

11:9-15 to 11:9-18

LEGISLATIVE HISTORY CHECKLIST

NJSA 11:9-15 to 11:9-18 (Civil Service exams--State--allow waiver for certain disabled persons)

LAWS 1981 CHAPTER 204

Bill No. A1960

Sponsor(s) Paterniti and others

Date Introduced July 28, 1980

Committee: Assembly County Government

Senate 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 Sept. 29, 1980

Re-enacted 6-8-81

Senate Feb. 2, 1981

Re-enacted 6-29-81

Date of approval July 9, 1981

Following statements are attached if available:

Sponsor statement Yes ~~No~~

Committee Statement: Assembly Yes ~~No~~

Senate Yes ~~No~~

Fiscal Note Yes ~~No~~

Veto Message Yes ~~No~~

Message on signing Yes ~~No~~

Following were printed:

Reports Yes ~~No~~

Hearings Yes ~~No~~

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## ASSEMBLY, No. 1960

STATE OF NEW JERSEY

INTRODUCED JULY 28, 1980

By Assemblymen PATERNITI, BORNHEIMER, SCHWARTZ,  
 Assemblywoman McCONNELL, Assemblymen LESNIAK,  
 DEVERIN, VILLANE and SAXTON

Referred to Committee on County Government

AN ACT providing for waiver of examination, under certain conditions, for persons seeking employment in the **\*[noncompetitive]\*** classified service of the Civil Service; granting retroactive service credit, under certain circumstances, for previous temporary service by persons attaining permanent status as a result of such waiver; *\*and\** supplementing chapter 9 of Title 11 of the Revised Statutes.

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

1 1. **\*[Examination for any position in the noncompetitive serv-**  
 1A **ice]\*** *\*Competitive examination and noncompetitive examination*  
 1B *for any position in the classified service of the Civil Service\**

2 may be waived for any applicant who suffers from any physical,  
 3 mental, or emotional affliction, injury, dysfunction, impairment,  
 4 or disability, which

5 a. Makes it physically or psychologically impracticable for him  
 6 to undergo the prescribed testing procedure for the class of  
 7 position for which he applies, but

8 b. Does not prevent him from satisfactorily performing the duties  
 9 of that position under the conditions of actual service.

1 2. The commission shall prescribe rules, regulations, and pro-  
 2 cedures, by which waivers of examination under this supplementary  
 3 act may be applied for and granted; and shall include therein the  
 4 requirement that the applicant submit to the **\*\*[Chief Examiner**  
 5 **and Secretary]\*\*** *\*\*President\*\**:

6 a. A physician's statement describing the nature of the con-  
 7 dition that makes it impracticable for the applicant to undergo the  
 8 testing procedure,

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

9 b. A statement from the appointing authority as to its satisfac-  
10 tion that the applicant could satisfactorily perform the duties of  
11 the position under conditions of actual service, and

12 c. A statement of agreement by the applicant to undergo such  
13 additional physical or psychological examination as the \*\***[Chief**  
14 **Examiner and Secretary]**\*\* *President* may deem necessary in  
15 order to establish the facts required for the granting of a waiver.

1 3. If, after receiving the information required under the rules  
2 of the commission, and conducting or causing to be conducted  
3 such additional inquiries and examinations as he deems necessary,  
4 the \*\***[Chief Examiner and Secretary]**\*\* *President* is satisfied  
5 that the conditions for a waiver of examination, as set forth in  
6 section 1 of this supplementary act, have been met, he shall grant  
7 such waiver and permit the applicant to be employed or placed  
8 upon an employment list of the position with respect to which the  
9 waiver of examination is granted.

1 4. If a person who becomes a permanent fulltime employee as  
2 a result of a waiver of examination under the terms of this act  
3 previously served the same employer, in either the same or other  
4 positions, on a temporary or emergency basis for at least 1 year  
5 in the aggregate during the period ending 6 months from the effec-  
6 tive date of this supplementary act, and certifies to the commission  
7 that, but for the condition on the basis of which the waiver was  
8 granted, he would during that time have sought permanent, full-  
9 time employment through the examination process, he shall be  
10 entitled, for the purposes of securing or ascertaining any rights  
11 or benefits to which he may be entitled under Title 11 and Title 43  
12 of the Revised Statutes, or any other law, as a permanent employee  
13 in the classified service, to reckon any such prior temporary or  
14 emergency employment as if it had been permanent, fulltime  
15 employment.

