

SENATE, No. 168

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator KRISTIN M. CORRADO

District 40 (Bergen, Essex, Morris and Passaic)

SYNOPSIS

Establishes various good governance requirements at State and local authorities.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** establishing various good governance requirements at State
2 and local authorities, amending P.L.1986, c.105, and
3 supplementing Title 52 of the Revised Statutes.

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

7
8 1. Section 2 of P.L.1986, c.105 (C.34:19-2) is amended to read
9 as follows:

10 2. As used in this act:

11 a. "Employer" means any individual, partnership, association,
12 corporation, or any person or group of persons acting directly or
13 indirectly on behalf of, or in the interest of, an employer with the
14 employer's consent and shall include all branches of State
15 Government, or the **【several】** counties and municipalities thereof,
16 or any other political subdivision of the State, or a school district, or
17 any special district, or any authority, commission, or board or any
18 other agency or instrumentality thereof.

19 b. "Employee" means any individual who performs services for
20 and under the control and direction of an employer for wages or
21 other remuneration.

22 c. "Public body" means:

23 (1) the United States Congress, and State legislature, or any
24 popularly-elected local governmental body, or any member or
25 employee thereof;

26 (2) any federal, State, or local judiciary, or any member or
27 employee thereof, or any grand or petit jury;

28 (3) any federal, State, or local regulatory, administrative, or
29 public agency or authority, or instrumentality thereof;

30 (4) any federal, State, or local law enforcement agency,
31 prosecutorial office, or police or peace officer;

32 (5) any federal, State, or local department of an executive
33 branch of government; or

34 (6) any division, board, bureau, office, committee, or
35 commission of any of the public bodies described in the above
36 paragraphs of this subsection.

37 d. "Supervisor" means any individual with an employer's
38 organization who has the authority to direct and control the work
39 performance of the affected employee, who has authority to take
40 corrective action regarding the violation of the law, rule, or
41 regulation of which the employee complains, or who has been
42 designated by the employer on the notice required under section 7
43 of **【this act】** P.L.1986, c.105 (C.34:19-1 et seq.).

44 e. "Retaliatory action" means the discharge, suspension, or
45 demotion of an employee, or other adverse employment action

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 taken against an employee in the terms and conditions of
2 employment.

3 f. "Improper quality of patient care" means, with respect to
4 patient care, any practice, procedure, action, or failure to act of an
5 employer that is a health care provider which violates any law or
6 any rule, regulation, or declaratory ruling adopted pursuant to law,
7 or any professional code of ethics.

8 g. "Authority" means an independent State authority or local
9 authority.

10 h. "Independent State authority" means a public authority,
11 board, commission, corporation, or other agency or instrumentality
12 of the State allocated, in but not of, a principal department of State
13 government pursuant to Article V, Section IV, paragraph I of the
14 New Jersey Constitution, or which is not subject to supervision or
15 control by the department in which it is allocated, and a regional
16 authority, but shall not include a college or university.

17 i. "Local authority" means an "authority" as defined under the
18 "Local Authorities Fiscal Control Law," P.L.1983, c.313
19 (C.40A:5A-1 et seq.).

20 (cf: P.L.1997, c.98, s.1)

21

22 2. Section 5 of P.L.1986, c.105 (C.34:19-5) is amended to read
23 as follows:

24 5. Upon a violation of any of the provisions of **【this act】**
25 P.L.1986, c.105 (C.34:19-1 et seq.), an aggrieved employee or
26 former employee may, within one year, institute a civil action in a
27 court of competent jurisdiction. Upon the application of any party,
28 a jury trial shall be directed to try the validity of any claim under
29 **【this act】** P.L.1986, c.105 (C.34:19-1 et seq.) specified in the suit.
30 All remedies available in common law tort actions shall be
31 available to prevailing plaintiffs. These remedies are in addition to
32 any legal or equitable relief provided by **【this act】** P.L.1986, c.105
33 (C.34:19-1 et seq.) or any other statute. The court shall also order,
34 where appropriate, and to the fullest extent possible:

35 a. An injunction to restrain any violation of **【this act】**
36 P.L.1986, c.105 (C.34:19-1 et seq.) which is continuing at the time
37 that the court issues its order;

38 b. The reinstatement of the employee to the same position held
39 before the retaliatory action, or to an equivalent position;

40 c. The reinstatement of full fringe benefits and seniority rights;

41 d. **【The compensation】** (1) Compensation for all lost wages,
42 benefits, and other remuneration; or

43 (2) With respect to an employee or former employee of an
44 authority, compensation in twice the amount of all lost wages,
45 benefits, and other remuneration; and

46 e. The payment by the employer of reasonable costs, and
47 attorney's fees.

