

Public Hearing

before

ASSEMBLY STATE AND LOCAL GOVERNMENT COMMITTEE

Assembly Concurrent Resolution 192

“Invalidates Civil Service Commission job banding rule”

LOCATION: Committee Room 11
State House Annex
Trenton, New Jersey

DATE: October 9, 2014
12:30 p.m.

MEMBERS OF COMMITTEE PRESENT:

Assemblywoman Linda D. Stender, Chair
Assemblyman Herb Conaway Jr., Vice Chair
Assemblyman Timothy J. Eustace
Assemblyman Robert Auth
Assemblyman Michael Patrick Carroll



ALSO PRESENT:

Pamela H. Espenshade
Scott A. Brodsky
Office of Legislative Services
Committee Aides

Brian M. Quigley
Assembly Majority
Committee Aide

Bill Killion
Assembly Republican
Committee Aide

Meeting Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey



LINDA STENDER
Chairwoman

HERB CONAWAY, JR.
Vice-Chairman

TIMOTHY J. EUSTACE
ROBERT AUTH
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New Jersey State Legislature
ASSEMBLY STATE AND LOCAL GOVERNMENT
COMMITTEE
STATE HOUSE ANNEX
PO BOX 068
TRENTON NJ 08625-0068

PUBLIC HEARING NOTICE

The Assembly State and Local Government Committee will hold a public hearing on Thursday, October 9, 2014 at 12:30 PM in Committee Room 11, 4th Floor, State House Annex, Trenton, New Jersey.

The public may address comments and questions to Pamela H. Espenshade, State Government, Scott A. Brodsky, Local Government, Committee Aides, or make bill status and scheduling inquiries to Audrey M. Bailey, Secretary, at (609)847-3890(State Govt.), (609)847-3875(Local Govt.), fax (609)777-2998, or e-mail: OLSAideASL@njleg.org. Written and electronic comments, questions and testimony submitted to the committee by the public, as well as recordings and transcripts, if any, of oral testimony, are government records and will be available to the public upon request.

The public hearing is being held in compliance with Article V, Section IV, paragraph 6 of the New Jersey Constitution.

ACR-192

Invalidates Civil Service Commission job banding rule.

Stender/Gusciora/
Conaway/Eustace

Persons wishing to testify should submit 15 copies of written testimony to the committee on the day of the hearing.

Issued 9/30/14

For reasonable accommodation of a disability call the telephone number or fax number above, or TTY for persons with hearing loss 609-777-2744 (toll free in NJ) 800-257-7490. The provision of assistive listening devices requires 24 hours' notice. Real time reporter or sign language interpretation requires 5 days' notice.

For changes in schedule due to snow or other emergencies, call 800-792-8630 (toll-free in NJ) or 609-292-4840.

ASSEMBLY CONCURRENT RESOLUTION No. 192

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED SEPTEMBER 29, 2014

Sponsored by:

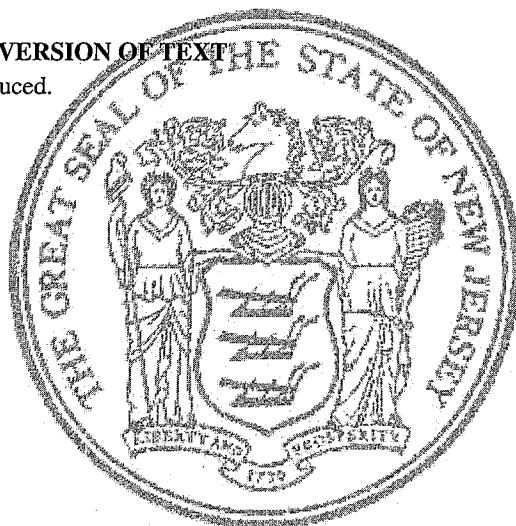
Assemblywoman LINDA STENDER
District 22 (Middlesex, Somerset and Union)
Assemblyman REED GUSCIORA
District 15 (Hunterdon and Mercer)
Assemblyman HERB CONAWAY, JR.
District 7 (Burlington)
Assemblyman TIMOTHY J. EUSTACE
District 38 (Bergen and Passaic)
Assemblyman DANIEL R. BENSON
District 14 (Mercer and Middlesex)

