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Yes

"Corzine signs bill limiting unpaid suspension," Home News Tribune, 3-6-09.

LAW/RWH

[Second Reprint]

**ASSEMBLY, No. 3481**

**STATE OF NEW JERSEY**  
**213th LEGISLATURE**

INTRODUCED DECEMBER 8, 2008

**Sponsored by:**

**Assemblyman GARY S. SCHAER**

**District 36 (Bergen, Essex and Passaic)**

**Assemblyman FREDERICK SCALERA**

**District 36 (Bergen, Essex and Passaic)**

**Assemblyman JOHN S. WISNIEWSKI**

**District 19 (Middlesex)**

**Co-Sponsored by:**

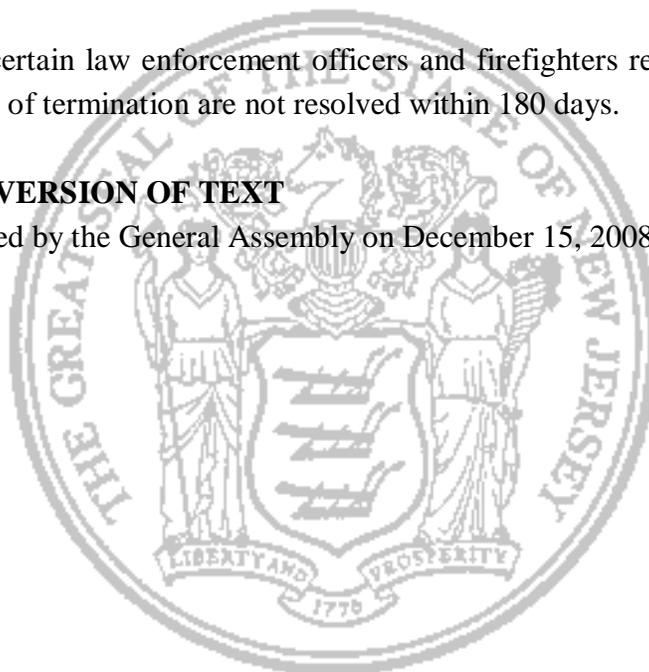
**Assemblywoman Greenstein, Assemblyman Connors, Senators Sarlo and Weinberg**

**SYNOPSIS**

Provides certain law enforcement officers and firefighters regain pay status when appeals of termination are not resolved within 180 days.

**CURRENT VERSION OF TEXT**

As amended by the General Assembly on December 15, 2008.



**(Sponsorship Updated As Of: 2/24/2009)**

1 AN ACT concerning the suspensions of certain law enforcement  
2 officers and firefighters, supplementing Title 40A of the New  
3 Jersey Statutes and amending N.J.S.40A:14-150 and  
4 N.J.S.40A:14-22.

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

8  
9 1. (New section) As used in this act:

10 “Law enforcement agency” or “agency” means any public  
11 agency, other than the Department of Law and Public Safety  
12 <sup>2</sup>**[<sup>1</sup>and]**, but not including<sup>2</sup> the Juvenile Justice Commission<sup>1</sup>, any  
13 police force, department, or division within the State, or any county  
14 or municipality thereof, which is empowered by statute to act for  
15 the detection, investigation, arrest, conviction, detention, or  
16 rehabilitation of persons violating the criminal laws of this State.

17 “Law enforcement officer” or “officer” means any person who is  
18 employed as a permanent full-time member of any State, county, or  
19 municipal law enforcement agency, department, or division of those  
20 governments who is statutorily empowered to act for the detection,  
21 investigation, arrest, conviction, detention, or rehabilitation of  
22 persons violating the criminal laws of this State and statutorily  
23 required to successfully complete a training course approved by, or  
24 certified as being substantially equivalent to such an approved  
25 course, by the Police Training Commission pursuant to P.L.1961,  
26 c.56 (C.52:17B-66 et seq.).

27 “Paid firefighter” or “firefighter” means any <sup>1</sup>**[full time]** full-  
28 time<sup>1</sup> paid firefighter employed by a public fire department.

29 “Public fire department” or “department” means any department  
30 of a municipality, county, fire district or the State or any agency  
31 thereof having employees engaged in firefighting provided that such  
32 firefighting employees are included in a negotiating unit exclusively  
33 comprised of firefighting employees.

34  
35 2. (New section) a. When a law enforcement officer employed  
36 by a law enforcement agency or a firefighter employed by a public  
37 fire department that is subject to the provisions of Title 11A of the  
38 New Jersey Statutes is suspended from performing his official  
39 duties without pay for a complaint or charges, other than (1) a  
40 complaint or charges relating to the subject matter of a pending  
41 criminal investigation, inquiry, complaint, or charge whether pre-  
42 indictment or post indictment, or (2) when the complaint or charges  
43 allege conduct that also would constitute a violation of the criminal  
44 laws of this State or any other jurisdiction, and the law enforcement

**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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly ALP committee amendments adopted December 8, 2008.

<sup>2</sup>Assembly floor amendments adopted December 15, 2008.

1 agency employing the officer or the public fire department  
2 employing the firefighter seeks to terminate that officer's or  
3 firefighter's employment for the conduct that was the basis for the  
4 officer's or firefighter's suspension without pay, a final  
5 determination on the officer's or firefighter's suspension and  
6 termination shall be rendered within 180 calendar days from the  
7 date the officer or firefighter is suspended without pay.

8 If a final determination is not rendered within those 180 days, as  
9 hereinafter calculated, the officer or firefighter shall, commencing  
10 on the 181st calendar day, begin again to receive the base salary he  
11 was being paid at the time of his suspension and shall continue to  
12 do so until a final determination on the officer's or firefighter's  
13 termination is rendered.

14 b. The 180 calendar day period shall commence on the date that  
15 the officer or firefighter is suspended without pay and shall be  
16 calculated as follows:

17 (1) The calendar days that accrue between the date the officer or  
18 firefighter is terminated by his employing agency or department and  
19 the date on which the officer or firefighter files his appeal of his  
20 termination with the Office of Administrative Law shall not be used  
21 in calculating the date upon which the officer or firefighter is  
22 entitled, pursuant to subsection a. of this section, to receive his base  
23 salary pending a final determination on his appeal;

24 (2) If the officer or firefighter or '~~their~~ his' representative  
25 requests and is granted a postponement of a hearing or any other  
26 delay before the 181st calendar day, the calendar days that accrue  
27 during that postponement or delay shall not be used in calculating  
28 the date upon which the officer or firefighter is entitled, pursuant to  
29 subsection a. of this section, to receive his base salary pending a  
30 final determination on his appeal;

31 (3) If the officer or firefighter or '~~their~~ his' representative  
32 causes by his actions a postponement, adjournment or delay of a  
33 hearing before the 181st calendar day, the calendar days that accrue  
34 during that postponement, adjournment or delay shall not be used in  
35 calculating the date upon which the officer or firefighter is entitled,  
36 pursuant to subsection a. of this section, to receive his base salary  
37 pending a final determination on his appeal;

38 (4) If the officer and the agency or the firefighter and the  
39 department agree to any postponement or delay of a hearing before  
40 the 181st calendar day, the calendar days that accrue during that  
41 postponement or delay shall not be used in calculating the date upon  
42 which that officer or firefighter is entitled, pursuant to subsection a.  
43 of this section, to receive his base salary pending a final  
44 determination on his appeal; or

45 (5) If the administrative law judge or Civil Service Commission  
46 for good cause '~~postpone~~ postpones' or '~~delay~~ delays' a  
47 hearing before the 181st calendar day, the calendar days that accrue  
48 during that postponement or delay shall not be used in calculating

1 the date upon which that officer or firefighter is entitled, pursuant to  
2 subsection a. of this section, to receive his base salary pending a  
3 final determination on his appeal.

4 c. If an officer or firefighter who is receiving full pay pending a  
5 final determination on an appeal in accordance with the provisions  
6 of subsection a. of this section requests and is granted, or who  
7 otherwise causes by his actions a postponement, adjournment, or  
8 delay of a hearing, or whose representative requests and is granted,  
9 or who otherwise causes by his actions a postponement,  
10 adjournment or delay of a hearing, that officer or firefighter shall  
11 not be entitled to receive his base salary during the period of that  
12 postponement, adjournment, or delay.

13

14 3. (New section) a. An employing agency or department  
15 subject to the provisions of section 2 of P.L. , c. (C )  
16 (pending before the Legislature as this bill) shall conduct a hearing  
17 on the complaint or charges within 30 days of the date on which the  
18 officer or firefighter was suspended, unless (1) the officer or  
19 firefighter agrees to waive his right to the hearing or (2) the parties  
20 agree to an adjournment to a later date. As provided in paragraphs  
21 (2) and (4) of subsection b. of section 2 of P.L. , c. (C. )  
22 (pending before the Legislature as this bill), the calendar days that  
23 accrue during any such waiver or agreement to adjourn shall not be  
24 used in calculating the date upon which the officer or firefighter is  
25 entitled, pursuant to subsection a. of section 2 of  
26 P.L. , c. (C. ) (pending before the Legislature as this bill),  
27 to receive his base salary pending a final determination on the  
28 officer's or firefighter's appeal.

29 b. The employing agency or department shall make a final  
30 disposition of the complaint and charges against the officer or  
31 firefighter within 20 days of the hearing and shall furnish the officer  
32 or firefighter with a written notice thereof.

33 c. An officer or firefighter shall have 20 days from the date of  
34 receipt of a written notice to appeal. The calendar days that accrue  
35 between the date of the receipt of a written notice of a final  
36 disposition and the filing of an appeal shall not be used in  
37 calculating the date upon which that officer or firefighter is entitled,  
38 pursuant to subsection a. of section 2 of P.L. , c. (C. )  
39 (pending before the Legislature as this bill), to receive his base  
40 salary pending a final determination on his appeal.

41 d. To facilitate the timely rendering of a final determination on  
42 an appeal filed pursuant to the provisions of P.L. , c. (C. )  
43 (pending before the Legislature as this bill), an aggrieved officer or  
44 firefighter shall file his appeal simultaneously with the Office of  
45 Administrative Law and the Civil Service Commission. The  
46 simultaneous filing of an appeal pursuant to this subsection shall be  
47 in a manner, form and time prescribed by the Civil Service  
48 Commission.

1 4. (New section) If the administrative law judge recommends  
2 that:

3 a. The officer's or firefighter's appeal be denied and that the  
4 officer's or firefighter's employment be terminated, the officer or  
5 firefighter shall not be entitled to receive his base salary, or  
6 continue to receive his base salary if, at the time the judge's  
7 recommendation is rendered, the officer or firefighter already is  
8 receiving his base salary, as provided in subsection a. of section 2  
9 of P.L. , c. (C. ) (pending before the Legislature as this  
10 bill), until a final determination rendered by the Civil Service  
11 Commission reverses that recommendation;

12 b. The employing agency's action terminating the officer or the  
13 department's action terminating the firefighter be dismissed, the  
14 employing agency or department shall, within the time prescribed  
15 by the Civil Service Commission, begin paying the officer or  
16 firefighter his base salary. If, at the time the judge's  
17 recommendation is rendered, the officer or firefighter **'[is]'** already  
18 is receiving his base salary, as provided in section 2 of  
19 P.L. , c. (C. ) (pending before the Legislature as this bill),  
20 the officer or firefighter shall continue to do so, until a final  
21 determination rendered by the Civil Service Commission reverses  
22 that recommendation; or

23 c. The officer or firefighter be subject to disciplinary action, but  
24 to a disciplinary action that is less adverse than termination of the  
25 officer's or firefighter's employment, the officer or firefighter shall  
26 be entitled, commencing on the 181st day following his suspension,  
27 as provided in section 2 of P.L. , c. (C. ) (pending before  
28 the Legislature as this bill) or on the day set forth in the judge's  
29 recommendation, whichever is later, to receive his base salary. In  
30 the case of an officer or firefighter who is receiving his base salary  
31 in accordance with the provisions of subsection a. <sup>1</sup>of<sup>1</sup>section 2 of  
32 P.L. , c. (C. ) (pending before the Legislature as this bill) at  
33 the time the judge's recommendation is issued, the officer or  
34 firefighter shall continue to receive his base salary unless otherwise  
35 recommended by the judge.

36 d. Nothing herein shall be construed to authorize an award of  
37 back pay before a final decision is issued pursuant to section 5 of  
38 P.L. , c. (C. ) (pending before the Legislature as this bill).

39  
40 5. (New section) The Office of Administrative Law  
41 immediately shall transmit an administrative law judge's  
42 recommended decision in each case subject to the provisions of  
43 P.L. , c. (C. ) (pending before the Legislature as this bill) to  
44 the Civil Service Commission for review.

45 Within 45 days of receiving such a decision, the commission  
46 shall complete its review and issue its final determination. If the  
47 commission fails to issue its final determination within that 45 day  
48 period, the recommended decision of the administrative law judge

1 shall be deemed to be final; provided, however, the commission, at  
2 its discretion, may extend its review period by no more than an  
3 additional 15 days. If, during any such extension, the commission  
4 fails to issue its final determination, the recommended decision of  
5 the administrative law judge shall be deemed to be final, unless, for  
6 good cause given, the commission gives written notice to the Chief  
7 Administrative Law Judge, the officer or firefighter, and the  
8 officer's employing agency or the firefighter's department that the  
9 review period shall be extended.

10 If the extension of a review period pursuant to this subsection is  
11 initiated prior to the 181<sup>st</sup> calendar day, the calendar days accruing  
12 during that extension, in accordance with the provisions of  
13 paragraph (5) of subsection b. of section 2 of P.L. , c. (C. )  
14 (pending before the Legislature as this bill), shall not be used in  
15 calculating the date upon which that officer or firefighter is entitled,  
16 pursuant to section 2 of P.L. , c. (C. ) (pending before the  
17 Legislature as this bill), to receive his base salary pending a final  
18 determination of his appeal.

19

20 6. (New section) a. If the final determination of the  
21 commission affirms the officer's or firefighter's appeal, the officer  
22 or firefighter shall be reinstated immediately, be entitled to receive  
23 his base salary, be restored all rights and benefits, including those  
24 accruable during the period of appeal, and shall, within a timely  
25 period prescribed by rule and regulation, be paid any salary moneys  
26 withheld by the officer's employing agency or the firefighter's  
27 department during the period the officer or firefighter was  
28 suspended without pay.

