

40A:14-9

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LEGISLATIVE FACT SHEET

on Municipal policemen & firemen -
N.J.R.S. 40A:14-9, 17, 19, 122, residency requirements abolished.
128, 147 (1971 Amendment)

LAWS OF 1971

CHAPTER 443 Approved Feb. 15, 1972

SENATE BILL 2326

ASSEMBLY BILL

INTRODUCED Nov. 15, 1971

BY Wallwork et al.

SPONSOR'S STATEMENT

YES NO

ASSEMBLY COMMITTEE STATEMENT

YES NO

SENATE COMMITTEE STATEMENT

YES NO

FISCAL NOTE

YES NO

AMENDED DURING PASSAGE

YES NO

HEARING None discovered

VETO See Governor's statement on incompleteness of S2326 [obtained from Governor's Counsel's File on S2326].

GOVERNOR'S STATEMENT ON SIGNING YES 2/15/76.

BACKGROUND:

See

N.J. Commission of Investigation.

Municipal Police Departments in New Jersey, by Thomas Mc Carthy. Oct. 18, 1970. See especially pp. 15-16 (enclosed).

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SENATE, No. 2326

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 15, 1971

By Senators WALLWORK, GIULIANO, MATTURRI, SCIRO,
H. A. KELLY and SCHIAFFO

(Without Reference)

AN ACT concerning residence requirements of police and firemen,
and amending sections 40A:14-9, 40A:14-17, 40A:14-19,
40A:14-122, 40A:14-128, and 40A:14-147 of the New Jersey
Statutes.

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

1 1. N. J. S. 40A:14-9 is amended to read as follows:

2 40A:14-9. Except as otherwise provided by law, no person shall
3 be appointed as a member of the paid or as a paid member of a
4 part-paid fire department and force, unless he:

5 (1) is a citizen of the United States **[and has been a resident of**
6 **the municipality, in which he is to be appointed, for at least 6**
7 **months next preceding his appointment]**;

8 (2) is sound in body and of good health sufficient to satisfy the
9 board of trustees of the police and firemen's retirement system of
10 New Jersey as to his eligibility for membership in the retirement
11 system;

12 (3) is able to read, write and speak the English language well
13 and intelligently;

14 (4) is of good moral character; and

15 (5) has not been convicted of any criminal offense involving
16 moral turpitude.

17 The appointing body, officer or officers of the municipality when
18 authorized so to do, may employ such officers and other personnel
19 for said paid or part-paid fire department and force as temporary
20 employees in emergencies, or for certain specified parts of the
21 year, as needed.

22 Except as otherwise provided by law, any permanent paid mem-
23 ber or officer of such paid or part-paid fire department and force,

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

24 who is absent from duty without just cause or leave of absence,
25 for a continuous period of 5 days, shall cease to be a member of
26 such paid or part-paid fire department.

1 2. N. J. S. 40A:14-17 is amended to read as follows:

2 40A:14-17. Except as otherwise provided by law, in any mu-
3 nicipality having permanent members and officers of a paid or
4 part-paid fire department and force, the employment of said mem-
5 bers and officers shall be for an indeterminate term and continuous
6 during good behavior **and** efficiency **and** required residency.

1 3. N. J. S. 40A:14-19 is amended to read as follows:

2 40A:14-19. Except as otherwise provided by law no permanent
3 member or officer of the paid or part-paid fire department or force
4 shall be removed from his office, employment or position for
5 political reasons or for any cause other than incapacity, misconduct,
6 **nonresidence,** or disobedience of rules and regulations established
7 for the government of the paid or part-paid fire department and
8 force, nor shall such member or officer be suspended, removed,
9 fined or reduced in rank from or in office, employment or position
10 therein except for just cause as hereinabove provided and then only
11 upon a written complaint, setting forth the charge or charges
12 against such member or officer. Said complaint shall be filed in the
13 office of the body, officer or officers having charge of the depart-
14 ment or force wherein the complaint is made and a copy thereof
15 shall be served upon the member or officer so charged, with notice
16 of a hearing thereon designating its time and place by the proper
17 authorities, which shall be not less than 15 nor more than 30 days
18 from the date of service of the complaint. A failure to substantially
19 comply with said provisions as to the service of the complaint shall
20 require a dismissal of the complaint.

