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The "New Jersey First Act" Residency Requirements for Public Employees

Earlier this year Governor Christie signed into law the "New Jersey First Act" (P.L. 2011, c. 70). The law, which took effect on September 1, 2011, amended an existing law (R.S. 52:14-7) that regulated certain state government residency requirements. The new law establishes new residency requirements for all public employees and officers at all levels and types of New Jersey government agencies.

This notice summarizes the key elements of the law and provides interpretative guidance on its application. While focused on local government units, the guidance is generally applicable to all New Jersey government agencies. The text of the law is reprinted in Appendix A. Appendix B of this Notice is a list of frequently asked questions and answers that elaborate on operational issues raised by the law.

The law requires that "every person holding an office, employment or position" in the State of New Jersey shall have their "principal residence" in the State of New Jersey. There are several limited exemptions to the law:

- 1) Employees hired on or after September 1, 2011 who are not a resident when hired receive a one year exemption. If they fail to establish residency within that year, they shall be deemed unqualified for holding the office, employment, or position.
- 2) Employees, officers, and appointees who did not meet the residency requirement on the effective date (i.e., residency was out-of-state on 9/1/2011), are exempted unless they break public service for a period of time greater than seven days.
- 3) Specific situations at higher education institutions (State universities, colleges, and county colleges). These organizations should consult the text of the law for how the exemptions are applied.
- 4) People employed by the State whose work requires them to be out-of-state for the majority of their working hours.

- 5) Exemptions granted on the basis of critical need or hardship. The law established a committee to grant such exemptions. At the time of this Notice procedures for filing have yet to be developed. Once established, information will be available through the Civil Service Commission, Division of Local Government Services, and Department of Education websites.

The Frequently Asked Questions in Appendix B elaborate on various circumstances surrounding these exemptions.

The law defines “principal residence” to mean:

- (1) where the person spends the majority of his or her non-working time, and
- (2) which is most clearly the center of his or her domestic life, and
- (3) which is designated as his or her legal address and residence for voting.

Simply having a home in New Jersey is not significant enough to meet the residency requirement; all the above requirements must be met.

The law specifically covers “every person holding an office, employment, or position:

- (1) in the Executive, Legislative, or Judicial Branch of this State, or
- (2) with an authority, board, body, agency, commission, or instrumentality of the State, including any State college, university, or other higher educational institution, and, to the extent consistent with law, any interstate agency to which New Jersey is a party, or
- (3) with a county, municipality, or other political subdivision of the State or an authority, board, body, agency, district, commission, or instrumentality of the county, municipality, or subdivision, or
- (4) with a school district or an authority, board, body, agency, commission, or instrumentality of the district.”

The use of the phrase “office, employment, or position” is interpreted to include individuals serving on boards or commissions as volunteers. Notwithstanding that, such individuals may fall under another exemption to the law.

The State Civil Service Commission is issuing guidance on the law to those local units who fall under the Commission’s jurisdiction (Title 11A). The Commission is also proposing rule amendments that will make existing rules consistent with the law. The rule proposal is scheduled to be published in the November 7, 2011, issue of the New Jersey Register and will be posted on the [Commission’s website](#) at that time.

Appendix B of this Notice is a list of frequently asked questions and answers that elaborate on operational issues raised by the law. The Division of Local Government Services website will contain [New Jersey First](#) law information under the Financial Administration heading.

Each local unit should carefully review hiring after September 1. Existing employees should also be made aware of the law. Agency personnel manuals and policies should also be updated to reflect the new requirements. Advertisements for new positions should inform applicants of the residency requirement (see FAQ Question #13).

Questions concerning individual circumstances should be referred to local legal counsel for analysis and direction.

Approved: Thomas H. Neff, Director

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APPENDIX A**CHAPTER 70, LAWS OF 2011**

AN ACT concerning residency requirements for public officers and employees and amending R.S.52:14-7.

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

1. This act shall be known and may be cited as the "New Jersey First Act."
2. R.S.52:14-7 is amended to read as follows:

Residency requirement for State officers, employees; exceptions.