29 b. If the final determination issued by the commission denies  
30 the officer's or firefighter's appeal, the officer or firefighter shall  
31 reimburse his employing agency or department for all pay received  
32 during the period of the appeal pursuant to section 2 of  
33 P.L. , c. (C. ) (pending before the Legislature as this bill).

34 If an officer or firefighter fails to reimburse his employing  
35 agency or department for the amounts he received pursuant to  
36 subsection a. of section 2 of P.L. , c. (C. ) (pending before  
37 the Legislature as this bill), the agency or department may have a  
38 lien, pursuant to the provisions of section 13 of  
39 P.L. , c. (C. ) (pending before the Legislature as this bill),  
40 for those amounts on any and all property and income to which the  
41 officer or firefighter shall have or may acquire an interest in,  
42 including moneys contributed by the officer or firefighter to the  
43 Police and Firemen's Retirement System of New Jersey, established  
44 pursuant to P.L.1944, c.255 (C.43:16A-1 et seq.) or any other State  
45 retirement system established by law, and all terminal pay, such as  
46 compensation for earned sick and vacation leave, to which the  
47 officer or firefighter is entitled.

1       7. (New section) a. An officer or firefighter appealing a final  
2 determination terminating his employment to the Appellate  
3 Division of the Superior Court, shall not be entitled to the payment  
4 of any base salary under the provisions of section 2 of  
5 P.L. , c. (C. ) (pending before the Legislature as this bill)  
6 during the pendency of that appeal.

7       b. If the employing agency or department appeals a final  
8 determination rendered by the Civil Service Commission to the  
9 Appellate Division, the officer or firefighter shall continue to  
10 receive his base salary during the pendency of that appeal.

11       If the court <sup>1</sup>[should affirm] affirms<sup>1</sup> the employing agency's or  
12 department's termination, the officer or firefighter shall reimburse  
13 his employing agency or department for all base salary received  
14 under the provisions of P.L. , c. (C. ) (pending before the  
15 Legislature as this bill). If an officer or firefighter fails to  
16 reimburse his employing agency or department for the amounts so  
17 received, the agency or department may have a lien, pursuant to the  
18 provisions of section 13 of P.L. , c. (C. ) (pending before  
19 the Legislature as this bill), for those amounts on any and all  
20 property and income to which the officer or firefighter shall have or  
21 may acquire an interest in, including moneys contributed by the  
22 officer or firefighter to the Police and Firemen's Retirement System  
23 of New Jersey, established pursuant to P.L.1944, c.255 (C.43:16A-1  
24 et seq.) or any other State retirement system established by law, and  
25 all terminal pay, such as compensation for earned sick and vacation  
26 leave, to which the officer or firefighter is entitled.

27  
28       8. (New section) Within six months of the effective date of  
29 P.L. , c. (C. ) (pending before the Legislature as this bill),  
30 the Director of the Office of Administrative Law shall establish a  
31 special unit, to be known as the Law Enforcement and Firefighter  
32 Unit. Administrative law judges qualified by their expertise and  
33 experience in disciplinary matters and cases subject to the  
34 provisions of P.L. , c. (C. ) (pending before the Legislature  
35 as this bill) shall be assigned to this Law Enforcement and  
36 Firefighter Unit.

37       To the greatest extent practicable and feasible, all cases subject  
38 to P.L. , c. (C. ) (pending before the Legislature as this bill)  
39 shall be heard and determined by judges assigned to the Law  
40 Enforcement and Firefighter Unit.

41  
42       9. (New section) a. Notwithstanding the provisions of the  
43 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
44 seq.), the Office of Administrative Law and the Civil Service  
45 Commission, in consultation, shall promulgate temporary rules to  
46 effectuate the purposes of section 2 through section 7, inclusive, of  
47 P.L. , c. (C. ) (pending before the Legislature as this bill).  
48 These rules shall include, but not be limited to practices and

1 procedures governing matters such as discovery, motions and the  
2 conduct of hearings and shall be designed to ensure that all  
3 disciplinary cases subject to the provisions of section 2 of  
4 P.L. c. (C. ) (pending before the Legislature as this bill) are  
5 brought to resolution expeditiously. The temporary rules  
6 promulgated pursuant to this subsection shall take effect  
7 immediately and shall expire on the first day of the 13th month  
8 following enactment.

9 b. In accordance with the provisions of the “Administrative  
10 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), the Office of  
11 Administrative Law and the Civil Service Commission, in  
12 consultation, shall promulgate rules and regulations to effectuate  
13 the purposes of section 2 through section 7, inclusive, of  
14 P.L. , c. (C. ) (pending before the Legislature as this bill).  
15 These rules and regulations shall include, but not be limited to  
16 practices and procedures governing matters such as discovery,  
17 motions and the conduct of hearings and shall be designed to ensure  
18 that all disciplinary cases subject to the provisions of section 2 of  
19 P.L. , c. (C. ) (pending before the Legislature as this bill)  
20 are brought to resolution expeditiously. The rules and regulations  
21 promulgated pursuant to this section shall take effect upon the  
22 expiration of the temporary rules promulgated pursuant to  
23 subsection a. of this section and may, as appropriate to effectuate  
24 the purposes of P.L. , c. (C. ) (pending before the  
25 Legislature as this bill), be amended in accordance with the  
26 provisions of the “Administrative Procedure Act,” P.L.1968, c.410  
27 (C.52:14B-1 et seq.).

28  
29 10. (New section) a. When a law enforcement officer or  
30 firefighter employed by a law enforcement agency or department  
31 that is not subject to the provisions of Title 11A of the New Jersey  
32 Statutes is suspended from performing his official duties without  
33 pay for a complaint or charges, other than (1) a complaint or  
34 charges relating to the subject matter of a pending criminal  
35 investigation, inquiry, complaint, or charge whether pre-indictment  
36 or post indictment, or (2) when the complaint or charges allege  
37 conduct that also would constitute a violation of the criminal laws  
38 of this State or any other jurisdiction, and the law enforcement  
39 agency or department employing the officer or firefighter seeks to  
40 terminate that officer’s or firefighter’s employment for the conduct  
41 that was the basis for the officer’s or firefighter’s suspension  
42 without pay, the officer, as an alternative to the judicial review  
43 authorized under N.J.S.40A:14-150, and the firefighter, as an  
44 alternative to the judicial review authorized under N.J.S.40A:14-22,  
45 may submit an appeal of his suspension and termination to the  
46 Public Employment Relations Commission for arbitration  
47 conducted in accordance with the provisions of section 11 of  
48 P.L. , c. (C. ) (pending before the Legislature as this bill). A

1 final determination on the officer's or firefighter's suspension and  
2 termination shall be rendered by an arbitrator within 180 calendar  
3 days from the date the officer or firefighter is suspended without  
4 pay.

5 If a final determination is not rendered within those 180 days, as  
6 hereinafter calculated, the officer or firefighter shall, commencing  
7 on the 181st calendar day, begin again to receive the base salary he  
8 was being paid at the time of his suspension and shall continue to  
9 do so until the final determination on the officer's or firefighter's  
10 termination is rendered.

11 b. The 180 calendar day period shall commence on the date  
12 that the officer or firefighter is suspended without pay and shall be  
13 calculated as follows:

14 (1) The calendar days that accrue between the date the officer or  
15 firefighter is terminated by his employing agency or department and  
16 the date on which the officer or firefighter submits his appeal for  
17 arbitration to the Public Employment Relations Commission  
18 pursuant to section 11 of P.L. , c. (C. ) (pending before the  
19 Legislature as this bill) shall not be used in calculating the date  
20 upon which the officer or firefighter is entitled, pursuant to  
21 subsection a. of this section, to receive his base salary pending a  
22 final determination on his appeal;

23 (2) If the officer or the firefighter or their representative requests  
24 and is granted a postponement of a hearing or any other delay  
25 before the 181st calendar day, the calendar days that accrue during  
26 that postponement or delay shall not be used in calculating the date  
27 upon which the officer or firefighter is entitled, pursuant to  
28 subsection a. of this section, to receive his base salary pending a  
29 final determination on his appeal;

30 (3) If the officer or the firefighter or their representative causes  
31 by his actions a postponement, adjournment or delay of a hearing  
32 before the 181st calendar day, the calendar days that accrue during  
33 that postponement, adjournment or delay shall not be used in  
34 calculating the date upon which the officer or firefighter is entitled,  
35 pursuant to subsection a. of this section, to receive his base salary  
36 pending a final determination on his appeal;

37 (4) If the officer and the agency or the firefighter and the  
38 department agree to any postponement or delay of a hearing before  
39 the 181st calendar day, the calendar days that accrue during that  
40 postponement or delay shall not be used in calculating the date upon  
41 which that officer or firefighter is entitled, pursuant to subsection a.  
42 of this section, to receive his base salary pending a final  
43 determination on his appeal; or

44 (5) If the arbitrator or the Public Employment Relations  
45 Commission for good cause postpones or delays a hearing before  
46 the 181st calendar day, the calendar days that accrue during that  
47 postponement or delay shall not be used in calculating the date upon  
48 which that officer or firefighter is entitled, pursuant to subsection a.

1 of this section, to receive his base salary pending final  
2 determination of his appeal.

3 c. If an officer or firefighter, who is receiving full pay pending  
4 a final determination in accordance with the provisions of  
5 subsection a. of this section, requests and is granted, or who  
6 otherwise causes by his actions a postponement, adjournment or  
7 delay of a hearing, or whose representative requests and is granted,  
8 or who otherwise causes by his actions a postponement,  
9 adjournment or delay of a hearing, that officer or firefighter shall be  
10 paid no salary during the period of that postponement, adjournment  
11 or delay.

12

13 11. (New section) a. In lieu of serving a written notice to the  
14 Superior Court under the provisions of N.J.S.40A:14-150 or  
15 N.J.S.40A:14-22, as appropriate, seeking review of the termination  
16 of his employment for a complaint or charges, other than a  
17 complaint or charges relating to a criminal offense, as prescribed in  
18 subsection a. of section 10 of P.L. , c. (C. ) (pending before  
19 the Legislature as this bill), an officer or firefighter may submit his  
20 appeal to arbitration as hereinafter provided.

21 b. Within 20 days of receiving notice of termination, the officer  
22 or firefighter shall submit his appeal for arbitration to the Public  
23 Employment Relations Commission. The appeal shall be filed in a  
24 manner and form prescribed by the commission.

25 Upon receipt of such an appeal, the commission shall forthwith  
26 notify the employing agency or department of the appeal.

27 c. The commission shall establish a special panel of arbitrators  
28 to hear appeals filed pursuant to this section. The arbitrators  
29 selected to serve on this special panel shall be qualified by  
30 experience and expertise in disciplinary matters and cases subject to  
31 the provisions of P.L. , c. (C. ) (pending before the  
32 Legislature as this bill).

33 d. Within 10 days of notifying the appealing officer's former  
34 employing agency or the firefighter's former department, the  
35 commission shall provide the parties with a list of available  
36 arbitrators.

37 If within 10 days of receiving the list of available arbitrators, the  
38 parties are unable to mutually agree upon the selection of an  
39 arbitrator and so notify the commission in writing, the assignment  
40 of the arbitrator for the purposes of this section shall be the  
41 responsibility of the commission, independent of and without any  
42 participation by either of the parties. The commission shall select  
43 the arbitrator for assignment by lot.

44 Should an arbitrator selected by mutual agreement be unable to  
45 serve, the parties shall be afforded an opportunity to select a  
46 replacement. If the two parties are unable to mutually agree upon  
47 the selection of a replacement within a time period prescribed by

1 the commission, the commission shall select the replacement in the  
2 manner hereinafter provided.

3 In any proceeding where an assigned arbitrator is unable to  
4 serve or, pursuant to the preceding paragraph, the two parties are  
5 unable to mutually agree upon a replacement, the commission shall  
6 assign a replacement arbitrator. The assignment shall be the  
7 responsibility of the commission, independent of and without any  
8 participation by either of the parties. The commission shall select  
9 the replacement arbitrator for assignment by lot.

10 e. The arbitrator may administer oaths, require the attendance  
11 of witnesses, and the production of such documents as he may deem  
12 material to a just determination of the appeal, and for such purpose  
13 may issue subpoenas. If any person refuses to obey a subpoena, or  
14 refuses to be sworn or to testify, or if any witness, party or attorney  
15 is guilty of contempt while in attendance of any hearing, the  
16 arbitrator may, or the Attorney General if requested, shall invoke  
17 the aid of the Superior Court within the county in which the hearing  
18 is being held, and that court shall issue an appropriate order. A  
19 failure to obey the order may be punished by the court as contempt.

20 f. The arbitrator shall render an opinion and final  
21 determination within 90 days of his appointment, be that  
22 appointment by mutual agreement of the parties or by assignment of  
23 the commission by lot.

24 The arbitrator's final determination shall be binding on all  
25 parties and shall be implemented immediately.

26 g. (1) If the final determination sustains the officer's or the  
27 firefighter's appeal, the officer or firefighter shall be reinstated  
28 immediately with full pay, be restored all rights and benefits,  
29 including those accruable during the period of appeal, and shall,  
30 within a timely period prescribed by rule and regulation, be paid  
31 any salary moneys withheld by the officer's employing agency or  
32 the firefighter's department.

33 (2) If the final determination denies the officer's or the  
34 firefighter's appeal, the officer or firefighter shall reimburse his  
35 employing agency or department for all pay received during the  
36 period of the appeal pursuant to this section. If an officer or  
37 firefighter fails to reimburse his employing agency or department  
38 for the amounts he received pursuant to this section, the agency or  
39 department may have a lien, pursuant to the provisions of section 13  
40 of P.L. , c. (C. ) (pending before the Legislature as this  
41 bill), for those amounts on any and all property and income to  
42 which the officer or firefighter shall have or may acquire an interest  
43 in, including moneys contributed by the officer or firefighter to the  
44 Police and Firemen's Retirement System of New Jersey, established  
45 pursuant to P.L.1944, c.255 (C.43:16A-1 et seq.) or any other State  
46 retirement system established by law, and all terminal pay, such as  
47 compensation for earned sick and vacation leave, to which the  
48 officer or firefighter is entitled.

1 h. (1) During the period of an appeal of an arbitrator's final  
2 determination filed by an officer's employing agency or a  
3 firefighter's department, that officer or firefighter shall be entitled  
4 to receive the salary he was being paid at the time of his termination  
5 and shall continue to do so until a final determination has been  
6 made on the appeal.

