

SENATE, No. 236

STATE OF NEW JERSEY
215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

Senator STEVEN V. OROHO

District 24 (Morris, Sussex and Warren)

Co-Sponsored by:

Senators Beck and Bateman

SYNOPSIS

Eliminates seniority in Civil Service and other jurisdictions for reductions in force in certain circumstances.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



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2

1 AN ACT concerning seniority and reductions in force in Civil
2 Service and other jurisdictions and amending various sections of
3 the statutory law.

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

7
8 1. Section 6 of P.L.1968, c.303 (C.34:13A:5.2) is amended to
9 read as follows:

10 6. There is hereby established in the Division of Public
11 Employment Relations a commission to be known as the New
12 Jersey Public Employment Relations Commission. This
13 commission, in addition to the powers and duties granted by this
14 act, shall have in the public employment area the same powers and
15 duties granted to the labor mediation board in sections 7 and 10 of
16 P.L. 1941, c. 100, and in sections 2 and 3 of P.L. 1945, c. 32. This
17 commission shall make policy and establish rules and regulations
18 concerning employer-employee relations in public employment
19 relating to dispute settlement, grievance procedures and
20 administration including enforcement of statutory provisions
21 concerning representative elections and related matters and to
22 implement fully all the provisions of this act. The commission shall
23 receive the certification of an appointing authority and either
24 approve or disapprove the requested reductions in force in police
25 and fire departments in counties and municipalities that have not
26 adopted Title 11A, Civil Service, of the New Jersey Statutes in a
27 manner similar to the procedure established in paragraph (2) of
28 subsection e. of N.J.S.40A:8-1. The commission shall consist of
29 seven members to be appointed by the Governor, by and with the
30 advice and consent of the Senate. Of such members, two shall be
31 representative of public employers, two shall be representative of
32 public employee organizations and three shall be representative of
33 the public including the appointee who is designated as chairman.
34 Of the first appointees, two shall be appointed for two years, two
35 for a term of three years and three, including the chairman, for a
36 term of four years. Their successors shall be appointed for terms of
37 three years each, and until their successors are appointed and
38 qualified, except that any person chosen to fill a vacancy shall be
39 appointed only for the unexpired term of the member whose office
40 has become vacant.

41 The members of the commission, other than the chairman, shall
42 be compensated at the rate of \$250.00 for each six hour day spent in
43 attendance at meetings and consultations and shall be reimbursed
44 for necessary expenses in connection with the discharge of their
45 duties except that no commission member who receives a salary or

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

Matter underlined thus is new matter.

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1 other form of compensation as a representative of any employer or
2 employee group, organization or association, shall be compensated
3 by the commission for any deliberations directly involving members
4 of said employer or employee group, organization or association.
5 Compensation for more, or less than, six hours per day, shall be
6 prorated in proportion to the time involved.

7 The chairman of the commission shall be its chief executive
8 officer and administrator, shall devote his full time to the
9 performance of his duties as chairman of the Public Employment
10 Relations Commission and shall receive such compensation as shall
11 be provided by law.

12 (cf: P.L.1987, c.456, s.1)

13

14 2. N.J.S.11A:8-1 is amended to read as follows:

15 11A:8-1. a. A permanent employee may be laid off for
16 economy, efficiency or other related reason. A permanent
17 employee shall receive 45 days' written notice, unless in State
18 government a greater time period is ordered by the chairperson of
19 the commission, which shall be served personally or by certified
20 mail, of impending layoff or demotion and the reasons therefor.
21 The notice shall expire 120 days after service unless extended by
22 the chairperson of the commission for good cause. At the same
23 time the notice is served, the appointing authority shall provide the
24 chairperson of the commission with a list of the names and
25 permanent titles of all employees receiving the notice. The Civil
26 Service Commission shall adopt rules to implement employee
27 layoff rights consistent with the provisions of this section, upon
28 recommendation by the chairperson of the commission. The
29 chairperson of the commission shall consult with the advisory board
30 representing labor organizations prior to such recommendations.

31 b. Permanent employees in the service of the State or a
32 political subdivision shall be laid off in inverse order of seniority.
33 As used in this subsection, "seniority" means the length of
34 continuous permanent service in the jurisdiction, regardless of title
35 held during the period of service, except that for police and
36 firefighting titles, "seniority" means the length of continuous
37 permanent service only in the current permanent title and any other
38 title that has lateral or demotional rights to the current permanent
39 title. Seniority for all titles shall be based on the total length of
40 calendar years, months and days in continuous permanent service
41 regardless of the length of the employee's work week, work year or
42 part-time status.

43 c. For purposes of State service, a "layoff unit" means a
44 department or autonomous agency and includes all programs
45 administered by that department or agency. For purposes of
46 political subdivision service, the "layoff unit" means a department
47 in a county or municipality, an entire autonomous agency, or an

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1 entire school district, except that the chairperson of the commission
2 may establish broader layoff units.

