

52:14F-3 — 52:14F-5

LEGISLATIVE HISTORY CHECKLIST

NJSA 52:14F-3 - 52:14F-5 ("Temporary administrative judge"--redefine)

LAWS 1981 CHAPTER 202

Bill No. A1588

Sponsor(s) Gormley and Herman

Date Introduced April 21, 1980

Committee: Assembly State Govt., Federal & Interstate Relations & Veterans Affairs;
Judiciary, Law, Public Safety and Defense

Senate Judiciary, State Govt., Federal & Interstate Relations & Veterans Affairs

Amended during passage Yes ~~No~~ Amendments denoted by asterisks

according to Governor's recommendations:

Date of Passage: Assembly June 12, 1980

Re-enacted 6-11-81

Senate Jan. 29, 1981

Re-enacted 6-22-81

Date of approval July 9, 1981

Following statements are attached if available:

Sponsor statement Yes ~~No~~ Also attached: Senate amendments adopted 11-10-80 (with statement)

Committee Statement: Assembly Yes ~~No~~

Senate Yes ~~No~~ 9-29-80 & 10-11-80

Fiscal Note Yes ~~No~~

Veto Message Yes ~~No~~

Message on signing Yes ~~No~~

Following were printed:

Reports Yes ~~No~~

Hearings Yes ~~No~~

6/22/81

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[THIRD OFFICIAL COPY REPRINT]
ASSEMBLY, No. 1588

STATE OF NEW JERSEY

INTRODUCED APRIL 21, 1980

By Assemblymen GORMLEY and HERMAN

Referred to Committee on State Government, Federal and
Interstate Relations and Veterans Affairs

AN ACT concerning the appointment of temporary administrative
law judges and amending ****[section 5 of]**** P. L. 1978, c. 67.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 ****1.** Section 3 of P. L. 1978, c. 67 (C. 52:14F-3) is amended to
2 read as follows:

3 3. The head of the office shall be the director who shall be an
4 attorney-at-law of this State. The director **[and the full-time**
5 **administrative judges]** shall be appointed by the Governor with
6 the advice and consent of the Senate.

7 The director shall serve for a term of 6 years. As used in this
8 act, "director" shall mean the Director of the Office of Administra-
9 tive Law.

10 The director shall devote his entire time to the duties of his office
11 and shall receive a salary as provided by law. Any vacancy occur-
12 ring in the office of the director shall be filled in the same manner
13 as the original appointment, but for the unexpired term only.

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

3 4. **[The Governor shall appoint the full-time administrative**
4 **judges who shall serve for terms of 5 years and until the appoint-**
5 **ment and qualification of their successors. A vacancy in the office of**
6 **full-time administrative judge shall be filled in the same manner**
7 **as the original appointment for the unexpired term only.]** *Perma-*
8 *nent administrative law judges shall be appointed by the Governor*
9 *with the advice and consent of the Senate to initial terms of 1 year.*
10 *During this initial term, each judge shall be subject to a program*
11 *of evaluation as delineated in section 5 of P. L. 1978, c. 67 (C.*

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

12 52:14F-5). First reappointment of a judge after this initial term
 13 shall be by the Governor for a term of 4 years and until the appoint-
 14 ment and qualification of the judge's successor. Subsequent re-
 15 appointments of a judge shall be by the Governor with the advice
 16 and consent of the Senate to terms of 5 years and until the appoint-
 17 ment and qualification of the judge's successor.** ***The advice
 18 and consent of the Senate, as provided in this section, shall be ex-
 19 ercised within 45 days after a nomination for appointment has been
 20 submitted to the Senate, and if no action has been taken within
 21 the 45-day period, the nomination shall be deemed confirmed.***

1 **[1.]** **3.** Section 5 of P. L. 1978, c. 67 (C. 52:14F-5) is
 2 amended to read as follows:

3 5. The Director of the Office of Administrative Law shall:

4 a. Administer and cause the work of the office to be performed
 5 in such manner and pursuant to such program as may be required
 6 or appropriate;