1 4. N. J. S. 40A:14-122 is amended to read as follows:

2 40A:14-122. Except as otherwise provided by law, no person
3 shall be appointed as a member of the police department and force,
4 unless he:

5 (1) is a citizen of the United States **and** has been a resident of
6 the municipality, in which he is to be appointed, for at least 6
7 months next preceding his appointment;

8 (2) is sound in body and of good health sufficient to satisfy the
9 board of trustees of the police and firemen's retirement system of
10 New Jersey as to his eligibility for membership in the retirement
11 system;

12 (3) is able to read, write and speak the English language well
13 and intelligently;

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15 criminal offense involving moral turpitude.

16 The appointing body, officer or officers of the municipality when
17 authorized so to do, may employ such officers and other personnel
18 for said police department and force as temporary employees in
19 emergencies, or for certain specified parts of the year, as needed.

20 Except as otherwise provided by law, any permanent member
21 or officer of such police department and force who shall be absent
22 from duty without just cause or leave of absence, for a continuous
23 period of 5 days, shall cease to be a member of such police de-
24 partment and force.

1 5. N. J. S. 40A:14-128 is amended to read as follows:

2 40A:14-128. Except as otherwise provided by law, in any mu-
3 nicipality having permanent members and officers of a police de-
4 partment and force, the employment of said members and officers
5 shall be indeterminate and continuous during good behavior~~[.]~~ and
6 efficiency ~~[and required residency]~~.

1 6. N. J. S. 40A:14-147 is amended to read as follows:

2 40A:14-147. Except as otherwise provided by law, no permanent
3 member or officer of the police department or force shall be removed
4 from his office, employment or position for political reasons or for
5 any cause other than incapacity, misconduct, ~~[nonresidence,]~~ or dis-
6 obedience of rules and regulations established for the government
7 of the police department and force, nor shall such member or
8 officer be suspended, removed, fined or reduced in rank from or in
9 office, employment or position therein, except for just cause as
10 hereinbefore provided and then only upon a written complaint
11 setting forth the charge or charges against such member or officer.
12 Said complaint shall be filed in the office of the body, officer or of-
13 ficers having charge of the department or force wherein the com-
14 plaint is made and a copy shall be served upon the member or
15 officer so charged, with notice of a designated hearing thereon by
16 the proper authorities, which shall be not less than 15 nor more
17 than 30 days from date of service of the complaint. A failure to
18 comply with said provisions as to the service of the complaint shall
19 require a dismissal of the complaint.

1 7. This act shall take effect immediately.

2

SENATE, No. 2326

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 15, 1971

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H. A. KELLY and SCHIAFFO

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6 **the municipality, in which he is to be appointed, for at least 6**
7 **months next preceding his appointment]**;

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9 board of trustees of the police and firemen's retirement system of
10 New Jersey as to his eligibility for membership in the retirement
11 system;

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13 and intelligently;

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15 (5) has not been convicted of any criminal offense involving
16 moral turpitude.

17 The appointing body, officer or officers of the municipality when
18 authorized so to do, may employ such officers and other personnel
19 for said paid or part-paid fire department and force as temporary
20 employees in emergencies, or for certain specified parts of the
21 year, as needed.

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23 ber or officer of such paid or part-paid fire department and force,

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5 bers and officers shall be for an indeterminate term and continuous
6 during good behavior **[,]** and efficiency **[and required residency]**.

1 3. N. J. S. 40A:14-19 is amended to read as follows:

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3 member or officer of the paid or part-paid fire department or force
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6 **[nonresidence,]** or disobedience of rules and regulations established
7 for the government of the paid or part-paid fire department and
8 force, nor shall such member or officer be suspended, removed,
9 fined or reduced in rank from or in office, employment or position
10 therein except for just cause as hereinabove provided and then only
11 upon a written complaint, setting forth the charge or charges
12 against such member or officer. Said complaint shall be filed in the
13 office of the body, officer or officers having charge of the depart-
14 ment or force wherein the complaint is made and a copy thereof
15 shall be served upon the member or officer so charged, with notice
16 of a hearing thereon designating its time and place by the proper
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1 5. N. J. S. 40A:14-128 is amended to read as follows:

2 40A:14-128. Except as otherwise provided by law, in any mu-
3 nicipality having permanent members and officers of a police de-
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6 efficiency ~~and required residency~~.

