

# SENATE, No. 2726

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED JUNE 14, 2018

**Sponsored by:**

**Senator ROBERT W. SINGER**

**District 30 (Monmouth and Ocean)**

**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 P.L. ,  
25 c. (pending before the Legislature as this bill) shall, upon their  
26 confirmation and reappointment, serve for terms of five years and  
27 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% of the annual salary of  
42 a Judge of the Superior Court. The annual salary for a judge during  
43 the first year of the first reappointment shall be increased to 78 2/3  
44 % of the annual salary of a Judge of the Superior Court. Upon

**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 receipt of satisfactory annual evaluations, the annual salary for a  
2 judge shall be increased to 81 2/3 % of the annual salary of a Judge  
3 of the Superior Court for the second year of the first reappointment  
4 and to 85% 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% of the annual salary of a Judge of the Superior Court for the  
7 fourth year of the first reappointment and for each year of  
8 subsequent reappointments thereafter, or subsequent reappointment  
9 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  
47 Statutes, such clerical assistants and other personnel as may be  
48 required for the conduct of the office;

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

1 hearing functions of a State agency, on a temporary or case basis as  
2 may be necessary during emergency or unusual situations for the  
3 proper performance of the duties of the office, pursuant to a  
4 reasonable fee schedule established in advance by the director.  
5 Administrative law judges appointed pursuant to this procedure  
6 shall have the same qualifications for appointment as permanent  
7 administrative law judges;

8 n. Assign administrative law judges to conduct contested cases  
9 as required by sections 9 and 10 of P.L.1968, c.410 (C.52:14B-9  
10 and 52:14B-10). Proceedings shall be scheduled for suitable  
11 locations, either at the offices of the Office of Administrative Law  
12 or elsewhere in the State, taking into consideration the convenience  
13 of the witnesses and parties, as well as the nature of the cases and  
14 proceedings;

15 o. Assign an administrative law judge or other personnel, if so  
16 requested by the head of an agency and if the director deems  
17 appropriate, to any agency to conduct or assist in administrative  
18 duties and proceedings other than those related to contested cases or  
19 administrative adjudications, including but not limited to rule-  
20 making and investigative hearings;

21 p. Assign an administrative law judge not engaged in the  
22 conduct of contested cases to perform other duties vested in or  
23 required of the office;

24 q. Secure, compile and maintain all reports of administrative  
25 law judges issued pursuant to this act, and such reference materials  
26 and supporting information as may be appropriate;

27 r. Develop and maintain a program for the continuing training  
28 and education of administrative law judges and agencies in regard  
29 to their responsibilities under this act;

30 s. Develop and implement a program of judicial evaluation to  
31 aid himself in the performance of his duties, and to assist in the  
32 making of reappointments under section 4 of P.L.1978, c.67  
33 (C.52:14F-4). This program of evaluation shall focus on three areas  
34 of judicial performance: competence, productivity, and demeanor.  
35 It shall include consideration of: industry and promptness in  
36 adhering to schedules, making rulings and rendering decisions;  
37 tolerance, courtesy, patience, attentiveness, and self-control in  
38 dealing with litigants, witnesses and counsel, and in presiding over  
39 contested cases; legal skills and knowledge of the law and new legal  
40 developments; analytical talents and writing abilities; settlement  
41 skills; quantity, nature and quality of caseload disposition;  
42 impartiality and conscientiousness. The director shall develop  
43 standards and procedures for this program, which shall include  
44 taking comments from selected litigants and lawyers who have  
45 appeared before a judge. The methods used by the judge but not the  
46 result arrived at by the judge in any case may be used in evaluating  
47 a judge. Before implementing any action based on the findings of  
48 the evaluation program, the director shall discuss the findings and

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

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

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

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

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

44 x. Schedule hearings in an expeditious and efficient manner  
45 taking into account the significance of the issues, the needs of the  
46 parties, available resources, costs to the parties, and other relevant  
47 factors. The director may, on a temporary basis when required by

1   exigent circumstances, schedule hearings notwithstanding deadlines  
2   otherwise set forth in statute.

3   (cf: P.L.2013, c.236, s.3)

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

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9                                   STATEMENT

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

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

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

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