to submit a registration form as required by this chapter.~~

~~—(2) A penalty of not more than \$1,000 a month for each work location for which an employer has not filed a plan as required by this chapter.~~

~~—(3) A penalty of not more than \$5,000 a month for each work location which fails to achieve the average passenger occupancy rate as required by this chapter.~~

~~b. The Commissioner may assess the penalties provided for in this section, taking into account the nature, seriousness and circumstances of the violation, whether there is a pattern of noncompliance, and efforts which are being made by the employer to achieve compliance.~~

~~c. Each month of noncompliance shall constitute a separate offense. However, no initial penalty shall be imposed by the Commissioner during one year following the date of adoption of the regulation establishing the program, unless the employer has received a notice of the violation, has been given a 30-day grace period from the date of transmittal of the notice to comply with the provisions of this chapter, and has failed to do so within that period. An employer filing a plan during the grace period shall be subject to a \$100 late filing fee.~~

~~d. An employer that files an amended plan pursuant to subsection (h) of 27A:67-4 which is approved by the department shall not be subject to the \$5,000 penalty for noncompliance provided for in subsection c. of this section until the expiration of one year from the last date on which the amended plan is required to be filed, or from the date on which it is filed, if not later than the required date.~~

~~e. An employer which has been found to be in noncompliance with this chapter and which has been assessed a civil administrative penalty may appeal the penalty upon submission of the appropriate application accompanied by an application fee set by regulation.~~

~~f. A government employer failing to comply with the provisions of this chapter or any regulation issued under it shall, in the case of the State departments or agencies, receive a notice of violation addressed to the head of the department or agency in question. Upon receipt of the notice the head of the department or agency shall consult with the Commissioner of Transportation as to actions to be taken by the department or agency to comply with this chapter, and, failing appropriate action by the department or agency, the Commissioner may recommend to the Attorney General that action be taken to effect compliance as is provided in the case of government employers other than State departments or agencies. In the case of government employers other than State departments or agencies, the department may request the Attorney General to institute civil proceedings in the Superior Court to enjoin the government employers to comply with the provisions of this chapter or the regulations issued under it, and the court may impose fines for continued noncompliance in the same amount as the civil administrative penalties provided for in this section which are in effect for employers other than government employers at the time the fines are imposed.~~

Source: 27:26A-13

This section is repealed by L.1996, c. 121, § 8, effective November 1, 1996.

27A:67-13. Annual progress report

~~The travel demand management advisory council shall submit an annual progress report to the Governor and the Legislature by October 1 of each year covering the period of the previous State fiscal year. The report shall cover the status of the program and any recommendations to alter or improve the program, including any proposed legislative changes.~~

Source: 27:26A-14

COMMENT

This section is repealed by L.1996, c. 121, § 8, effective November 1, 1996.

27A:67-8. Tax credits for employers participating in ride-sharing programs

a. An employer that is a taxpayer subject to the provisions of the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), the "Financial Business Tax Law (1946)," P.L.1946, c.174 (C.54:10B-1 et seq.), "The Savings Institution Tax Act," P.L.1973, c.31 (C.54:10D-1 et seq.), the tax imposed on marine insurance companies pursuant to R.S.54:16-1 et seq., the tax imposed on fire insurance companies pursuant to R.S.54:17-4 et al., the tax imposed on insurers generally, pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.), the public utility franchise tax, public utilities gross receipts tax and public utility excise tax imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.), or that is a taxpayer in respect of a distributive share of partnership income under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., which provides commuter transportation benefits as defined in section 3 of P.L.1992, c.32 (C.27A:67-1) shall be allowed a credit against that tax equal to 5% of the cost of commuter transportation benefits for the accounting or privilege period, beginning on or after January 1, 1994 and ending not later than January 1, 1995 subject to the limitations of subsection b. of this section. For accounting or privilege periods beginning on or after January 1, 1995, but ending not later than December 31, 2007, the credit allowed under this section shall be 10% of the cost of commuter transportation benefits for the relevant accounting or privilege period, as appropriate, subject to the limitations of subsection b. of this section. Notwithstanding the provisions of this section to the contrary, a taxpayer that filed a certified compliance plan with the Department of Transportation required by section 5 of P.L.1992, c.32 (C.27:26A-5) on or before May 31, 1996, shall be allowed a credit against that tax equal to 15% of the cost of commuter transportation benefits for the accounting or privilege periods ending on and after July 31, 1996, but ending not later than June 30, 1997, for the relevant accounting or privilege period, as appropriate, subject to the limitations of subsection (b) of this section. In the case of a taxpayer receiving partnership income, an offset against that income subject to the limitations in paragraph (5) of subsection (b) of this section shall be considered the credit.

b. (1) The credit granted a taxpayer for an accounting or privilege period shall not exceed the per employee limit multiplied by the number of employees participating in alternative means of commuting at the work location. The per employee limit shall be \$36.00 for the accounting or privilege periods beginning on and after January 1, 1994 but before January 1, 1995, \$72.00 for the accounting or privilege period beginning on or after January 1, 1995 but before January 1, 1997, \$100.00 for accounting or privilege periods beginning on or after January 1, 1997 but before January 1, 2002, and \$120.00 for those periods thereafter. Notwithstanding the provisions of this section to the contrary, the per employee limit for a taxpayer that filed a certified compliance plan with the Department of Transportation required by section 5 of P.L.1992, c.32 (C.27:26A-5) on or before the plan submittal date established by the department and which was filed on or before May 31, 1996, shall be \$150.00 for the accounting or privilege periods ending on or after July 31, 1996, but ending not later than June 30, 1997. For those periods beginning on or after January 1, 1995, the Director of the Division of Taxation, in the Department of the Treasury, shall adjust the limit, rounded down to the nearest dollar, in proportion to the change in the average consumer price index for all urban consumers in the New York and Northeastern New Jersey and the Philadelphia areas, as reported by the United States Department of Labor, from calendar year 1994 to the calendar year ending immediately before the appropriate period.

(2) The taxpayer may only claim a credit for providing commuter transportation benefits if those benefits are provided in addition to and not in lieu of compensation and those benefits are based upon a direct expenditure made after the taxpayer has registered with the Department of Transportation and the taxpayer's employer trip reduction program has been certified for providing commuter transportation benefits by the Department of Transportation as prescribed in section 3 of P.L.1996, c.121 (C.27A:67-5). Despite any provisions of P.L.1996, c.121 (C.27A:67-3 et al.) to the contrary, the tax credit eligibility and reporting requirements found at N.J.A.C.16:50-15 shall remain in effect until such time as the Department of Transportation adopts new regulations pursuant to section 3 of P.L.1996, c.121 (C.27A:67-5).

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(3) The amount of the credit allowed under this section for an accounting or privilege period shall not exceed 50% of the tax liability which would be otherwise due for any one of the taxes enumerated in subsection a. of this section after first applying the credits, if any, allowed under any other law and shall not reduce the amount of tax liability to less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162 (C.54:10A-5), section 3 of P.L.1946, c.174 (C.54:10B-3) or section 3 of P.L.1973, c.31 (C.54:10D-3), as may be applicable.