52:14-7. a. Every person holding an office, employment, or position

- (1) in the Executive, Legislative, or Judicial Branch of this State, or
- (2) with an authority, board, body, agency, commission, or instrumentality of the State including any State college, university, or other higher educational institution, and, to the extent consistent with law, any interstate agency to which New Jersey is a party, or
- (3) with a county, municipality, or other political subdivision of the State or an authority, board, body, agency, district, commission, or instrumentality of the county, municipality, or subdivision, or
- (4) with a school district or an authority, board, body, agency, commission, or instrumentality of the district, shall have his or her principal residence in this State and shall execute such office, employment, or position.

This residency requirement shall not apply to any person (a) who is employed on a temporary or per-semester basis as a visiting professor, teacher, lecturer, or researcher by any State college, university, or other higher educational institution, or county or community college, or in a full or part-time position as a member of the faculty, the research staff, or the administrative staff by any State college, university, or other higher educational institution, or county or community college, that the college, university, or institution has included in the report required to be filed pursuant to this subsection, or (b) who is employed full-time by the State who serves in an office, employment, or position that requires the person to spend the majority of his or her working hours in a location outside of this State.

For the purposes of this subsection, a person may have at most one principal residence, and the state of a person's principal residence means the state (1) where the person spends the majority of his or her nonworking time, and (2) which is most clearly the center of his or her domestic life, and (3) which is designated as his or her legal address and legal residence for voting. The fact that a person is domiciled in this State shall not by itself satisfy the requirement of principal residency hereunder.

A person, regardless of the office, employment, or position, who holds an office, employment, or position in this State on the effective date of P.L.2011, c.70 but does not have his or her principal residence in this State on that effective date shall not be subject to the residency requirement of this subsection while the person continues to hold office, employment, or position without a break in public service of greater than seven days.

Any person may request an exemption from the provisions of this subsection on the basis of critical need or hardship from a five-member committee hereby established to consider applications for such exemptions. The committee shall be composed of three persons appointed by the Governor, a person appointed by the Speaker of the General Assembly, and a person appointed by the President of the Senate, each of whom shall serve at the pleasure of the person making the appointment and shall have a term not to exceed five years. A vacancy on the committee shall be filled in the same manner as the original

appointment was made. The Governor shall make provision to provide such clerical, secretarial and administrative support to the committee as may be necessary for it to conduct its responsibilities pursuant to this subsection.

The decision on whether to approve an application from any person shall be made by a majority vote of the members of the committee, and those voting in the affirmative shall so sign the approved application. If the committee fails to act on an application within 30 days after the receipt thereof, no exemption shall be granted and the residency requirement of this subsection shall be operative. The head of a principal department of the Executive Branch of the State government, a Justice of the Supreme Court, judge of the Superior Court and judge of any inferior court established under the laws of this State shall not be eligible to request from the committee an exemption from the provisions of this subsection.

The exemption provided in this subsection for certain persons employed by a State college, university, or other higher educational institution, or a county or community college, other than those employed on a temporary or per-semester basis as a visiting professor, teacher, lecturer, or researcher, shall apply only to those persons holding positions that the college, university, or institution has included in a report of those full or part-time positions as a member of the faculty, the research staff, or the administrative staff requiring special expertise or extraordinary qualifications in an academic, scientific, technical, professional, or medical field or in administration, that, if not exempt from the residency requirement, would seriously impede the ability of the college, university, or institution to compete successfully with similar colleges, universities, or institutions in other states. The report shall be compiled annually and shall also contain the reasons why the positions were selected for inclusion in the report. The report shall be compiled and filed within 60 days following the effective date of P.L.2011, c.70. The report shall be reviewed, revised as necessary, and filed by January 1 of each year thereafter. Each report shall be filed with the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), with the Legislature, and a report may be revised at any time by filing an amendment to the report with the Governor and Legislature.