SYNOPSIS

Invalidates Civil Service Commission job banding rule.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/3/2014)

ACR192 STENDER, GUSCIORA

2

1 **A CONCURRENT RESOLUTION** concerning legislative review of
2 rules and regulations pursuant to Article V, Section IV,
3 paragraph 6 of the Constitution of the State of New Jersey and
4 invalidating the Civil Service Commission job banding rule.
5

6 **WHEREAS**, Pursuant to Article V, Section IV, paragraph 6 of the
7 Constitution of the State of New Jersey, the Legislature may review
8 any rule or regulation adopted or proposed by an administrative
9 agency to determine if it is consistent with the intent of the
10 Legislature, and invalidate an adopted rule or regulation or prohibit
11 the adoption of a proposed rule or regulation if it finds that the rule
12 or regulation is not consistent with legislative intent; and

13 **WHEREAS**, Upon finding that a rule or regulation, either proposed or
14 adopted, is not consistent with legislative intent, Article V, Section
15 IV, paragraph 6 provides that the Legislature shall transmit its
16 findings in the form of a concurrent resolution to the Governor and
17 the head of the Executive Branch agency which promulgated, or
18 plans to promulgate, the rule or regulation, and the agency shall
19 have 30 days from the time the concurrent resolution is transmitted
20 to amend or withdraw the rule or regulation; and

21 **WHEREAS**, If the agency does not amend or withdraw the existing or
22 proposed rule or regulation, Article V, Section IV, paragraph 6
23 provides that the Legislature may invalidate or prohibit the adoption
24 of the proposed rule or regulation, following a public hearing held
25 by either House on the invalidation or prohibition, the placement of
26 a transcript of the public hearing on the desks of the members of
27 each House of the Legislature in open meeting followed by the
28 passage of at least 20 calendar days, and a vote of a majority of the
29 authorized membership of each House in favor of a concurrent
30 resolution invalidating or prohibiting the adoption of the rule or
31 regulation; and

32 **WHEREAS**, The Civil Service Commission adopted a new rule,
33 N.J.A.C.4A:3-3.2A, entitled "Job Banding Program," which was
34 filed with the Office of Administrative Law on February 28, 2013
35 and published in the New Jersey Register on March 18, 2013, and,
36 after the adoption of substantial changes, was adopted by the
37 commission at its meeting on May 7, 2014 and became effective on
38 June 2, 2014 upon publication in the New Jersey Register; and

39 **WHEREAS**, On June 16, 2014, Senate Concurrent Resolution No. 116
40 received final approval by the Legislature and was filed with the
41 Secretary of State, and transmitted to the Governor and the Chair of
42 the Civil Service Commission; and

43 **WHEREAS**, Senate Concurrent Resolution No. 116 expressed the
44 Legislature's finding that the Civil Service Commission's new rule
45 N.J.A.C.4A:3-3.2A, "Job Banding Program," was not consistent
46 with legislative intent and informed the commission, pursuant to
47 Article V, Section IV, paragraph 6 of the Constitution of the State
48 of New Jersey, that the commission shall have 30 days following

ACR192 STENDER, GUSCIORA

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1 transmittal of that concurrent resolution to amend or withdraw the
2 new rule or the Legislature may, by passage of another concurrent
3 resolution, exercise its authority under the Constitution to invalidate
4 the regulation in whole or in part; and

5 **WHEREAS**, The new rule is contrary to the spirit, intent, and plain
6 meaning of the provision in the New Jersey Constitution that
7 requires that promotions of public employees be based on merit and
8 fitness to be ascertained, as far as practicable, by examination,
9 which, as far as practicable, shall be competitive. The new rule is
10 not consistent with the legislative intent that the public policy of
11 this State is to select and advance employees on the basis of their
12 relative knowledge, skills and abilities, ensure equal employment
13 opportunity at all levels of public service, and protect career public
14 employees from political coercion. The new rule is not consistent
15 with the legislative intent that a competitive promotional
16 examination process be established, maintained, and administered
17 by the Civil Service Commission to ensure that promotions are
18 based on merit and fitness and are not based on patronage or
19 discriminatory reason. The new rule is not consistent with the
20 intent of the Legislature as expressed in the language of the Civil
21 Service Act, including the spirit, intent, or plain meaning of
22 N.J.S.A.11A:3-1, N.J.S.A.11A:4-1, or N.J.S.A.11A:4-8; and