(4) A taxpayer having liability for more than one of the taxes enumerated in subsection a. of this section for an accounting or privilege period shall allocate the credit amount available for that period to the liabilities for that period in the proportion that each liability bears to the total of the liabilities for that period, and each apportioned amount of credit shall be applied to only one amount of liability.

(5) A partnership shall not be allowed a credit under this section directly. A partnership shall be entitled to reduce total partnership income distributed to the partners and subject to tax under subsection k. of N.I.S.54A:5-1 by the lesser of 71.5 percent of the amount of commuter transportation benefits provided pursuant to law or \$515.00 for each employee receiving such benefits. For accounting and privilege periods beginning on or after January 1, 1995, but ending no later than December 31, 2001, the reduction to partnership income allowed under this section shall be the lesser of 143 percent of the cost of commuter transportation benefits provided or \$1,030.00, and for accounting and privilege periods beginning on or after January 1, 2002 the reduction to partnership income allowed under this section shall be the lesser of 157 percent of the cost of commuter transportation benefits provided or \$1,884.00, for each employee receiving such benefits for the relevant accounting or privilege period, as appropriate, subject to the limitations of subsection b. of this section.

c. Each employee who receives money towards commuter transportation benefits from the employee's employer as an advance, a reimbursement, or both, shall furnish suitable proof to the employer, in the form of receipts, ticket stubs or the like, that the employee utilized monies provided by the employer for an alternative means of commuting, as defined pursuant to section 3 of P.L.1992, c.32 (C.27A:67-1).

d. For the purposes of verifying eligibility for the credit, the Commissioner of Transportation shall certify to the Director of the Division of Taxation a list of those employers that have registered with the department and have a certified voluntary employer trip reduction program. An employer trip reduction program of an employer who is a member of a TMA shall be considered certified by the department. "A member of a TMA" shall be defined in regulations promulgated by the department pursuant to section 3 of P.L.1996, c.121 (C.27A:67-5). The list shall be provided to the Director of the Division of Taxation within 90 days of registration.

e. The taxpayer shall file with the department a schedule of the expenditures for which the taxpayer has claimed a credit pursuant to this section on any tax return filed with the Director of the Division of Taxation, in such form and pursuant to such rules as shall be prescribed by the Commissioner in consultation with the Director of the Division of Taxation.

Source: 27:26A-15

COMMENT

This section is repealed by L.1996, c. 121, § 8, effective November 1, 1996.

COMPILE IN TITLE 39 - MOTOR VEHICLES

Parking of roll-off dumpsters

a. A person shall not park any waste or refuse container, commonly known as a roll-off dumpster or roll-off container, on a highway unless:

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(1) the container displays yellow reflective diamond-shaped markers with a minimum size of 18 inches by 18 inches mounted at the edge of the container at both ends nearest the path of passing vehicles at least three feet above the roadway and facing the direction of oncoming traffic, or

(2) the person has the written consent of the public entity with jurisdiction over the highway. Consent shall remain in effect for a period of 30 days or less, but may be renewed if application for renewal is made.

b. A person who is convicted of a violation of this section shall pay a fine of \$100.00 or less for each violation. The fine shall be paid to the public entity responsible for maintenance of the highway on which the violation occurs.

Source: 27:5I-1

COMMENT

This section is substantially similar to its source, but the optional 90 day jail term has been deleted. A court has the power to jail a person who contemptuously refuses to pay a fine, and in the absence of contempt, 90 days is an inappropriate sentence where the ordinary maximum sentence is a \$100 fine.

COMPILE IN TITLE 40 - MUNICIPALITIES AND COUNTIES

Power of housing authority or redevelopment agency to contract with Department of Transportation and convey realty

If the agreement and conveyance serves the purposes of the authority or agency, any municipal housing authority or redevelopment agency may enter into cooperative agreements with the Department and may convey real estate to the state without any advertisement, order of court, or other action or formality, other than the authorizing resolution of the governing body of the authority or agency, and the approval by resolution of the municipality in which the land affected are located.

Source: 27:5D-2

COMMENT

This section is substantially identical to 27:5D-2

SECTION	DISPOSITION	COMMENT
27:1A-1	27A:2-1	
27:1A-2	27A:2-1	
27:1A-2.1	27A:2-1	
27:1A-3	Deleted	Unnecessary; see 27A:2-8
27:1A-4	27A:2-2	
27:1A-5	27A:2-3	
27:1A-5.1	Deleted	See 2-3(i)
27:1A-5.2	Deleted	Executed
27:1A-5.3	Deleted	Executed
27:1A-5.4	Deleted	Executed
27:1A-5.5	27A:2-9	
27:1A-5.6	27A:2-10	
27:1A-5.7	27A:5-52	
27:1A-5.8	27A:5-52	
27:1A-5.9	27A:5-52	
27:1A-5.10	27A:5-52	
27:1A-5.11	27A:5-52	
27:1A-5.12	27A:5-52	
27:1A-5.13	27A:5-53	
27:1A-5.14	27A:5-54	
27:1A-5.15	27A:3-3	
27:1A-5.16	27A:2-12	
27:1A-5.17	27A:11-12	
27:1A-5.18	27A:3-18	
27:1A-5.19	27A:2-3	
27:1A-6	27A:2-4; 27A:2-5	
27:1A-7	27A:2-8	
27:1A-8	27A:2-6	
27:1A-10	27A:2-6	
27:1A-11	Deleted	Executed
27:1A-12	27A:2-6	
27:1A-13	27A:2-6	
27:1A-14	27A:2-6	
27:1A-28	Deleted	Executed
27:1A-33	Deleted	Executed
27:1A-34	Deleted	Executed
27:1A-35	Deleted	Executed
27:1A-37	Deleted	Executed
27:1A-38	Deleted	Executed
27:1A-39	Deleted	Executed
27:1A-40	Deleted	Executed
27:1A-41	Deleted	Executed
27:1A-42	Deleted	Unnecessary
27:1A-43	Deleted	Unnecessary
27:1A-44	Deleted	Executed
27:1A-45	Deleted	Executed
27:1A-46	Deleted	Executed
27:1A-47	Deleted	Unnecessary
27:1A-48	Deleted	Executed
27:1A-49	Deleted	Unnecessary
27:1A-50	Deleted	Executed
27:1A-51	Deleted	Executed
27:1A-52	Deleted	Executed
27:1A-53	Deleted	Executed
27:1A-54	Deleted	Executed
27:1A-55	Deleted	Unnecessary

