

SENATE, No. 2162

STATE OF NEW JERSEY

INTRODUCED JUNE 5, 1997

By Senator PALAIA

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
33 procedure is clearly required by this plan of government or by general
34 law.

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

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

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

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

1 person appointed hereunder shall not be subject to the provisions of
2 Title 11A of the New Jersey Statutes, and no such person shall be a
3 member of the city council.

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

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

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

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23 2. This act shall take effect immediately.

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STATEMENT

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28 This bill would permit the council in a municipality governed by the
29 "mayor-council plan" form of government of the Optional Municipal
30 Charter Law, P.L.1950, c.210 (C.40:69A-1 et seq.), to provide, by
31 ordinance, that a business administrator be given three months written
32 notice of removal or notice of the municipality's intention not to renew
33 the administrator's appointment. The ordinance may also provide that
34 in the event the mayor determines that the removal shall be immediate,
35 the administrator may be paid a maximum of three months' salary as a
36 severance package in addition to any unpaid balance of salary, unless
37 the removal is for good cause. The bill defines "good cause" as the
38 conviction of a crime or offense involving moral turpitude, the
39 violation of the provisions of section 17-14, 17-15, 17-16, 17-17, or
40 17-18 of P.L.1950, c.210 (C.40:69A-163 through 40:69A-167), or the
41 violation of any code of ethics in effect within the municipality.

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45 Requires three months' notice prior to removal of business
46 administrator without good cause.