

ASSEMBLY, No. 3376

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

SYNOPSIS

Revises reappointment process for administrative law judges, and establishes tenure upon reappointment with the Senate's advice and consent.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT establishing tenure for administrative law judges, and
2 amending P.L.1978, c.67.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. Section 4 of P.L.1978, c.67 (C.52:14F-4) is amended to read
8 as follows:

9 4. Permanent administrative law judges shall be appointed by
10 the Governor with the advice and consent of the Senate to initial
11 terms of one year. During this initial term, each judge shall be
12 subject to a program of evaluation developed by the Director of the
13 Office of Administrative Law as delineated in section 5 of
14 P.L.1978, c.67 (C.52:14F-5). First reappointment of a judge after
15 this initial term shall be by the Governor for a term of four years
16 and until the appointment and qualification of the judge's successor.

17 Administrative law judges nominated by the Governor before
18 July 1, 1981 shall, upon their confirmation by the Senate, serve for
19 terms of five years and until the appointment and qualification of
20 their successors.

21 **【Subsequent reappointments】** The subsequent reappointment of
22 a judge shall be by the Governor with the advice and consent of the
23 Senate **【to】**. Administrative law judges nominated for
24 reappointment by the Governor before the effective date of
25 P.L. , c. (pending before the Legislature as this bill) shall, upon
26 their confirmation and reappointment, serve for terms of five years
27 and until the appointment and qualification of the judge's successor.

28 **【The advice and consent of the Senate, as provided in this section,**
29 **shall be exercised within 45 days after a nomination for**
30 **appointment has been submitted to the Senate, and if no action has**
31 **been taken within the 45-day period, the nomination shall be**
32 **deemed confirmed. This 45-day period shall not apply to any**
33 **person nominated by the Governor for the position of administrative**
34 **law judge prior to July 1, 1981.】** For administrative law judges
35 nominated for reappointment by the Governor on or after that
36 effective date, the director's evaluations shall be made available to
37 the Senate Judiciary Committee, and upon confirmation by the
38 Senate and subsequent reappointment, the judges shall have tenure,
39 and shall serve during good behavior.

40 The annual salary for an administrative law judge during the
41 initial term of one year shall be equal to **【75%】** 75 percent of the
42 annual salary of a Judge of the Superior Court. The annual salary
43 for a judge during the first year of the first reappointment shall be
44 increased to **【78 2/3%】** 78 2/3 percent of the annual salary of a
45 Judge of the Superior Court. Upon receipt of satisfactory annual

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

Matter underlined thus is new matter.

1 evaluations, the annual salary for a judge shall be increased to **【81**
2 **2/3%】** 81 2/3 percent of the annual salary of a Judge of the Superior
3 Court for the second year of the first reappointment and to **【85%】**
4 85 percent of the annual salary of a Judge of the Superior Court for
5 the third year of the first reappointment. The annual salary shall be
6 **【85%】** 85 percent of the annual salary of a Judge of the Superior
7 Court for the fourth year of the first reappointment and for each
8 year of subsequent reappointments thereafter, or subsequent
9 reappointment with tenure, as applicable.

10 In addition to salary, an administrative law judge regularly
11 assigned as an assignment judge shall receive \$2,500 annually as
12 additional compensation, and a judge regularly assigned other
13 administrative or supervisory duties shall receive \$1,500 annually
14 as additional compensation.

15 All administrative law judges, including the Chief
16 Administrative Law Judge, shall be retired upon attaining the age of
17 70 years, except that any administrative law judge who has retired
18 on pension or retirement allowance may, with the judge's consent,
19 be recalled by the **【Director/Chief Administrative Law Judge of the**
20 **Office of Administrative Law】** director for service as a recalled
21 judge in the Office of Administrative Law. No recalled judge shall
22 serve beyond his 80th birthday.

23 Upon such recall the retired judge shall have all the powers of an
24 administrative law judge and shall be paid a per diem allowance
25 fixed by the **【Director/ Chief Administrative Law Judge】** director.
26 In addition the recalled judge shall be reimbursed for reasonable
27 expenses actually incurred by him in connection with his
28 assignment and shall be provided with such facilities as may be
29 required in the performance of his duties. Such per diem
30 compensation and expenses shall be paid by the State. Payment for
31 services and expenses shall be made in the same manner as payment
32 is made to the judges of the Office of Administrative Law from
33 which he retired.