1 5. This act shall take effect 90 days after the date of enactment.

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12 c. A statement of agreement by the applicant to undergo such  
 13 additional physical or psychological examination as the Chief  
 14 Examiner and Secretary may deem necessary in order to establish  
 15 the facts required for the granting of a waiver.

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 2 of the commission, and conducting or causing to be conducted  
 3 such additional inquiries and examinations as he deems necessary,  
 4 the Chief Examiner and Secretary is satisfied that the conditions  
 5 for a waiver of examination, as set forth in section 1 of this  
 6 supplementary act, have been met, he shall grant such waiver and  
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 8 list of the position with respect to which the waiver of examina-  
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 14 emergency employment as if it had been permanent, fulltime  
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#### STATEMENT

Our Constitution and civil-service law require that fitness for public employment be ascertained "as far as practicable" by examination. What is "practicable" is ascertained in relation to the nature of the position to be filled, rather than the characteristics of individual applicants—and this is, in general, just. But there are certain circumstances under which this "impartial" rule becomes unjust.

It is unjust to that category of persons who suffer from certain disabilities that impair their capacity to take and pass examinations, but do not affect their ability to do the work of the jobs that they seek. Many job opportunities for such persons exist in

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the “noncompetitive” category — i.e., that in which the examinees do not compete against each other for relative excellence, but only seek to establish basic fitness to do the work.

There are, in fact, numerous instances of such civil-service jobs being held by persons with disabilities of this description; but, owing to their exam-related disability, they can not gain permanent status. Because they perform well in actual service, their employers continually renew “temporary” appointments; but, as “temporary”, they can not qualify for those benefits — pension rights, sick leave, etc. — to which their service should rightfully entitle them.

This bill would provide a procedure under which persons with this sort of handicap — e.g., a learning disability, dyslexia, mild retardation — could gain a waiver of examination and become employed on a permanent basis. The procedure would require (1) a physician’s statement about the disability that prevents the applicant from taking an examination, and (2) a statement from the prospective employer that the applicant is believed capable of doing the job. The Chief Examiner and Secretary of the Department of Civil Service would be authorized, on the basis of this information and such additional inquiries and examinations as he thinks needed, to grant the waiver, and allow the applicant to attain permanent employment.

This bill also provides that persons who qualify for waivers and attain permanent status as a result of the new procedure, will be entitled to get full service credit for their previous “temporary” employment before that procedure became available.

This bill is supplementary to chapter 9 of the Civil Service Law (Title 11 of the Revised Statutes), relating to examination for State-government positions. A companion bill (Assembly Bill No. 1961) would add identical provisions to chapter 23 of Title 11, dealing with the local-government-service examinations.

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ASSEMBLY COUNTY GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1960

STATE OF NEW JERSEY

DATED: SEPTEMBER 15, 1980

The purpose of this bill is to establish a procedure whereby certain disabled individuals may be granted a waiver from the examination requirements for State employment positions in the "noncompetitive" category of Civil Service.

At present, individuals who suffer from disabilities which impair their ability to take examinations, but not their ability to fulfill job responsibilities, are unable to secure permanent status. As a result, such individuals are classified as "temporary" employees and do not qualify for those benefits traditionally associated with the position, such as pension rights and sick leave.

The procedure for securing a waiver includes: (1) a physician's statement about the disability which prevents the applicant from taking the examination; (2) a statement from the prospective employer concerning capability of the applicant to fulfill the responsibilities of the job in question; and (3) such additional inquiries and examinations as the Chief Examiner and Secretary of the State Department of Civil Service deem necessary.

The bill also provides that persons who qualify for a waiver and attain "permanent" status as a result of this procedure shall be entitled to full service credit for their previous "temporary" service period. Such credits include pension rights and sick leave.

The positions covered in this bill are in the "noncompetitive" category of Civil Service. "Noncompetitive" category jobs are those in which applicants are tested not in terms of relative excellence, but rather to establish basic fitness to fulfill job responsibilities.