23 **WHEREAS**, On July 16, 2014, the Civil Service Commission approved
24 proposed amendments to the job banding rule that would make only
25 minor changes and are not responsive to the Legislature's finding,
26 expressed in Senate Concurrent Resolution No. 116, that job
27 banding is not consistent with legislative intent as expressed in the
28 language of the Civil Service Act; and

29 **WHEREAS**, The amendments proposed on July 16, 2014 do not in any
30 way limit the Legislature's ability to proceed with invalidating the
31 job banding rule pursuant to Article V, Section IV, paragraph 6
32 through passage of this resolution; and

33 **WHEREAS**, Prior to voting on a concurrent resolution to invalidate an
34 adopted rule or regulation or prohibit the adoption of a rule or
35 regulation, a public hearing shall be held on invalidating or
36 prohibiting the adoption of the proposed rule and the transcript of
37 that hearing shall be placed on the desk of each member of the
38 Senate and each member of the General Assembly; now, therefore,
39

40 **BE IT RESOLVED** by the General Assembly of the State of New
41 Jersey (the Senate concurring):

42
43 1. The Legislature invalidates, in whole, N.J.A.C.4A:3-3.2A,
44 the rule adopted by the Civil Service Commission and entitled "Job
45 Banding Program," pursuant to the power set forth in Article V,
46 Section IV, paragraph 6 of the Constitution of the State of New
47 Jersey, which became effective on June 2, 2014.

ACR192 STENDER, GUSCIORA

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1 2. The Legislature recognizes that the Civil Service
2 Commission further amended N.J.A.C.4A:3-3.2A and submitted
3 such amendments for filing to the Office of Administrative Law on
4 July 16, 2014. As the Legislature has invalidated N.J.A.C.4A:3-
5 3.2A in its entirety as set forth in section 1 of this concurrent
6 resolution, any subsequent amendments to said regulation shall be
7 deemed null and void.

8

9 3. Copies of this concurrent resolution, as fined with the
10 Secretary of the State shall be transmitted by the Secretary of the
11 Senate or the Clerk of the General Assembly shall transmit a copy
12 of this concurrent resolution to the Governor, the Chair of the Civil
13 Service Commission, and the Office of Administrative Law.

14

15 4. This concurrent resolution shall take effect immediately.

16

17

STATEMENT

19

20 Pursuant to Article V, Section IV, paragraph 6 of the
21 Constitution of the State of New Jersey, this concurrent resolution
22 invalidates, in whole, the rule proposed by the Civil Service
23 Commission to establish a job banding program, specifically
24 N.J.A.C. 4A:3-3.2A, which was adopted by the commission on May
25 7, 2014 and became effective on June 2, 2014 upon publication in
26 the New Jersey Register. In addition, this concurrent resolution
27 expressly provides that any amendments to that rule adopted by the
28 Commission, including the amendment filed by the commission
29 with the Office of Administrative Law on July 16, 2014, are null
30 and void.

As required by the Constitution, the Legislature has previously informed the commission, through Senate Concurrent Resolution No. 116 of 2014, of the Legislature's finding that the job banding rule is not consistent with legislative intent.

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ASSEMBLYWOMAN LINDA D. STENDER (Chair): Good morning. I'm going to call this public hearing of the Assembly State and Local Government Committee to order.

This hearing before the Assembly State and Local Government Committee on Assembly Concurrent Resolution 192, invalidating the Civil Service Commission job banding rule, is being held in compliance with Article V, Section IV, paragraph 6 of the New Jersey Constitution, and in the manner provided by the rules of the General Assembly.

