

2C:51-2.1

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2003 **CHAPTER:** 145

NJSA: 2C:51-2.1 (Amendment on forfeiture)

BILL NO: S1750

SPONSOR(S): Codey

DATE INTRODUCED: July 2, 2002

COMMITTEE: **ASSEMBLY:** State Government

SENATE: Judiciary

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** June 12, 2003

SENATE: December 16, 2002

DATE OF APPROVAL: August 8, 2003

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (Original version of bill enacted)

[SPONSORS STATEMENT:](#) (Begins on page 4 of original bill) [Yes](#)

COMMITTEE STATEMENT: [ASSEMBLY:](#) [Yes](#)

[SENATE:](#) [Yes](#)

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

P.L. 2003, CHAPTER 145, *approved August 8, 2003*
Senate Bill No. 1750

1 **AN ACT** concerning forfeiture of public office, amending N.J.S.2C:51-
2 2 and repealing section 17-17 of P.L.1950, c. 210.

3

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

6

7 1. N.J.S.2C:51-2 is amended to read as follows:

8 2C:51-2. Forfeiture of Public Office. a. A person holding any
9 public office, position, or employment, elective or appointive, under
10 the government of this State or any agency or political subdivision
11 thereof, who is convicted of an offense shall forfeit such office or
12 position if:

13 (1) He is convicted under the laws of this State of an offense
14 involving dishonesty or of a crime of the third degree or above or
15 under the laws of another state or of the United States of an offense
16 or a crime which, if committed in this State, would be such an offense
17 or crime;

18 (2) He is convicted of an offense involving or touching such office,
19 position or employment; or

20 (3) The Constitution [or a statute other than the code] so
21 provides.

22 b. A court of this State shall enter an order of forfeiture pursuant
23 to subsection a.:

24 (1) Immediately upon a finding of guilt by the trier of fact or a plea
25 of guilty entered in any court of this State unless the court, for good
26 cause shown, orders a stay of such forfeiture pending a hearing on the
27 merits at the time of sentencing; or

28 (2) Upon application of the county prosecutor or the Attorney
29 General, when the forfeiture is based upon a conviction of an offense
30 under the laws of another state or of the United States. An order of
31 forfeiture pursuant to this paragraph shall be deemed to have taken
32 effect on the date the person was found guilty by the trier of fact or
33 pled guilty to the offense.

34 c. No court shall grant a stay of an order of forfeiture pending
35 appeal of a conviction or forfeiture order unless the court is clearly
36 convinced that there is a substantial likelihood of success on the
37 merits. If the conviction be reversed or the order of forfeiture be
38 overturned, he shall be restored, if feasible, to his office, position or
39 employment with all the rights, emoluments and salary thereof from
40 the date of forfeiture.

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 Any official action taken by the convicted person on or after the
2 date as of which a forfeiture of the person's office shall take effect
3 shall, during a period of 60 days following the date on which an order
4 of forfeiture shall have been issued hereunder, be voidable by the
5 person's successor in office or, if the office of the person was that of
6 member of the governing body of a county, municipality or
7 independent authority, by that governing body.

8 d. In addition to the punishment prescribed for the offense, and the
9 forfeiture set forth in subsection a. of N.J.S.2C:51-2, any person
10 convicted of an offense involving or touching on his public office,
11 position or employment shall be forever disqualified from holding any
12 office or position of honor, trust or profit under this State or any of its
13 administrative or political subdivisions.

14 e. Any forfeiture or disqualification under subsection a., b. or d.
15 which is based upon a conviction of a disorderly persons or petty
16 disorderly persons offense may be waived by the court upon
17 application of the county prosecutor or the Attorney General and for
18 good cause shown.

19 f. Except as may otherwise be ordered by the Attorney General as
20 the public need may require, any person convicted of an offense under
21 section 2C:27-2, 2C:27-4, 2C:27-6, 2C:27-7, 2C:29-4, 2C:30-2, or
22 2C:30-3 of this Title shall be ineligible, either directly or indirectly, to
23 submit a bid, enter into any contract, or to conduct any business with
24 any board, agency, authority, department, commission, public
25 corporation, or other body of this State, of this or one or more other
26 states, or of one or more political subdivisions of this State for a
27 period of, but not more than, 10 years from the date of conviction for
28 a crime of the second degree, or five years from the date of conviction
29 for a crime of the third degree. It is the purpose of this subsection to
30 bar any individual convicted of any of the above enumerated offenses
31 and any business, including any corporation, partnership, association
32 or proprietorship in which such individual is a principal, or with
33 respect to which such individual owns, directly or indirectly, or
34 controls 5% or more of the stock or other equity interest of such
35 business, from conducting business with public entities.

