

ASSEMBLY, No. 1223

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblymen AUGUSTINE and ARNONE

1 AN ACT concerning the removal of a municipal business administrator
2 and amending P.L.1950, c.210.

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

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7 1. Section 3-13 of P.L.1950, c.210 (C.40:69A-43) is amended to
8 read as follows:

9 3-13. (a) The municipality shall have a department of
10 administration and such other departments, not less than two and not
11 exceeding nine in number, as council may establish by ordinance. All
12 of the administrative functions, powers and duties of the municipality,
13 other than those vested in the offices of the municipal clerk and the
14 municipal tax assessor, shall be allocated and assigned among and
15 within such departments.

16 The offices of the municipal clerk and the municipal tax assessor
17 shall be subject to such general administrative procedures and
18 requirements as are departments of the municipal government,
19 including, but not limited to, the preparation and submission of an
20 annual budget and of such periodic budget reports as are generally
21 required of departments, and such accounting controls, central
22 purchasing practices, personnel procedures and regulations, and
23 central data processing services as are generally required of
24 departments.

25 (b) Each department shall be headed by a director, who shall be
26 appointed by the mayor with the advice and consent of the council.
27 Each department head shall serve during the term of office of the
28 mayor appointing him, and until the appointment and qualification of
29 his successor. The mayor shall, with the advice and consent of the
30 council, appoint the municipal assessor and all other municipal officers
31 not assigned within municipal departments, subject to the terms of any
32 general law providing for these offices, unless a different appointment

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

Matter underlined thus is new matter.

1 procedure is clearly required by this plan of government or by general
2 law.

3 (c) The mayor may in his discretion remove any department head
4 and, subject to any general provisions of law concerning term of office
5 or tenure, any other municipal executive officer who is not a
6 subordinate departmental officer or employee, after notice and an
7 opportunity to be heard. Prior to removal the mayor shall first file
8 written notice of his intention with the council, and such removal shall
9 become effective on the 20th day after the filing of such notice unless
10 the council shall prior thereto have adopted a resolution by a
11 two-thirds vote of the whole number of the council, disapproving the
12 removal.

13 In the event of the removal or failure of reappointment of a business
14 administrator, that administrator shall be entitled to a three-months'
15 written notice of the removal or non-reappointment, or if the mayor
16 determines that the removal shall be immediate, then the administrator
17 shall be paid any unpaid balance of his salary plus his salary for a
18 minimum of the next three calendar months following the effective
19 date of the mayor's action unless the removal is for good cause. For
20 the purposes of this subsection, "good cause" shall mean conviction of
21 a crime or offense involving moral turpitude, the violation of the
22 provisions of section 17-14, 17-15, 17-16, 17-17, or 17-18 of
23 P.L.1950, c.210 (C.40:69A-163 through 40:69A-167), or the violation
24 of any code of ethics in effect within the municipality.

25 (d) Department heads shall appoint subordinate officers and
26 employees within their respective departments and may, with approval
27 of the mayor, remove such officers and employees, subject to the
28 provisions of Title 11A of the New Jersey Statutes, where that Title
29 is effective in the municipality, or other general law.

30 (e) Notwithstanding the foregoing provisions of this section, in any
31 city of the first class, there shall be, and in any municipality having a
32 population of 15,000 or more, there may be, a board of alcoholic
33 beverage control which shall exercise the powers conferred upon
34 municipal boards of alcoholic beverage control under Title 33 of the
35 Revised Statutes. Such boards shall be comprised of three members,
36 no more than two of whom shall be of the same political party, who
37 shall be appointed by the mayor, with the advice and consent of the
38 council, each to serve for a term of three years, provided that of those
39 first appointed, one shall be appointed to serve for a term of one year,
40 one for two years, and one for three years. Any vacancy in such office
41 shall be filled in the same manner as the original appointment, for the
42 balance of the unexpired term. Except in cities of the first class the
43 members of such board shall serve without compensation but may be
44 reimbursed for necessary expenses incurred in the performance of their
45 duties; in cities of the first class, the members of such board shall
46 receive such compensation as shall be established by ordinance of the

1 municipality. They shall be removable by the mayor for cause. Any
2 person appointed hereunder shall not be subject to the provisions of
3 Title 11A of the New Jersey Statutes, and no such person shall be a
4 member of the city council.

5 Nothing in this subsection shall be construed to limit the general
6 power of the municipal council under this act to establish, alter and
7 abolish offices, boards and commissions in any municipality other than
8 a city of the first class.

9 (f) Whenever in any municipality with a population greater than
10 100,000, according to the latest federal decennial census, the
11 governing body is authorized by any provision of general law to
12 appoint the members of any board, authority or commission, such
13 power of appointment shall be deemed to vest in the mayor with the
14 advice and consent of the council. In all other municipalities,
15 whenever the governing body is authorized by any provision of general
16 law to appoint the members of any board, authority or commission,
17 such power of appointment shall be deemed to vest in the mayor with
18 the advice and consent of the council, unless the specific terms of that
19 general law clearly require a different appointment procedure or
20 appointment by resolution, in which case the appointment shall be by
21 the council.

22 (cf: P.L.1989, c.258, s.1)

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24 2. This act shall take effect immediately.

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STATEMENT

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29 This bill would require that a business administrator be given at
30 least three months' notice or a minimum of three months' salary as a
31 severance package prior to removal without good cause. The bill
32 defines "good cause" as the conviction of a crime or offense involving
33 moral turpitude, the violation of the provisions of section 17-14,
34 17-15, 17-16, 17-17, or 17-18 of P.L.1950, c.210 (C.40:69A-163
35 through 40:69A-167), or the violation of any code of ethics in effect
36 within the municipality. This amendment would make the procedure
37 for the removal of a business administrator consistent with the removal
38 of a municipal manager or municipal administrator.

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43 Requires three months' notice prior to removal of business
44 administrator without good cause.