

40:69A-43  
LEGISLATIVE HISTORY CHECKLIST  
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NJSA: 40:69A-43 (Removal of business administrator)

LAWS OF: 1997 CHAPTER: 418

BILL NO: A1223

SPONSOR(S): Augustine and Arnone

DATE INTRODUCED: Pre-filed

COMMITTEE: ASSEMBLY: Local Government  
SENATE: Community Affairs

AMENDED DURING PASSAGE: Yes Amendments during passage denoted  
Second reprint enacted by superscript numbers

DATE OF PASSAGE: ASSEMBLY: May 22, 1997  
SENATE: January 8, 1998

DATE OF APPROVAL: January 19, 1998

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes Also attached: statement adopted  
3-13-97

COMMITTEE STATEMENT: ASSEMBLY: Yes  
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:  
REPORTS: No

HEARINGS: No

KBP:pp

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P.L. 1997, CHAPTER 418, *approved January 19, 1998*  
Assembly, No. 1223 (*Second Reprint*)

1 AN ACT concerning the removal of a municipal business administrator  
2 and amending P.L.1950, c.210.

3

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

6

7 1. Section 3-13 of P.L.1950, c.210 (C.40:69A-43) is amended to  
8 read as follows:

9 3-13. (a) The municipality shall have a department of  
10 administration and such other departments, not less than two and not  
11 exceeding nine in number, as council may establish by ordinance. All  
12 of the administrative functions, powers and duties of the municipality,  
13 other than those vested in the offices of the municipal clerk and the  
14 municipal tax assessor, shall be allocated and assigned among and  
15 within such departments.

16 The offices of the municipal clerk and the municipal tax assessor  
17 shall be subject to such general administrative procedures and  
18 requirements as are departments of the municipal government,  
19 including, but not limited to, the preparation and submission of an  
20 annual budget and of such periodic budget reports as are generally  
21 required of departments, and such accounting controls, central  
22 purchasing practices, personnel procedures and regulations, and  
23 central data processing services as are generally required of  
24 departments.

25 (b) Each department shall be headed by a director, who shall be  
26 appointed by the mayor with the advice and consent of the council.  
27 Each department head shall serve during the term of office of the  
28 mayor appointing him, and until the appointment and qualification of  
29 his successor. The mayor shall, with the advice and consent of the  
30 council, appoint the municipal assessor and all other municipal officers  
31 not assigned within municipal departments, subject to the terms of any

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

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Assembly ALG committee amendments adopted December 5, 1996.

<sup>2</sup> Assembly floor amendments adopted March 13, 1997.

1 general law providing for these offices, unless a different appointment  
2 procedure is clearly required by this plan of government or by general  
3 law.

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

14 In the event of the removal or failure of reappointment of a business  
15 administrator, that administrator <sup>1</sup>[shall] may, <sup>2</sup>[at the discretion of the  
16 council, <sup>1</sup>] upon the enactment of an ordinance, <sup>2</sup> be entitled to a  
17 three-months' written notice of the removal or non-reappointment, or  
18 if the mayor determines that the removal shall be immediate, then the  
19 administrator <sup>1</sup>[shall] may, <sup>2</sup>[at the discretion of the council, <sup>1</sup>] upon  
20 the enactment of an ordinance, <sup>2</sup> be paid any unpaid balance of his  
21 salary plus his salary for a <sup>2</sup>[minimum] maximum<sup>2</sup> of the next three  
22 calendar months following the effective date of the mayor's action  
23 unless the removal is for good cause. For the purposes of this  
24 subsection, "good cause" shall mean conviction of a crime or offense  
25 involving moral turpitude, the violation of the provisions of section  
26 17-14, 17-15, 17-16, 17-17, or 17-18 of P.L.1950, c.210  
27 (C.40:69A-163 through 40:69A-167), or the violation of any code of  
28 ethics in effect within the municipality.

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

34 (e) Notwithstanding the foregoing provisions of this section, in any  
35 city of the first class, there shall be, and in any municipality having a  
36 population of 15,000 or more, there may be, a board of alcoholic  
37 beverage control which shall exercise the powers conferred upon  
38 municipal boards of alcoholic beverage control under Title 33 of the  
39 Revised Statutes. Such boards shall be comprised of three members,  
40 no more than two of whom shall be of the same political party, who  
41 shall be appointed by the mayor, with the advice and consent of the  
42 council, each to serve for a term of three years, provided that of those  
43 first appointed, one shall be appointed to serve for a term of one year,  
44 one for two years, and one for three years. Any vacancy in such office  
45 shall be filled in the same manner as the original appointment, for the  
46 balance of the unexpired term. Except in cities of the first class the

1 members of such board shall serve without compensation but may be  
2 reimbursed for necessary expenses incurred in the performance of their  
3 duties; in cities of the first class, the members of such board shall  
4 receive such compensation as shall be established by ordinance of the  
5 municipality. They shall be removable by the mayor for cause. Any  
6 person appointed hereunder shall not be subject to the provisions of  
7 Title 11A of the New Jersey Statutes, and no such person shall be a  
8 member of the city council.

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

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

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

27

28 2. This act shall take effect immediately.

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33 Requires three months' notice prior to removal of business  
34 administrator without good cause.

ASSEMBLY, No. 1223

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblymen AUGUSTINE and ARNONE

1 AN ACT concerning the removal of a municipal business administrator  
2 and amending P.L.1950, c.210.

3

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12 of the administrative functions, powers and duties of the municipality,  
13 other than those vested in the offices of the municipal clerk and the  
14 municipal tax assessor, shall be allocated and assigned among and  
15 within such departments.