27:1A-56	Deleted	Executed
27:1A-57	Deleted	Executed
27:1A-58	Deleted	Executed
27:1A-59	Deleted	Executed
27:1A-60	27A:2-17	
27:1A-61	Deleted	Unnecessary
27:1A-62	Deleted	See 27A:2-10
27:1A-63	Deleted	Executed
27:1A-64	27A:62-1	
27:1A-65	27A:62-2	
27:1A-66	27A:62-3	
27:1A-67	27A:62-4	
27:1A-68	Deleted	See 27A:62-10
27:1A-69	27A:62-5	
27:1A-70	27A:62-6	
27:1A-71	27A:62-7	
27:1A-72	27A:62-8	
27:1A-73	27A:62-9	
27:1A-74	27A:62-10	
27:1A-75	Deleted	Unnecessary
27:1A-76	27A:19-1	
27:1A-77	27A:19-2	
27:1A-78	27A:19-3	
27:1A-79	27A:19-4	
27:1A-80	27A:19-5	
27:1A-81	27A:19-6	
27:1A-82	27A:19-7	
27:1A-83	27A:19-8	
27:1A-84	27A:19-9	
27:1A-85	27A:19-10	
27:1B-1	Deleted	Unnecessary
27:1B-2	27A:5-1	
27:1B-3	27A:5-2	
27:1B-4	27A:5-3	
27:1B-5	27A:5-4	
27:1B-6	27A:5-5	
27:1B-7	27A:5-6	
27:1B-8	27A:5-7	
27:1B-9	27A:5-8	
27:1B-10	27A:5-9	
27:1B-11	27A:5-10	
27:1B-12	27A:5-11	
27:1B-13	27A:5-12	
27:1B-14	27A:5-13	
27:1B-15	27A:5-14	
27:1B-16	27A:5-15	
27:1B-17	27A:5-16	
27:1B-18	27A:5-17	
27:1B-19	27A:5-18	
27:1B-20	27A:5-19	
27:1B-21	27A:5-20	
27:1B-21.1	27A:5-21	
27:1B-21.4	27A:5-22	
27:1B-21.5	27A:5-23	
27:1B-21.6	27A:5-24	
27:1B-21.7	27A:5-25	

27:1B-21.8	27A:5-26	
27:1B-21.9	27A:5-27	
27:1B-21.10	27A:5-28	
27:1B-21.11	27A:5-29	
27:1B-21.12	27A:5-30	
27:1B-21.13	27A:5-31	
27:1B-21.14	Deleted	Unnecessary
27:1B-21.15	27A:5-32	
27:1B-21.16	27A:5-33	
27:1B-21.17	27A:5-34	
27:1B-21.18	27A:5-35	
27:1B-21.19	27A:5-36	
27:1B-21.20	27A:5-37	
27:1B-21.21	27A:5-38	
27:1B-21.22	27A:5-39	
27:1B-21.23	27A:5-40	
27:1B-21.24	27A:5-41	
27:1B-21.25	27A:5-42	
27:1B-21.26	27A:5-43	
27:1B-21.27	27A:5-44	
27:1B-21.28	27A:5-45	
27:1B-21.29	27A:5-46	
27:1B-21.30	27A:5-47	
27:1B-21.31	27A:5-48	
27:1B-21.32	27A:5-49	
27:1B-22	27A:5-50	
27:1B-22.1	27A:5-51	
27:1B-23	27A:5-55	
27:1B-24	27A:5-56	
27:1B-25	27A:6-1	
27:1B-25.1	27A:6-2	
27:1B-25.2	27A:6-3	
27:1B-25.3	27A:6-4	
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27:1B-29	Deleted	Unnecessary
27:1B-30	Deleted	Unnecessary
27:1B-31	Deleted	Unnecessary
27:1C-1	Deleted	Unnecessary
27:1C-2	27A:61-1	
27:1C-3	27A:61-2	
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27:1C-14	27A:61-15	
27:1C-15	27A:61-4	
27:1C-16	27A:61-16	
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27:2-3	Deleted	See 27A:4-2; 27A:4-13
27:2-4	Deleted	See 27A:4-2; 27A:4-13
27:2-5	Deleted	See 27A:4-2; 27A:4-13
27:2-6	Deleted	See 27A:4-2; 27A:4-13
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27:3-5	Deleted	Anachronistic
27:3-6	27A:18-2	
27:3-7	Deleted	Unnecessary
27:3-8	Deleted	See 27A:18-2
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27:3-11	Deleted	See 27:7-2
27:3-12	Deleted	Unnecessary
27:3A-1	Deleted	Unnecessary
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27:4-1	Deleted	See 27A:11-11 and note on local highways
27:5-5	Deleted	Unnecessary
27:5-6	27A:65-1	
27:5-7	27A:65-2	
27:5-8	27A:65-4	
27:5-9	27A:65-5	
27:5-9.1	27A:65-6	
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27:5-24	Deleted	Executed
27:5-25	27A:65-20	
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27:5A-1	Deleted	Unnecessary
27:5A-2	Deleted	Unnecessary
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27:5D-1	Deleted	See 27:2-3
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27:5E-1	Deleted	Unnecessary
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27:5E-11	Deleted	Unnecessary
27:5E-12	27A:9-6	
27:5F-13.1	27A:16-11	
27:5F-18	Deleted	Unnecessary
27:5F-19	27A:16-1	
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27:5F-31	27A:16-12	
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27:5F-34	Deleted	Executed
27:5F-35	Deleted	Executed
27:5F-36	27A:16-24	
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27:5G-5	Deleted	Unnecessary
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27:5G-9	27A:17-4	
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27:7-3	Deleted	Unnecessary
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27:7-5	27A:11-7	
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27:7-10	Deleted	Unnecessary
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27:7-14	Deleted	See 27A:11-10(a)
27:7-15	Deleted	See 27A:2-3
27:7-16	Deleted	See 27A:11-10(b)
27:7-17	Deleted	Executed
27:7-18	Deleted	Unnecessary
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27:7-27	Deleted	Unnecessary
27:7-28	Deleted	Unnecessary
27:7-29	27A:4-2	
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27:7-34	27A:4-14	
27:7-35.1	Deleted	Unnecessary
27:7-35.2	27A:4-3	
27:7-35.3	27A:4-5	
27:7-35.4	27A:4-6	
27:7-35.5	27A:4-7	
27:7-35.6	27A:4-8	
27:7-35.7	27A:4-8	
27:7-35.8	27A:4-9	
27:7-35.9	27A:4-15	
27:7-35.10	27A:4-15	
27:7-35.11	27A:4-4	
27:7-35.12	Deleted	Unnecessary
27:7-36	27A:11-9	
27:7-37	Deleted	Unnecessary
27:7-38	Deleted	Unnecessary
27:7-39	Deleted	see 27A:11-1(a)
27:7-40	Deleted	Executed
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27:7-45	Deleted	See 27A:11-6
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27:7-57	Deleted	Unnecessary
27:7-66	27A:11-3; 27A:11-4	
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27:7-73	Deleted	Unnecessary
27:7-74	27A:3-9	
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27:7-86	Deleted	Executed
27:7-87	Deleted	Unnecessary
27:7-88	Deleted	Executed
27:7-89	Deleted	Unnecessary
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27:7A-9	Deleted	Unnecessary