7 (2) During the period of an appeal of an arbitrator's final  
8 determination filed by an officer or firefighter, that officer or  
9 firefighter shall not be entitled to receive any salary.

10  
11 12. (New section) a. Notwithstanding the provisions of the  
12 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
13 seq.), the Public Employment Relations Commission shall  
14 promulgate temporary rules to effectuate the purposes of sections  
15 10 and 11 of P.L. , c. (C. ) (pending before the Legislature  
16 as this bill). These rules shall include, but not be limited to  
17 practices and procedures governing matters such as discovery,  
18 motions and the conduct of hearings and shall be designed to ensure  
19 that all disciplinary cases subject to the provisions 'of' section 10  
20 of P.L. c. (C. ) (pending before the Legislature as this bill)  
21 are brought to resolution expeditiously. The temporary rules  
22 promulgated pursuant to this subsection shall take effect  
23 immediately and shall expire on the first day of the 13th month  
24 following enactment.

25 b. In accordance with the provisions of the "Administrative  
26 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the Public  
27 Employment Relations Commission shall promulgate rules and  
28 regulations to effectuate the purposes of sections 10 and 11 of  
29 P.L. , c. (C. ) (pending before the Legislature as this bill).  
30 These rules and regulations shall include, but not be limited to  
31 practices and procedures governing matters such as discovery,  
32 motions and the conduct of hearings and shall be designed to ensure  
33 that all disciplinary cases subject to the provisions of  
34 P.L. , c. (C. ) (pending before the Legislature as this bill)  
35 are brought to resolution expeditiously. The rules and regulations  
36 promulgated pursuant to this section shall take effect upon the  
37 expiration of the temporary rules promulgated pursuant to  
38 subsection a. of this section and may, as appropriate to effectuate  
39 the purposes of section 10 of P.L. , c. (C. ) (pending before  
40 the Legislature as this bill), be amended in accordance with the  
41 provisions of the "Administrative Procedure Act," P.L.1968, c.410  
42 (C.52:14B-1 et seq.).

43  
44 13. (New section) a. If an officer or firefighter who is required  
45 to reimburse his employing agency for pay received during a period  
46 of appeal pursuant section 6 or section 11 of P.L. , c. (C. )  
47 (pending before the Legislature as this bill) fails to do so, the  
48 employing agency or department shall have a lien on any or all

1 property or income which that officer or firefighter shall have, or in  
2 which the officer or firefighter may acquire, an interest, including  
3 moneys contributed by the officer or firefighter to the Police and  
4 Firemen's Retirement System of New Jersey, established pursuant  
5 to P.L.1944, c.255 (C.43:16A-1 et seq.) or any other State  
6 retirement system established by law, and all terminal pay, such as  
7 compensation for earned sick and vacation leave, to which the  
8 officer or firefighter is entitled. When properly filed as hereinafter  
9 provided, the lien shall have priority over all unrecorded  
10 encumbrances.

11 b. The lien shall be in a form to be prescribed by the Attorney  
12 General and shall contain the name of the affected law enforcement  
13 agency, the name and address of the officer or firefighter, the date  
14 of the officer's or firefighter's termination, the date the officer or  
15 firefighter was ordered to reimburse his employing agency or  
16 department, the amount due and payable as reimbursement on the  
17 date of the filing of the lien, together with notice of the rate of  
18 accumulation, if any, thereafter. The lien shall be signed by the  
19 State Treasurer or chief financial officer of the county or  
20 municipality, as appropriate, or his duly constituted agent.

21 c. As an additional remedy, the State Treasurer, or the chief  
22 financial officer of the county or municipality, as the case may be,  
23 may issue a certificate to the clerk of the Superior Court stating that  
24 the person identified in the certificate is indebted under the  
25 provisions of P.L. , c. (C. ) (pending before the Legislature  
26 as this bill) for the amount set forth in the certificate. The certificate  
27 shall reference P.L. , c. (C. ) (pending before the  
28 Legislature as this bill), the statute under which the indebtedness  
29 arises. Thereupon the clerk shall immediately enter upon the record  
30 of docketed judgments the name of that officer or firefighter as  
31 debtor; the State, county, or municipality, as appropriate, as  
32 creditor; the address of the officer if shown in the certificate; the  
33 amount of the debt so certified; a reference to P.L. , c. (C. )  
34 (pending before the Legislature as this bill), the statute under which  
35 the debt is assessed; and the date of making such entries. The  
36 docketing of the certificate shall have the same force and effect as a  
37 civil judgment docketed in the Superior Court and the State, county,  
38 or municipality, as the case may be, shall have all the remedies and  
39 may take all of the proceedings for the collection thereof which may  
40 be had or taken upon the recovery of a judgment in action, but  
41 without prejudice to any right to appeal. Upon entry by the clerk of  
42 the certificate in the record of docketed judgments in accordance  
43 with the provisions of this subsection, interest in the amount  
44 specified by court rule for post-judgment interest shall accrue from  
45 the date of the docketing of the certificate; provided, however,  
46 payment of the interest may be waived by the State Treasurer, or the  
47 chief financial officer of the affected county or municipality. In the  
48 event that the debt remains unpaid following the issuance of the

1 certificate of debt and either the State Treasurer, or the chief  
2 financial officer of the affected county or municipality take any  
3 further collections action including referral of the matter to the  
4 Attorney General, or his designee, or the appropriate county or  
5 municipal official, or his designee, as the case may be, the fee  
6 imposed in lieu of the actual cost of collection, may be 20% of the  
7 debt or \$200, whichever is greater.

8 d. The clerk of the Superior Court shall provide suitable books  
9 in which shall be entered copies of the liens filed pursuant to this  
10 section. The entries shall be properly indexed in the name of the  
11 officer or firefighter subject to the lien.

12 All liens and other papers incidental thereto required for the  
13 purposes of this section shall be received and recorded by the clerk  
14 of the Superior Court, without payment of fees.

15 e. To discharge any lien or liens filed pursuant to this section,  
16 the State Treasurer or the chief financial officer of the affected  
17 county or municipality, or his duly constituted agent, shall file with  
18 the clerk of the Superior Court, a duly acknowledged certificate  
19 setting forth the fact that the State, county or municipality desires to  
20 discharge the lien of record.

21 The State Treasurer or the chief financial officer of the affected  
22 county or municipality is authorized to compromise for settlement  
23 any lien filed under the provisions of this section. A memorandum  
24 of compromise and settlement signed by the State Treasurer or the  
25 chief financial officer of the affected county or municipality shall  
26 be sufficient authorization for a complete discharge of the lien.

27 f. Any person desiring to secure immediate discharge of any  
28 lien may deposit with the court cash in an amount sufficient to  
29 cover the amount of the lien, or post a bond in an amount and with  
30 sureties approved by the court. Upon proper notice to the State or  
31 the affected county or municipality of such deposit or bond, a  
32 satisfaction of the lien shall be filed forthwith with the clerk of the  
33 Superior Court.

34 g. Any person affected in any manner, whether directly or  
35 indirectly by any lien filed under the provisions of this section, and  
36 desiring to examine the validity of the lien or the facts and  
37 circumstances surrounding the entry of the lien, may do so in an  
38 action brought in the county where the lien was filed. The action  
39 shall be brought against the State, county or municipal law  
40 enforcement agency 'or department' claiming the lien, and the court  
41 may proceed in the action in a summary manner and enter such  
42 judgment as it may deem appropriate.

43  
44 14. N.J.S.40A:14-150 is amended to read as follows:

45 40A:14-150. Any member or officer of a police department or  
46 force in a municipality wherein **【Title 11 (Civil Service)】** Title 11A  
47 of the **【Revised】** New Jersey Statutes is not in operation, who has  
48 been tried and convicted upon any charge or charges, may obtain a

1 review thereof by the Superior Court; provided, however, that in the  
2 case of an officer who is appealing removal from his office,  
3 employment or position for a complaint or charges, other than a  
4 complaint or charges relating to a criminal offense, the officer may,  
5 in lieu of serving a written notice seeking a review of that removal  
6 by the court, submit his appeal to arbitration pursuant to section 10  
7 of P.L. , c. (C. ) (pending before the Legislature as this  
8 bill). Such review shall be obtained by serving a written notice of  
9 an application therefor upon the officer or board whose action is to  
10 be reviewed within 10 days after written notice to the member or  
11 officer of the conviction. The officer or board shall transmit to the  
12 court a copy of the record of such conviction, and of the charge or  
13 charges for which the applicant was tried. The court shall hear the  
14 cause de novo on the record below and may either affirm, reverse or  
15 modify such conviction. If the applicant shall have been removed  
16 from his office, employment or position the court may direct that he  
17 be restored to such office, employment or position and to all his  
18 rights pertaining thereto, and may make such other order or  
19 judgment as said court shall deem proper.

20 Either party may supplement the record with additional  
21 testimony subject to the rules of evidence.

22 (cf: P.L.1981, c.75, s.6)

23

24 15. N.J.S.40A:14-22 is amended to read as follows:

25 40A:14-22. Any member or officer of a paid or part-paid fire  
26 department or force in a municipality wherein Title **11** (Civil  
27 Service) **11A** of the **Revised** New Jersey Statutes is not in  
28 operation, who has been tried and convicted upon any charge or  
29 charges may obtain a review thereof by the Superior Court;  
30 provided, however, a firefighter who is qualified under the  
31 provisions of section 10 of P.L. , c. (C. ) (pending before  
32 the Legislature as this bill) may appeal removal from his office,  
33 employment or position for a complaint or charges, other than a  
34 complaint or charges relating to a criminal offense, by submitting  
35 an appeal to arbitration pursuant to section 10 of  
36 P.L. , c. (C. ) (pending before the Legislature as this bill) in  
37 lieu of serving a written notice seeking a review of that removal by  
38 the court. Such review shall be obtained by serving a written notice  
39 of an application therefor upon the officer or board whose action is  
40 to be reviewed within 10 days after written notice to the member or  
41 officer of the conviction. The officer or board shall transmit to the  
42 court a copy of the record of such conviction, and of the charge or  
43 charges for which the applicant was tried. The court shall hear the  
44 cause de novo on the record below and may either affirm, reverse or  
45 modify such conviction. If the applicant shall have been removed  
46 from his office, employment or position the court may direct that he  
47 be restored to such office, employment or position and to all his

1 rights pertaining thereto, and may make such other order or  
2 judgment as said court shall deem proper.

3 Either party may supplement the record with additional  
4 testimony subject to the rules of evidence.

5 (cf: P.L.1981, c.75, s.5)

6

7 16. This act shall take effect on the first day of the third month  
8 following enactment and shall apply to all disciplinary cases in  
9 which the underlying conduct occurred after that effective date.  
10 Notwithstanding the effective date, the Civil Service Commission,  
11 the Office of Administrative Law and the Public Employment  
12 Relations Commission may take such anticipatory administrative  
13 actions in advance thereof as shall be necessary for the  
14 implementation of this act.

# ASSEMBLY, No. 3481

## STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED DECEMBER 8, 2008

**Sponsored by:**

**Assemblyman GARY S. SCHAER**

**District 36 (Bergen, Essex and Passaic)**

**Assemblyman FREDERICK SCALERA**

**District 36 (Bergen, Essex and Passaic)**

**SYNOPSIS**

Provides certain law enforcement officers and firefighters regain pay status when appeals of termination are not resolved within 180 days.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning the suspensions of certain law enforcement  
2 officers and firefighters, supplementing Title 40A of the New  
3 Jersey Statutes and amending N.J.S.40A:14-150 and  
4 N.J.S.40A:14-22.

5

6 **BE IT ENACTED** by the Senate and General Assembly of the State  
7 of New Jersey:

8

9 1. (New section) As used in this act:

10 “Law enforcement agency” or “agency” means any public  
11 agency, other than the Department of Law and Public Safety, any  
12 police force, department, or division within the State, or any county  
13 or municipality thereof, which is empowered by statute to act for  
14 the detection, investigation, arrest, conviction, detention, or  
15 rehabilitation of persons violating the criminal laws of this State.

16 “Law enforcement officer” or “officer” means any person who is  
17 employed as a permanent full-time member of any State, county, or  
18 municipal law enforcement agency, department, or division of those  
19 governments who is statutorily empowered to act for the detection,  
20 investigation, arrest, conviction, detention, or rehabilitation of  
21 persons violating the criminal laws of this State and statutorily  
22 required to successfully complete a training course approved by, or  
23 certified as being substantially equivalent to such an approved  
24 course, by the Police Training Commission pursuant to P.L.1961,  
25 c.56 (C.52:17B-66 et seq.).

26 “Paid firefighter” or “firefighter” means any full time paid  
27 firefighter employed by a public fire department.

28 “Public fire department” or “department” means any department  
29 of a municipality, county, fire district or the State or any agency  
30 thereof having employees engaged in firefighting provided that such  
31 firefighting employees are included in a negotiating unit exclusively  
32 comprised of firefighting employees.

33

34 2. (New section) a. When a law enforcement officer employed  
35 by a law enforcement agency or a firefighter employed by a public  
36 fire department that is subject to the provisions of Title 11A of the  
37 New Jersey Statutes is suspended from performing his official  
38 duties without pay for a complaint or charges, other than (1) a  
39 complaint or charges relating to the subject matter of a pending  
40 criminal investigation, inquiry, complaint, or charge whether pre-  
41 indictment or post indictment, or (2) when the complaint or charges  
42 allege conduct that also would constitute a violation of the criminal  
43 laws of this State or any other jurisdiction, and the law enforcement  
44 agency employing the officer or the public fire department  
45 employing the firefighter seeks to terminate that officer’s or

**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 firefighter's employment for the conduct that was the basis for the  
2 officer's or firefighter's suspension without pay, a final  
3 determination on the officer's or firefighter's suspension and  
4 termination shall be rendered within 180 calendar days from the  
5 date the officer or firefighter is suspended without pay.

6 If a final determination is not rendered within those 180 days, as  
7 hereinafter calculated, the officer or firefighter shall, commencing  
8 on the 181st calendar day, begin again to receive the base salary he  
9 was being paid at the time of his suspension and shall continue to  
10 do so until a final determination on the officer's or firefighter's  
11 termination is rendered.