1 6. N. J. S. 40A:14-147 is amended to read as follows:

2 40A:14-147. Except as otherwise provided by law, no permanent
3 member or officer of the police department or force shall be removed
4 from his office, employment or position for political reasons or for
5 any cause other than incapacity, misconduct, ~~nonresidence,~~ or dis-
6 obedience of rules and regulations established for the government
7 of the police department and force, nor shall such member or
8 officer be suspended, removed, fined or reduced in rank from or in
9 office, employment or position therein, except for just cause as
10 hereinbefore provided and then only upon a written complaint
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15 officer so charged, with notice of a designated hearing thereon by
16 the proper authorities, which shall be not less than 15 nor more
17 than 30 days from date of service of the complaint. A failure to
18 comply with said provisions as to the service of the complaint shall
19 require a dismissal of the complaint.

1 7. This act shall take effect immediately.

FEBRUARY 15, 1972

FOR RELEASE:
IMMEDIATE

Governor William T. Cahill today signed into law three bills which eliminate the requirement that police and firemen must reside in the municipality in which they serve. To do so, the Governor signed Senate bill 2326 (1971), sponsored by Senator James H. Wallwork (R., Essex); Senate bill 452 and Senate bill 453 (1972), sponsored by Senator Raymond H. Bateman (R., Somerset).

In signing the bills the Governor said that they provide a solution to the problem by creating realistic laws capable of being enforced. He pointed out that under the existing laws, residency within a municipality for police and firemen will be encouraged on a voluntary basis and stressed that a workable system of mutual assistance is provided to protect municipalities in times of emergency.

Under the terms of the bills, S-452 prohibits making residency a condition of employment for police and firemen. It stipulates, however, that in instances where a resident of a municipality and a non-resident receive the same score on a civil service examination for appointment or promotion, the resident will be appointed or promoted prior to the non-resident.

"This will provide an incentive for police and firemen to reside in the municipality on a voluntary basis without any reduction in quality," the Governor said. He added that "preferences for veterans will not be diminished by this provision."

The second bill sponsored by Senator Bateman, S-453, provides for mutual assistance in times of emergency between adjoining municipalities on a mandatory basis. The Governor noted that past experience has shown that municipalities usually resort to assistance from neighboring municipalities in times of emergency rather than attempting to recall off-duty police and firemen.

"Mutual assistance has proven to be the best method of securing a complete package of manpower, equipment and vehicles in the shortest period of time," the Governor said. The bill also provides for reimbursement between municipalities on a per-hour basis for services where the municipalities themselves have not agreed to their own terms. The bill has a safeguard that no municipality will be required to render assistance to such an extent that its own residents or their property would be endangered.

The bill sponsored by Senator Wallwork, S-2326, strips any references to residency requirements from a number of the general statutes concerning police and firemen. It is anticipated that the removal of the non-residency requirement will permit some departments to be improved by upgrading the calibre of appointments and by filling existing vacancies.

In addition, the Governor signed Senate bill 2243 (1972), sponsored by Senator Harry Sears (R., Morris), which amends the existing law to allow municipal utilities to function on the same basis as the county solid waste disposal facilities. This law will strengthen municipal utilities authorities and will enable them to do what must be done in this vital and necessary area.

Also signed into law was Senate bill S-986, sponsored by Senator Wayne Dumont (R., District 15), which reduces the residency requirement from three years to one year for persons 65 years of age or older to qualify for the senior citizens' property tax deductions. The deductions apply to persons having an income of \$5,000 or less. The signing of this bill is in keeping with the recent changes in the law to increase the amount of the senior citizens' tax deductions from \$80 to \$160 annually as part of a program by the Cahill Administration to assist senior citizens in maintaining their homes while preserving their personal dignity and self-respect.

The Governor also signed Assembly bill 2569, sponsored by Assemblywoman Elizabeth Cox (R., District 9B), which provides for the termination of leases in

STATEMENT IN CONNECTION WITH S-2326

Senate Bill No. 2326 removes the requirement that policemen and firemen reside in the municipality in which they serve. The social, economic and constitutional significance of this bill requires me to make my position abundantly clear.