36 The State Treasurer shall keep and maintain a list of all
37 corporations barred from conducting such business pursuant to this
38 section.

39 g. In any case in which the issue of forfeiture is not raised in a
40 court of this State at the time of a finding of guilt, entry of guilty plea
41 or sentencing, a forfeiture of public office, position or employment
42 required by this section may be ordered by a court of this State upon
43 application of the county prosecutor or the Attorney General or upon
44 application of the public officer or public entity having authority to
45 remove the person convicted from his public office, position or
46 employment. The fact that a court has declined to order forfeiture

1 shall not preclude the public officer or public entity having authority
2 to remove the person convicted from seeking to remove or suspend
3 the person from his office, position or employment on the ground that
4 the conduct giving rise to the conviction demonstrates that the person
5 is unfit to hold the office, position or employment.

6 (cf: P.L.1995,c.250,s.1)

7

8 2. Section 17-17 of P.L.1950, c. 210 (C.40:69A-166) is hereby
9 repealed.

10

11 3. This act shall apply as follows:

12 a. Any person who forfeited or was disqualified from holding any
13 public office, position, or employment, elective or appointive, under
14 the government of this State or any agency or political subdivision
15 thereof, by a court of competent jurisdiction, prior to the effective
16 date of this act shall continue to be disqualified or continue to forfeit
17 such office, position or employment.

18 b. Any person holding any public office, position, or employment,
19 elective or appointive, under the government of this State or any
20 agency or political subdivision thereof, on the effective date of this act,
21 shall be subject to disqualification or forfeiture of that public office,
22 position, or employment only pursuant to N.J.S.2C:51-2 and not
23 pursuant to a statute other than the criminal code.

24

25 4. This act shall take effect immediately.

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STATEMENT

29

30 The bill amends N.J.S.A.2C:51-2 to provide that a person will be
31 disqualified from public office, position or employment only as
32 provided in the Criminal Code and in the Constitution. The bill
33 remedies disparities among the statutes concerning forfeiture of public
34 office, position or employment in order to be consistent with the
35 Criminal Code.

36 The Criminal Code, in N.J.S.A.2C:51-2, provides that a person
37 holding any public office, position or employment must forfeit the
38 office or position if he is: (1) convicted of an offense involving
39 dishonesty; (2) convicted of a crime of the third degree or above; (3)
40 convicted of an offense involving or touching his office, position or
41 employment, or (4) if the Constitution or a statute other than the
42 Criminal Code so provides. In addition to these provisions concerning
43 forfeiture, the Criminal Code also provides that a person who is
44 convicted of an offense involving or touching on his public office,
45 position or employment will be permanently disqualified from ever
46 holding "any office or position of honor, trust or profit under this

1 State or any of its administrative or political subdivisions."

2 However, other statutes conflict with this provision. For example,
3 a portion of the Optional Municipal Charter Law (also known as the
4 "Faulkner Act"), which applies to only a minority of the State's 566
5 municipalities, provides that a person "convicted of a crime or offense
6 involving moral turpitude" shall forfeit "any municipal office, position
7 or employment in a municipality governed pursuant this act [the
8 Faulkner Act]" and that such conviction would also disqualify the
9 person from assuming such office, position or employment in the
10 future.

11 Because of these conflicting statutes, public officials are held to
12 inconsistent standards depending on the municipality where they
13 happen to serve. This bill is intended to rectify this confusing and
14 unjust situation by providing that the Criminal Code provisions
15 concerning forfeiture and disqualification for public office will be the
16 only standard.

17 The sponsor wants to underscore the policy considerations
18 implicated by this bill. Given the many and varied forms of municipal
19 government (for example, commission, special charter, municipal
20 manager, township, borough), it is paramount to insure that all
21 municipal officials are subject to the same standards throughout the
22 State concerning their eligibility to hold office.

23

24

25

26

27 Amends Criminal Code provisions concerning forfeiture; repeals
28 section 17-17 of P.L.1950, c.210.

SENATE, No. 1750

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED JULY 2, 2002

Sponsored by:
Senator RICHARD J. CODEY
District 27 (Essex)

SYNOPSIS

Amends Criminal Code provisions concerning forfeiture; repeals section 17-17 of P.L.1950, c.210.

CURRENT VERSION OF TEXT

As introduced.