12 b. The 180 calendar day period shall commence on the date  
13 that the officer or firefighter is suspended without pay and shall be  
14 calculated as follows:

15 (1) The calendar days that accrue between the date the officer or  
16 firefighter is terminated by his employing agency or department and  
17 the date on which the officer or firefighter files his appeal of his  
18 termination with the Office of Administrative Law shall not be used  
19 in calculating the date upon which the officer or firefighter is  
20 entitled, pursuant to subsection a. of this section, to receive his base  
21 salary pending a final determination on his appeal;

22 (2) If the officer or firefighter or their representative requests  
23 and is granted a postponement of a hearing or any other delay  
24 before the 181st calendar day, the calendar days that accrue during  
25 that postponement or delay shall not be used in calculating the date  
26 upon which the officer or firefighter is entitled, pursuant to  
27 subsection a. of this section, to receive his base salary pending a  
28 final determination on his appeal;

29 (3) If the officer or firefighter or their representative causes by  
30 his actions a postponement, adjournment or delay of a hearing  
31 before the 181st calendar day, the calendar days that accrue during  
32 that postponement, adjournment or delay shall not be used in  
33 calculating the date upon which the officer or firefighter is entitled,  
34 pursuant to subsection a. of this section, to receive his base salary  
35 pending a final determination on his appeal;

36 (4) If the officer and the agency or the firefighter and the  
37 department agree to any postponement or delay of a hearing before  
38 the 181st calendar day, the calendar days that accrue during that  
39 postponement or delay shall not be used in calculating the date upon  
40 which that officer or firefighter is entitled, pursuant to subsection a.  
41 of this section, to receive his base salary pending a final  
42 determination on his appeal; or

43 (5) If the administrative law judge or Civil Service Commission  
44 for good cause postpone or delay a hearing before the 181st  
45 calendar day, the calendar days that accrue during that  
46 postponement or delay shall not be used in calculating the date upon  
47 which that officer or firefighter is entitled, pursuant to subsection a.

1 of this section, to receive his base salary pending a final  
2 determination on his appeal.

3 c. If an officer or firefighter who is receiving full pay pending  
4 a final determination on an appeal in accordance with the provisions  
5 of subsection a. of this section requests and is granted, or who  
6 otherwise causes by his actions a postponement, adjournment, or  
7 delay of a hearing, or whose representative requests and is granted,  
8 or who otherwise causes by his actions a postponement,  
9 adjournment or delay of a hearing, that officer or firefighter shall  
10 not be entitled to receive his base salary during the period of that  
11 postponement, adjournment, or delay.

12  
13 3. (New section) a. An employing agency or department  
14 subject to the provisions of section 2 of P.L. , c. (C )  
15 (pending before the Legislature as this bill) shall conduct a hearing  
16 on the complaint or charges within 30 days of the date on which the  
17 officer or firefighter was suspended, unless (1) the officer or  
18 firefighter agrees to waive his right to the hearing or (2) the parties  
19 agree to an adjournment to a later date. As provided in paragraphs  
20 (2) and (4) of subsection b. of section 2 of P.L. , c. (C. )  
21 (pending before the Legislature as this bill), the calendar days that  
22 accrue during any such waiver or agreement to adjourn shall not be  
23 used in calculating the date upon which the officer or firefighter is  
24 entitled, pursuant to subsection a. of section 2 of  
25 P.L. , c. (C. ) (pending before the Legislature as this bill),  
26 to receive his base salary pending a final determination on the  
27 officer's or firefighter's appeal.

28 b. The employing agency or department shall make a final  
29 disposition of the complaint and charges against the officer or  
30 firefighter within 20 days of the hearing and shall furnish the officer  
31 or firefighter with a written notice thereof.

32 c. An officer or firefighter shall have 20 days from the date of  
33 receipt of a written notice to appeal. The calendar days that accrue  
34 between the date of the receipt of a written notice of a final  
35 disposition and the filing of an appeal shall not be used in  
36 calculating the date upon which that officer or firefighter is entitled,  
37 pursuant to subsection a. of section 2 of P.L. , c. (C. )  
38 (pending before the Legislature as this bill), to receive his base  
39 salary pending a final determination on his appeal.

40 d. To facilitate the timely rendering of a final determination on  
41 an appeal filed pursuant to the provisions of P.L. , c. (C. )  
42 (pending before the Legislature as this bill), an aggrieved officer or  
43 firefighter shall file his appeal simultaneously with the Office of  
44 Administrative Law and the Civil Service Commission. The  
45 simultaneous filing of an appeal pursuant to this subsection shall be  
46 in a manner, form and time prescribed by the Civil Service  
47 Commission.

1 4. (New section) If the administrative law judge recommends  
2 that:

3 a. The officer's or firefighter's appeal be denied and that the  
4 officer's or firefighter's employment be terminated, the officer or  
5 firefighter shall not be entitled to receive his base salary, or  
6 continue to receive his base salary if, at the time the judge's  
7 recommendation is rendered, the officer or firefighter already is  
8 receiving his base salary, as provided in subsection a. of section 2  
9 of P.L. , c. (C. ) (pending before the Legislature as this  
10 bill), until a final determination rendered by the Civil Service  
11 Commission reverses that recommendation;

12 b. The employing agency's action terminating the officer or the  
13 department's action terminating the firefighter be dismissed, the  
14 employing agency or department shall, within the time prescribed  
15 by the Civil Service Commission, begin paying the officer or  
16 firefighter his base salary. If, at the time the judge's  
17 recommendation is rendered, the officer or firefighter is already is  
18 receiving his base salary, as provided in section 2 of  
19 P.L. , c. (C. ) (pending before the Legislature as this bill),  
20 the officer or firefighter shall continue to do so, until a final  
21 determination rendered by the Civil Service Commission reverses  
22 that recommendation; or

23 c. The officer or firefighter be subject to disciplinary action,  
24 but to a disciplinary action that is less adverse than termination of  
25 the officer's or firefighter's employment, the officer or firefighter  
26 shall be entitled, commencing on the 181st day following his  
27 suspension, as provided in section 2 of P.L. , c. (C. )  
28 (pending before the Legislature as this bill) or on the day set forth  
29 in the judge's recommendation, whichever is later, to receive his  
30 base salary. In the case of an officer or firefighter who is receiving  
31 his base salary in accordance with the provisions of subsection a.  
32 section 2 of P.L. , c. (C. ) (pending before the Legislature  
33 as this bill) at the time the judge's recommendation is issued, the  
34 officer or firefighter shall continue to receive his base salary unless  
35 otherwise recommended by the judge.

36 d. Nothing herein shall be construed to authorize an award of  
37 back pay before a final decision is issued pursuant to section 5 of  
38 P.L. , c. (C. ) (pending before the Legislature as this bill).

39

40 5. (New section) The Office of Administrative Law  
41 immediately shall transmit an administrative law judge's  
42 recommended decision in each case subject to the provisions of  
43 P.L. , c. (C. ) (pending before the Legislature as this bill) to  
44 the Civil Service Commission for review.

45 Within 45 days of receiving such a decision, the commission  
46 shall complete its review and issue its final determination. If the  
47 commission fails to issue its final determination within that 45 day  
48 period, the recommended decision of the administrative law judge

1 shall be deemed to be final; provided, however, the commission, at  
2 its discretion, may extend its review period by no more than an  
3 additional 15 days. If, during any such extension, the commission  
4 fails to issue its final determination, the recommended decision of  
5 the administrative law judge shall be deemed to be final, unless, for  
6 good cause given, the commission gives written notice to the Chief  
7 Administrative Law Judge, the officer or firefighter, and the  
8 officer's employing agency or the firefighter's department that the  
9 review period shall be extended.

10 If the extension of a review period pursuant to this subsection is  
11 initiated prior to the 181<sup>st</sup> calendar day, the calendar days accruing  
12 during that extension, in accordance with the provisions of  
13 paragraph (5) of subsection b. of section 2 of P.L. , c. (C. )  
14 (pending before the Legislature as this bill), shall not be used in  
15 calculating the date upon which that officer or firefighter is entitled,  
16 pursuant to section 2 of P.L. , c. (C. ) (pending before the  
17 Legislature as this bill), to receive his base salary pending a final  
18 determination of his appeal.

19

20 6. (New section) a. If the final determination of the  
21 commission affirms the officer's or firefighter's appeal, the officer  
22 or firefighter shall be reinstated immediately, be entitled to receive  
23 his base salary, be restored all rights and benefits, including those  
24 accruable during the period of appeal, and shall, within a timely  
25 period prescribed by rule and regulation, be paid any salary moneys  
26 withheld by the officer's employing agency or the firefighter's  
27 department during the period the officer or firefighter was  
28 suspended without pay.

29 b. If the final determination issued by the commission denies  
30 the officer's or firefighter's appeal, the officer or firefighter shall  
31 reimburse his employing agency or department for all pay received  
32 during the period of the appeal pursuant to section 2 of  
33 P.L. , c. (C. ) (pending before the Legislature as this bill).

34 If an officer or firefighter fails to reimburse his employing  
35 agency or department for the amounts he received pursuant to  
36 subsection a. of section 2 of P.L. , c. (C. ) (pending before  
37 the Legislature as this bill), the agency or department may have a  
38 lien, pursuant to the provisions of section 13 of  
39 P.L. , c. (C. ) (pending before the Legislature as this bill),  
40 for those amounts on any and all property and income to which the  
41 officer or firefighter shall have or may acquire an interest in,  
42 including moneys contributed by the officer or firefighter to the  
43 Police and Firemen's Retirement System of New Jersey, established  
44 pursuant to P.L.1944, c.255 (C.43:16A-1 et seq.) or any other State  
45 retirement system established by law, and all terminal pay, such as  
46 compensation for earned sick and vacation leave, to which the  
47 officer or firefighter is entitled.

1       7. (New section) a. An officer or firefighter appealing a final  
2 determination terminating his employment to the Appellate  
3 Division of the Superior Court, shall not be entitled to the payment  
4 of any base salary under the provisions of section 2 of  
5 P.L. , c. (C. ) (pending before the Legislature as this bill)  
6 during the pendency of that appeal.

7       b. If the employing agency or department appeals a final  
8 determination rendered by the Civil Service Commission to the  
9 Appellate Division, the officer or firefighter shall continue to  
10 receive his base salary during the pendency of that appeal.

11       If the court should affirm the employing agency's or  
12 department's termination, the officer or firefighter shall reimburse  
13 his employing agency or department for all base salary received  
14 under the provisions of P.L. , c. (C. ) (pending before the  
15 Legislature as this bill). If an officer or firefighter fails to  
16 reimburse his employing agency or department for the amounts so  
17 received, the agency or department may have a lien, pursuant to the  
18 provisions of section 13 of P.L. , c. (C. ) (pending before  
19 the Legislature as this bill), for those amounts on any and all  
20 property and income to which the officer or firefighter shall have or  
21 may acquire an interest in, including moneys contributed by the  
22 officer or firefighter to the Police and Firemen's Retirement System  
23 of New Jersey, established pursuant to P.L.1944, c.255 (C.43:16A-1  
24 et seq.) or any other State retirement system established by law, and  
25 all terminal pay, such as compensation for earned sick and vacation  
26 leave, to which the officer or firefighter is entitled.

27  
28       8. (New section) Within six months of the effective date of  
29 P.L. , c. (C. ) (pending before the Legislature as this bill),  
30 the Director of the Office of Administrative Law shall establish a  
31 special unit, to be known as the Law Enforcement and Firefighter  
32 Unit. Administrative law judges qualified by their expertise and  
33 experience in disciplinary matters and cases subject to the  
34 provisions of P.L. , c. (C. ) (pending before the Legislature  
35 as this bill) shall be assigned to this Law Enforcement and  
36 Firefighter Unit.

37       To the greatest extent practicable and feasible, all cases subject  
38 to P.L. , c. (C. ) (pending before the Legislature as this bill)  
39 shall be heard and determined by judges assigned to the Law  
40 Enforcement and Firefighter Unit.

41  
42       9. (New section) a. Notwithstanding the provisions of the  
43 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
44 seq.), the Office of Administrative Law and the Civil Service  
45 Commission, in consultation, shall promulgate temporary rules to  
46 effectuate the purposes of section 2 through section 7, inclusive, of  
47 P.L. , c. (C. ) (pending before the Legislature as this bill).  
48 These rules shall include, but not be limited to practices and

1 procedures governing matters such as discovery, motions and the  
2 conduct of hearings and shall be designed to ensure that all  
3 disciplinary cases subject to the provisions of section 2 of  
4 P.L. c. (C. ) (pending before the Legislature as this bill) are  
5 brought to resolution expeditiously. The temporary rules  
6 promulgated pursuant to this subsection shall take effect  
7 immediately and shall expire on the first day of the 13th month  
8 following enactment.

9 b. In accordance with the provisions of the “Administrative  
10 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), the Office of  
11 Administrative Law and the Civil Service Commission, in  
12 consultation, shall promulgate rules and regulations to effectuate  
13 the purposes of section 2 through section 7, inclusive, of  
14 P.L. , c. (C. ) (pending before the Legislature as this bill).  
15 These rules and regulations shall include, but not be limited to  
16 practices and procedures governing matters such as discovery,  
17 motions and the conduct of hearings and shall be designed to ensure  
18 that all disciplinary cases subject to the provisions of section 2 of  
19 P.L. , c. (C. ) (pending before the Legislature as this bill)  
20 are brought to resolution expeditiously. The rules and regulations  
21 promulgated pursuant to this section shall take effect upon the  
22 expiration of the temporary rules promulgated pursuant to  
23 subsection a. of this section and may, as appropriate to effectuate  
24 the purposes of P.L. , c. (C. ) (pending before the  
25 Legislature as this bill), be amended in accordance with the  
26 provisions of the “Administrative Procedure Act,” P.L.1968, c.410  
27 (C.52:14B-1 et seq.).