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

9 c. Except as otherwise provided in subsection 1, below, appoint,
 10 pursuant to the provisions of Title 11 of the Revised Statutes,
 11 such clerical assistants and other personnel as may be required for
 12 the conduct of the office;

13 d. Assign and reassign personnel to employment within the
 14 office;

15 e. Develop uniform standards, rules of evidence, and procedures,
 16 including but not limited to standards for determining whether a
 17 summary or plenary hearing should be held to regulate the conduct
 18 of contested cases and the rendering of administrative adjudica-
 19 tions;

20 f. Promulgate and enforce such rules for the prompt imple-
 21 mentation and coordinated administration of the Administrative
 22 Procedure Act, P. L. 1968, c. 410 (C. 52:14B-1 et seq.) as may be
 23 required or appropriate;

24 g. Administer and supervise the procedures relating to the con-
 25 duct of contested cases and the making of administrative adjudica-
 26 tions, as defined by section 2 of P. L. 1968, c. 410 (C. 52:14B-2);

27 h. Advise agencies concerning their obligations under the Admin-
 28 istrative Procedure Act, subject to the provisions of subsections b.
 29 and e. of section 4 of P. L. 1944, c. 20 (C. 52:17A-4b and 4e);

30 i. Assist agencies in the preparation, consideration, publication
 31 and interpretation of administrative rules required or appropriate
 32 pursuant to the Administrative Procedure Act, P. L. 1968, c. 410
 33 (C. 52:14B-1 et seq.);

34 j. Employ the services of the several agencies and of the em-
 35 ployees thereof in such manner and to such extent as may be agreed
 36 upon by the director and the chief executive officer of such agency;

37 k. Have access to information concerning the several agencies
 38 to assure that they properly promulgate all rules required by law;

39 l. Assign ~~full-time~~ *permanent* administrative law
 40 judges at supervisory and other levels who are qualified in the field
 41 of administrative law or in subject matter relating to the hearing
 42 functions of a State agency. ~~A full-time~~ *The entire time*
 43 *of a permanent* administrative law judge shall ~~not hold other~~
 43A ~~employment~~ *be devoted to the duties of the office*.

44 Administrative law judges shall receive such salaries as provided
 45 by law.

46 Administrative law judges shall be attorneys-at-law of this
 47 State, or any persons who are not attorneys-at-law, but who, in
 48 the judgment of the Governor or the director are qualified in the
 49 field of administrative law, administrative hearings and proceed-
 50 ings in subject matter relating to the hearing functions of a
 51 particular State agency;

52 m. ~~Appoint such additional administrative law judges, quali-~~
 53 ~~fied in the field of administrative law or in subject matter relating~~
 54 ~~to the hearing functions of a State agency, on a temporary or case~~
 55 ~~basis as may be necessary during emergency or unusual situations~~
 56 ~~for the proper performance of the duties of the office, pursuant to~~
 57 ~~a reasonable fee schedule established in advance by the director.~~
 58 ~~Temporary administrative law judges shall have the same qualifi-~~
 59 ~~cations for appointment as permanent administrative law judges.~~*

59A ~~Deleted by amendment.~~ *Appoint additional administra-*
 59B *tive law judges, qualified in the field of administrative law or in a*
 59C *subject matter relating to the hearing functions of a State agency,*
 59D *on a temporary or case basis as may be necessary during emer-*
 59E *gency or unusual situations for the proper performance of the*
 59F *duties of the office, pursuant to a reasonable fee schedule established*
 59G *in advance by the director. Temporary administrative law judges*
 59H *shall have the same qualifications for appointment as permanent*
 59I *administrative law judges.***

60 n. Assign an administrative law judge to any agency empowered
 61 to conduct contested cases to preside over such proceedings in
 62 contested cases as are required by sections 9 and 10 of P. L. 1968,
 63 c. 410 (C. 52:14B-9 and 52:14B-10)**. *Proceedings shall be*
 63A *scheduled for suitable locations, either at the offices of the Office of*
 63B *Administrative Law or elsewhere in the State, taking into con-*