16 The offices of the municipal clerk and the municipal tax assessor  
17 shall be subject to such general administrative procedures and  
18 requirements as are departments of the municipal government,  
19 including, but not limited to, the preparation and submission of an  
20 annual budget and of such periodic budget reports as are generally  
21 required of departments, and such accounting controls, central  
22 purchasing practices, personnel procedures and regulations, and  
23 central data processing services as are generally required of  
24 departments.

25 (b) Each department shall be headed by a director, who shall be  
26 appointed by the mayor with the advice and consent of the council.  
27 Each department head shall serve during the term of office of the  
28 mayor appointing him, and until the appointment and qualification of  
29 his successor. The mayor shall, with the advice and consent of the  
30 council, appoint the municipal assessor and all other municipal officers  
31 not assigned within municipal departments, subject to the terms of any  
32 general law providing for these offices, unless a different appointment

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

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

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

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26 employees within their respective departments and may, with approval  
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28 provisions of Title 11A of the New Jersey Statutes, where that Title  
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30 (e) Notwithstanding the foregoing provisions of this section, in any  
31 city of the first class, there shall be, and in any municipality having a  
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35 Revised Statutes. Such boards shall be comprised of three members,  
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37 shall be appointed by the mayor, with the advice and consent of the  
38 council, each to serve for a term of three years, provided that of those  
39 first appointed, one shall be appointed to serve for a term of one year,  
40 one for two years, and one for three years. Any vacancy in such office  
41 shall be filled in the same manner as the original appointment, for the  
42 balance of the unexpired term. Except in cities of the first class the  
43 members of such board shall serve without compensation but may be  
44 reimbursed for necessary expenses incurred in the performance of their  
45 duties; in cities of the first class, the members of such board shall  
46 receive such compensation as shall be established by ordinance of the

1 municipality. They shall be removable by the mayor for cause. Any  
2 person appointed hereunder shall not be subject to the provisions of  
3 Title 11A of the New Jersey Statutes, and no such person shall be a  
4 member of the city council.

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

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

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

23

24 2. This act shall take effect immediately.

25

26

27

#### STATEMENT

28

29 This bill would require that a business administrator be given at  
30 least three months' notice or a minimum of three months' salary as a  
31 severance package prior to removal without good cause. The bill  
32 defines "good cause" as the conviction of a crime or offense involving  
33 moral turpitude, the violation of the provisions of section 17-14,  
34 17-15, 17-16, 17-17, or 17-18 of P.L.1950, c.210 (C.40:69A-163  
35 through 40:69A-167), or the violation of any code of ethics in effect  
36 within the municipality. This amendment would make the procedure  
37 for the removal of a business administrator consistent with the removal  
38 of a municipal manager or municipal administrator.

39

40

41

42

43 Requires three months' notice prior to removal of business  
44 administrator without good cause.

ASSEMBLY LOCAL GOVERNMENT COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 1223**

with committee amendments

**STATE OF NEW JERSEY**

DATED: DECEMBER 5, 1996

The Assembly Local Government Committee reports favorably Assembly Bill No. 1223, with committee amendments.

This bill, as amended by the committee, would permit, at the discretion of the municipal council, that a business administrator be given at least three months' notice or a minimum of three months' salary as a severance package prior to removal without good cause. The bill defines "good cause" as the conviction of a crime or offense involving moral turpitude, the violation of the provisions of section 17-14, 17-15, 17-16, 17-17, or 17-18 of P.L.1950, c.210 (C.40:69A-163 through 40:69A-167), or the violation of any code of ethics in effect within the municipality. This amendment would make the procedure for the removal of a business administrator similar to the removal of a municipal manager or municipal administrator.

The committee amended the bill to make the mandatory language of the bill permissive so that the municipal council would have the discretion to offer a business administrator a severance package.

This bill was prefiled for introduction in the 1996 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.



STATEMENT TO  
[First Reprint]  
**ASSEMBLY, No. 1223**

with Assembly Floor Amendments  
(Proposed By Assemblyman AUGUSTINE)

ADOPTED: MARCH 13, 1997

These amendments require that an ordinance must be passed by the governing body of a municipality before notice of removal or non-reappointment is given to a municipal administrator. The amendments also require the passage of an ordinance prior to the payment to a municipal administrator of his or her salary for a maximum of three calendar months. Currently, the bill permitted such actions to be done at the discretion of the municipal council, and provided for a minimum payment of three months' salary to an outgoing municipal administrator.

SENATE COMMUNITY AFFAIRS COMMITTEE

STATEMENT TO

[Second Reprint]

**ASSEMBLY, No. 1223**

**STATE OF NEW JERSEY**

DATED: JUNE 5, 1997

The Senate Community Affairs Committee reports favorably Assembly Bill No. 1223 (2R).

This bill would permit the municipal council, upon adoption of an ordinance, to give a business administrator either at least three months' notice or a maximum of three months' salary as a severance package before the administrator's removal without good cause. The bill defines "good cause" as the conviction of a crime or offense involving moral turpitude, the violation of the provisions of section 17-14, 17-15, 17-16, 17-17, or 17-18 of P.L.1950, c.210 (C.40:69A-163 through 40:69A-167), or the violation of any code of ethics in effect within the municipality. This bill also makes the procedure for the removal of a business administrator similar to the procedure for the removal of a municipal manager and municipal administrator.