28  
29 10. (New section) a. When a law enforcement officer or  
30 firefighter employed by a law enforcement agency or department  
31 that is not subject to the provisions of Title 11A of the New Jersey  
32 Statutes is suspended from performing his official duties without  
33 pay for a complaint or charges, other than (1) a complaint or  
34 charges relating to the subject matter of a pending criminal  
35 investigation, inquiry, complaint, or charge whether pre-indictment  
36 or post indictment, or (2) when the complaint or charges allege  
37 conduct that also would constitute a violation of the criminal laws  
38 of this State or any other jurisdiction, and the law enforcement  
39 agency or department employing the officer or firefighter seeks to  
40 terminate that officer’s or firefighter’s employment for the conduct  
41 that was the basis for the officer’s or firefighter’s suspension  
42 without pay, the officer, as an alternative to the judicial review  
43 authorized under N.J.S.40A:14-150, and the firefighter, as an  
44 alternative to the judicial review authorized under N.J.S.40A:14-22,  
45 may submit an appeal of his suspension and termination to the  
46 Public Employment Relations Commission for arbitration  
47 conducted in accordance with the provisions of section 11 of  
48 P.L. , c. (C. ) (pending before the Legislature as this bill). A

1 final determination on the officer's or firefighter's suspension and  
2 termination shall be rendered by an arbitrator within 180 calendar  
3 days from the date the officer or firefighter is suspended without  
4 pay.

5 If a final determination is not rendered within those 180 days, as  
6 hereinafter calculated, the officer or firefighter shall, commencing  
7 on the 181st calendar day, begin again to receive the base salary he  
8 was being paid at the time of his suspension and shall continue to  
9 do so until the final determination on the officer's or firefighter's  
10 termination is rendered.

11 b. The 180 calendar day period shall commence on the date  
12 that the officer or firefighter is suspended without pay and shall be  
13 calculated as follows:

14 (1) The calendar days that accrue between the date the officer or  
15 firefighter is terminated by his employing agency or department and  
16 the date on which the officer or firefighter submits his appeal for  
17 arbitration to the Public Employment Relations Commission  
18 pursuant to section 11 of P.L. , c. (C. ) (pending before the  
19 Legislature as this bill) shall not be used in calculating the date  
20 upon which the officer or firefighter is entitled, pursuant to  
21 subsection a. of this section, to receive his base salary pending a  
22 final determination on his appeal;

23 (2) If the officer or the firefighter or their representative requests  
24 and is granted a postponement of a hearing or any other delay  
25 before the 181st calendar day, the calendar days that accrue during  
26 that postponement or delay shall not be used in calculating the date  
27 upon which the officer or firefighter is entitled, pursuant to  
28 subsection a. of this section, to receive his base salary pending a  
29 final determination on his appeal;

30 (3) If the officer or the firefighter or their representative causes  
31 by his actions a postponement, adjournment or delay of a hearing  
32 before the 181st calendar day, the calendar days that accrue during  
33 that postponement, adjournment or delay shall not be used in  
34 calculating the date upon which the officer or firefighter is entitled,  
35 pursuant to subsection a. of this section, to receive his base salary  
36 pending a final determination on his appeal;

37 (4) If the officer and the agency or the firefighter and the  
38 department agree to any postponement or delay of a hearing before  
39 the 181st calendar day, the calendar days that accrue during that  
40 postponement or delay shall not be used in calculating the date upon  
41 which that officer or firefighter is entitled, pursuant to subsection a.  
42 of this section, to receive his base salary pending a final  
43 determination on his appeal; or

44 (5) If the arbitrator or the Public Employment Relations  
45 Commission for good cause postpones or delays a hearing before  
46 the 181st calendar day, the calendar days that accrue during that  
47 postponement or delay shall not be used in calculating the date upon  
48 which that officer or firefighter is entitled, pursuant to subsection a.

1 of this section, to receive his base salary pending final  
2 determination of his appeal.

3 c. If an officer or firefighter, who is receiving full pay pending  
4 a final determination in accordance with the provisions of  
5 subsection a. of this section, requests and is granted, or who  
6 otherwise causes by his actions a postponement, adjournment or  
7 delay of a hearing, or whose representative requests and is granted,  
8 or who otherwise causes by his actions a postponement,  
9 adjournment or delay of a hearing, that officer or firefighter shall be  
10 paid no salary during the period of that postponement, adjournment  
11 or delay.

12

13 11. (New section) a. In lieu of serving a written notice to the  
14 Superior Court under the provisions of N.J.S.40A:14-150 or  
15 N.J.S.40A:14-22, as appropriate, seeking review of the termination  
16 of his employment for a complaint or charges, other than a  
17 complaint or charges relating to a criminal offense, as prescribed in  
18 subsection a. of section 10 of P.L. , c. (C. ) (pending before  
19 the Legislature as this bill), an officer or firefighter may submit his  
20 appeal to arbitration as hereinafter provided.

21 b. Within 20 days of receiving notice of termination, the officer  
22 or firefighter shall submit his appeal for arbitration to the Public  
23 Employment Relations Commission. The appeal shall be filed in a  
24 manner and form prescribed by the commission.

25 Upon receipt of such an appeal, the commission shall forthwith  
26 notify the employing agency or department of the appeal.

27 c. The commission shall establish a special panel of arbitrators  
28 to hear appeals filed pursuant to this section. The arbitrators  
29 selected to serve on this special panel shall be qualified by  
30 experience and expertise in disciplinary matters and cases subject to  
31 the provisions of P.L. , c. (C. ) (pending before the  
32 Legislature as this bill).

33 d. Within 10 days of notifying the appealing officer's former  
34 employing agency or the firefighter's former department, the  
35 commission shall provide the parties with a list of available  
36 arbitrators.

37 If within 10 days of receiving the list of available arbitrators, the  
38 parties are unable to mutually agree upon the selection of an  
39 arbitrator and so notify the commission in writing, the assignment  
40 of the arbitrator for the purposes of this section shall be the  
41 responsibility of the commission, independent of and without any  
42 participation by either of the parties. The commission shall select  
43 the arbitrator for assignment by lot.

44 Should an arbitrator selected by mutual agreement be unable to  
45 serve, the parties shall be afforded an opportunity to select a  
46 replacement. If the two parties are unable to mutually agree upon  
47 the selection of a replacement within a time period prescribed by

1 the commission, the commission shall select the replacement in the  
2 manner hereinafter provided.

3 In any proceeding where an assigned arbitrator is unable to  
4 serve or, pursuant to the preceding paragraph, the two parties are  
5 unable to mutually agree upon a replacement, the commission shall  
6 assign a replacement arbitrator. The assignment shall be the  
7 responsibility of the commission, independent of and without any  
8 participation by either of the parties. The commission shall select  
9 the replacement arbitrator for assignment by lot.

10 e. The arbitrator may administer oaths, require the attendance  
11 of witnesses, and the production of such documents as he may deem  
12 material to a just determination of the appeal, and for such purpose  
13 may issue subpoenas. If any person refuses to obey a subpoena, or  
14 refuses to be sworn or to testify, or if any witness, party or attorney  
15 is guilty of contempt while in attendance of any hearing, the  
16 arbitrator may, or the Attorney General if requested, shall invoke  
17 the aid of the Superior Court within the county in which the hearing  
18 is being held, and that court shall issue an appropriate order. A  
19 failure to obey the order may be punished by the court as contempt.

20 f. The arbitrator shall render an opinion and final  
21 determination within 90 days of his appointment, be that  
22 appointment by mutual agreement of the parties or by assignment of  
23 the commission by lot.

24 The arbitrator's final determination shall be binding on all  
25 parties and shall be implemented immediately.

26 g. (1) If the final determination sustains the officer's or the  
27 firefighter's appeal, the officer or firefighter shall be reinstated  
28 immediately with full pay, be restored all rights and benefits,  
29 including those accruable during the period of appeal, and shall,  
30 within a timely period prescribed by rule and regulation, be paid  
31 any salary moneys withheld by the officer's employing agency or  
32 the firefighter's department.

33 (2) If the final determination denies the officer's or the  
34 firefighter's appeal, the officer or firefighter shall reimburse his  
35 employing agency or department for all pay received during the  
36 period of the appeal pursuant to this section. If an officer or  
37 firefighter fails to reimburse his employing agency or department  
38 for the amounts he received pursuant to this section, the agency or  
39 department may have a lien, pursuant to the provisions of section 13  
40 of P.L. , c. (C. ) (pending before the Legislature as this  
41 bill), for those amounts on any and all property and income to  
42 which the officer or firefighter shall have or may acquire an interest  
43 in, including moneys contributed by the officer or firefighter to the  
44 Police and Firemen's Retirement System of New Jersey, established  
45 pursuant to P.L.1944, c.255 (C.43:16A-1 et seq.) or any other State  
46 retirement system established by law, and all terminal pay, such as  
47 compensation for earned sick and vacation leave, to which the  
48 officer or firefighter is entitled.

1 h. (1) During the period of an appeal of an arbitrator's final  
2 determination filed by an officer's employing agency or a  
3 firefighter's department, that officer or firefighter shall be entitled  
4 to receive the salary he was being paid at the time of his termination  
5 and shall continue to do so until a final determination has been  
6 made on the appeal.

7 (2) During the period of an appeal of an arbitrator's final  
8 determination filed by an officer or firefighter, that officer or  
9 firefighter shall not be entitled to receive any salary.

10  
11 12. (New section) a. Notwithstanding the provisions of the  
12 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
13 seq.), the Public Employment Relations Commission shall  
14 promulgate temporary rules to effectuate the purposes of sections  
15 10 and 11 of P.L. , c. (C. ) (pending before the Legislature  
16 as this bill). These rules shall include, but not be limited to  
17 practices and procedures governing matters such as discovery,  
18 motions and the conduct of hearings and shall be designed to ensure  
19 that all disciplinary cases subject to the provisions section 10 of  
20 P.L. c. (C. ) (pending before the Legislature as this bill) are  
21 brought to resolution expeditiously. The temporary rules  
22 promulgated pursuant to this subsection shall take effect  
23 immediately and shall expire on the first day of the 13th month  
24 following enactment.

25 b. In accordance with the provisions of the "Administrative  
26 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the Public  
27 Employment Relations Commission shall promulgate rules and  
28 regulations to effectuate the purposes of sections 10 and 11 of  
29 P.L. , c. (C. ) (pending before the Legislature as this bill).  
30 These rules and regulations shall include, but not be limited to  
31 practices and procedures governing matters such as discovery,  
32 motions and the conduct of hearings and shall be designed to ensure  
33 that all disciplinary cases subject to the provisions of  
34 P.L. , c. (C. ) (pending before the Legislature as this bill)  
35 are brought to resolution expeditiously. The rules and regulations  
36 promulgated pursuant to this section shall take effect upon the  
37 expiration of the temporary rules promulgated pursuant to  
38 subsection a. of this section and may, as appropriate to effectuate  
39 the purposes of section 10 of P.L. , c. (C. ) (pending before  
40 the Legislature as this bill), be amended in accordance with the  
41 provisions of the "Administrative Procedure Act," P.L.1968, c.410  
42 (C.52:14B-1 et seq.).

43  
44 13. (New section) a. If an officer or firefighter who is required  
45 to reimburse his employing agency for pay received during a period  
46 of appeal pursuant section 6 or section 11 of P.L. , c. (C. )  
47 (pending before the Legislature as this bill) fails to do so, the  
48 employing agency or department shall have a lien on any or all

1 property or income which that officer or firefighter shall have, or in  
2 which the officer or firefighter may acquire, an interest, including  
3 moneys contributed by the officer or firefighter to the Police and  
4 Firemen's Retirement System of New Jersey, established pursuant  
5 to P.L.1944, c.255 (C.43:16A-1 et seq.) or any other State  
6 retirement system established by law, and all terminal pay, such as  
7 compensation for earned sick and vacation leave, to which the  
8 officer or firefighter is entitled. When properly filed as hereinafter  
9 provided, the lien shall have priority over all unrecorded  
10 encumbrances.

11 b. The lien shall be in a form to be prescribed by the Attorney  
12 General and shall contain the name of the affected law enforcement  
13 agency, the name and address of the officer or firefighter, the date  
14 of the officer's or firefighter's termination, the date the officer or  
15 firefighter was ordered to reimburse his employing agency or  
16 department, the amount due and payable as reimbursement on the  
17 date of the filing of the lien, together with notice of the rate of  
18 accumulation, if any, thereafter. The lien shall be signed by the  
19 State Treasurer or chief financial officer of the county or  
20 municipality, as appropriate, or his duly constituted agent.

21 c. As an additional remedy, the State Treasurer, or the chief  
22 financial officer of the county or municipality, as the case may be,  
23 may issue a certificate to the clerk of the Superior Court stating that  
24 the person identified in the certificate is indebted under the  
25 provisions of P.L. , c. (C. ) (pending before the Legislature  
26 as this bill) for the amount set forth in the certificate. The certificate  
27 shall reference P.L. , c. (C. ) (pending before the  
28 Legislature as this bill), the statute under which the indebtedness  
29 arises. Thereupon the clerk shall immediately enter upon the record  
30 of docketed judgments the name of that officer or firefighter as  
31 debtor; the State, county, or municipality, as appropriate, as  
32 creditor; the address of the officer if shown in the certificate; the  
33 amount of the debt so certified; a reference to P.L. , c. (C. )  
34 (pending before the Legislature as this bill), the statute under which  
35 the debt is assessed; and the date of making such entries. The  
36 docketing of the certificate shall have the same force and effect as a  
37 civil judgment docketed in the Superior Court and the State, county,  
38 or municipality, as the case may be, shall have all the remedies and  
39 may take all of the proceedings for the collection thereof which may  
40 be had or taken upon the recovery of a judgment in action, but  
41 without prejudice to any right to appeal. Upon entry by the clerk of  
42 the certificate in the record of docketed judgments in accordance  
43 with the provisions of this subsection, interest in the amount  
44 specified by court rule for post-judgment interest shall accrue from  
45 the date of the docketing of the certificate; provided, however,  
46 payment of the interest may be waived by the State Treasurer, or the  
47 chief financial officer of the affected county or municipality. In the  
48 event that the debt remains unpaid following the issuance of the

1 certificate of debt and either the State Treasurer, or the chief  
2 financial officer of the affected county or municipality take any  
3 further collections action including referral of the matter to the  
4 Attorney General, or his designee, or the appropriate county or  
5 municipal official, or his designee, as the case may be, the fee  
6 imposed in lieu of the actual cost of collection, may be 20% of the  
7 debt or \$200, whichever is greater.

8 d. The clerk of the Superior Court shall provide suitable books  
9 in which shall be entered copies of the liens filed pursuant to this  
10 section. The entries shall be properly indexed in the name of the  
11 officer or firefighter subject to the lien.

12 All liens and other papers incidental thereto required for the  
13 purposes of this section shall be received and recorded by the clerk  
14 of the Superior Court, without payment of fees.