63c *sideration the convenience of the witnesses and parties, as well as*
 63d *the nature of the cases and proceedings**;*

64 o. Assign an administrative law judge or other personnel to
 65 any agency to conduct or assist in administrative duties and
 66 proceedings other than those related to contested cases or adminis-
 67 trative adjudications, including but not limited to rule-making and
 68 investigative hearings, if so requested by the head of an agency
 69 and if the director deems appropriate;

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

73 q. Secure, compile and maintain all reports of administrative
 74 law judges issued pursuant to this act, and such reference materials
 75 and supporting information as may be appropriate; ****[and]****

76 r. Develop and maintain a program for the continuing training
 77 and education of administrative law judges and agencies in regard
 78 to their responsibilities under this act ****[.]** **; and****

79 ****s. Develop and implement a program of judicial evaluation to**
 80 *aid himself in the performance of his duties, and to assist in the*
 81 *making of reappointments under section 4 of P. L. 1978, c. 67*
 82 *(C. 52:14F-4). This program of evaluation shall focus on three*
 83 *areas of judicial performance: competence, productivity, and*
 84 *demeanor. It shall include consideration of: industry and prompt-*
 85 *ness in adhering to schedules, making rulings and rendering*
 86 *decisions; tolerance, courtesy, patience, attentiveness, and self-*
 87 *control in dealing with litigants, witnesses and counsel, and in*
 88 *presiding over contested cases; legal skills and knowledge of the*
 89 *law and new legal developments; analytical talents and writing*
 90 *abilities; settlement skills; quantity, nature and quality of caseload*
 91 *disposition; impartiality and conscientiousness. The director shall*
 92 *develop standards and procedures for this program, which shall*
 93 *include taking comments from selected litigants and lawyers who*
 94 *have appeared before a judge. The methods used by the judge but*
 95 *not the result arrived at by the judge in any case may be used in*
 96 *evaluating a judge. Before implementing any action based on the*
 97 *findings of the evaluation program, the director shall discuss the*
 98 *findings and the proposed action with the affected judge. The*
 99 *evaluation by the director and supporting data shall be submitted*
 100 *to the Governor *****[and the Senate Judiciary Committee]****.*
 101 *These documents shall remain confidential and shall be exempted*
 102 *from the requirements of P. L. 1963, c. 73 (C. 47:1A-1 et seq.).***

1 ****[2.]** **4.**** This act shall take effect ****[immediately]**** *120
 2 *days following enactment*.*

68 investigative hearings, if so requested by the head of an agency
69 and if the director deems appropriate;

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

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

76 r. Develop and maintain a program for the continuing training
77 and education of administrative law judges and agencies in regard
78 to their responsibilities under this act.

1 2. This act shall take effect immediately.

STATEMENT

The purpose of this bill is to clarify the meaning of "temporary" appointment of administrative law judges, and to affirm the legislative intent that administrative law judges who work as regular judges should go through the regular appointment procedure.

Currently, the Director of the Office of Administrative Law is using the provisions of subsection m of section 5 of P. L. 1978, c. 67 (C. 52:14F-5m.) to appoint regular judges on a probationary basis. These judges do regular work on a full schedule, year round, and receive regular pay, but have not been subject to the regular appointment procedure for "full-time" judges. This procedure includes the advice and consent of the Senate.

The concept of "probationary" judges, whose tenure is completely at the will of the Governor, is one that has been consistently rejected, as compromising the credibility and appearance of impartiality of the judiciary.

Second, in interpreting the act which created the Office of Administrative Law as allowing for the appointment of probationary judges, who work as regular employees, the director has misconstrued the meanings of "full-time" and "temporary." The statute contrasts "full-time" judges who must be regularly appointed, and "temporary" judges, who may be employed at the director's will. Webster defines "full-time" as "the amount of time considered the normal or standard amount for working during a given period." A "probationary" judge works full-time.