1 In addition, the court or jury may order: the assessment of a civil
2 fine of not more than \$10,000 for the first violation of **the act**
3 P.L.1986, c.105 (C.34:19-1 et seq.) and not more than \$20,000 for
4 each subsequent violation, which shall be paid to the State
5 Treasurer for deposit in the General Fund; with respect to an
6 authority, the assessment of a civil fine of not more than \$25,000
7 for the first violation of P.L.1986, c.105 (C.34:19-1 et seq.) and not
8 more than \$50,000 for each subsequent violation, which shall be
9 paid to the State Treasurer for deposit in the General Fund; punitive
10 damages; or both a civil fine and punitive damages. In determining
11 the amount of punitive damages, the court or jury shall consider not
12 only the amount of compensatory damages awarded to the
13 employee, but also the amount of all damages caused to
14 shareholders, investors, clients, patients, customers, employees,
15 former employees, retirees or pensioners of the employer, or to the
16 public or any governmental entity, by the activities, policies, or
17 practices of the employer which the employee disclosed, threatened
18 to disclose, provided testimony regarding, objected to, or refused to
19 participate in.

20 (cf: P.L.2005, c.329, s.2)

21
22 3. (New section) As used in P.L. , c. (C.) (pending
23 before the Legislature as this bill):

24 "Authority" means an independent State authority, interstate
25 authority, or local authority.

26 "Independent State authority" means a public authority, board,
27 commission, corporation, or other agency or instrumentality of the
28 State allocated, in but not of, a principal department of State
29 government pursuant to Article V, Section IV, paragraph 1 of the
30 New Jersey Constitution, or which is not subject to supervision or
31 control by the department in which it is allocated, and a regional
32 authority, but shall not include a college or university.

33 "Local authority" means an "authority" as defined under the
34 "Local Authorities Fiscal Control Law," P.L.1983, c.313
35 (C.40A:5A-1 et seq.).

36
37 4. (New section) a. Every authority shall adopt a code of
38 ethics applicable to each officer, director, and employee of the
39 authority that, at a minimum, includes the applicable standards
40 established in the State's ethics laws.

41 b. Every officer, director, and employee of the authority shall
42 participate in training regarding the person's ethical responsibilities.

43
44 5. (New section) a. Every member of an authority's board of
45 commissioners shall perform each of their duties as a board member
46 in good faith and with that degree of diligence, care, and skill which
47 an ordinarily prudent person in like position would use under
48 similar circumstances, and may take into consideration the views

1 and policies of any elected official or body, or other person, and
2 ultimately apply independent judgment in the best interest of the
3 authority, its mission, and the public.

4 b. At the time that the board member takes and subscribes the
5 oath of office, or within 60 days after the effective date of
6 P.L. , c. (C.) (pending before the Legislature as this bill)
7 if the board member has already taken and subscribed the oath of
8 office, execute an acknowledgement in which the board member
9 acknowledges that the board member understands the board
10 member's role, and fiduciary responsibilities as set forth in this
11 section, and acknowledges that the board member understands the
12 board member's duty of loyalty and care to the organization and
13 commitment to the authority's mission and the public interest.

14
15 6. (New section) Every authority shall be subject to the
16 provisions of P.L.1963, c.73 (C.47:1A-1 et seq.), commonly known
17 as the open public records act.