15 e. To discharge any lien or liens filed pursuant to this section,  
16 the State Treasurer or the chief financial officer of the affected  
17 county or municipality, or his duly constituted agent, shall file with  
18 the clerk of the Superior Court, a duly acknowledged certificate  
19 setting forth the fact that the State, county or municipality desires to  
20 discharge the lien of record.

21 The State Treasurer or the chief financial officer of the affected  
22 county or municipality is authorized to compromise for settlement  
23 any lien filed under the provisions of this section. A memorandum  
24 of compromise and settlement signed by the State Treasurer or the  
25 chief financial officer of the affected county or municipality shall  
26 be sufficient authorization for a complete discharge of the lien.

27 f. Any person desiring to secure immediate discharge of any  
28 lien may deposit with the court cash in an amount sufficient to  
29 cover the amount of the lien, or post a bond in an amount and with  
30 sureties approved by the court. Upon proper notice to the State or  
31 the affected county or municipality of such deposit or bond, a  
32 satisfaction of the lien shall be filed forthwith with the clerk of the  
33 Superior Court.

34 g. Any person affected in any manner, whether directly or  
35 indirectly by any lien filed under the provisions of this section, and  
36 desiring to examine the validity of the lien or the facts and  
37 circumstances surrounding the entry of the lien, may do so in an  
38 action brought in the county where the lien was filed. The action  
39 shall be brought against the State, county or municipal law  
40 enforcement agency claiming the lien, and the court may proceed in  
41 the action in a summary manner and enter such judgment as it may  
42 deem appropriate.

43

44 14. N.J.S.40A:14-150 is amended to read as follows:

45 40A:14-150. Any member or officer of a police department or  
46 force in a municipality wherein **【Title 11 (Civil Service)】** Title 11A  
47 of the **【Revised】** New Jersey Statutes is not in operation, who has  
48 been tried and convicted upon any charge or charges, may obtain a

1 review thereof by the Superior Court; provided, however, that in the  
2 case of an officer who is appealing removal from his office,  
3 employment or position for a complaint or charges, other than a  
4 complaint or charges relating to a criminal offense, the officer may,  
5 in lieu of serving a written notice seeking a review of that removal  
6 by the court, submit his appeal to arbitration pursuant to section 10  
7 of P.L. , c. (C. ) (pending before the Legislature as this  
8 bill). Such review shall be obtained by serving a written notice of  
9 an application therefor upon the officer or board whose action is to  
10 be reviewed within 10 days after written notice to the member or  
11 officer of the conviction. The officer or board shall transmit to the  
12 court a copy of the record of such conviction, and of the charge or  
13 charges for which the applicant was tried. The court shall hear the  
14 cause de novo on the record below and may either affirm, reverse or  
15 modify such conviction. If the applicant shall have been removed  
16 from his office, employment or position the court may direct that he  
17 be restored to such office, employment or position and to all his  
18 rights pertaining thereto, and may make such other order or  
19 judgment as said court shall deem proper.

20 Either party may supplement the record with additional  
21 testimony subject to the rules of evidence.

22 (cf: P.L.1981, c.75, s.6)

23

24 15. N.J.S.40A:14-22 is amended to read as follows:

25 40A:14-22. Any member or officer of a paid or part-paid fire  
26 department or force in a municipality wherein Title **11** (Civil  
27 Service) **11A** of the **Revised** New Jersey Statutes is not in  
28 operation, who has been tried and convicted upon any charge or  
29 charges may obtain a review thereof by the Superior Court;  
30 provided, however, a firefighter who is qualified under the  
31 provisions of section 10 of P.L. , c. (C. ) (pending before  
32 the Legislature as this bill) may appeal removal from his office,  
33 employment or position for a complaint or charges, other than a  
34 complaint or charges relating to a criminal offense, by submitting  
35 an appeal to arbitration pursuant to section 10 of  
36 P.L. , c. (C. ) (pending before the Legislature as this bill) in  
37 lieu of serving a written notice seeking a review of that removal by  
38 the court. Such review shall be obtained by serving a written notice  
39 of an application therefor upon the officer or board whose action is  
40 to be reviewed within 10 days after written notice to the member or  
41 officer of the conviction. The officer or board shall transmit to the  
42 court a copy of the record of such conviction, and of the charge or  
43 charges for which the applicant was tried. The court shall hear the  
44 cause de novo on the record below and may either affirm, reverse or  
45 modify such conviction. If the applicant shall have been removed  
46 from his office, employment or position the court may direct that he  
47 be restored to such office, employment or position and to all his

1 rights pertaining thereto, and may make such other order or  
2 judgment as said court shall deem proper.

3 Either party may supplement the record with additional  
4 testimony subject to the rules of evidence.

5 (cf: P.L.1981, c.75, s.5)

6

7 16. This act shall take effect on the first day of the third month  
8 following enactment and shall apply to all disciplinary cases in  
9 which the underlying conduct occurred after that effective date.  
10 Notwithstanding the effective date, the Civil Service Commission,  
11 the Office of Administrative Law and the Public Employment  
12 Relations Commission may take such anticipatory administrative  
13 actions in advance thereof as shall be necessary for the  
14 implementation of this act.

15

16

17

#### STATEMENT

18

19 This bill would entitle certain law enforcement officers and paid  
20 firefighters who are appealing terminations for noncriminal  
21 complaints or charges to again begin receiving their base salary if a  
22 final determination on their appeal is not rendered within 180 days.

23 Starting on the 181st following their suspension without pay, law  
24 enforcement officers or firefighters would begin again to receive the  
25 base salary that they were being paid prior to their termination and  
26 to continue to receive that salary until a final determination on their  
27 appeal is rendered. If the law enforcement officer or firefighter  
28 prevails in the appeal, the salary moneys that have been withheld  
29 are to be paid to that law enforcement officer or firefighter. If an  
30 appeal is denied, any moneys paid to the officer or firefighter are to  
31 be returned to the employer. The bill provides that a law  
32 enforcement officer or firefighter who fails to reimburse his  
33 employer is subject to a lien for those amounts.

34 The bill outlines how the 180-day period is to be calculated. The  
35 period is to commence the day the officer or firefighter is  
36 suspended without pay. Delays and postponements caused by the  
37 officer or firefighter, his representative, or in the filing of his appeal  
38 are not to be included in calculating the 180 days. Similarly,  
39 mutually agreed upon delays or postponement by the officer or  
40 firefighter, and his former employer, or delays or postponements  
41 declared by the Civil Service Commission, in the case of a civil  
42 service employer, or the arbitrator in the case of a non-civil service  
43 employer, are not to be counted.

44 The procedures for filing and resolving these types of appeals are  
45 well established for civil service jurisdictions. At present, there are  
46 no standard appeal procedures for non-civil service jurisdictions.  
47 Such matters are governed by contract.

1 Under the provisions of the bill, the Public Employment  
2 Relations Commission (PERC) is to establish a special panel of  
3 arbitrators who, by experience and expertise, are qualified to hear  
4 and resolve these types of disciplinary cases and appeals. The bill  
5 specifies that an officer or firefighter must file his appeal with  
6 PERC within 20 days of his termination. Upon the receipt of the  
7 appeal, PERC is to notify the former employer of the officer or  
8 firefighter. Within 10 days of that notice, PERC is to provide both  
9 parties with a list of available arbitrators. If the parties cannot  
10 mutually agree on an arbitrator within 10 days of their receiving  
11 that list, PERC is to appoint an arbitrator, who has been chosen by  
12 lot, to the case. The bill affords the arbitrator the authority to  
13 administer oaths, require attendance of witnesses, and the  
14 production of any documents deemed material to ensure a just  
15 determination of the appeal. If necessary, the arbitrator is  
16 empowered to issue subpoenas.

17 The arbitrator is to render an opinion and final determination of  
18 the appeal within 90 days of his appointment. The arbitrator's  
19 determination is binding on all parties and is to be implemented  
20 immediately.

21 Members and officers of the New Jersey State Police are not  
22 covered by the provisions of this bill.

# ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

## STATEMENT TO

### **ASSEMBLY, No. 3481**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: DECEMBER 8, 2008

The Assembly Law and Public Safety Committee reports favorably and with committee amendments Assembly Bill No. 3481.

As amended and reported by the committee, Assembly Bill No. 3481 entitles certain law enforcement officers and paid firefighters who are appealing terminations for noncriminal complaints or charges to again begin receiving their base salary if a final determination on their appeal is not rendered within 180 days.

Starting on the 181st following their suspension without pay, law enforcement officers or firefighters would begin again to receive the base salary that they were being paid prior to their termination and to continue to receive that salary until a final determination on their appeal is rendered. If the law enforcement officer or firefighter prevails in the appeal, the salary moneys that have been withheld are to be paid to that law enforcement officer or firefighter. If an appeal is denied, any moneys paid to the officer or firefighter are to be returned to the employer. The amended bill provides that a law enforcement officer or firefighter who fails to reimburse his employer is subject to a lien for those amounts.

The amended bill outlines how the 180-day period is to be calculated. The period is to commence the day the officer or firefighter is suspended without pay. Delays and postponements caused by the officer or firefighter, his representative, or in the filing of his appeal are not to be included in calculating the 180 days. Similarly, mutually agreed upon delays or postponements by the officer or firefighter, and his former employer, or delays or postponements declared by the Civil Service Commission, in the case of a civil service employer, or the arbitrator in the case of a non-civil service employer, are not to be counted.

The procedures for filing and resolving these types of appeals are well established for civil service jurisdictions. At present, there are no standard appeal procedures for non-civil service jurisdictions. Such matters are governed by contract.

Under the provisions of the amended bill, the Public Employment Relations Commission (PERC) is to establish a special panel of arbitrators who, by experience and expertise, are qualified to hear and

resolve these types of disciplinary cases and appeals. The amended bill specifies that an officer or firefighter must file his appeal with PERC within 20 days of his termination. Upon the receipt of the appeal, PERC is to notify the former employer of the officer or firefighter. Within 10 days of that notice, PERC is to provide both parties with a list of available arbitrators. If the parties cannot mutually agree on an arbitrator within 10 days of receiving that list, PERC is to appoint an arbitrator, who has been chosen by lot, to the case. The amended bill affords the arbitrator the authority to administer oaths, require attendance of witnesses, and require the production of any documents deemed material to ensure a just determination of the appeal. If necessary, the arbitrator is empowered to issue subpoenas.

The arbitrator is to render an opinion and final determination of the appeal within 90 days of his appointment. The arbitrator's determination is binding on all parties and is to be implemented immediately.

As amended, the Department of Law and Public Safety and the Juvenile Justice Commission are excluded from the provisions of the bill. Therefore, members and officers of the New Jersey State Police are not covered by the bill.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

- (1) clarify that law enforcement officers employed by the Juvenile Justice Commission are not included in bill; and
- (2) make technical corrections.

STATEMENT TO  
[First Reprint]  
**ASSEMBLY, No. 3481**

with Assembly Floor Amendments  
(Proposed By Assemblyman SCHAER)

ADOPTED: DECEMBER 15, 2008

Assembly Bill No. 3481 (1R) entitles certain law enforcement officers and paid firefighters who are appealing terminations for noncriminal complaints or charges to again begin receiving their base salary if a final determination on their appeal is not rendered within 180 days.

Committee amendments provided that law enforcement officers employed by the Juvenile Justice Commission were to be specifically excluded from the provisions of the bill. These Assembly amendments reverse the committee's action to clearly affirm that Juvenile Justice Commission law enforcement officers are to be afforded the benefits of the bill. Even though the Juvenile Justice Commission is in but not of the Department of Law and Public, the commission would not be excluded from the provisions of the bill.

# LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

**ASSEMBLY, No. 3481**

## **STATE OF NEW JERSEY 213th LEGISLATURE**

DATED: APRIL 21, 2009

### **SUMMARY**

- Synopsis:** Provides certain law enforcement officers and firefighters regain pay status when appeals of termination are not resolved within 180 days.
- Type of Impact:** Indeterminate. General Fund and local governments.
- Agencies Affected:** The Office of Administrative Law; Civil Service Commission; Public Employment Relations Commission; Juvenile Justice Commission; Department of Corrections; Department of Community Affairs; local law enforcement agencies and paid fire departments.

#### **Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Cost</b>	Indeterminate - See comments below		
<b>Local Cost</b>	Indeterminate - See comments below		

- The Office of Legislative Services (OLS) is unable to provide an estimate of costs to either the State or local governments that may result from this bill due to the unavailability of comprehensive information on the frequency and duration of employer suspensions in the Juvenile Justice Commission, the Department of Corrections, local law enforcement and fire department personnel in cases where criminality is not alleged. Further, OLS is unable to determine the cost to the Office of Administrative Law, that would be required to establish a special “Law Enforcement and Firefighter Unit” or to the Public Employment Relations Commission (PERC), who under this bill would be authorized to review and resolve these disputes.
- Requires the Office of Administrative Law to establish a special “Law Enforcement and Firefighter Unit” and PERC to establish a special panel to hear these disputes.
- Provides that certain law enforcement officers and career firefighters, who are suspended without pay and where an employer is seeking termination, will starting on the 181st calendar day of their suspension, begin receiving their base salary. If the charges are substantiated, the bill requires the employee to reimburse the employer for all pay received

while suspended or a lien may be placed any property or income. If the charges are again, dismissed, the officer is to be immediately reinstated at full pay and be paid all the salary moneys the employing law enforcement agency or fire department withheld during suspension.

## **BILL DESCRIPTION**

Assembly Bill No. 3481 (2R) of 2008 entitles certain law enforcement officers and paid firefighters who are appealing terminations for noncriminal complaints or charges to again begin receiving their base salary if a final determination on their appeal is not rendered within 180 days.

The procedures for filing and resolving these types of appeals are established for civil service jurisdictions.

At present, there are no standard appeal procedures for non-civil service jurisdictions, as currently these procedures are governed by individual contracts. Under the provisions of the bill, the Office of Administrative Law and the PERC would be authorized to review and resolve these disputes. The bill sets forth the procedures PERC is to follow in these non-civil service cases. Additionally, this bill outlines how the 180 day period is to be calculated.

The provisions of this bill would apply to all State, county and municipal law enforcement officers and paid firefighters except those under the Department of Law and Public Safety, excluding the Juvenile Justice Commission, which is in but not of the Department of Law and Public Safety. The definition of "law enforcement officer" is all inclusive, incorporating anyone empowered by statute to act for the detection, investigation, arrest, conviction, detention, or rehabilitation of persons violating the criminal laws of this State.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

#### **Department of Corrections**

The Department of Corrections provided information that they had approximately 7,000 staff members who would be covered under this bill.

