

2A: 81-17.2a1 + 17.2a2

LEGISLATIVE FACT SHEET

ON Public employee witness to be informed of duty to testify

N.J.R.S. 2A: 81-17.2a1 + 17.2a2

( Amendment )

LAWS OF 1975

CHAPTER 246 Oct 28, 1975

SENATE

ASSEMBLY 2045

INTRODUCED July 29, 1974

BY Shelton

STATEMENT

YES

NO

AMENDED DURING PASSAGE

YES

NO

HEARING

VETO

STATEMENT to A 2045 (1974-75)

This bill amends P. L. 1970, c. 72, which sets forth the duty of every public employee to appear and testify upon matters directly related to the conduct of his office, position or employment before any court, grand jury or the State Commission of Investigation. The major defect in existing law which this bill attempts to cure is that the law automatically gives public employees immunity regardless of whether or not the employee advanced a claim of immunity, and whether or not the employee's testimony was compelled. Recent United States Supreme Court decisions have upheld the constitutionality of immunity statutes which confer immunity only after an affirmative claim is made, or only for testimony which was compelled by the prosecutor. The existing statute results in a prosecutor's losing control over the testimony of public employee witnesses, and in the witnesses being able to blurt out material voluntarily with a consequent receipt of immunity for the material blurted out. Cont'd -> OVER

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This bill also amends P. L. 1970, c. 72 so as to make explicit the prosecutor's obligation to inform the public employee witness of his duty to appear and to testify, and of the consequences resulting from a failure to appear and testify. The employee's due process rights would be violated were he not forewarned of his obligations and of the consequences resulting from his failure to fulfill those obligations.

This bill also amends the existing statute so as to exempt from any grant of immunity a false swearing prosecution as well as a perjury prosecution. Both the federal and the State general immunity statutes provide that any grant of immunity is ineffective in such prosecutions, but the inadvertent omission of explicit language concerning false swearing in P. L. 1970, c. 72 has presented problems for the State's law enforcement officers in recent prosecutions.

ASSEMBLY No. 2045

STATE OF NEW JERSEY

INTRODUCED JULY 29, 1974

By Assemblyman SHELTON

Referred to Committee on Judiciary, Law, Public Safety  
and Defense

AN ACT to amend "An Act providing for the removal of certain public employees from office, position or employment, and repealing P. L. 1953, chapter 259," approved May 21, 1970 (P. L. 1970, c. 72).

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

1 1. Section 2 of P. L. 1970, c. 72 (C. 2A:81-17.2a1 is amended to  
2 read as follows:

3 2. It shall be the duty of every public employee to appear and  
4 testify upon matters directly related to the conduct of his office,  
5 position or employment before any court, grand jury or the State  
6 Commission of Investigation. Any public employee failing or re-  
7 fusing to so appear and to so testify, *after having been informed*  
8 *of his duty to appear and testify under this act by the prosecuting*  
9 *attorney, or a member of or attorney for the State Commission of*  
10 *Investigation, as the case may be, shall be subject to removal from*  
11 *his office, position or employment.*

1 2. Section 3 of P. L. 1970, c. 72 (C. 2A:81-17.2a2) is amended  
2 to read as follows:

3 3. If any public employee, *having claimed the privilege against*  
4 *self-incrimination, testifies before any court, grand jury or the*  
5 *State Commission of Investigation after having been informed that*  
6 *his failure to appear and testify would subject him to removal*  
7 *from his office, position or employment, such testimony and the*  
8 *evidence derived therefrom shall not be used against such public*  
9 *employee in a subsequent criminal proceeding under the laws of*  
10 *this State; provided that no such public employee shall be exempt*  
11 *from prosecution or punishment for perjury or false swearing*  
12 *committed while so testifying.*

1 3. This act shall take effect immediately.

## STATEMENT

This bill amends P. L. 1970, c. 72, which sets forth the duty of every public employee to appear and testify upon matters directly related to the conduct of his office, position or employment before any court, grand jury or the State Commission of Investigation. The major defect in existing law which this bill attempts to cure is that the law automatically gives public employees immunity regardless of whether or not the employee advanced a claim of immunity, and whether or not the employee's testimony was compelled. Recent United States Supreme Court decisions have upheld the constitutionality of immunity statutes which confer immunity only after an affirmative claim is made, or only for testimony which was compelled by the prosecutor. The existing statute results in a prosecutor's losing control over the testimony of public employee witnesses, and in the witnesses being able to blurt out material voluntarily with a consequent receipt of immunity for the material blurted out.

This bill also amends P. L. 1970, c. 72 so as to make explicit the prosecutor's obligation to inform the public employee witness of his duty to appear and to testify, and of the consequences resulting from a failure to appear and testify. The employee's due process rights would be violated were he not forewarned of his obligations and of the consequences resulting from his failure to fulfill those obligations.

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~~4/11/77~~  
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FROM THE OFFICE OF THE GOVERNOR

OCTOBER 29, 1975

FOR FURTHER INFORMATION

FOR IMMEDIATE RELEASE

DICK CAMPBELL

Governor Brendan Byrne has signed into law a bill which provides that public employees who testify before courts or investigative agencies shall be granted immunity from prosecution only if they claim the privilege against self-incrimination.

The bill, A-2045, sponsored by Assemblyman Robert C. Shelton, Jr., D-Sussex, amends a 1970 law which provides for the removal from office of any public employee who refuses to testify before any court, grand jury or the State Commission of Investigation. That law automatically granted immunity to any public employee who testified.

The amended law now also requires that the public employee be informed that his or her failure to appear and testify could result in removal from office.

The new law also provides that no public employee who testifies under such circumstances shall be exempt from charges of false swearing, in addition to charges of perjury.

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