3 d. For purposes of State service, "job location" means a county.
4 The chairperson of the commission shall assign a job location to
5 every facility and office within a State department or autonomous
6 agency. For purposes of local service, "job location" means the
7 entire political subdivision and includes any facility operated by the
8 political subdivision outside its geographic borders.

9 e. **【For】** (1) Except as provided for in subparagraph (2) of this
10 paragraph, for the purposes of determining lateral title rights in
11 State and political subdivision service, title comparability shall be
12 determined by the commission based upon whether the: **【(1)】** (a)
13 titles have substantially similar duties and responsibilities; 【(2)】 (b)
14 education and experience requirements for the titles are identical or
15 similar; 【(3)】 (c) employees in an affected title, with minimal
16 training and orientation, could perform the duties of the designated
17 title by virtue of having qualified for the affected title; and 【(4)】 (d)
18 special skills, licenses, certifications or registration requirements
19 for the designated title are similar and do not exceed those which
20 are mandatory for the affected title. Demotional title rights shall be
21 determined by the chairperson of the commission based upon the
22 same criteria, except that the demotional title shall have lower but
23 substantially similar duties and responsibilities as the affected title.

24 (2) Notwithstanding the provisions of subparagraph (1) of this
25 subsection, an appointing authority may certify that a permanent
26 employee, who is less senior in a title and is affected by the
27 exercise of a lateral or demotional title right by a more senior
28 permanent employee, is more critical and essential to the State or
29 political subdivision based upon business and operational necessity
30 and should not be removed from his job and responsibilities. The
31 appointing authority's certification shall include the skills, licenses
32 and certifications required, if any, the nature of the job activity, and
33 why the more senior employee who would replace the individual
34 does not possess the essential requirements necessary to meet the
35 needs of the State or affected political subdivision. The appointing
36 authority shall submit the certification to the chairperson of the
37 commission, along with any other required layoff information, prior
38 to the proposed effective date of the layoff, but shall not implement
39 the layoff until approved by the chairperson.

40 f. In State service, a permanent employee in a position affected
41 by a layoff action shall be provided with applicable lateral and
42 demotional title rights first, at the employee's option, within the
43 municipality in which the facility or office is located and then to the
44 job locations selected by the employee within the department or
45 autonomous agency. The employee shall select individual job
46 locations in preferential order from the list of all job locations and
47 shall indicate job locations at which the employee will accept lateral

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1 and demotional title rights. In local service, a permanent employee
2 in a position affected by a layoff action shall be provided lateral and
3 demotional title rights within the layoff unit.

4 g. Following the employee's selection of job location
5 preferences, lateral and demotional title rights shall be provided in
6 the following order:

7 (1) a vacant position that the appointing authority has previously
8 indicated it is willing to fill;

9 (2) a position held by a provisional employee who does not have
10 permanent status in another title, and if there are multiple
11 employees at a job location, the specific position shall be
12 determined by the appointing authority;

13 (3) a position held by a provisional employee who has
14 permanent status in another title, and if there are multiple
15 provisional employees at a job location, the specific position shall
16 be determined based on level of the permanent title held and
17 seniority;

18 (4) the position held by the employee serving in a working test
19 period with the least seniority;

20 (5) in State service, and in local jurisdictions having a
21 performance evaluation program approved by the commission, the
22 position held by the permanent employee whose performance rating
23 within the most recent 12 months in the employee's permanent title
24 was significantly below standards or an equivalent rating;

25 (6) in State service, and in local jurisdictions having a
26 performance evaluation program approved by the commission, the
27 position held by the permanent employee whose performance rating
28 within the most recent 12 months in the employee's permanent title
29 was marginally below standards or an equivalent rating; and

30 (7) the position held by the permanent employee with the least
31 seniority.

32 h. A permanent employee shall be granted special
33 reemployment rights based on the employee's permanent title at the
34 time of the layoff action and the employee shall be certified for
35 reappointment after the layoff action to the same, lateral and lower
36 related titles. Special reemployment rights shall be determined by
37 the chairperson of the commission in the same manner as lateral and
38 demotional rights.

39 i. Notwithstanding the provisions above, at no time shall any
40 person on a military leave of absence for active service in the
41 Armed Forces of the United States in time of war or emergency be
42 laid off.

43 (cf: P.L.2008, c.29, s.69)

44

45 3. N.J.S.40A:14-25 is amended to read as follows:

46 40A:14-25. The governing body of any municipality, if they
47 shall deem it necessary for reasons of economy, may decrease the

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1 number of members and officers of the paid or part-paid fire
2 department or force or their grades or ranks. In case of demotion
3 from the higher ranks, the officers or members to be so demoted
4 shall be in the inverse order of their appointment. When the service
5 of members or officers is terminated, such termination shall be in
6 the inverse order of their appointment. In any municipality wherein
7 Title 11A, Civil Service, of the New Jersey Statutes has been
8 adopted, any action taken under this section shall be subject to the
9 provisions of paragraph (2) of subsection e. of N.J.S.11A:8-1. In
10 any municipality wherein Title 11A, Civil Service, of the New
11 Jersey Statutes has not been adopted, actions taken under this
12 section shall be subject to similar requirements as found in
13 paragraph (2) of subsection e. of N.J.S.11A:8-1, except that the
14 appointing authority shall file the certification required in that
15 paragraph with the Public Employment Relations Commission,
16 prior to the effective date of the proposed layoff, and in accordance
17 with the rules and regulations promulgated by the Public
18 Employment Relations Commission for this purpose. Any member
19 or officer who is demoted or whose service is terminated by reason
20 of such decrease shall be placed on a special employment list, and
21 in the case of subsequent promotions, a person so demoted shall be
22 reinstated to his original rank, and in the case of termination of
23 service and new appointment, prior consideration shall be given to
24 the persons on said special employment list.