Furthermore, "temporary" appointment has been defined, in construing similar statutes, by the Supreme Court and by the

A1588 (1981)

ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY
AND DEFENSE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1588

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: MAY 15, 1980

The purpose of this bill, as amended by the Assembly Judiciary, Law, Public Safety and Defense Committee, is to eliminate the authority of the Director of the Office of Administrative Law to appoint "temporary" administrative law judges. The director has used the existing law in order to appoint regular judges on a probationary basis, which is a clear violation of the provisions and legislative intent of the existing law. The existing law does not allow for "probationary" appointments, and has clear procedures for the appointment of full-time, regular judges. Yet, full-time, regular judges have been sitting on a "probationary" basis for 1 to 2 years without having gone through the regular appointment procedure, and without the statutorily required advice and consent of the Senate. The committee feels that the best way to eliminate this blatant abuse of a legislatively granted authority is to eliminate the authority.

Currently, the Director of the Office of Administrative Law is using the provisions of subsection m. of section 5 of P. L. 1978, c. 67 (C. 52:14F-5m.) to appoint regular judges on a probationary basis. These judges do regular work on a full schedule, year round, and receive regular pay, but have not been subject to the statutorily required appointment procedure for "full-time" judges. This use of the section on temporary judicial appointments raises at least two major problems. First, the theory and practice of "probationary" judges, whose tenures are completely at the will of the Governor, has never been accepted by the Legislature or public. It is a practice which poses serious dangers of compromising the credibility and appearance of impartiality of the judiciary.

Second, in interpreting subsection m. as allowing for the appointment of probationary judges, who work as regular employees, the director has clearly misconstrued the meanings of "full-time" and "temporary." The statute contrasts "full-time" judges who must be appointed by the Governor with the advice and consent of the Senate and

“temporary” judges, who may be employed at the director’s will. Both the plain meaning of the word “full-time” and the legal definition of the word “temporary” clearly indicate that these “probationary” judges are in fact “full-time” judges and must be subject to the statutorily required appointment procedure. For example, Webster defines “full-time” as “the amount of time considered the normal or standard amount for working during a given period.” These “probationary” judges work such amounts, and thus are “full-time” judges.

Furthermore, “temporary” appointment has been defined, in construing similar statutes, by the Supreme Court and by the Attorney General as involving intermittent employment for emergent or unusual conditions. It was the legislative intent that subsection m. be used for such situations. This might include predictable circumstances which require extraordinary assistance. But it does not include performing ordinary and regular responsibilities on a continuous or full-time basis, which is the case with these “probationary” judges. Thus these “probationary” judges are not “temporary,” and their existence is an abuse of the law.

SENATE STATE GOVERNMENT, FEDERAL AND
INTERSTATE RELATIONS AND VETERANS AFFAIRS
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 1588

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STATE OF NEW JERSEY

DATED: SEPTEMBER 29, 1980

As noted in the statement of the Assembly Judiciary Committee, the purpose of this bill is to remove from the present law, the authority for "temporary" appointments to the position of Administrative Law Judge in the Office of Administrative Law.

As originally drafted, the bill amended the statutory language so that temporary appointments could be made only "during emergency or unusual situations." The Assembly Judiciary Committee amended the bill so that the entire subsection is deleted thus removing the authorization for temporary appointments under any circumstances.

The Office of Administrative Law was created pursuant to P. L. 1978, c. 67 approved July 6, 1978 (C. 52:14F-1 et seq.). The enactment provision specified that the act would be "inoperative" until 6 months following its enactment, except with respect to the making of appointments and the taking of preparatory actions, which could take effect immediately. The act appropriated \$100,000.00 to the Division of Administrative Procedure in the Department of State for the implementation of the act. The appropriation to the Office of Administrative Law for Fiscal Year 1981 is \$2,419,100.00.