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27:8-1	Deleted	See 27A:2-3
27:8-2	Deleted	See 27A:2-11
27:8-3	Deleted	See 27A:2-11
27:8-4	Deleted	See 27A:2-11
27:8-5	Deleted	Unnecessary
27:8-6	Deleted	See 27A:2-11
27:9-1	Deleted	See 27A:2-3
27:9-2	Deleted	Unnecessary
27:9-3	Deleted	See 27A:11-6; 27A:11-7
27:9-4	Deleted	Unnecessary
27:9-5	Deleted	See 27A:2-3
27:9-6	Deleted	See 27A:2-3
27:9-7	Deleted	See 27A:2-3
27:9-8	Deleted	Unnecessary
27:9-9	Deleted	See 27A:2-3
27:9-10	Deleted	See 27A:2-3
27:9-11	Deleted	Unnecessary
27:9-12	Deleted	Unnecessary
27:10-1	Deleted	See 27A:2-3
27:10-2	Deleted	Unnecessary
27:10-3	Deleted	Unnecessary
27:10-4	Deleted	See 27A:2-3
27:10-5	Deleted	See 27A:2-3
27:11-1	Deleted	See 27A:2-11
27:11-2	Deleted	See 27A:2-11
27:11-3	Deleted	See 27A:2-11
27:11-4	Deleted	Unnecessary
27:11-5	Deleted	Unnecessary
27:11-6	Deleted	Unnecessary
27:11-7	Deleted	Executed
27:11-8	Deleted	Executed
27:11-9	Deleted	Executed
27:11-10	Deleted	Executed
27:11-11	Deleted	Executed
27:11-12	Deleted	Executed
27:11-13	Deleted	Executed
27:11-14	Deleted	Unnecessary
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27:12-3	Deleted	Unnecessary
27:12-4	Deleted	See 27A:3-1; 27A:3-4
27:12-5	Deleted	See 27A:3-1
27:12-6	Deleted	Unnecessary
27:12-7	Deleted	See 27A:3-4
27:12-7.1	Deleted	See 27A:3-4
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27:13-1.1	Deleted	See 27A:6-1
27:13-1.2	Deleted	See 27A:6-1
27:13-1.3	Deleted	See 27A:6-1
27:13-2	Deleted	See 27A:6-1
27:13-3	Deleted	See 27A:6-1
27:13-4	Deleted	See 27A:6-1
27:13-5	Deleted	See 27A:6-1
27:13-6	Deleted	See 27A:6-1
27:13-7	Deleted	See 27A:6-1
27:13-8	Deleted	See 27A:6-1
27:13-9	Deleted	See 27A:6-1
27:13-10	Deleted	See 27A:6-1
27:13-11	Deleted	See 27A:6-1
27:13-12	Deleted	See 27A:6-1
27:13-13	Deleted	See 27A:6-1
27:13-14	Deleted	See 27A:6-1
27:13-15	Deleted	See 27A:6-1
27:13-16	Deleted	See 27A:6-1
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27:13A-3	Deleted	See 27A:6-1
27:13A-4	Deleted	See 27A:6-1
27:13A-5	Deleted	See 27A:6-1
27:13A-6	Deleted	See 27A:6-1
27:13A-7	Deleted	See 27A:6-1
27:13A-8	Deleted	See 27A:6-1
27:13A-9	Deleted	See 27A:6-1
27:13A-10	Deleted	See 27A:6-1
27:13A-11	Deleted	See 27A:6-1
27:13A-12	Deleted	See 27A:6-1
27:13A-13	Deleted	See 27A:6-1
27:14-1	Deleted	See Note on Local Highways
27:14-2	Deleted	See Note on Local Highways
27:14-3	Deleted	See Note on Local Highways
27:14-4	Deleted	See Note on Local Highways
27:14-5	Deleted	See Note on Local Highways
27:14-6	Deleted	See Note on Local Highways
27:14-7	Deleted	See Note on Local Highways
27:14-8	Deleted	Unnecessary
27:14-9	Deleted	See Note on Local Highways
27:14-10	Deleted	See Note on Local Highways
27:14-11	Deleted	See Note on Local Highways
27:14-12	Deleted	See Note on Local Highways
27:14-13	Deleted	See Note on Local Highways
27:14-14	Deleted	See Note on Local Highways
27:14-15	Deleted	See Note on Local Highways
27:14-16	Deleted	See Note on Local Highways
27:14-17	Deleted	See Note on Local Highways
27:14-18	Deleted	See Note on Local Highways
27:14-19	Deleted	See Note on Local Highways
27:14-20	Deleted	See Note on Local Highways
27:14-21	Deleted	See Note on Local Highways
27:14-22	Deleted	See Note on Local Highways

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27:14-24.2	Deleted	See Note on Local Highways
27:14-25	Deleted	See Note on Local Highways
27:14-26	Deleted	See Note on Local Highways
27:14-27	Deleted	See Note on Local Highways
27:14-28	Deleted	See Note on Local Highways
27:14-29	Deleted	See Note on Local Highways
27:14-30	Deleted	See Note on Local Highways
27:14-31	Deleted	See Note on Local Highways
27:14-32	Deleted	See Note on Local Highways
27:14-33	Deleted	See Note on Local Highways
27:14-34	Deleted	See Note on Local Highways
27:14-35	Deleted	See Note on Local Highways
27:14-36	Deleted	See Note on Local Highways
27:14-37	Deleted	See Note on Local Highways
27:14-38	Deleted	See Note on Local Highways
27:14-39	Deleted	See Note on Local Highways
27:14-40	Deleted	See Note on Local Highways
27:14-41	Deleted	See Note on Local Highways
27:14-42	Deleted	See Note on Local Highways
27:14-43	Deleted	See Note on Local Highways
27:14-44	Deleted	See Note on Local Highways
27:14-45	Deleted	See Note on Local Highways
27:14-46	Deleted	See Note on Local Highways
27:14-47	Deleted	See Note on Local Highways
27:14-48	Deleted	See Note on Local Highways
27:14-49	Deleted	See Note on Local Highways
27:15-1	Deleted	See Note on Local Highways
27:15-1.1	Deleted	See Note on Local Highways
27:15-1.2	Deleted	See Note on Local Highways
27:15-1.3	Deleted	See Note on Local Highways
27:15-1.4	Deleted	See Note on Local Highways
27:15-1.5	Deleted	See Note on Local Highways
27:15-1.6	Deleted	See Note on Local Highways
27:15-1.7	Deleted	See Note on Local Highways
27:15-1.8	Deleted	See Note on Local Highways
27:15-1.9	Deleted	See Note on Local Highways
27:15-1.10	Deleted	See Note on Local Highways
27:15-1.11	Deleted	See Note on Local Highways
27:15-1.12	Deleted	See Note on Local Highways
27:15-1.13	Deleted	See Note on Local Highways
27:15-1.14	Deleted	See Note on Local Highways
27:15-1.15	Deleted	Executed
27:15-1.16	Deleted	Executed
27:15-1.17	Deleted	Executed
27:15-7	Deleted	See Note on Local Highways
27:15-8	Deleted	See Note on Local Highways
27:15-16	Deleted	See Note on Local Highways
27:15-17	Deleted	See Note on Local Highways
27:15-19	Deleted	See Note on Local Highways
27:15-20	Deleted	Executed
27:15A-1	Deleted	Unnecessary
27:15A-2	Deleted	Unnecessary
27:15A-3	Deleted	Unnecessary