Attendant circumstances have rendered the normal alternatives available to me in the review of legislation insufficient in this instance. Ordinarily, the choices would be:

1. Sign the bill if it were appropriate;
2. Conditionally veto it, if changes were required, but it were otherwise suitable;
3. Veto it if it were unsatisfactory.

The course of events in the Legislature which passed this bill effectively nullifies the alternative of a conditional veto, even if circumstances dictated such action.

The sequence of events in the movement of this bill through the Legislature is most noteworthy:

November 15, 1971 -- The bill was introduced in the Senate and placed on second reading without reference to a committee for consideration.

December 2, 1971 (next session) -- The bill was voted on and passed by the Senate. On the same day, it was delivered to the Assembly and again placed on second reading without reference to a committee.

December 6, 1971 (next session) -- It was voted on and passed by the Assembly.

In the short period of three consecutive legislative sessions, this bill was introduced and voted on by both Houses of the Legislature. It did not have the benefit of consideration by a legislative committee, nor public hearing.

There are times when circumstances dictate such prompt action on a bill. I do not believe such overriding circumstances existed in this case.

To compensate for this void, representatives of the Governor's Office have met with persons representing various viewpoints for the express purpose of ferreting out the facts. Facts have been ascertained, but I should stress that the more appropriate body for gathering basic information of this nature under these circumstances should be the Legislature.

It is obvious that with one abbreviated legislative session remaining after passage of the bill on December 6, 1971, a conditional veto of the bill was an impossibility, as such a procedure would require emergency action in both Houses to approve the recommended changes.

I cannot veto the bill since I agree with its underlying philosophy that policemen and firemen should not be compelled to live within the municipality in which they serve if they do not choose to do so. I do not consider police and firemen second-class citizens.

Opponents of the bill have stressed police and firemen should be residents in order to meet any emergencies which may arise. The facts do not sustain the conclusion that emergencies require residency. In relation to fires, it has been pointedly established that a fire consumes within minutes and, therefore, both manpower and equipment must be accessible in moments. Assistance from other towns provides the aid needed more rapidly than a telephonic recall system. Statistics from some of our larger cities show that mutual assistance between municipalities is more widely used than recall. These facts, coupled with the knowledge that between 30-50% of the police and firemen in our larger cities presently reside outside the municipality of their employment, buttress my belief that the issue of residency has not, nor will not, adversely affect any emergency matter. To cope with emergencies, mutual assistance between municipalities must be the cornerstone.

It has been further argued by the opponents of the bill that permitting police and firemen to reside outside the municipality of their employment will create an exodus from the cities. Again, it must be recognized that many of them reside elsewhere at the present time. Statistically, far less than 1% of the population of a city is represented by police and firemen. Consequently, it seems fair to conclude that the residency of this small group is not a significant factor upon which to base the survival of the cities. We must realize that

these very cities and towns have condoned the migration of their police and fire forces over the years. To require these men to uproot their families and return is an inequity. I recognize an argument can be advanced that the municipal employee should reside where he works. This proposition can only be accepted if we assume all employees must reside in the municipality in which they work. To select one group upon the false pretense of emergency and require that group to meet a residential mandate is arbitrary and morally wrong.

I cannot sign the bill at this time because of the problems to which this bill did not address itself and the technical deficiencies in its drafting. Relevant shortcomings of the bill are as follows:

1. The most effective means of coping with emergencies is a workable plan for the exchange of mutual aid and assistance among neighboring municipalities. In this manner, additional equipment as well as manpower will be available. Our existing mutual aid and assistance laws must be broadened to cover all possible circumstances.

2. It is quite possible that the interest of the public at large is advanced when public employees voluntarily reside within the political unit in which they work. This cannot be effectively accomplished, however, at the expense of particular employees. To require involuntary residency breeds frustration, dissatisfaction and bitterness. These are not the ingredients of good law enforcement and public safety nor do they foster good community relations. So that residency on a voluntary basis will be encouraged, a preference should be given to residents over non-residents in appointment and promotional exams. Such a preference system should be designed to insure that the quality of appointees to the police force and fire departments will not be jeopardized.