According to the Office of Administrative Law, of the 39 who have cleared the "evaluation program," and were submitted to the Governor's Office, 30 have been nominated and 9 still have not been cleared for nomination by the Governor. Seventeen ALJ's have been confirmed by the Senate and 13 are still awaiting an appearance before the Senate Judiciary Committee. These individuals were all nominated by the Governor in April, 1980. It would appear that 4 ALJ's are presently in the "evaluation program."

The lowest salary for an Administrative Law Judge is \$26,300.00 and the highest is \$43,000.00. The average salary for Administrative Law Judges is \$37,200.00. The Director of the Office of Administrative Law has a salary of \$48,000.00.

The argument for the bill is two-fold. First, it is argued that judges who are employed "temporarily" are, in effect, in a "probationary" status with the appointments subject to the will of the appointing authority, thus jeopardizing their independence of judgment. Second, the length of time "temporary" ALJ's are in place and hearing cases is such that it violates the legislative intent of the bill.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1588

STATE OF NEW JERSEY

DATED: DECEMBER 11, 1980

All Administrative Law Judges are to be appointed to 5-year terms with the advice and consent of the Senate. The statute creating the Office of Administrative Law, however, also contains a provision authorizing the Director of OAL to appoint "temporary" administrative law judges. Since the creation of the OAL the Director has used this provision to appoint all ALJs on a probationary basis. Approximately a year after appointment, each judge's performance is evaluated and that evaluation submitted to the governor. It is at this point that an ALJ nomination is formally submitted to the Senate for its advice and consent.

On the grounds that this practice is both a contravention of the Legislature's intent in creating the OAL and a means of avoiding the normal "advise and consent" function of the Senate, Assembly Bill No. 1588, as originally drafted, would have limited the authority of the Director of OAL to make "temporary appointments" to emergency or unusual situations. As amended by the Assembly Judiciary Committee and passed by the Assembly, Assembly Bill No. 1588 would have totally eliminated the authority of the Director to appoint ALJs on a "temporary" basis.

The Senate State Government Committee released Assembly Bill No. 1588 as passed by the Assembly. On November 10, however, in an effort to insure both the normal "advise and consent" process and to preserve evaluation of ALJs after a year's service, floor amendments were added to Assembly Bill No. 1588. These floor amendments provide that the initial appointment of an ALJ would be for a 1-year term by the governor with the advice and consent of the Senate. The first reappointment of an ALJ would be for a 4-year term by the governor without the advice and consent of the Senate. Subsequent reappointments would be for 5 years by the governor with advice and consent of the Senate. The authority of the director of OAL to make "temporary" appointments would be limited to emergency or unusual situations.

The floor amendments also require that the program of judicial evaluation focus on competence, productivity and demeanor and that

the results of the evaluation be available to both the governor and the Senate Judiciary Committee.

Additionally, the floor amendments contain language mandating that administrative law cases be heard, whenever possible, in a place most convenient to the litigants.

After being amended on the floor, Assembly Bill No. 1588 was referred to the Judiciary Committee for review. The Judiciary Committee favorably released Assembly Bill No. 1588 as amended by the November 10 amendments.

SENATE AMENDMENTS TO
ASSEMBLY, No. 1588
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STATE OF NEW JERSEY

ADOPTED NOVEMBER 10, 1980

Amend page 1, title, line 2, omit "section 5 of".

Amend page 1, section 1, before line 1, insert new sections 1 and 2 as follows:

"1. Section 3 of P. L. 1978, c. 67 (C. 52:14F-3) is amended to read as follows:

3. The head of the office shall be the director, who shall be an attorney-at-law of this State. The director **[and the full-time administrative judges]** shall be appointed by the Governor with the advice and consent of the Senate.

The director shall serve for a term of 6 years. As used in this act, "director" shall mean the Director of the Office of Administrative Law.

The director shall devote his entire time to the duties of his office and shall receive a salary as provided by law. Any vacancy occurring in the office of the director shall be filled in the same manner as the original appointment, but for the unexpired term only.