I would ask that speakers please make their oral remarks into the Hearing Unit microphones used for recording the proceedings in order to ensure that those remarks will be included in the transcript of the hearing. And also state your name and any organization affiliation for the record before beginning to speak in order to assist the Hearing Unit staff in identifying the remarks of each speaker in the hearing transcript.

Please call the roll.

MS. ESPENSHADE (Committee Aide): Assemblyman Carroll.
(no response)

Assemblyman Auth.

ASSEMBLYMAN AUTH: Present.

MS. ESPENSHADE: Assemblyman Eustace.

ASSEMBLYMAN EUSTACE: Present.

MS. ESPENSHADE: Present; and Chairwoman Stender.

ASSEMBLYWOMAN STENDER: Present.

Thank you very much.

For today on this, I have, in favor, Eric Richard from the New Jersey AFL-CIO, no need to testify; Beth Schroder, from the NJEA, in favor, no need to testify.

Please let the record note that Assemblyman Conaway is at the dais.

And also, Seth Hahn from the CWA, in favor. Seth, would you come up and share some remarks?

S E T H H A H N: Are these the hearing microphones?

ASSEMBLYWOMAN STENDER: Either one.

MR. HAHN: Okay, great. Thank you.

I think these are off (referring to PA microphones) so I'm just going to speak loudly.

ASSEMBLYWOMAN STENDER: No, wait.

MR. HAHN: No?

ASSEMBLYWOMAN STENDER: Because we need the transcript.

Both of my lights are on. (referring to PA microphones)
Thank You.

MR. HAHN: Chair and members of the Committee, my name is Seth Hahn. I represent the Communications Workers of America in New Jersey. We represent tens of thousands of public workers at the State, county, and local government level, and we represent workers both within the Civil Service system and workers outside of it.

Thank you for holding this public hearing on the Administration's job banding proposal at Civil Service. To start, it is important to point out that this Administration is dead set on violating the

clear will of the Legislature and the clearly defined authority this Legislature has under the New Jersey Constitution. Through numerous public hearings over the course of nearly a year-and-a-half, the Legislature has been clear: no job banding. And despite that, and despite legislative action to stop the proposal from going into effect January of this year, the Civil Service Commission still has the banding proposal on its website as if the rule is in effect. It is now playing what it must consider a cute cat and mouse game, where every time the Legislature says it cannot enact its proposal, it makes a minor change to its proposal and says to the Legislature, “We’re going to ignore what you said your concerns are and enact this proposal with a minor change.”

This is an affront to the powers the New Jersey Constitution gives to this Legislature, and every member of the Legislature should be outraged that the Civil Service Commission holds this body in such low regard.

On the merits of the proposal, let us be clear. At a time when New Jersey citizens want more oversight of government and more checks on abuse and corruption; at a time when it is clear stronger checks are needed to ensure quality career employees fill the ranks of public workers, this Administration is attempting to obliterate oversight and destroy the modest checks on the power of political appointees in government that have been in place for more than 100 years. These checks are so important they are enshrined in the New Jersey Constitution, which says promotions in Civil Service shall be completed by competitive examination “as far as practicable.”

The effect of reducing oversight in Civil Service and granting political appointees more power is seen every day. Just last week, the *Star-Ledger* reported that the son of a politically connected county executive close to the Governor was hired at the Department of Education as an education specialist, level three, step five. This position was not filled by examination. Had it been a position filled by examination with respect to qualifications, it's not clear the executive's son would have been qualified in the first place, but he certainly would have started at level one, step one. The difference to the taxpayers in just this one example is nearly \$30,000 in increased salary alone each year.

While the Commission's proposal would not have stopped this in this specific title -- because it's a title that falls outside of those in need of competitive examinations -- it would make this the common practice of every single job in State service.