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27:15A-4	Deleted	Unnecessary
27:15A-5	Deleted	Unnecessary
27:15A-6	Deleted	Unnecessary
27:15A-7	Deleted	Unnecessary
27:16-1	Deleted	See Note on Local Highways
27:16-2	Deleted	See Note on Local Highways
27:16-3	Deleted	See Note on Local Highways
27:16-4	Deleted	See Note on Local Highways
27:16-5	Deleted	See Note on Local Highways
27:16-6	Deleted	See Note on Local Highways
27:16-7	Deleted	See Note on Local Highways
27:16-8	Deleted	See Note on Local Highways
27:16-9	Deleted	See Note on Local Highways
27:16-10	Deleted	See Note on Local Highways
27:16-11	Deleted	See Note on Local Highways
27:16-12	Deleted	See Note on Local Highways
27:16-13	Deleted	See Note on Local Highways
27:16-14	Deleted	See Note on Local Highways
27:16-15	Deleted	See Note on Local Highways
27:16-16	Deleted	See Note on Local Highways
27:16-17	Deleted	See Note on Local Highways
27:16-18	Deleted	See Note on Local Highways
27:16-19	Deleted	See Note on Local Highways
27:16-20	Deleted	See Note on Local Highways
27:16-21	Deleted	See Note on Local Highways
27:16-22	Deleted	See Note on Local Highways
27:16-23	Deleted	See Note on Local Highways
27:16-24	Deleted	See Note on Local Highways
27:16-25	Deleted	See Note on Local Highways
27:16-26	Deleted	See Note on Local Highways
27:16-27	Deleted	See Note on Local Highways
27:16-28	Deleted	See Note on Local Highways
27:16-29	Deleted	See Note on Local Highways
27:16-30	Deleted	See Note on Local Highways
27:16-31	Deleted	See Note on Local Highways
27:16-31.1	Deleted	See Note on Local Highways
27:16-32	Deleted	See Note on Local Highways
27:16-33	Deleted	See Note on Local Highways
27:16-34	Deleted	See Note on Local Highways
27:16-35	Deleted	See Note on Local Highways
27:16-36	Deleted	See Note on Local Highways
27:16-37	Deleted	See Note on Local Highways
27:16-38	Deleted	See Note on Local Highways
27:16-39	Deleted	See Note on Local Highways
27:16-40	Deleted	See Note on Local Highways
27:16-41	Deleted	See Note on Local Highways
27:16-42	Deleted	See Note on Local Highways
27:16-48	Deleted	See Note on Local Highways
27:16-54	Deleted	See Note on Local Highways
27:16-55	Deleted	See Note on Local Highways
27:16-56	Deleted	See Note on Local Highways
27:16-57	Deleted	See Note on Local Highways
27:16-58	Deleted	See Note on Local Highways
27:16-59	Deleted	See Note on Local Highways
27:16-60	Deleted	See Note on Local Highways
27:16-61	Deleted	See Note on Local Highways

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27:16-62	Deleted	See Note on Local Highways
27:16-63	Deleted	See Note on Local Highways
27:16-64	Deleted	See Note on Local Highways
27:16-65	Deleted	See Note on Local Highways
27:16-66	Deleted	See Note on Local Highways
27:16-67	Deleted	See Note on Local Highways
27:16-68	Deleted	See Note on Local Highways
27:16-69	Deleted	See Note on Local Highways
27:16-70	Deleted	See Note on Local Highways
27:16-71	Deleted	See Note on Local Highways
27:16-72	Deleted	See Note on Local Highways
27:16-73	Deleted	See Note on Local Highways
27:16-74	Deleted	See Note on Local Highways
27:16-75	Deleted	See Note on Local Highways
27:16-76	Deleted	See Note on Local Highways
27:17-1	Deleted	These statutes which establish independent county boulevard Commissions have been held unconstitutional. See, <u>Humble Oil and Refining Co. v. Wojtycha</u> , 48 N.J. 562 (1967).
27:17-2	Deleted	See comment to 27:17-1
27:17-3	Deleted	See comment to 27:17-1
27:17-4	Deleted	See comment to 27:17-1
27:17-5	Deleted	See comment to 27:17-1
27:17-6	Deleted	See comment to 27:17-1
27:17-7	Deleted	See comment to 27:17-1
27:17-8	Deleted	See comment to 27:17-1
27:17-9	Deleted	See comment to 27:17-1
27:17-10	Deleted	See comment to 27:17-1
27:17-11	Deleted	See comment to 27:17-1
27:17-12	Deleted	See comment to 27:17-1
27:17-13	Deleted	See comment to 27:17-1
27:17-14	Deleted	See comment to 27:17-1
27:17-15	Deleted	See comment to 27:17-1
27:17-16	Deleted	See comment to 27:17-1
27:17-17	Deleted	See comment to 27:17-1
27:17-18	Deleted	See comment to 27:17-1
27:17-19	Deleted	See comment to 27:17-1
27:17-20	Deleted	See comment to 27:17-1
27:18-1	Deleted	See Note on Local Highways
27:18-2	Deleted	See Note on Local Highways
27:18-3	Deleted	See Note on Local Highways
27:18-4	Deleted	See Note on Local Highways
27:19-1	Deleted	See Note on Local Highways
27:19-2	Deleted	See Note on Local Highways
27:19-3	Deleted	See Note on Local Highways
27:19-4	Deleted	See Note on Local Highways
27:19-5	Deleted	See Note on Local Highways
27:19-6	Deleted	See Note on Local Highways
27:19-7	Deleted	See Note on Local Highways
27:19-8	Deleted	See Note on Local Highways
27:19-9	Deleted	See Note on Local Highways