25 (cf: N.J.S.40A:14-25)

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27 4. N.J.S.40A:14-115 is amended to read as follows:

28 40A:14-115. The board of chosen freeholders of any county, if
29 they shall deem it necessary for reasons of economy, may decrease
30 the number of members and officers of the police department or
31 force or their grades or ranks. In case of demotion from the higher
32 ranks, the officers or members to be so demoted shall be in the
33 inverse order of their appointment. When the service of members
34 or officers is terminated, such termination shall be in the inverse
35 order of their appointment. In any county wherein Title 11A, Civil
36 Service, of the New Jersey Statutes has been adopted, any action
37 taken under this section shall be subject to the provisions of
38 paragraph (2) of subsection e. of N.J.S.11A:8-1. In any county
39 wherein Title 11A, Civil Service, of the New Jersey Statutes has not
40 been adopted, actions taken under this section shall be subject to
41 similar requirements as found in paragraph (2) of subsection e. of
42 N.J.S.11A:8-1, except that the appointing authority shall file the
43 certification required in that paragraph with the Public Employment
44 Relations Commission, prior to the effective date of the proposed
45 layoff, and in accordance with the rules and regulations
46 promulgated by the Public Employment Relations Commission for
47 this purpose. Any member or officer who is demoted or whose

1 service is terminated by reason of such decrease shall be placed on
2 a special employment list, and in the case of subsequent
3 promotions, a person so demoted shall be reinstated to his original
4 rank, and in the case of termination of service and new
5 appointment, prior consideration shall be given to the persons on
6 said special employment list.

7 (cf: N.J.S.40A:14-115)

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9 5. N.J.S.40A:14-143 is amended to read as follows:

10 40A:14-143. The governing body of any municipality, if they
11 shall deem it necessary for reasons of economy, may decrease the
12 number of members and officers of the police department or force
13 or their grades or ranks. In case of demotion from the higher ranks,
14 the officers or members to be so demoted shall be in the inverse
15 order of their appointment. In any municipality wherein Title 11A,
16 Civil Service, of the New Jersey Statutes has been adopted, any
17 action taken under this section shall be subject to the provisions of
18 paragraph (2) of subsection e. of N.J.S.11A:8-1. In any
19 municipality wherein Title 11A, Civil Service, of the New Jersey
20 Statutes has not been adopted, actions taken under this section shall
21 be subject to similar requirements as found in paragraph (2) of
22 subsection e. of N.J.S.11A:8-1, except that the appointing authority
23 shall file the certification required in that paragraph with the Public
24 Employment Relations Commission, prior to the effective date of
25 the proposed layoff, and in accordance with the rules and
26 regulations promulgated by the Public Employment Relations
27 Commission for this purpose. When the service of members or
28 officers is terminated, such termination shall be in the inverse order
29 of their appointment. Any member or officer who is demoted or
30 whose service is terminated by reason of such decrease shall be
31 placed on a special employment list, and in the case of subsequent
32 promotions, a person so demoted shall be reinstated to his original
33 rank and in the case of termination of service and new appointment,
34 prior consideration shall be given to the persons on said special
35 employment list.

36 (cf: N.J.S.40A:14-143)

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38 6. This act shall take effect immediately.

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STATEMENT

42

43 This bill would modify existing civil service rules to permit the
44 State, a county or a municipality to lay off, as part of a reduction in
45 force, individuals with more seniority in the event the less senior
46 individual possesses essential skills necessary to meet the needs of
47 the county or municipality. When terminating a more senior

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1 employee instead of a less senior employee, the appointing
2 authority must certify to the chairperson of the Civil Service
3 Commission that the less senior employee has specialized skills,
4 licenses, certifications, or other qualifications that the more senior
5 employee does not possess and that those skills are essential to the
6 operation of the county or municipal department. In the event that
7 the reduction in force occurs in a county or municipality that has
8 not adopted the civil service rules, the appointing authority must
9 notify the Public Employment Relations Commission of the
10 pending layoffs and gain their approval prior to implementing the
11 layoffs.

12 Finally, the bill expands the authority of the chairperson of the
13 Civil Service Commission. Under the bill, counties and
14 municipalities must receive permission from the chairperson of the
15 commission prior to implementing a reduction in force that does not
16 follow seniority rules.