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

STATEMENT TO  
**ASSEMBLY, No. 1960**  
with Senate committee amendments

**STATE OF NEW JERSEY**

DATED: JANUARY 26, 1981

This bill is aimed as resolving the situation of certain State employees who are able to perform the duties required for a particular position but who, for one reason or another, are unable to pass the Civil Service examination for that purpose.

As the statement of the Assembly County Government Committee notes:

At present, individuals who suffer from disabilities which impair their ability to take examinations, but not their ability to fulfill job responsibilities, are unable to secure permanent status. As a result, such individuals are classified as "temporary" employees and do not qualify for those benefits traditionally associated with the position, such as pension rights and sick leave.

It should be noted that, as originally drafted, the bill applies only to examinations for "noncompetitive service." While it is true that the term "examination" is used in Civil Service statutes and rules with respect to the noncompetitive class of Civil Service, such examinations are job-related; that is, if the individual can perform the task involved he passes the "examination." Such an individual is not competing against other individuals in a formal examination situation. Individuals who pass the "examination" by performing the task become permanent employees and are eligible for membership in the retirement system and other employee benefits.

It would seem, then, that the people most in need of this bill are those who can do the job in the competitive class but who cannot pass the competitive examination because of some form of disability. A rather simple amendment should deal with this issue. Committee staff has discussed the matter with the sponsor, Assemblyman Paterniti, and has obtained his approval for such an amendment.

The bill establishes a procedure for a waiver of the examination. The procedure requires:

1. A statement from a physician which describes the nature of the condition which makes it impracticable for the applicant to take the examination.
2. A statement from the appointing authority expressing its satisfaction that the applicant could perform the duties required in the position under actual working conditions.
3. A statement by the applicant agreeing to take any additional physical or psychological examinations deemed necessary by Civil Service.

The Chief Examiner and Secretary of the Civil Service Commission is authorized, after reviewing the documents required by the act and after conducting such additional examinations as he may require, to waive examination and to permit the applicant to be employed in the position or placed upon the employment list for the position.

The bill also provides that, under certain conditions, the individual who becomes a permanent full-time employee as a result of the waiver of examination shall be entitled to any rights or benefits under the civil service and pension statutes which would have accrued to him had his prior temporary service been service as a permanent employee. The conditions are that he must have served the same employer in the same or other position on a temporary or emergency basis for at least 1 year, in the aggregate, during the period ending 6 months from the effective date of the act.

#### COMMITTEE AMENDMENT

The committee amended the bill, with the sponsor's consent, to make possible a waiver of examination for a person who is able to perform the duties in a position which requires a competitive examination but who is unable to pass such an examination. The same procedure and requirements presently in the bill would apply to this applicant as well as to an applicant for a position in the noncompetitive class.

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STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

May 14, 1981

ASSEMBLY BILL NO. 1960 (OCR)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14(b) of the Constitution, I herewith return Assembly Bill No. 1960 (OCR) with my objections for reconsideration.

This bill permits the Chief Examiner and Secretary of the Civil Service Commission to waive the competitive examination for persons in the State civil service who suffer from disabilities that prevent them from taking the examination, but do not affect their ability to perform the duties of the position they seek.

I support the general intent of the bill to permit qualified, disabled persons to secure under certain conditions permanent positions in the classified civil service. However, the authority to waive competitive examinations should reside in the President of the Commission, who is the chief executive officer of the Commission, N.J.S. 11:1-6, and who already exercises authority to waive certain examinations for promotions. See N.J.A.C. 4:1-8.5.

Accordingly, I herewith return Assembly Bill No. 1960 (OCR) for reconsideration and recommend that it be amended as follows:

Page 1, Section 2, Line 4: Delete "Chief Examiner and" and insert "President"

Page 1, Section 2, Line 5: Delete "Secretary"

Page 2, Section 2, Line 13: Delete "Chief"

Page 2, Section 2, Line 14: Delete "Examiner and Secretary" and insert "President"

Page 2, Section 3, Line 4: Delete "Chief Examiner and Secretary" and insert "President"

Respectfully,

/s/ Brendan Byrne

GOVERNOR

[seal]

Attest:

/s/ Harold L. Hodes

CHIEF OF STAFF, SECRETARY