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

4. **[The Governor shall appoint the full-time administrative judges who shall serve for terms of 5 years and until the appointment and qualification of their successors. A vacancy in the office of full-time administrative judge shall be filled in the same manner as the original appointment for the unexpired term only.]** *Permanent administrative law judges shall be appointed by the Governor with the advice and consent of the Senate to initial terms of 1 year. During this initial term, each judge shall be subject to a program of evaluation as delineated in section 5 of P. L. 1978, c. 67 (C. 52:14F-5). First reappointment of a judge after this initial term shall be by the Governor for a term of 4 years and until the appointment and qualification of the judge's successor. Subsequent reappointments of a judge shall be by the Governor with the advice and consent of the Senate to terms of 5 years and until the appointment and qualification of the judge's successor."*

Amend page 1, section 1, line 1, omit "1.", insert "3."

Amend page 2, section 1, line 39, omit "full-time", insert "permanent".

Amend page 2, section 1, line 42, omit "A full-time", insert "The entire time of a permanent".

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

Amend page 2, section 1, lines 42 and 43, omit "not hold other employment", insert "be devoted to the duties of the office".

Amend page 2, section 1, line 59A, omit "Deleted by amendment.", insert "Appoint additional administrative law judges, qualified in the field of administrative law or in a subject matter relating to the hearing functions of a State agency, on a temporary or case basis as may be necessary during emergency or unusual situations for the proper performance of the duties of the office, pursuant to a reasonable fee schedule established in advance by the director. Temporary administrative law judges shall have the same qualifications for appointment as permanent administrative law judges."

Amend page 2, section 1, line 63, after "52:14B-10)", insert ". Proceedings shall be scheduled for suitable locations, either at the offices of the Office of Administrative Law or elsewhere in the State, taking into consideration the convenience of the witnesses and parties, as well as the nature of the cases and proceedings".

Amend page 3, section 1, line 75, omit "and".

Amend page 3, section 1, line 78, omit ".", insert "; and".

Amend page 3, section 1, after line 78, insert a new subsection as follows:

"s. Develop and implement a program of judicial evaluation to aid himself in the performance of his duties, and to assist in the making of reappointments under section 4 of P. L. 1978, c. 67 (C. 52:14F-4). This program of evaluation shall focus on three areas of judicial performance: competence, productivity, and demeanor. It shall include consideration of: industry and promptness in adhering to schedules, making rulings and rendering decisions; tolerance, courtesy, patience, attentiveness, and self-control in dealing with litigants, witnesses and counsel, and in presiding over contested cases; legal skills and knowledge of the law and new legal developments; analytical talents and writing abilities; settlement skills; quantity, nature and quality of case-load disposition; impartiality and conscientiousness. The director shall develop standards and procedures for this program, which shall include taking comments from selected litigants and lawyers who have appeared before a judge. The methods used by the judge but not the result arrived at by the judge in any case may be used in evaluating a judge. Before implementing any action based on the findings of the evaluation program, the director shall discuss the findings and the proposed action with the affected judge. The evaluation by the director and supporting data shall be submitted to the Governor and the Senate Judiciary Committee. These documents shall remain confidential and shall be exempted from the requirements of P. L. 1963, c. 73 (C. 47:1A-1 et seq.)."

Amend page 3, section 2, line 1, omit "2.", insert "4."

STATEMENT

The purpose of the bill, as amended, is to clarify the distinction between the temporary and the initial appointment of administrative law judges, and to delineate procedures appropriate to each.

A temporary appointment is by the director, for a short period of time, and in response to unusual or emergency situations. An initial appointment of a permanent administrative law judge is by the Governor with the advice and consent of the Senate and is for 1 year.

The first reappointment of an administrative law judge is by the Governor, for a term of 4 years. Subsequent reappointment will be for terms of 5 years, by the Governor with the advice and consent of the Senate.

The reappointment process shall include a program of judicial evaluation, outlined in the bill, the results of which shall be given to the Governor and the Senate Judiciary Committee. Safeguards are specified so that only the methods used by a judge in a case, and not the decision arrived at by a judge in a case, can be used in the evaluation.