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27:19-10	Deleted	See Note on Local Highways
27:19-11	Deleted	See Note on Local Highways
27:19-12	Deleted	See Note on Local Highways
27:19-13	Deleted	See Note on Local Highways
27:19-14	Deleted	See Note on Local Highways
27:19-15	Deleted	See Note on Local Highways
27:19-16	Deleted	See Note on Local Highways
27:19-17	Deleted	See Note on Local Highways
27:19-18	Deleted	See Note on Local Highways
27:19-19	Deleted	See Note on Local Highways
27:19-20	Deleted	See Note on Local Highways
27:19-21	Deleted	See Note on Local Highways
27:19-22	Deleted	See Note on Local Highways
27:19-23	Deleted	See Note on Local Highways
27:19-24	Deleted	See Note on Local Highways
27:19-25	Deleted	See Note on Local Highways
27:19-26	Deleted	See Note on Local Highways
27:19-26.1	Deleted	See Note on Local Highways
27:19-26.2	Deleted	See Note on Local Highways
27:19-26.3	Deleted	See Note on Local Highways
27:19-26.4	Deleted	See Note on Local Highways
27:19-26.5	Deleted	See Note on Local Highways
27:19-27	Deleted	See Note on Local Highways
27:19-28	Deleted	See Note on Local Highways
27:19-29	Deleted	See Note on Local Highways
27:19-30	Deleted	See Note on Local Highways
27:19-31	Deleted	See Note on Local Highways
27:19-32	Deleted	See Note on Local Highways
27:19-32.1	Deleted	See Note on Local Highways
27:19-32.2	Deleted	See Note on Local Highways
27:19-33	Deleted	See Note on Local Highways
27:19-34	Deleted	See Note on Local Highways
27:19-34.1	Deleted	See Note on Local Highways
27:19-35	Deleted	See Note on Local Highways
27:19-36	Deleted	See Note on Local Highways
27:19-36.1	Deleted	See Note on Local Highways
27:19-36.2	Deleted	See Note on Local Highways
27:19-36.3	Deleted	See Note on Local Highways
27:19-36.4	Deleted	See Note on Local Highways
27:19-36.5	Deleted	See Note on Local Highways
27:19-37	Deleted	See Note on Local Highways
27:19-37.1	Deleted	See Note on Local Highways
27:19-37.2	Deleted	See Note on Local Highways
27:19-38	Deleted	See Note on Local Highways
27:19-39	Deleted	See Note on Local Highways
27:19-40	Deleted	See Note on Local Highways
27:19-41	Deleted	See Note on Local Highways
27:19-42	Deleted	See Note on Local Highways
27:19-43	Deleted	See Note on Local Highways
27:19-44	Deleted	See Note on Local Highways
27:19-45	Deleted	See Note on Local Highways

27:20-1	Deleted	Anachronistic
27:20-2	Deleted	Anachronistic
27:20-3	Deleted	Anachronistic
27:20-4	Deleted	Anachronistic
27:20-5	Deleted	Anachronistic

27:20-6	Deleted	Anachronistic
27:20-7	Deleted	Anachronistic
27:20-8	Deleted	Anachronistic
27:20-9	Deleted	Anachronistic
27:20-10	Deleted	Anachronistic
27:20-11	Deleted	Anachronistic
27:20-12	Deleted	Anachronistic
27:21-1	Deleted	Anachronistic
27:21-2	Deleted	Anachronistic
27:21-3	Deleted	Anachronistic
27:21-4	Deleted	Anachronistic
27:21-5	Deleted	Anachronistic
27:21-6	Deleted	Anachronistic
27:21-7	Deleted	Anachronistic
27:21-8	Deleted	Anachronistic
27:22-1	Deleted	See Note on Local Highways
27:22-2	Deleted	See Note on Local Highways
27:22-3	Deleted	See Note on Local Highways
27:22-4	Deleted	See Note on Local Highways
27:22-5	Deleted	See Note on Local Highways
27:22-6	Deleted	See Note on Local Highways
27:22-7	Deleted	See Note on Local Highways
27:22-8	Deleted	See Note on Local Highways
27:22-9	Deleted	See Note on Local Highways
27:22-10	Deleted	See Note on Local Highways
27:22-11	Deleted	See Note on Local Highways
27:22-12	Deleted	See Note on Local Highways
27:22-13	Deleted	See Note on Local Highways
27:22-14	Deleted	See Note on Local Highways
27:22-15	Deleted	See Note on Local Highways
27:23-1 through 27:23-40		Continued as Chapter 52
27:25-1 through 27:25-34		Continued as Chapter 51
27:25A-1 through 27:25A-42	Continued as Chapter 54	
27:26-1	Deleted	Unnecessary
27:26-2	27A:63-1	
27:26-3	27A:63-2	
27:26-4	27A:63-3	
27:26-5	27A:63-4	
27:26A-3	27A:67-1	
27:26A-4	27A:67-2	
27:26A-4.1	27A:67-3	
27:26A-4.2	27A:67-4	
27:26A-4.3	27A:67-5	
27:26A-4.4	27A:67-6	
27:26A-8	27A:67-7	
27:26A-15	27A:67-8	
27:27-1.	Deleted	Unnecessary
27:27-2.	27A:2-6	
27:27-3.	Deleted	See 27A:32-1 et seq.

27:27-4.
27:27-5.

27A:2-6
Deleted

Unnecessary

Note on Local Highways:

There are provisions on local highways both in Title 40 - Municipalities and Counties and in Title 27 - Highways. The County and Municipal Government Study Commission has recommended that authority for local transportation be stated in general terms and compiled in Title 40A. The Law Revision Commission concurs in that approach.

State of New Jersey

N J L R C

New Jersey Law Revision Commission

TENTATIVE REPORT

relating to

MOTOR VEHICLE LIENS

DECEMBER 2003

This tentative report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the tentative report, please inform the Commission so that your approval can be considered along with other comments.

COMMENTS MUST BE RECEIVED BY THE COMMISSION NOT LATER THAN MARCH 22, 2004.

Please send comments concerning this tentative report or direct any related inquiries, to:

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MOTOR VEHICLE LIEN - TENTATIVE REPORT DECEMBER 22, 2003

/motorvehiclelien/mvlTR122203.doc

LIENS FOR MOTOR VEHICLE SERVICE

Introduction

This project was begun in response to the opinion of the Appellate Division in *General Electric Capital Auto Lease v. Violante*, 358 N.J. Super. 171 (App. Div. 2003), which indicated “that the Legislature might wish to study the impact of certain language in *N.J.S.A. 2A:44-21*, bearing upon the garage keepers’ lien, in the face of contemporary transactional realities.” That case held that a lien for service to a motor vehicle was not effective against the lessor of the vehicle. In affirming the lower court’s decision, Judge Kestin explicitly stated that the Appellate Court is bound by “three cases from the third decade of the last century” though it might wish otherwise.

In 1994, The New Jersey Law Revision Commission examined in detail the six New Jersey artisans’ liens statutes. These statutes establish liens for storage of, or work done on, goods which one person (owner) entrusts to another (lienor) who performs the service. The focus of the Commission’s Report was to correct procedural defects in these statutes. Two of the six statutes require rather than allow sales in the absence of payment, and both were held unconstitutional. The Garage Keepers Lien Act provides for mandatory public sale of an automobile if the indebted owner does not post either the full amount of the disputed garage bill or a double bond, with court costs. The mandatory public sale procedure was held “unconstitutional under the Fourteenth Amendment in failing to afford all automobile owners the opportunity to be heard judicially prior to divestment of title.” *Whitmore v. N.J. Div. Of Motor Vehicles*, 137 N.J. Super. 492, 500 (Ch. Div. 1975). (The other mandatory sale lien statute, the Stableman’s Lien Act, was held unconstitutional in *White Birch Farms v. Garritano*, 233 N.J. Super. 553, 557-558 (L. Div. 1987).