34 (cf: P.L.2005, c.6, s.1)

35
36 2. Section 5 of P.L.1978, c.67 (C.52:14F-5) is amended to read
37 as follows:

38 5. The Director **【and Chief Administrative Law Judge】** of the
39 Office of Administrative Law shall:

40 a. Administer and cause the work of the office to be performed
41 in such manner and pursuant to such program as may be required or
42 appropriate;

43 b. Organize and reorganize the office, and establish such
44 bureaus as may be required or appropriate;

45 c. Except as otherwise provided in subsections l. and t., below,
46 appoint, pursuant to the provisions of Title 11A of the New Jersey

- 1 Statutes, such clerical assistants and other personnel as may be
2 required for the conduct of the office;
- 3 d. Assign and reassign personnel to employment within the
4 office;
- 5 e. Develop uniform standards, rules of evidence, and
6 procedures, including but not limited to standards for determining
7 whether a summary or plenary hearing should be held to regulate
8 the conduct of contested cases and the rendering of administrative
9 adjudications;
- 10 f. Promulgate and enforce such rules for the prompt
11 implementation and coordinated administration of the
12 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
13 seq.) as may be required or appropriate;
- 14 g. Administer and supervise the procedures relating to the
15 conduct of contested cases and the making of administrative
16 adjudications, as defined by section 2 of P.L.1968, c.410
17 (C.52:14B-2), and develop and implement an electronic filing
18 system for the conduct of contested cases in such a manner and
19 within such a time period as deemed practicable within available
20 resources;
- 21 h. Advise agencies concerning their obligations under the
22 "Administrative Procedure Act," subject to the provisions of
23 subsections b. and e. of section 4 of P.L.1944, c.20 (C.52:17A-4);
- 24 i. Assist agencies in the preparation, consideration, publication
25 and interpretation of administrative rules required or appropriate
26 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
27 (C.52:14B-1 et seq.);
- 28 j. Employ the services of the several agencies and of the
29 employees thereof in such manner and to such extent as may be
30 agreed upon by the director and the chief executive officer of such
31 agency;
- 32 k. Have access to information concerning the several agencies
33 to assure that they properly promulgate all rules required by law;
- 34 l. Assign permanent administrative law judges at supervisory
35 and other levels who are qualified in the field of administrative law
36 or in subject matter relating to the hearing functions of a State
37 agency.
- 38 Administrative law judges shall receive such salaries as provided
39 by section 4 of P.L.1978, c.67 (C.52:14F-4), as amended by
40 P.L.1999, c.380, shall not engage in the practice of law and shall
41 devote full time to their judicial duties.
- 42 Administrative law judges appointed after the effective date of
43 this amendatory act shall have been attorneys-at-law of this State
44 for a minimum of five years. An administrative law judge
45 appointed prior to the effective date of this amendatory act shall not
46 be required to be an attorney or, if an attorney, shall not be required
47 to have been an attorney-at-law for five years in order to be
48 reappointed;

- 1 m. Appoint additional administrative law judges, qualified in
2 the field of administrative law or in a subject matter relating to the
3 hearing functions of a State agency, on a temporary or case basis as
4 may be necessary during emergency or unusual situations for the
5 proper performance of the duties of the office, pursuant to a
6 reasonable fee schedule established in advance by the director.
7 Administrative law judges appointed pursuant to this procedure
8 shall have the same qualifications for appointment as permanent
9 administrative law judges;
- 10 n. Assign administrative law judges to conduct contested cases
11 as required by sections 9 and 10 of P.L.1968, c.410 (C.52:14B-9
12 and 52:14B-10). Proceedings shall be scheduled for suitable
13 locations, either at the offices of the Office of Administrative Law
14 or elsewhere in the State, taking into consideration the convenience
15 of the witnesses and parties, as well as the nature of the cases and
16 proceedings;
- 17 o. Assign an administrative law judge or other personnel, if so
18 requested by the head of an agency and if the director deems
19 appropriate, to any agency to conduct or assist in administrative
20 duties and proceedings other than those related to contested cases or
21 administrative adjudications, including but not limited to rule-
22 making and investigative hearings;
- 23 p. Assign an administrative law judge not engaged in the
24 conduct of contested cases to perform other duties vested in or
25 required of the office;
- 26 q. Secure, compile and maintain all reports of administrative
27 law judges issued pursuant to this act, and such reference materials
28 and supporting information as may be appropriate;
- 29 r. Develop and maintain a program for the continuing training
30 and education of administrative law judges and agencies in regard
31 to their responsibilities under this act;
- 32 s. Develop and implement a program of judicial evaluation to
33 aid himself in the performance of his duties, and to assist in the
34 making of reappointments under section 4 of P.L.1978, c.67
35 (C.52:14F-4). This program of evaluation shall focus on three areas
36 of judicial performance: competence, productivity, and demeanor.
37 It shall include consideration of: industry and promptness in
38 adhering to schedules, making rulings and rendering decisions;
39 tolerance, courtesy, patience, attentiveness, and self-control in
40 dealing with litigants, witnesses and counsel, and in presiding over
41 contested cases; legal skills and knowledge of the law and new legal
42 developments; analytical talents and writing abilities; settlement
43 skills; quantity, nature and quality of caseload disposition;
44 impartiality and conscientiousness. The director shall develop
45 standards and procedures for this program, which shall include
46 taking comments from selected litigants and lawyers who have
47 appeared before a judge. The methods used by the judge but not the
48 result arrived at by the judge in any case may be used in evaluating