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2

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12 position if:

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14 involving dishonesty or of a crime of the third degree or above or
15 under the laws of another state or of the United States of an offense
16 or a crime which, if committed in this State, would be such an offense
17 or crime;

18 (2) He is convicted of an offense involving or touching such office,
19 position or employment; or

20 (3) The Constitution [or a statute other than the code] so
21 provides.

22 b. A court of this State shall enter an order of forfeiture pursuant
23 to subsection a.:

24 (1) Immediately upon a finding of guilt by the trier of fact or a plea
25 of guilty entered in any court of this State unless the court, for good
26 cause shown, orders a stay of such forfeiture pending a hearing on the
27 merits at the time of sentencing; or

28 (2) Upon application of the county prosecutor or the Attorney
29 General, when the forfeiture is based upon a conviction of an offense
30 under the laws of another state or of the United States. An order of
31 forfeiture pursuant to this paragraph shall be deemed to have taken
32 effect on the date the person was found guilty by the trier of fact or
33 pled guilty to the offense.

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35 appeal of a conviction or forfeiture order unless the court is clearly
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37 merits. If the conviction be reversed or the order of forfeiture be
38 overturned, he shall be restored, if feasible, to his office, position or
39 employment with all the rights, emoluments and salary thereof from
40 the date of forfeiture.

41 Any official action taken by the convicted person on or after the
42 date as of which a forfeiture of the person's office shall take effect
43 shall, during a period of 60 days following the date on which an order

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.

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1 of forfeiture shall have been issued hereunder, be voidable by the
2 person's successor in office or, if the office of the person was that of
3 member of the governing body of a county, municipality or
4 independent authority, by that governing body.

5 d. In addition to the punishment prescribed for the offense, and the
6 forfeiture set forth in subsection a. of N.J.S.2C:51-2, any person
7 convicted of an offense involving or touching on his public office,
8 position or employment shall be forever disqualified from holding any
9 office or position of honor, trust or profit under this State or any of its
10 administrative or political subdivisions.

11 e. Any forfeiture or disqualification under subsection a., b. or d.
12 which is based upon a conviction of a disorderly persons or petty
13 disorderly persons offense may be waived by the court upon
14 application of the county prosecutor or the Attorney General and for
15 good cause shown.

16 f. Except as may otherwise be ordered by the Attorney General as
17 the public need may require, any person convicted of an offense under
18 section 2C:27-2, 2C:27-4, 2C:27-6, 2C:27-7, 2C:29-4, 2C:30-2, or
19 2C:30-3 of this Title shall be ineligible, either directly or indirectly, to
20 submit a bid, enter into any contract, or to conduct any business with
21 any board, agency, authority, department, commission, public
22 corporation, or other body of this State, of this or one or more other
23 states, or of one or more political subdivisions of this State for a
24 period of, but not more than, 10 years from the date of conviction for
25 a crime of the second degree, or five years from the date of conviction
26 for a crime of the third degree. It is the purpose of this subsection to
27 bar any individual convicted of any of the above enumerated offenses
28 and any business, including any corporation, partnership, association
29 or proprietorship in which such individual is a principal, or with
30 respect to which such individual owns, directly or indirectly, or
31 controls 5% or more of the stock or other equity interest of such
32 business, from conducting business with public entities.

33 The State Treasurer shall keep and maintain a list of all
34 corporations barred from conducting such business pursuant to this
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36 g. In any case in which the issue of forfeiture is not raised in a
37 court of this State at the time of a finding of guilt, entry of guilty plea
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40 application of the county prosecutor or the Attorney General or upon
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11 the government of this State or any agency or political subdivision
12 thereof, by a court of competent jurisdiction, prior to the effective
13 date of this act shall continue to be disqualified or continue to forfeit
14 such office, position or employment.

15 b. Any person holding any public office, position, or employment,
16 elective or appointive, under the government of this State or any
17 agency or political subdivision thereof, on the effective date of this act,
18 shall be subject to disqualification or forfeiture of that public office,
19 position, or employment only pursuant to N.J.S.2C:51-2 and not
20 pursuant to a statute other than the criminal code.

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22 4. This act shall take effect immediately.

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25 **STATEMENT**

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38 employment, or (4) if the Constitution or a statute other than the
39 Criminal Code so provides. In addition to these provisions concerning
40 forfeiture, the Criminal Code also provides that a person who is
41 convicted of an offense involving or touching on his public office,
42 position or employment will be permanently disqualified from ever
43 holding "any office or position of honor, trust or profit under this
44 State or any of its administrative or political subdivisions."