The Department of Corrections estimated that there were approximately 1,100 disciplinary charges annually, the majority of which are disciplinary actions that would not lead to employee termination. In most cases where the department had determined that a suspension was necessary, the actual suspension was not imposed until the appeals process had been exhausted, therefore the bill would have only a limited impact on those employees who are to be suspended. The department's experience has shown that between 70 to 80 percent of contested removal actions are upheld.

#### **Juvenile Justice Commission**

None received.

#### **Civil Service Commission**

The Civil Service Commission determined that this bill would have no fiscal impact.

#### **Department of Community Affairs**

None received.

**OFFICE OF LEGISLATIVE SERVICES**

The OLS is unable to provide an estimate of costs to either the State or local governments that may result from this bill due to the unavailability of comprehensive information on the frequency and duration of employer suspensions in the Juvenile Justice Commission, the Department of Corrections, local law enforcement and fire department personnel in cases where criminality is not alleged. Further, OLS is unable to determine the cost to the Office of Administrative Law, that would be required to establish a special “Law Enforcement and Firefighter Unit” or to the Public Employment Relations Commission, who under this bill would be authorized to review and resolve these disputes.

This bill allows the employee to receive pay after 180 days if a final determination of an employee’s appeal of a termination for non-criminal disciplinary matter is not made during that 180 day period. Currently, the employee receives no pay during this period. Similar to current practice, if the complaint or charges are dismissed, the employee is to be immediately reinstated with full pay and benefits, receiving back pay for the days for which pay was not received. Conversely, if the charges are substantiated, they must repay the salary received after the 180 days from the date the decision was rendered. Consequently, it would appear that this bill would not impose new salary cost liabilities on public employees.

Currently, in occurrences of where an employee suspension is preliminary yet results in termination, the likelihood is small that the employee would repay those funds. The option to place a lien on an employee’s property and income better ensures that payment would be recovered.

*Section: Law and Public Safety*  
*Analyst: Kristin A. Brunner*  
*Senior Fiscal Analyst*  
*Approved: David J. Rosen*  
*Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-1 et seq.).

# SENATE, No. 1336

## STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED FEBRUARY 26, 2008

**Sponsored by:**  
**Senator PAUL A. SARLO**  
**District 36 (Bergen, Essex and Passaic)**

### **SYNOPSIS**

Provides certain law enforcement officers and firefighters cannot be suspended without pay for more than 180 calendar days.

### **CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning law enforcement officers and supplementing  
2 Title 34 and Title 53 of the Revised Statutes.

3

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

6

7 1. a. As used in this section, "law enforcement officer" means  
8 any person who is employed as a permanent full-time member of  
9 any State, county or municipal law enforcement agency,  
10 department, or division of those governments who is statutorily  
11 empowered to act for the detection, investigation, arrest, conviction,  
12 detention, or rehabilitation of persons violating the criminal laws of  
13 this State and statutorily required to successfully complete a  
14 training course approved by, or certified as being substantially  
15 equivalent to such an approved course, by the Police Training  
16 Commission pursuant to P.L.1961, c.56 (C.52:17B-66 et seq.).  
17 "Law enforcement agency" means any public agency, other than the  
18 Department of Law and Public Safety, any police force, department  
19 or division within the State of New Jersey, or any county or  
20 municipality thereof, which is empowered by statute to act for the  
21 detection, investigation, arrest, conviction, detention, or  
22 rehabilitation of persons violating the criminal laws of this State.

23 b. If a law enforcement officer is suspended from performing his  
24 official duties without pay for any complaint or charges, other than  
25 a complaint or charges alleging a violation of the criminal laws of  
26 this State or any other jurisdiction, and if no final determination is  
27 made on that complaint or those charges within 180 calendar days  
28 of the service of the complaint or charges on the officer, that law  
29 enforcement officer shall, commencing on the 181st calendar day,  
30 begin again receiving full salary and shall continue to do so until  
31 the final determination is made on the complaint or charges. The  
32 salary moneys withheld during the first 180 calendar days of the  
33 officer's suspension shall be held in escrow by the law enforcement  
34 agency employing the officer pending final determination on the  
35 complaint or charges.

36 If an officer requests and is granted a postponement of a hearing,  
37 no salary shall be paid to that officer during the period of  
38 postponement. Further, if the postponement is granted before the  
39 181st calendar day following the commencement of the officer's  
40 suspension, the calendar days that accrue during the postponement  
41 shall not be used in calculating the date upon which that officer is  
42 entitled, pursuant to this subsection, to receive full pay pending  
43 final determination on the complaint or charges.

44 If the complaint or charges are dismissed, the officer shall be  
45 reinstated immediately with full pay, be restored all rights and  
46 benefits, including those accruable during the period of suspension,  
47 and shall, within five business days, be paid any salary moneys held  
48 in escrow by the employing law enforcement agency. Should the

**S1336 SARLO**

1 complaint or charges be dismissed, but the suspension of the officer  
2 continue during an appeal, then the full pay or salary of the officer  
3 shall continue until the determination of the appeal.

4 If the complaint or charges are sustained at the original hearing  
5 or any appeal therefrom, the officer shall reimburse the employing  
6 law enforcement agency for all pay received during the period of  
7 suspension pursuant to this section. An officer who appeals shall  
8 remain on the payroll until a final determination has been made by  
9 the Merit System Board, in the case of an officer who is subject to  
10 the provisions of Title 11A of the New Jersey Statutes, or the  
11 Superior Court, in the case of an officer who is not subject to the  
12 provisions of Title 11A of the New Jersey Statutes.

13

14 2. If a member of the State Police is suspended from performing  
15 his official duties without pay for any complaint or charges, other  
16 than a complaint or charges alleging a violation of the criminal laws  
17 of this State or any other jurisdiction, and if no final determination  
18 is made on that complaint or those charges within 180 calendar days  
19 of the service of the complaint or charges on the officer, that  
20 member of the State Police shall, commencing on the 181st  
21 calendar day, begin again receiving full salary and shall continue to  
22 do so until the final determination is made on the complaint or  
23 charges. The salary moneys withheld during the first 180 calendar  
24 days of the member's suspension shall be held in escrow by the  
25 State pending final determination on the complaint or charges.

26 If a member requests and is granted a postponement of a hearing,  
27 no salary shall be paid to that member during the period of  
28 postponement. Further, if the postponement is granted before the  
29 181st calendar day following the commencement of the member's  
30 suspension, the calendar days that accrue during the postponement  
31 shall not be used in calculating the date upon which that member is  
32 entitled, pursuant to this subsection, to receive full pay pending  
33 final determination on the complaint or charges.

34 If the complaint or charges are dismissed, the member shall be  
35 reinstated immediately with full pay, be restored all rights and  
36 benefits, including those accruable during the period of suspension,  
37 and shall, within five business days, be paid any salary moneys held  
38 in escrow by the State. Should the complaint or charges be  
39 dismissed, but the suspension of the member continue during an  
40 appeal, then the full pay or salary of the member shall continue  
41 until the determination of the appeal.

42 If the complaint or charges are sustained at the original hearing  
43 or any appeal therefrom, the member shall reimburse the State for  
44 all pay received during the period of suspension pursuant to this  
45 section. A member shall remain on the payroll until a final  
46 determination has been made.

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1       3. If a member of a paid fire department or paid member of a  
2 part-paid fire department is suspended from performing his official  
3 duties without pay for any complaint or charges, other than a  
4 complaint or charges alleging a violation of the criminal laws of  
5 this State or any other jurisdiction, and if no final determination is  
6 made on that complaint or those charges within 180 calendar days  
7 of the service of the complaint or charges on the officer, that  
8 member shall, commencing on the 181st calendar day, begin again  
9 receiving full salary and shall continue to do so until the final  
10 determination is made on the complaint or charges. The salary  
11 moneys withheld during the first 180 calendar days of the member's  
12 suspension shall be held in escrow by the fire department  
13 employing the member pending final determination on the  
14 complaint or charges.

15       If a member requests and is granted a postponement of a hearing,  
16 no salary shall be paid to that member during the period of  
17 postponement. Further, if the postponement is granted before the  
18 181st calendar day following the commencement of the member's  
19 suspension, the calendar days that accrue during the postponement  
20 shall not be used in calculating the date upon which that member is  
21 entitled, pursuant to this subsection, to receive full pay pending  
22 final determination on the complaint or charges.

23       If the complaint or charges are dismissed, the member shall be  
24 reinstated immediately with full pay, be restored all rights and  
25 benefits, including those accruable during the period of suspension,  
26 and shall, within five business days, be paid any salary moneys held  
27 in escrow by the employing fire department. Should the complaint  
28 or charges be dismissed, but the suspension of the member continue  
29 during an appeal, then the full pay or salary of the member shall  
30 continue until the determination of the appeal.

31       If the complaint or charges are sustained at the original hearing  
32 or any appeal therefrom, the member shall reimburse the employing  
33 fire department for all pay received during the period of suspension  
34 pursuant to this section. A member who appeals shall remain on the  
35 payroll until a final determination has been made by the Merit  
36 System Board, in the case of a member who is subject to the  
37 provisions of Title 11A of the New Jersey Statutes, or the Superior  
38 Court, in the case of a member who is not subject to the provisions  
39 of Title 11A of the New Jersey Statutes.

40

41       4. This act shall take effect on the first day of the fifth month  
42 following enactment.

43

44

45

STATEMENT

46

47       This bill provides that whenever any law enforcement officer or  
48 career firefighter is suspended without pay for any reason, other

1 than an allegation of criminal wrong doing, and a decision on the  
2 complaint or charges is not rendered within 180 calendar days, that  
3 on the 181st calendar day the officer or member is to begin again  
4 receiving full salary and is to continue to do so until a final  
5 determination is made on the complaint or charges. The salary  
6 moneys withheld during the first 180 calendar days of the  
7 suspension of the officer or member are to be held in escrow by the  
8 law enforcement agency or fire department that employs the officer  
9 or member until there is a final determination on the complaint or  
10 charges.

11 The bill further provides that when an officer or firefighter  
12 requests and is granted a postponement of a hearing, no salary  
13 would be paid to that officer or firefighter during the period of  
14 postponement. Additionally, if the postponement is granted before  
15 the 181st calendar day following the commencement of the  
16 suspension, the calendar days that accrue during the postponement  
17 could not be used in calculating the date upon which the officer or  
18 firefighter is entitled to receive full pay pending final determination  
19 on the complaint or charges.

20 If the complaint or charges are dismissed, the officer or member  
21 is to be immediately reinstated at full pay, have restored all rights  
22 and benefits, including those that would have accrued during the  
23 suspension and, within five business days, be paid all the salary  
24 moneys the employing law enforcement agency or fire department  
25 has held in escrow. The bill specifies that a suspended officer or  
26 member is to continue to be paid during any appeal process.

27 If the complaint or charges are sustained, the bill provides that  
28 the officer or member is to reimburse his employer for all pay  
29 received during the period of suspension.

30 A law enforcement officer or a paid firefighter who appeals a  
31 finding sustained on a complaint or charges is to remain on the  
32 payroll until the appeal is ultimately decided by the Merit System  
33 Board, in the case of an officer or member who is subject to Civil  
34 Service, or the Superior Court, in the case of an officer or member  
35 who is not subject to Civil Service. A member of the State Police is  
36 afforded a similar privilege.

37 The provisions of this bill would apply to all State, county and  
38 municipal law enforcement officers. The definition of law  
39 enforcement officer is all inclusive, incorporating anyone  
40 empowered by statute to act for the detection, investigation, arrest,  
41 conviction, detention, or rehabilitation of persons violating the  
42 criminal laws of this State.

43 The salary program proposed under the bill is modeled on the  
44 one currently in effect for suspended teachers.

SENATE LAW AND PUBLIC SAFETY AND VETERANS'  
AFFAIRS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, No. 1336**

**STATE OF NEW JERSEY**

DATED: FEBRUARY 9, 2009

The Senate Law and Public Safety and Veterans' Affairs Committee reports favorably a Senate Committee Substitute for Senate Bill No. 1336.

This committee substitute entitles certain law enforcement officers and paid firefighters who are appealing terminations for noncriminal complaints or charges to again begin receiving their base salary if a final determination on their appeal is not rendered within 180 days.

Starting on the 181st day following their suspension without pay, law enforcement officers or firefighters would begin again to receive the base salary that they were being paid prior to their termination and continue to receive that salary until a final determination on their appeal is rendered. If the law enforcement officer or firefighter prevails in the appeal, the salary moneys that have been withheld are to be paid to that law enforcement officer or firefighter. If an appeal is denied, any moneys paid to the officer or firefighter are to be returned to the employer. The substitute provides that a law enforcement officer or firefighter who fails to reimburse his employer is subject to a lien for those amounts.

The substitute outlines how the 180-day period is to be calculated. The period is to commence the day the officer or firefighter is suspended without pay. Delays and postponements caused by the officer or firefighter, his representative, or in the filing of his appeal are not to be included in calculating the 180 days. Similarly, mutually agreed upon delays or postponements by the officer or firefighter, and his former employer, or delays or postponements declared by the Civil Service Commission, in the case of a civil service employer, or the arbitrator in the case of a non-civil service employer, are not to be counted.

The procedures for filing and resolving these types of appeals are well established for civil service jurisdictions. At present, there are no standard appeal procedures for non-civil service jurisdictions. Such matters are governed by contract.

Under the provisions of the substitute, the Public Employment Relations Commission (PERC) would review and resolve these

disputes in non-civil service jurisdictions. The PERC is to establish a special panel of arbitrators who, by experience and expertise, are qualified to hear and resolve these types of disciplinary cases and appeals. The substitute specifies that an officer or firefighter must file his appeal with PERC within 20 days of his termination. Upon the receipt of the appeal, PERC is to notify the former employer of the officer or firefighter. Within 10 days of that notice, PERC is to provide both parties with a list of available arbitrators. If the parties cannot mutually agree on an arbitrator within 10 days of receiving that list, PERC is to appoint an arbitrator, who has been chosen by lot, to the case. The substitute affords the arbitrator the authority to administer oaths, require attendance of witnesses, and require the production of any documents deemed material to ensure a just determination of the appeal. If necessary, the arbitrator is empowered to issue subpoenas.