The 1994 Commission Report on Distraint and Artisans’ Liens proposed a single artisan’s lien statute to replace most of the current statutes dealing with particular trades. However, as the Introduction to the report stated:

The one statute not replaced by this proposal is Garage Keepers and Automobile Repairmen. The Commission recommends repeal of the current statute and amendment of the Abandoned Motor Vehicles laws, N.J.S. 39:10A-8 through 39:10A-20. Change in ownership of motor vehicles and boats requires adherence to certificate of title requirements, which the proposal does not encompass. Motor vehicles and boats are excluded from the proposal for this reason.

The 1994 recommendations provide a context for drafting a statute on liens for service to motor vehicles, but none of those recommendations addresses the issue of the extent to which these liens should be enforceable against lessors of motor vehicles or holders of a security interest in motor vehicles. There is little financial difference between a lease, a conditional sale and a chattel mortgage. While distinctions can be made among them, all provide methods of financing a car. Under current law, all are treated the same, and the Commission finds no reason to change that.

In some other respects, the proposed statute would change current law and practice. Current law makes a lessor or secured lender immune from the effects of the lien. However, in practice, a lessor or secured lender usually has to satisfy the lien to gain possession of the vehicle. Making lessors and secured lenders totally immune from these liens does not provide a fair result. If a lessor can reclaim a car that has been repaired without paying for the repair, he is unjustly enriched at the expense of the repair shop. But it is wrong to force a lessor to pay for months of storage of the car when he was not notified that the car was incurring these charges nor given a chance to claim the car and avoid the cost.

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A fair statute requires careful balancing of the legitimate interests of repair, car towing and storage businesses, lessors, secured parties, and owner-drivers. The proposed statute attempts this balance. In general, liens for service to a vehicle are made enforceable against all parties. Liens for vehicle storage are made enforceable against a party after that party is notified and given a chance to reclaim the car. To assure that the rules set out in the statute apply in practice, a claimant is given a simple court remedy to reclaim a vehicle quickly, leaving the decision on the lawful amount of the lien until afterward. But a deposit of the asserted lien amount is required so that the lien holder is protected.

Section 1. Lien for motor vehicle repair

a. A person who repairs a motor vehicle owned by another, has a lien on the vehicle repaired and its contents while the vehicle is in the lienor's possession.

b. The amount of the lien is equal to the unpaid balance of the price agreed for the repair plus the reasonable cost of storage of a vehicle not reclaimed within two days after notification that repair is completed.

c. "Repair" includes improvement or modification of a motor vehicle or the replacement of parts or accessories of the motor vehicle, but does not include the cost of storage of the motor vehicle nor towing of the motor vehicle unless the towing is done to bring the vehicle to a place where other repair is performed.

COMMENT

This provision creates a lien for auto repair. It does not create a lien for storage not connected to repair nor for supply of fuel. There is no similar provision in the Abandoned Vehicle Act (39:10A-8 through 20). The equivalent provision of the existing garage keeper's lien is part of 2A:44-21:

A garage keeper who shall store, maintain, keep or repair a motor vehicle or furnish gasoline, accessories or other supplies therefor, at the request or with the consent of the owner or his representative, shall have a lien upon the motor vehicle or any part thereof for the sum due for such storing, maintaining, keeping or repairing of such motor vehicle or for furnishing gasoline or other fuel, accessories or other supplies therefor, and may, without process of law, detain the same at any time it is lawfully in his possession until the sum is paid. A motor vehicle is considered detained when the owner or person entitled to possession of the motor vehicle is advised by the garage keeper, by a writing sent by certified mail return receipt requested to the address supplied by the owner or person entitled to possession of the motor vehicle, that goods or services have been supplied or performed, and that there is a sum due for those goods or services.

This section specifically provides that the lien extends to the contents of the vehicle. There is no similar provision in current law, but 2A:44-21, quoted above, gives a garage keeper the right to detain the vehicle which may include the right to detain the contents. Extending the lien to contents obviates problems of distinguishing between equipment that is fairly considered part of the vehicle and items merely stored in it. The lien on contents is limited in that it is subject to claims of third parties. See Section 2(e) below.

Subsection (b) addresses the amount of the lien. There are two separate amounts that may be involved, repair and storage. The cost of repair is set as the amount agreed between the parties. The Commission was informed that when a car is left for service during business hours there is always an agreement as to the price. When a car is towed or left when the shop is closed, there is agreement as soon as possible. In any event, auto mechanics always obtain authorization for a repair before beginning work. This approach differs from existing law. Both the Abandoned Vehicle Act and the Garage Keepers' Lien Act are based on reasonable rather than agreed cost. 39:10A-14; 2A:44-23. The Commission decided that it was preferable for the amount of the lien to be definite and so to avoid disputes and litigation.

Cost of storage is a harder issue. A repair shop should have a lien for storage when, after a significant period of time, the vehicle is not claimed nor the repairs paid for. The Commission was informed that the custom among repair shops is to charge for storage beginning two days after the repairs are completed. However, amounts claimed for storage should not be excessive when compared with local parking charges. Storage charges could be left to agreement of the parties, but most repair shops are not in the

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business of storing cars, so there will not be any established rate. As a result, an “agreed storage cost” will be set by form contract language that is likely not to be read or understood. The provision restricts the cost of storage to what is reasonable. The provision also begins storage charges two days after notification that the car is ready.

Section 2. Priority of lien; limitation as against lessors and secured parties; limitation regarding contents.

a. A lien on a motor vehicle for repair shall have priority over other liens and interests except as provided in this section.

b. A lien for repair is enforceable against the holder of a security interest indicated on the title document for the vehicle or against the lessor of a vehicle leased for a term of one year or more only to the extent provided by this section.

c. A lien for the agreed price of service is enforceable against the holder of a security interest or a lessor if:

- (1) the holder of a security interest or lessor has agreed to the service and its price, or
- (2) the price is less than \$2000.

d. A lien for the cost of storage of a vehicle not paid for and taken after repair is completed is enforceable against the holder of a security interest indicated on the title document or a lessor to the extent that the cost is for storage beginning two days after the holder of a security interest or lessor has been notified by the lienor that the vehicle has not been paid for and taken.

e. A lien on the contents of a vehicle shall be subordinate to claims of owners of the contents who are not owners or habitual drivers of the vehicle.

COMMENT

This section limits the cases in which secured parties and lessors will be bound by the lien for repair. The Commission decided that secured creditors and lessors should be treated equally. As a basic rule, the Commission decided that the cost of repair adds to the value of the car and should be enforceable against any kind of financing party. There was discussion as to whether the secured party or lessor should be consulted before work is done that could result in a lien. Consultation was found unnecessary for ordinary repairs. The Commission was advised that the cost of repair rarely exceeds \$2000. However, where the cost of service will be more than that amount, advance approval was found appropriate. The section also limits a secured party or lessor’s liability for the cost of storage. It was considered unfair to charge for storage that occurred before the secured party or lessor was notified and had an opportunity to reclaim the vehicle.