The bill also requires that administrative law cases be heard, whenever possible, in a place most convenient to the litigants. This means that cases involving South Jersey residents should be heard in South Jersey, cases involving North Jersey residents should be heard in North Jersey, and so forth.

A1588 (2021)

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Attorney General as involving intermittent employment for emergent or unusual conditions. This might include predictable circumstances which require extraordinary assistance. But it does not include performing ordinary and regular responsibilities on a continuous or full-time basis. Thus "probationary" judges are not "temporary" and this bill would clarify that legislative intent.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

June 8, 1981

ASSEMBLY BILL NO. 1588 (2d OCR)

To the General Assembly:

Pursuant to Article V, Section I, paragraph 14(b) of the Constitution, I herewith return Assembly Bill No. 1588 (2d OCR), with my objections, for re-consideration.

This bill would amend the manner and terms of appointment of administrative law judges. It provides for the appointment of judges by the Governor, with the advice and consent of the Senate, to initial terms of one year. During the initial term, the judge would be subject to an evaluation prepared by the Director of the Office of Administrative Law. The evaluation would be submitted to the Governor and the Senate Judiciary Committee. After the initial term, the judge would be eligible for reappointment for an additional four-year term. The bill limits the appointment of temporary administrative law judges to emergency or unusual situations.

In order to ensure that appointments are considered in a timely manner, and vacancies are not left unfilled, I suggest that the Senate be required to offer its advice and consent within a specified period of time.

Also, the bill provides for an inappropriate intrusion into the Executive Branch by requiring that an evaluation of an administrative law judge's performance, prepared by the Director, must be shared with the Senate Judiciary Committee.

Accordingly, I herewith return Assembly Bill No. 1588 (2d OCR) for reconsideration and recommend that it be amended as follows:

Page 2, section 2, line 17: Add "The advice and consent of the Senate, as provided in this section, shall be exercised within 45 days after a nomination for appointment has been submitted to the Senate, and if no action has been taken within the 45 day period, the nomination shall be deemed confirmed."

Page 4, section 3, line 100: Delete "and the Senate Judiciary Committee"

Respectfully,

/s/ Brendan Byrne

GOVERNOR

[seal]

Attest:

/s/ Harold L. Hodes

CHIEF OF STAFF, SECRETARY

7-9-81

FROM THE

-4-

probable cause to believe "that clear and immediate harm to the spouse of the accused or to members of the family of the accused" may result if the person remains in the house.

The judge may extend the order for up to two additional weeks if further need is shown.

The municipal court order is immediately appealable to the Superior Court, Chancery Division, or to the Juvenile and Domestic Relations Courts. Violation of the order is punishable by contempt.

A-1417, sponsored by Assemblyman James Bornheimer (D-Middlesex) which amends the law creating the Property-Liability Insurance Guaranty Association Act. The Association provides protection against insolvencies of property-liability insurers.

Governor Byrne conditionally vetoed the bill on June 11, suggesting some technical amendments. The legislature concurred with the Governor's recommendations.

A-1588, sponsored by Assemblyman William Gormley (R-Atlantic) which redefines the phrase "temporary Administrative Law Judge" (ALJ), in the 1978 law setting up the Office of Administrative Law (OAL).

A provision in the law allows the Director of the OAL to appoint judges on a temporary basis without the advice and consent of the Senate for one year. At the end of that period, the judge's work is evaluated and that evaluation submitted to the Governor, who in turn submits the ALJ's nomination to the Senate if he feels the evaluation warrants the appointment.

Under this bill, the initial appointment of an ALJ would be for one year, with the advice and consent of the Senate. The first reappointment would be for a four year term by the Governor, without the advice and consent of the Senate. Subsequent reappointments would be for five years, by the Governor and with the advice and consent of the Senate. The authority of the Director of the OAL to make temporary appointments would be limited to emergency or unusual situations.