45 However, other statutes conflict with this provision. For example,
46 a portion of the Optional Municipal Charter Law (also known as the

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1 "Faulkner Act"), which applies to only a minority of the State's 566
2 municipalities, provides that a person "convicted of a crime or offense
3 involving moral turpitude" shall forfeit "any municipal office, position
4 or employment in a municipality governed pursuant this act [the
5 Faulkner Act]" and that such conviction would also disqualify the
6 person from assuming such office, position or employment in the
7 future.

8 Because of these conflicting statutes, public officials are held to
9 inconsistent standards depending on the municipality where they
10 happen to serve. This bill is intended to rectify this confusing and
11 unjust situation by providing that the Criminal Code provisions
12 concerning forfeiture and disqualification for public office will be the
13 only standard.

14 The sponsor wants to underscore the policy considerations
15 implicated by this bill. Given the many and varied forms of municipal
16 government (for example, commission, special charter, municipal
17 manager, township, borough), it is paramount to insure that all
18 municipal officials are subject to the same standards throughout the
19 State concerning their eligibility to hold office.

ASSEMBLY STATE GOVERNMENT COMMITTEE

STATEMENT TO

SENATE, No. 1750

STATE OF NEW JERSEY

DATED: JUNE 5, 2003

The Assembly State Government Committee reports favorably Senate, No. 1750.

This bill provides that a person will be disqualified from public office, position or employment, elective or appointive, under the State government or any agency or political subdivision thereof, only as provided in the Criminal Code and in the New Jersey Constitution. The bill addresses disparities among the statutes concerning forfeiture of public office, position or employment in order to be consistent with the Criminal Code.

The Criminal Code, in N.J.S.A.2C:51-2, provides that a person holding any public office, position or employment must forfeit the office or position (1) if the person is convicted of an offense involving dishonesty, of a crime of the third degree or above, or of an offense involving or touching the office, position or employment; or (2) if the Constitution or a statute other than the Criminal Code so provides. The bill removes the last reference to a statute other than the Criminal Code.

The bill provides that any person who forfeited or was disqualified from holding any public office, position, or employment by a court of competent jurisdiction, prior to the effective date of the bill, will continue to be disqualified or continue to forfeit such office, position or employment. On or after the effective date of the bill, any person holding any public office, position, or employment will be subject to disqualification or forfeiture of that public office, position, or employment only pursuant to N.J.S.A.2C:51-2 and not pursuant to a statute other than the Criminal Code.

The bill also repeals N.J.S.A.40:69A-166, which provides that a person "convicted of a crime or offense involving moral turpitude" will forfeit any municipal office, position or employment in a municipality governed under the Faulkner Act and which conflicts with the Criminal Code provisions.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 1750

STATE OF NEW JERSEY

DATED: NOVEMBER 25, 2002

The Senate Judiciary Committee reports favorably Senate Bill No. 1750.

The bill amends N.J.S.A.2C:51-2 to provide that a person will be disqualified from public office, position or employment only as provided in the Criminal Code and in the Constitution. The bill remedies disparities among the statutes concerning forfeiture of public office, position or employment in order to be consistent with the Criminal Code.

The Criminal Code, in N.J.S.A.2C:51-2, currently provides that a person holding any public office, position or employment must forfeit the office or position if he is:

- (1) convicted of an offense involving dishonesty, N.J.S.A.2C:51-2 a. (1);
- (2) convicted of a crime of the third degree or above, N.J.S.A.2C:51-2 a. (1);
- (3) convicted of an offense involving or touching his office, position or employment, N.J.S.A. 2C:51-2 a. (2); or
- (4) if the Constitution or a statute other than the Criminal Code so provides, N.J.S.A. 2C:51-2 a. (3). This bill removes the reference in this paragraph to a statute other than the Criminal Code.

The Criminal Code provides that a person convicted of an offense involving or touching on his public office, position or employment will be permanently disqualified from ever holding "any office or position of honor, trust or profit under this State or any of its administrative or political subdivisions" in N.J.S.A. 2C:51-2 d. which would include municipalities.

However, other statutes conflict with this provision. For example, a portion of the Optional Municipal Charter Law (also known as the "Faulkner Act"), which applies to only a minority of the State's 566 municipalities, provides that a person "convicted of a crime or offense involving moral turpitude" shall forfeit "any municipal office, position or employment in a municipality governed pursuant this act (the Faulkner Act)" and that such conviction would also disqualify the person from assuming such office, position or employment in the future.

Because of these conflicting statutes, public officials are held to inconsistent standards depending on the municipality where they happen to serve. This bill is intended to rectify this situation by providing that the Criminal Code provisions concerning forfeiture and disqualification for public office will be the only standard.