Here's what the proposal does: It would allow the Civil Service Commission to take promotional exams currently in place and throw them out the window. Currently if you are, for example, an Auditor 1 and you want to become an Auditor 2, you have to meet minimum qualifications that may be more education or experience on the job, and then when the job comes open you have to take an exam. The scores of that exam are publicly listed, and then management has what is called the *rule of three* from which to choose a candidate for promotion. If 10 workers score a 90, 11 score an 89, and 12 score an 88, then management can pick from among those 33 people who scored in the top three scores for the promotion. And it is commonplace that management has two dozen, or even more, candidates from which to pick.

The only check on this is that you cannot pass over a veteran with someone who is not a veteran. So in the example above, where 10 score a 90, 11 score an 89, and 12 score an 88, if a veteran is one of those who scores an 89, then management can only choose from among the 21 workers in the top two scores, instead of the 33 workers in the top three.

This system is why women, people of color, LGBT workers, disabled workers, and many others have received access to promotions in public service in New Jersey. It's because the system requires transparency in promotions, and promotions cannot unilaterally be made by checking against a list of campaign contributors.

The proposal would allow the Civil Service Commission to remove the need for a competitive examination and place the Auditor 1 title and Auditor 2 -- and even Auditor 3 and other titles, if it chooses -- into the same job band. And instead of a promotion with a transparent test that is given to qualified applicants, managers would be allowed to choose who gets the Auditor 2 titles without respect to qualifications or an exam.

To be clear: The Civil Service Commission will tell you this is not changing veterans' preference -- and that is true. What the Civil Service Commission isn't telling you is that this proposal will allow the instances in which veterans' preference is used to be essentially eliminated. And instead of transparency and something a veteran can see in plain words on a piece of paper, this proposal creates an honor system, whereby management can say to a veteran who didn't get a promotion, "Trust me, I considered your status as a veteran when I passed you over."

This is shameful at a time when so many veterans are in need of a good job. If you can't put it on paper and document veterans' preference exists, then you are guaranteeing that it will not exist, pure and simple.

Public service needs, and New Jersey citizens are demanding, stronger protections against political influence and corruption instead of obliterating those meager protections already in place. Turning titles into mush and allowing managers to promote people up through different titles is something that may be acceptable if you're a business owner and want to spend your own money hiring your incompetent cousin in the private sector, but promotions in public service should be done according to qualifications and objective measurements, or taxpayers will be harmed.

Yes, it is harder for those who aren't able to obtain patronage jobs outside of Civil Service to be promoted if they have to obtain basic qualifications and perform well on tests designed to objectively and transparently measure merit. I have no doubt that it can be annoying when a politician's hand-selected employee isn't able to obtain a promotion. But it should be hard and annoying to pass over qualified veterans, women, people of color, gay and lesbian, or disabled workers for promotions. The fact that it is hard and annoying is the reason New Jersey has transformed from a largely white male management in the early 1980s to the broad diversity that reflects the diversity of our communities today. And public service managers should reflect the diversity of their communities, not the diversity of the local political machine's campaign contribution list.

The Administration is flagrantly flaunting the clear intent of the Legislature, and the Legislature should take the final steps to tell the

Administration this type of behavior will not be tolerated -- in the strongest possible terms.

Thank you, Madam Chair. I'd be happy to--

ASSEMBLYWOMAN STENDER: Thank you very much, Seth.

Any questions? (no response) I don't believe so.

MR. HAHN: Thank you.

ASSEMBLYWOMAN STENDER: Thank you.

I believe-- Michele Liebtag from CWA 1036, in favor, no need to testify.

I have a statement from the NJEA on this issue -- their position statement on ACR-192, in support.

"This resolution expresses opposition to a new rule that creates a job banding program within the Civil Service system. While the new rule only applies to State government workers, it is a fundamental change to our Civil Service system that should be opposed at all levels of government. Even with recent changes made to this newly adopted rule, the minor changes leave much of these contentious new rules intact."

Thank you.

Seeing nobody else, I believe I'm going to close this hearing. We are -- this is a requirement: to be clear of the legislative intent to protect Civil Service, as we have been clear about in the past, and again today.

I will close the hearing; there is no need for a roll call.

Hearing adjourned.