3. No consideration was given in this bill to other sections of the law which permit the appointment of non-resident policemen and firemen in certain instances:

- a) where municipal ordinance provides for waiver of residency because of inability to maintain an adequate police force or fire department;
- b) discharged servicemen who become residents after appointment;
- c) provisions for certain small municipalities where non-residents are appointed and become residents thereafter.

It is inconsistent and inappropriate to continue these special exceptions in effect when the general proposition of residency is eliminated. A question of legislative intent is also raised by such omissions.

4. Another area which requires further clarification is the effect this legislation has on municipal ordinances making residency a condition of employment for public officers and employees. As drafted, there is no prohibition against such ordinances. There remains a substantial question as to whether the bill preempts the field in this area. If not, municipalities could enact such residency ordinances. Such a vital question should be answered definitively and not left to judicial interpretations.

I cannot, in all good conscience, sign this bill until legislation is passed to alleviate the problems in the areas outlined above. In my judgment, this bill is materially deficient as long as these problems continue. In order to afford the new Legislature ample opportunity to pass the necessary legislation, I will withhold action on this bill until March 3, 1972. This is a period of 45 days, Sundays excepted, from January 11, 1972, the last day of the 1971 legislative session and the maximum period permitted by the Constitution. If the Legislature complies with my recommendation during this period of time, I will sign this bill. If the Legislature fails to act during this time, I will not sign the bill.

I am aware of the situation which has developed over the past several years as the result of municipal officials condoning or tacitly approving the disregard of residency requirements. In some cases, it is acknowledged that 50% of the police force or fire department presently live outside the municipality. Efforts to enforce this law have, in most cases, proven to be useless. I am also aware of the hardship and chaos which will result if residency requirements are enforced at this late date. Further problems which presently exist in recruiting qualified policemen and firemen would be magnified.

In order that no policemen or firemen will be placed in jeopardy for alleged violation of residency requirements during the consideration of this subject, I am submitting to the Legislature for approval a bill to prohibit any claim, action or suit against a policeman or fireman on the grounds of violation of residency requirements during the period of January 11, 1972, through March 3, 1972. I am, thus, asking the Legislature to resolve this issue

during this period. Further, I feel that this necessary delay should not work against the interests of our policemen and firemen to whom we all owe so much.

The approach to this problem which I have recommended will eliminate the need for policemen and firemen to misrepresent their residence. Municipalities will no longer have to participate in this charade. Municipalities will be better prepared to cope with emergent situations through broader, more comprehensive mutual aid laws. High standards for appointees to the police and fire departments will be maintained.

To expedite matters I am sending a copy of this statement to each of the new legislative leaders. I have also instructed affected State departments and offices to cooperate in the preparation of the necessary bills.

###

1. A state agency - perhaps the Police Training Commission - should assist local departments with their recruiting efforts. Departments could facilitate state assistance by abolishing residency requirements for applicants. At present, each department must advertise its vacancies, screen and test applicants, and schedule basic training for recruits. This procedure is inefficient, costly, and, most important, does not allow the departments to choose from among the largest possible number of applicants.

The state could organize well-planned recruiting campaigns in the New Jersey-New York-Pennsylvania area and send representatives to colleges and armed forces installations throughout the Northeast. (The armed forces currently operate a program which allows for the early discharge of veterans who wish to join police departments. The soldiers are assisted in meeting the educational requirements of the departments and the armed services provide the departments with basic physical and background data. Fort Dix has a large program, but most New Jersey departments do not take advantage of it.)

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Recommendations: The State Role cont'd

Ideally, the state would provide for initial intelligence testing, a brief physical, and the administration of a standard psychological test. Lists of eligible candidates, and their qualifications, would be made available to the departments who would then be able to contact promising candidates. The state would then cooperate in expediting background investigations and coordinating basic training programs in order to get the recruit in service as soon as possible.

2. The State should establish a Peace Officers' Certification Program similar to that operating in California. Under a program of this type, officers who successfully completed an approved basic training course and served for a uniform probationary period would be certified as eligible for appointment in any department in the state. Eventually, certification standards could be established for ranking officers and civilian personnel. This program would be aimed at improving the general quality of police personnel and facilitating transfers from one department to another.