The arbitrator is to render an opinion and final determination of the appeal within 90 days of his appointment. The arbitrator's determination is binding on all parties and is to be implemented immediately.

Law enforcement officers of the Department of Law and Public Safety, including members and officers of the New Jersey State Police, are not covered by the provisions of the committee substitute. Law enforcement officers of the Juvenile Justice Commission, which is in but not of the Department of Law and Public Safety, are afforded the protections of the committee substitute.

As reported by the committee, this committee substitute is identical to Assembly Bill No. 3481 (2R).

**FISCAL NOTE**  
**SENATE, No. 1336**  
**STATE OF NEW JERSEY**  
**213th LEGISLATURE**

DATED: FEBRUARY 18, 2009

**SUMMARY**

**Synopsis:** Provides certain law enforcement officers and firefighters cannot be suspended without pay for more than 180 calendar days.

**Type of Impact:** Indeterminate. General Fund.

**Agencies Affected:** Department of Law and Public Safety; Department of Corrections; Department of Community Affairs; local law enforcement agencies and fire departments.

**Executive Estimate**

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Cost</b>	Indeterminate - See comments below		
<b>Local Cost</b>	Indeterminate - See comments below		

- The Office of Legislative Services (OLS) **concurs** with the Executive estimate. The OLS is unable to provide a precise estimate of costs to both the State and local governments which may result from this bill, due to the unavailability of comprehensive information on the frequency and duration of employer suspensions, in cases where criminality is not alleged, of State Police, local law enforcement and fire department personnel, and the levels of compensation of such personnel.
- Provides that certain law enforcement officers and career firefighters, who are suspended without pay will, starting on the 181st calendar day of their suspension, begin receiving full salary.
- Requires the employee, if the charges are substantiated, to reimburse the employer for all pay received while suspended.
- Requires that the employee, if the charges are dismissed, to be immediately reinstated at full pay and be paid all the salary moneys the employing law enforcement agency or fire department held in escrow.

## **BILL DESCRIPTION**

Senate Bill No. 1336 of 2008 provides that whenever any law enforcement officer or career firefighter is suspended without pay for any reason, other than an allegation of criminal wrongdoing, and a decision on the complaint or charges is not rendered within 180 calendar days, that on the 181st calendar day the officer or member is to begin again receiving full salary and is to continue to do so until a final determination is made on the complaint or charges.

The salary moneys withheld during the first 180 calendar days of the suspension of the officer or member are to be held in escrow by the law enforcement agency or fire department that employs the officer or member until there is a final determination on the complaint or charges.

If the complaint or charges are dismissed, the officer or member is to be immediately reinstated at full pay, have restored all rights and benefits, including those that would have accrued during the suspension and, within five business days, be paid all the salary moneys the employing law enforcement agency or fire department has held in escrow. The bill specifies that a suspended officer or member is to continue to be paid during any appeal process filed by the employer. No salary is to be paid if the employee files an appeal.

If the complaint or charges are sustained, the bill provides that the officer or member is to reimburse his employer for all pay received during the period of suspension.

The provisions of this bill would apply to all State, county and municipal law enforcement officers. The definition of law enforcement officer is all inclusive, incorporating anyone empowered by statute to act for the detection, investigation, arrest, conviction, detention, or rehabilitation of persons violating the criminal laws of this State.

The salary program proposed under the bill is modeled on the one currently in effect for suspended teachers.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

#### **Department of Law and Public Safety**

The Department of Law and Public Safety finds that the costs associated with this bill are indeterminate as there are no set calculable figures to compute an accurate impact.

Currently, when the Division of State Police members are suspended without pay during the investigative process for any complaint or charges, the pay of those members is not placed into any special account. The salary is part of the overall payroll budget of the division. If after the investigative process the charges against the member are dismissed, all back pay due to them is received without interest. Conversely, if the charges are substantiated then the member would receive no back pay.

The Department of Law and Public Safety determines that this bill imposes a fiscal burden, not necessarily on the Division of State Police, but overall on State and local government. Current language in the bill specifies that the suspended member's salary be placed into an escrow account and held until the final determination of the complaint or charges.

Further, the department expressed concerns about whether the escrow account should be an interest bearing account. If it would be held in an interest bearing account, who would be the recipient of the accrued interest?

**Department of Community Affairs**

None received.

**Department of Corrections**

On a prior version of Assembly Bill No. 3153, the Department of Corrections (DOC) provided information that they had approximately 7,000 law enforcement staff members who would be covered under this bill.

As of 2008, the DOC issued an average of 1,100 disciplinary charges per year, the majority of which are disciplinary actions other than removals. In most cases where the department had determined that a suspension was necessary, the actual suspension was not imposed until the appeals process had been exhausted, therefore the bill would have only a limited impact on those employees who are to be suspended. The department's experience has shown that between 70-80 percent of contested removal actions are upheld.

**The Office of Management and Budget**

The Office of Management and Budget determined that the fiscal impact would vary depending on the number of officers and firefighters suspended beyond 180 days as well as if the charges are substantiated or not.

**Local Law Enforcement**

None received.

***OFFICE OF LEGISLATIVE SERVICES***

The OLS concurs with the Executive estimate. The OLS is unable to provide a precise estimate of costs to both the State and local governments which may result from this bill, due to the unavailability of comprehensive information on the frequency and duration of employer suspensions, in cases where criminality is not alleged, of State Police, local law enforcement and fire department personnel, and the levels of compensation of such personnel.

This bill allows the employee to receive pay after 180 days while a determination is being made. Currently, the employee receives no pay during this period. Similar to current practice, if the complaint or charges are dismissed, the employee is to be immediately reinstated with full pay and benefits, receiving back pay for the days not paid. Conversely, if the charges are substantiated, they must repay the salary received after the 180 days from the date the decision was rendered.

The likelihood is small that those amounts would be repaid in full by employees where the suspension is preliminary to termination of the employee, since there is no requirement that any funds be retained in escrow or otherwise reserved by the employee in the event repayment would be required.

S1336

4

*Section: Law and Public Safety*

*Analyst: Kristin A. Brunner  
Senior Fiscal Analyst*

*Approved: David J. Rosen  
Legislative Budget and Finance Officer*

This fiscal note has been prepared pursuant to P.L. 1980, c.67 (C. 52:13B-1 et seq.).

**LEGISLATIVE FISCAL ESTIMATE**  
**SENATE COMMITTEE SUBSTITUTE FOR**  
**SENATE, No. 1336**  
**STATE OF NEW JERSEY**  
**213th LEGISLATURE**

DATED: APRIL 20, 2009

**SUMMARY**

- Synopsis:** Provides certain law enforcement officers and firefighters regain pay status when appeals of termination are not resolved within 180 days.
- Type of Impact:** Indeterminate. General Fund and local governments.
- Agencies Affected:** The Office of Administrative Law; Civil Service Commission; Public Employment Relations Commission; Juvenile Justice Commission; Department of Corrections; Department of Community Affairs; local law enforcement agencies and paid fire departments.

**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Cost</b>	Indeterminate - See comments below		
<b>Local Cost</b>	Indeterminate - See comments below		

- The Office of Legislative Services (OLS) is unable to provide an estimate of costs to either the State or local governments that may result from this bill due to the unavailability of comprehensive information on the frequency and duration of employer suspensions in the Juvenile Justice Commission, the Department of Corrections, local law enforcement and fire department personnel in cases where criminality is not alleged. Further, OLS is unable to determine the cost to the Office of Administrative Law, that would be required to establish a special “Law Enforcement and Firefighter Unit” or to the Public Employment Relations Commission (PERC), who under this bill would be authorized to review and resolve these disputes.
- Requires the Office of Administrative Law to establish a special “Law Enforcement and Firefighter Unit” and PERC to establish a special panel to hear these disputes.
- Provides that certain law enforcement officers and career firefighters, who are suspended without pay and where an employer is seeking termination, will starting on the 181st

calendar day of their suspension, begin receiving their base salary. If the charges are substantiated, the bill requires the employee to reimburse the employer for all pay received while suspended or a lien may be placed any property or income. If the charges are dismissed, the officer is to be immediately reinstated at full pay and be paid all the salary moneys the employing law enforcement agency or fire department withheld during suspension.

## **BILL DESCRIPTION**

Senate Committee Substitute for Senate Bill No. 1336 of 2008 entitles certain law enforcement officers and paid firefighters who are appealing terminations for noncriminal complaints or charges to again begin receiving their base salary if a final determination on their appeal is not rendered within 180 days.

The procedures for filing and resolving these types of appeals are established for civil service jurisdictions.

At present, there are no standard appeal procedures for non-civil service jurisdictions, as currently these procedures are governed by individual contracts. Under the provisions of the bill, the Office of Administrative Law and the PERC would be authorized to review and resolve these disputes. The bill sets forth the procedures PERC is to follow in these non-civil service cases. Additionally, this bill outlines how the 180 day period is to be calculated.

The provisions of this bill would apply to all State, county and municipal law enforcement officers and paid firefighters except those under the Department of Law and Public Safety, excluding the Juvenile Justice Commission, which is in but not of the Department of Law and Public Safety. The definition of "law enforcement officer" is all inclusive, incorporating anyone empowered by statute to act for the detection, investigation, arrest, conviction, detention, or rehabilitation of persons violating the criminal laws of this State.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

#### **Department of Corrections**

The DOC provided information that they had approximately 7,000 staff members who would be covered under this bill.

The DOC estimated that there were approximately 1,100 disciplinary charges annually, the majority of which are disciplinary actions that would not lead to employee termination. In most cases where the department had determined that a suspension was necessary, the actual suspension was not imposed until the appeals process had been exhausted, therefore the bill would have only a limited impact on those employees who are to be suspended. The department's experience has shown that between 70 to 80 percent of contested removal actions are upheld.

#### **Juvenile Justice Commission**

None received.

#### **Civil Service Commission**

The Civil Service Commission determined that this bill would have no fiscal impact.

**Department of Community Affairs**

None received.

***OFFICE OF LEGISLATIVE SERVICES***

The OLS is unable to provide an estimate of costs to either the State or local governments that may result from this bill due to the unavailability of comprehensive information on the frequency and duration of employer suspensions in the Juvenile Justice Commission, the Department of Corrections, local law enforcement and fire department personnel in cases where criminality is not alleged. Further, OLS is unable to determine the cost to the Office of Administrative Law, that would be required to establish a special “Law Enforcement and Firefighter Unit” or to the Public Employment Relations Commission, who under this bill would be authorized to review and resolve these disputes.

This bill allows the employee to receive pay after 180 days if a final determination of an employee’s appeal of a termination for non-criminal disciplinary matter is not made during that 180 day period. Currently, the employee receives no pay during this period. Similar to current practice, if the complaint or charges are dismissed, the employee is to be immediately reinstated with full pay and benefits, receiving back pay for the days for which pay was not received. Conversely, if the charges are substantiated, they must repay the salary received after the 180 days from the date the decision was rendered. Consequently, it would appear that this bill would not impose new salary cost liabilities on public employees.

Currently, in occurrences of where an employee suspension is preliminary yet results in termination, the likelihood is small that the employee would repay those funds. The option to place a lien on an employee’s property and income better ensures that payment would be recovered.

*Section: Law and Public Safety*

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This fiscal note has been prepared pursuant to P.L. 1980, c.67 (C. 52:13B-1 et seq.).

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Governor**For Immediate Release:**  
**Date:** March 05, 2009**For More Information:**  
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## Governor Corzine Signs Legislation Designed to Limit Pay Suspensions of Police Officers, Firefighters

**ATLANTIC CITY** - Governor Jon S. Corzine today signed legislation designed to expedite disciplinary proceedings when law enforcement officers and firefighters are suspended without pay by limiting the number of days pay can be suspended while hearings are still pending.

"This bill provides a fair safeguard to law enforcement and fire services—a safeguard that is appropriate in light of their unique contribution to the state by risking themselves to protect others," said Governor Corzine. "We know that the fact-finding and deliberative process can take many months; and that this places a very heavy burden on people, who then must cope with extreme financial hardship caused by a protracted suspension of salary at a difficult and emotional time when their careers are, essentially, in limbo."

The bill, A3481/S1336, was signed during the Police Benevolent Association Mini Convention in Atlantic City. The bill enables law enforcement officers and firefighters who have been suspended without pay to regain pay status when appeals of termination are not resolved within 180 days. Individuals excluded from the bill are those that are the subject of a criminal investigation or when the allegations constitute a violation of criminal law.

"The ability of police officers and firefighters to provide for their families shouldn't be negated when appeals drag on for more than half-a-year," said Assemblyman Gary Schaer (D-Passaic). "This is an issue of fairness for times when the process crawls to a stop."

The bill applies to all full-time officers employed by any state, county, municipal department or division. Starting on the 181st day following their suspension without pay, officers would begin to receive their base salary and continue to receive their salary until the matter is resolved.

"Police and fire personnel and their families should not be held as financial hostages when an appeal cannot be heard and adjudicated in a timely fashion," said Assemblyman Fred Scalera (D-Essex).

The bill includes provisions designed to expedite the hearing processes, so that a final determination can be made within the 180-day period. In civil service cases, it would require the Office of Administrative Law (OAL) to designate certain administrative law judges with relevant experience to handle police and firefighter termination issues covered by the bill. It also would authorize the OAL and the Civil Service Commission to promulgate rules and regulations in order to hear and determine these cases in a timely manner.

"New Jersey is taking a strong step to provide a uniform and timely procedure to resolve disputes that will minimize the financial impact long delays can take on officers and their families," said Assemblyman John Wisniewski (D-Middlesex).

The bill also would expedite these matters by giving non-civil service employees covered the option of having their appeal determined by an arbitrator, in addition to filing an action in the Superior Court as is currently authorized by statute.

"This bill will help ensure the integrity of the disciplinary process and provide swifter resolutions to pending disciplinary matters," said Senator Paul A. Sarlo (D-Bergen, Essex, Passaic). "Given the powers and authority that law enforcement officers possess, matters of discipline should be handled quickly in order to eliminate any potential abuse of that power."

Primary sponsors in the Assembly were Assemblymen Gary Schaer (D-Passaic) and Fred Scalera (D-Essex), and John Wisniewski (D-Middlesex). Primary sponsor in the Senate was Senator Paul Sarlo (D-Bergen, Essex, Passaic).

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Photos from Governor Corzine's public events are available in the Governor's Newsroom section on the State of New Jersey web page,  
<http://www.nj.gov/governor/news/>

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