(HEARING CONCLUDED)

APPENDIX

Chair, members of the committee, my name is Seth Hahn and I represent the Communications Workers of America in New Jersey. We represent tens of thousands of public workers at the state, county and local government level, and we represent workers both within the Civil Service system and workers outside of it. Thank you for holding this public hearing on the Administration's job banding proposal at Civil Service.

To start, it is important to point out that this Administration is dead set on violating the clear will of the legislature and the clearly defined authority this legislature has under the New Jersey Constitution. Through numerous public hearings over the course of nearly a year and a half, the legislature has been clear: no job banding. And despite that, and despite legislative action to stop the proposal from going into effect in January of this year, the Civil Service Commission still has the banding proposal on its website as if the rule is in effect. It is now playing what it must consider a cute cat and mouse game, where every time the legislature says it cannot enact it's proposal, it makes a minor change to its proposal and says to the legislature, "We're going to ignore what you said your concerns are, and enact this proposal with a minor change." This is an affront to the powers the New Jersey Constitution gives to this legislature, and every member of the legislature should be outraged that the Civil Service Commission holds this body in such low regard.

On the merits of the proposal, let us be clear: At a time when New Jersey citizens want more oversight of government and more checks on abuse and corruption, at a time when it is clear stronger checks are needed to ensure quality, career employees fill the ranks of public workers, this Administration is attempting to obliterate oversight, and destroy the modest checks on the power of political appointees in government that have been in place for more than 100 years. These checks are so important they are enshrined in the New Jersey Constitution, which says promotions in Civil Service shall be completed by competitive examination "as far as practicable." The effect of reducing oversight in Civil Service and granting political appointees more power is seen every day. Just last week, the son of a politically-connected county executive close to the governor was hired at the Department of Education as an education specialist level three, step five. This position was not filled by examination. Had it been a position filled by examination and with respect to qualifications, it is not clear the executive's son would have been qualified in the first place, but he certainly would have started at



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Here is what the proposal does: It would allow the Civil Service Commission to take promotional exams currently in place and throw them out the window. Currently, if you are, for example, an auditor 1, and you want to become an auditor 2, you have to meet minimum qualifications that may be more education or experience on the job, and then you have to take an exam. The scores of that exam are publicly listed and then management has what is called the rule of three from which to choose a candidate for promotion. If ten workers score a '90,' eleven score an '89,' and twelve score an '88,' then management can pick from among those 33 people who scored in the top three scores for the promotion. And it is commonplace that management has two dozen or even more candidates from which to pick. The only check on this is that you cannot pass over a veteran with someone who is not a veteran. So in the example above where ten score a '90,' eleven score an '89' and twelve score an '88,' if a veteran is one of those who scores an '89,' then management can only choose from among the 21 workers in the top two scores instead of the 33 in the top three.

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POSITION STATEMENT

ACR-192

"Declares that Civil Service Commission's new rule concerning job banding is not consistent with legislative intent."

NJEA supports ACR-192 (Stender, Gusciora, Conaway, Eustace, Benson). This resolution expresses opposition to a new rule that creates a job banding program within the civil service system. While the new rule only applies to State government workers, it is a fundamental change to our Civil Service System that should be opposed at all levels of government. Even with recent changes made to this newly adopted rule, the minor changes leave much of these contentious new rules in tact.

Under the new regulations, employees of various, similar job titles would be placed into a category or job band. In order to move up or receive a promotion, employees would have to demonstrate competency, as determined by management, rather than the traditional test taking procedures.

The Civil Service system was established to protect public employees from arbitrary and capricious decisions in the hiring, promoting, demoting, and firing of public employees. One of the ways the system works is by allowing objective measures, like promotional exams, to determine an employee's qualifications for advancement. In doing so, it removes personal bias from the decision making process.

The new rules fly in the face of these very principles and will give sole discretion to managers to make unilateral decisions on who is qualified for advanced responsibilities and who is not. While management should have some discretion in delegating employee responsibilities, the job banding program will create a system in which managers can easily maneuver to advance the careers of their friends and stifle, for any reason at all, the careers of others.

NJEA urges your support of this resolution.

GGS/BSB/ies
10/09/2014