18
19 7. (New section) Every authority shall be required to
20 implement the recommendations contained in any independent audit
21 of the authority. If the board of the authority determines that any
22 recommendation contained in the independent audit cannot be
23 reasonably implemented, the board may petition the Governor for
24 approval to delay or omit the implementation of any
25 recommendation. The Governor shall be required to provide a
26 written response to a petition within 30 days of receipt. If the
27 authority fails to implement a recommendation contained in an
28 independent audit of the authority, and if it has not been granted
29 approval by the Governor to delay or omit the recommendation, the
30 authority shall be prohibited from issuing any additional bonds or
31 securities until the recommendation has been implemented or the
32 authority has been granted approval by the Governor to omit or
33 delay the recommendation.

34
35 8. (New section) Every authority shall provide on its Internet
36 website a copy of a sworn and duly notarized financial disclosure
37 statement for each member of the board of commissioners of the
38 authority. Each statement shall include the following information:

39 a. The name and position of the commissioner;

40 b. Any occupation, trade, business, profession, or employment
41 engaged in by the commissioner;

42 c. A list of all assets having a value of more than \$1,000, both
43 tangible and intangible, in which a direct or indirect interest is held
44 as of the date of the statement by the commissioner;

45 d. A list of all liabilities of the commissioner;

46 e. A list of all liabilities otherwise subject to disclosure which
47 have been forgiven by the creditor within 12 months of the
48 statement date;

1 f. A list of all sources of income of the commissioner,
2 including all directorships or other fiduciary positions for which
3 compensation has or will be claimed, all capital gains including a
4 description of the individual sources of those capital gains, all
5 contractual arrangements producing or expected to produce income,
6 and all honoraria, lecture fees, gifts, and other cash or non-cash
7 gratuities, and other miscellaneous sources of income including, but
8 not limited to, interest, dividends, royalties, and rents;

9 g. A list of any offices, trusteeships, directorships, or positions
10 of any nature, whether compensated or uncompensated, held by the
11 commissioner with any firm, corporation, association, partnership,
12 or business; and

13 h. For every firm, corporation, association, partnership, or
14 business from which the commissioner has received any
15 compensation, a list of all clients who have paid the firm,
16 corporation, association, partnership, or business more than
17 \$10,000.

18 Each statement shall contain a certification by the commissioner
19 that the commissioner has read the statement, that to the best of the
20 commissioner's knowledge and belief it is true, correct, and
21 complete, and that the commissioner has not transferred and will
22 not transfer any asset, interest, or property for the purpose of
23 concealing it from disclosure while retaining an equitable interest
24 therein.

25
26 9. This act shall take effect on the first day of the 13th month
27 following enactment.
28

30 STATEMENT

31
32 This bill requires independent State authorities and local
33 authorities to adopt various good governance reforms.

34 The bill requires authorities to adopt a code of ethics applicable
35 to each officer, director, and employee that, at a minimum, includes
36 the applicable standards established in the State's ethics law. Every
37 officer, director, and employee is required to participate in training
38 regarding the person's ethical responsibilities.

39 In addition, the bill requires every member of the authority's
40 board of commissioners to execute an acknowledgement that the
41 board member understands the member's role and fiduciary
42 responsibilities and that the member has a duty of loyalty and care
43 to the authority, its mission, and the public interest.

44 The bill subjects each authority to the State's open public records
45 act and increases potential penalties for violations by authorities of
46 the State's Conscientious Employee Protection Act.

47 Additionally, the bill requires authorities to implement the
48 recommendations contained in any independent audit of the

1 authority. If the authority determines that any recommendation
2 contained in the independent audit is not reasonably able to be
3 implemented, the authority may petition the Governor for approval
4 to delay or omit the implementation of any recommendation. The
5 Governor is required to provide a written response to a petition
6 within 30 days of receipt. If the authority fails to implement a
7 recommendation contained in an independent audit of the authority,
8 and if it has not been granted approval by the Governor to delay or
9 omit the recommendation, the authority is prohibited from issuing
10 any additional bonds or securities until the recommendation has
11 been implemented or the authority has been granted approval.

12 Finally, the bill requires that each authority provide on its
13 Internet website a copy of a sworn and duly notarized financial
14 disclosure statement for each member of its board of
15 commissioners. The financial statement is to include, for every
16 entity from which a commissioner has received any compensation, a
17 list of all clients of the entity who have paid it more than \$10,000.