The lien on the contents of a vehicle is limited differently from that on the vehicle itself. Repair of the vehicle benefits the vehicle and so benefits anyone with a claim to it. Items that happen to be in the vehicle that are not owned by owners or habitual drivers of the vehicle are not benefited by the repair. The phrase “habitual driver” is not defined. It is intended to encompass anyone who drives the car frequently enough that he can be considered benefited by the repair. The lien extends to these drivers as a matter of convenience. As a result, it is appropriate to make the lien subject to the claims of third party owners.

Section 3. Lien for towing and storage

a. A person who tows and stores a motor vehicle at the direction of a law enforcement officer or a person on whose property the motor vehicle is found has a lien on the motor vehicle and its contents while the vehicle is in the lienor's possession for the towing and storage. The amount of the lien shall be the price of towing and storage established by municipal ordinance or by contract between the municipality and the lienor. If no price has been set by ordinance or contract, the amount of the lien shall be the reasonable cost of towing and storage.

b. A lien for towing and storage shall have priority over other liens and interests except as provided in this subsection. A lien for storage is enforceable against the holder of a security interest indicated on the title document for

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the vehicle or a lessor of a vehicle leased for a term of one year or more only to the extent that the cost is for storage beginning two days after the holder of a security interest or lessor has been notified by the lienor that the vehicle has been impounded. A lien on the contents of a vehicle shall be subordinate to claims of owners of the contents who are not owners or habitual drivers of the vehicle.

c. The amount of the lien for towing and storage enforced against the holder of a security interest or a lessor shall include the cost of identifying the holder of a security interest or lessor.

COMMENT

Subsection (a) establishes a lien for towing and storage not associated with repair. Current statutes establish a lien for storing a motor vehicle but do not provide specifically for towing. See 2A:44-21 quoted above. In practice, when a vehicle is towed and impounded, it is not released until charges are paid. The section also limits the amount of the lien to the price set by municipal ordinance or contract. If an amount is not set by ordinance or contract, or where the ordinance or contract does not apply, as where a vehicle is towed from private property, the amount is the “reasonable cost of towing and storage.”

Subsection (b) limits the cases in which secured parties and lessors will be bound by the lien for storage. For the same reasons as in the lien for motor vehicle service, the Commission decided that secured creditors and lessors should be treated equally. The Commission found that charges for storage present the most serious problems and must be subject to the most strict limitations. Some drivers who decide that they cannot make car payments abandon their cars on the street. These cars are towed and impounded. The lessor or secured party often is not informed of that until several months pass. By the time notice is given, storage charges are substantial. It is unfair for the secured party or lessor to be responsible for storage charges incurred before he was able to reclaim the vehicle. Because the lienor may incur cost in identifying the holder of a security interest or a lessor, subsection (c) provides that the party who incurs that cost may include it as part of the lien. As for liens for repair, the lien against items in the vehicle is limited and affects only owners and habitual drivers of the vehicle. The phrase “habitual driver” is not defined. It is intended to encompass anyone who drives the car frequently enough to be considered benefited by the repair.

Section 4. Retention and release of motor vehicle subject to lien

a. A person who has possession of a motor vehicle and has a lien on it under this act may hold that vehicle and shall release it to any person who has a right to possession of the vehicle who tenders the amount of the lien as provided by this act.

b. If a person claims the vehicle and disputes the amount asserted as a lien, the person may bring a summary action in Superior Court to determine the amount due. If the person deposits in court the amount asserted as a lien, the court shall immediately order the vehicle released and after determining the amount due, shall order it paid from the deposit in court and order the balance of the deposit returned.

c. On payment of the lien amount, the person in possession of the motor vehicle may release it to any person who claims the vehicle and appears to have the right to its possession. If more than one person claims the motor vehicle, after the lien amount is paid, the person with possession of the vehicle shall release the vehicle to the person listed on the title document as owner or immediately bring an action in Superior Court to determine who has the right to possession of the vehicle.

COMMENT

Subsection (a) gives the lien holder the right to enforce the lien by holding the vehicle. Such a right is inherent in any possessory lien. Subsection (b) is an attempt to solve the problem of vehicles being held when the amount claimed as a lien is disputed. It is an alternative to a penalty provision which would be hard to enforce and might raise its own problems. While a summary action in court with a deposit of the amount in dispute is not convenient, it does serve the purpose of allowing the immediate release of the vehicle to preserve its value.

Subsection (c) allows the release of the vehicle to any person who appears to have a right to the vehicle. In most cases, the person who retrieves the car is the person who left it for service. That person may not be the owner of the car as shown on title documents, but the habitual driver raises the issue of disputed claims to ownership. While this problem was not raised in presentations to the Commission, it may deserve consideration.

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Section 5. Disposition of unclaimed motor vehicle

a. If a person has possession of a motor vehicle and has a lien on it under this act, and the vehicle has not been claimed for more than 60 days after notice of the vehicle's possession has been given to the owner of the vehicle and to any person whose security interest is filed with the Director of the Division of Motor Vehicles, and the amount of the lien is not known to be the subject of a dispute, the lien holder may:

(1) sell the motor vehicle at public or private sale, or

(2) if the motor vehicle is incapable of being operated safely or of being put in safe operational condition except at a cost in excess of its value, apply to the Director of the Division of Motor Vehicles for a title certificate allowing the vehicle to be disposed of as junk.

b. Prior to the sale of a motor vehicle pursuant to this section the lien holder shall give the owner of the motor vehicle or the holder of any security interest in the motor vehicle filed with the Director of the Division of Motor Vehicles and the Director of the Division of Motor Vehicles:

(1) at least 30 days written notice of the intent to sell the motor vehicle, and

(2) at least five days written notice of the date, time, place and manner of the proposed sale.

c. If a lien holder determines that the motor vehicle is incapable of being operated safely or of being put in safe operational condition except at a cost in excess of its value, the lien holder shall so certify to the Director of the Division of Motor Vehicles, on an application, and the Division of Motor Vehicles shall, without further certification or verification, issue for a fee of \$10.00, a junk title certificate for the vehicle; but no title certificate shall be issued unless the motor vehicle service facility first gives 30 days notice of its intention to obtain a junk title certificate to the owner of the motor vehicle or other person having a legal right to it and to the holder of any security interest in the motor vehicle filed with the Director of the Division of Motor Vehicles.

d. At any time prior to the sale of the motor vehicle or the issuance of a junk title certificate for it, the owner of the motor vehicle may reclaim possession of the motor vehicle from the motor vehicle repair facility or other person with whom the motor vehicle is stored pursuant to this act, upon payment of the reasonable costs of removal and storage of the motor vehicle, the expenses incurred pursuant to the provisions of this act, and the charges for the servicing or repair of the motor vehicle.

COMMENT

This section is based on parts of 39:10A-9, 39:10A-11, 39:10A-12, and 39:10A-14.

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