1 a judge. Before implementing any action based on the findings of
2 the evaluation program, the director shall discuss the findings and
3 the proposed action with the affected judge. The evaluation by the
4 director and supporting data shall be submitted to the Governor at
5 least 90 days before the expiration of any term, and all evaluations
6 made available to the Senate Judiciary Committee pursuant to
7 section 4 of P.L.1978, c.67 (C.52:14F-4) for any judge that has been
8 nominated for reappointment by the Governor on or after the
9 effective date of P.L. , c. (pending before the Legislature as this
10 bill). These documents shall remain confidential and shall be
11 exempted from the requirements of P.L.1963, c.73 (C.47:1A-1 et
12 seq.);

13 t. Promulgate and enforce rules for reasonable sanctions,
14 including assessments of costs and attorneys' fees which may be
15 imposed on a party, and attorney or other representative of a party
16 who, without just excuse, fails to comply with any procedural order
17 or with any standard or rule applying to a contested case and
18 including the imposition of a fine not to exceed **[\$1,000.00]** \$1,000
19 for misconduct which obstructs or tends to obstruct the conduct of
20 contested cases;

21 u. Have power in connection with contested case hearings (1)
22 to administer oaths to any and all persons, (2) to compel by
23 subpoena the attendance of witnesses and the production of books,
24 records, accounts, papers, and documents of any person or persons,
25 (3) to entertain objections to subpoenas, and (4) to rule upon
26 objections to subpoenas except, that any orders of administrative
27 law judges regarding these objections may be reviewed by the
28 agency head before the completion of the contested case in
29 accordance with procedural rules, adopted by the **[Director and**
30 **Chief Administrative Law Judge of the Office of Administrative**
31 **Law]** director. Misconduct by any party, attorney or representative
32 of a party or witness which obstructs or tends to obstruct the
33 conduct of a contested case or the failure of any witness, when duly
34 subpoenaed to attend, give testimony or produce any record, or the
35 failure to pay any sanction assessed pursuant to subsection t. of this
36 section, shall be punishable by the Superior Court in the same
37 manner as such failure is punishable by such court in a case pending
38 therein;

39 v. Assign any judge recalled pursuant to section 4 of
40 P.L.1978, c.67 (C.52:14F-4) and fix the per diem allowance;

41 w. Assign an administrative law judge or other personnel to
42 conduct arbitration, mediation, and other forms of alternative
43 dispute resolution with regard to any contested case or any
44 proceeding other than that related to a contested case or
45 administrative adjudication; and

46 x. Schedule hearings in an expeditious and efficient manner
47 taking into account the significance of the issues, the needs of the
48 parties, available resources, costs to the parties, and other relevant

1 factors. The director may, on a temporary basis when required by
2 exigent circumstances, schedule hearings notwithstanding deadlines
3 otherwise set forth in statute.
4 (cf: P.L.2013, c.236, s.3)

5
6 3. This act shall take effect on the first day of the second month
7 next following enactment.
8
9

10 STATEMENT

11
12 This bill would revise the reappointment process for
13 administrative law judges, and establish tenure upon reappointment
14 with the Senate's advice and consent.

15 Currently, whenever the Governor nominates an administrative
16 law judge for reappointment, such reappointment is for a term of
17 five years and until the appointment and qualification of the judge's
18 successor (either a new judge or the judge succeeding him- or
19 herself). A judge can be reappointed to multiple five-year terms
20 until attaining the age of 70 years, at which time the judge faces
21 mandatory retirement.

22 Under the bill, any judge nominated for reappointment on or
23 after the bill's effective date (the first day of the second month next
24 following enactment) would be eligible for lifetime tenure until
25 attaining the age of mandatory retirement. In order for the Senate
26 to make a more informed decision about granting lifetime tenure,
27 the judicial evaluations of tenure-eligible nominees would be made
28 available to the Senate Judiciary Committee for review as part of
29 the Senate's advice and consent process.

30 Additionally, the bill changes the references to the "Director and
31 Chief Administrative Law Judge" and "Director/Chief
32 Administrative Law Judge" to only reference the director position
33 in order to make this reference consistent throughout the relevant
34 statutory sections, as there are a multitude of references just to the
35 director. Per section 3 of P.L.1978, c.67 (C.52:14F-3), the term
36 "director" as used in those sections means "the Director of the
37 Office of Administrative Law and Chief Administrative Law
38 Judge," thus only the reference to the director is needed.