

APPENDIX

The 1947 New Jersey Constitution made our state's executive one of the most powerful governors of any state in the country. In the nearly 70 years since, the people of New Jersey have restricted the influence of such a powerful executive only one time: In 1992, the voters approved modest check on the executive through an Amendment empowering the legislature to declare that a proposed or enacted regulation does not meet the legislative intent of the law the legislature passed.

Today we are discussing a regulation that would gut more than one hundred years of taxpayer protection from corruption in public service, crafted specifically to circumvent the elected legislature, in which public participation has been discouraged at every step. Counting floor debate on the resolution in June, today is only the sixth opportunity for anyone in New Jersey to publicly discuss the most sweeping changes to public service since before World War I. We have heard unions, workers, elected leaders, veterans, women, people of color, the disabled, the LGBT community and more speak about how the proposed regulation would move New Jersey back decades, and to date only a single person has spoken in favor of the proposal—and even then it was not clear the regulations would solve that person's concern.

Such an overreach is exactly what voters had in mind when they gave the legislature this power.

The issue is whether promotions in jobs funded by taxpayers should happen according to a transparent process based on objective criteria and merit, or whether they should occur without oversight in an environment that encourages more nepotism, cronyism and corruption in New Jersey's public services.

The current system is a Constitutionally-required one that develops objective criteria for promotions. It requires management to post notice of promotional titles. Objective criteria such as experience and education are required for eligibility. It then requires a test, which is scored, and management can then select someone for promotion according to the “Rule of Three,” or the top three scores. For example, say eight people score ‘89,’ seven score ‘88,’ and ten score ‘87.’ Management would then have twenty-five people from which to select a candidate for promotion. The only meaningful restriction on the ability to pick anyone in the top three scores is that a veteran cannot be passed over for someone who scored lower than the veteran. It is quite common for management to have twenty-five choices or more from which to pick the successful candidate for promotion.

This proposal would obliterate that system. It would allow Civil Service executives to place thousands or even tens of thousands of workers into a “broad band” of titles, and instead of promotions, workers would be “advanced” through the broad band. Instead of qualifications and objective measurements, workers would be advanced based on unilateral determinations of “competency” by managers.

With regards to veterans, the Administration has been careful to say that veterans will still receive preference in promotions. What it has failed to mention is that this proposal is written so broadly that it could allow Civil Service executives to eliminate 90% of the instances in which promotions—and therefore the very meagre veterans’ preference we have—will exist.

The proposal would eliminate the only third-party process for workers to appeal decisions believed to be based on discrimination, and replace it with a system where a worker can only appeal to the Department that made the determination of

“competency” in the first place. Voters and legislators consistently want more oversight and more information about government operations, but this regulation would gut a system of oversight and replace it with one where a worker’s only recourse is to say, “Are you sure?” to the person who just made the decision.

The Civil Service Commission points to a pilot program within the state’s Judiciary as justification for the new rules. To be clear, in Judiciary, a series of mostly uniform job titles in a uniform system across 21 counties were broad banded. That process took many months to complete, was bargained with the unions involved, and represents less than one percent of the titles in Civil Service.

This process, on the other hand, where Civil Service seeks to band titles across state, county and municipal government that are often very different from town to town, has been done in a manner so secretive the only possible conclusion is it must be deliberate. Civil Service held only one meeting with the unions—the minimum required by law, and only after we pointed out it was required by law—to discuss the proposal. In many cases, we were told that basic questions about the proposal would not be answered, but that we should put our questions in our comments to the proposal. For the record, we put our questions in our comments document last June, and they remain unanswered. Civil Service held one public hearing, again the minimum requirement, and it did so on a week day in Trenton at 3:00 p.m. in a room that sat 30 people. Not one Civil Service commissioner attended that hearing, and not one Civil Service commissioner attended either of the two oversight hearings held by the legislature. Civil Service denied our request for more hearings throughout the state and at times when workers and local elected officials impacted could attend, even though previous Administrations, both Democratic and Republican, have granted more hearings for changes far less sweeping than this.

This entire proposal came less than two years after the legislature and the Governor could not agree to broad changes in the state's Civil Service. The Governor proposed a system of opting out of Civil Service as part of his "Toolkit" of reforms in 2009, and in 2010, the legislature passed a bill that would have allowed for government entities to change certain policies covered by Civil Service in the collective bargaining process. That bill was conditionally vetoed, and the Governor sent his initial Toolkit proposal back to the legislature, where it died. This issue is much bigger than just the changes to Civil Service: If the executive can decide that if it can't find compromise and common ground with the legislature, then he or she can simply circumvent the legislature to achieve his or her policy priorities, then the integrity of the legislature is fundamentally compromised.

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 it can be annoying when a politician's hand-selected employee isn't able to obtain a promotion. 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. If the Administration is not willing to withdraw the proposal, the legislature must take appropriate action to prohibit it from taking effect.