As used in this section, "school district" means any local or regional school district established pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey Statutes and any jointure commission, county vocational school, county special services district, educational services commission, educational research and demonstration center, environmental education center, and educational information and resource center.

b. If any person holding any office, employment, or other position in this State shall attempt to let, farm out or transfer such office, employment, or position or any part thereof to any person, he shall forfeit the sum of fifteen hundred dollars (\$1,500.00), to be recovered with costs by any person who shall sue for the same, one-half to the prosecutor and the other half to the treasurer for the use of the State.

c. No person shall be appointed to or hold any position in this State who has not the requisite qualifications for personally performing the duties of such position in cases where scientific engineering skill is necessary to the performance of the duties thereof.

d. Any person holding or attempting to hold an office, employment, or position in violation of this section shall be considered as illegally holding or attempting to hold the same; provided that a person holding an office, employment, or position in this State shall have one year from the time of taking the office, employment, or position to satisfy the requirement of principal residency, and if thereafter such person fails to satisfy the requirement of principal residency as defined herein with respect to any 365-day period, that person shall be deemed unqualified for holding the office, employment, or position. The Superior Court shall, in a civil action in lieu of prerogative writ, give judgment of ouster against such person, upon the complaint of any officer or citizen of the State, provided that any such complaint shall be brought within one year of the alleged 365-day period of failure to have his or her principal residence in this State.

3. This act shall take effect on the first day of the fourth month after enactment.

Approved May 17, 2011.

Appendix B

C. 70 Frequently Asked Questions

1. What is the effective date of P.L., c.70?

September 1, 2011.

2. Is there a "grandfather" provision in the law that allows employees who are already working for the State or local government to continue living out of state?

Yes. The statute provides that any "person, regardless of the office, employment, or position, who holds an office, employment, or position in this State on the effective date [Sept. 1, 2011] of P.L.2011, c.70 but does not have his or her principal residence in this State on that effective date shall not be subject to the residency requirement of this subsection while the person continues to hold office, employment, or position without a break in public service of greater than seven days." Thus, if a person is already an employee on September 1, 2011, and lives out of state, he is not required to move into New Jersey.

3. Could a current employee have moved out of state prior to the effective date (September 1, 2011) of the law?

Yes. As long as the change in residency took place before the effective date of the law, September 1, 2011, a current employee could have moved out of the state and stayed eligible for the "grandfather" provision as set forth in question 1 above, which says that a person who holds employment but does not have residency in New Jersey **on the effective date** of the law shall not be subject to the residency requirement.

4. Can a current employee who lives in New Jersey move out of state after the effective date of the law?

No. The language cited above, that a person who holds employment but does not have residency in New Jersey on the effective date of the act shall not be subject to the residency requirement, requires that all others **are** subject to the requirement. This includes any person who was a New Jersey resident on the effective date of the act but then later moved out of state.

5. If an employee who lives in New Jersey and is employed on September 1, 2011 moves out of state after September 1, 2011, is that employee immediately subject to removal or does that employee have a window of time to move back in? If so, how long is that window? Is it one year, the same as new employees?

A current employee who moves out of state after September 1, 2011 **does not** get a window of time to move back in. The statute states that the one-year grace period is from the time the employee takes his office, position or employment, not one year from the

time he moves out of state. An employee considering moving should apply for exemption before a move, if possible (See Question 5). If the employee moves without getting an exemption, an employer may want to give the employee notice to move back to New Jersey before initiating disciplinary action to remove him (See Question 9).

6. Will a current employee be able to apply for an "exemption" to move out of state after the effective date of the new law?

Yes. The employee will be able to request an exemption from the applicability of the law on the basis of "critical need or hardship" from the committee. The law does not limit the ability to apply to the committee for an exemption to only non-residents or new hires. However, if a current employee desires to move out of state, he should apply in advance for an exemption, rather than move and then ask for the exemption, since once the current employee moves out of state, the law applies to him.

7. What constitutes a "break in public service" under the new statute which triggers the residency requirement for current employees?

The statute does not define "break in public service." The Civil Service Commission has proposed regulations, which include a definition of a break in public service for purposes of the new law as "an actual separation from employment for more than seven calendar days due to such causes as resignation, retirement, layoff, or disciplinary removal. A leave of absence or a resignation/new appointment pursuant to N.J.A.C. 4A:4-7.9 shall not be considered a break in public service." This definition can reasonably be applied to all local units.

8. If a person is given a letter prior to September 1, 2011 offering him an office, position or employment and that he is being hired pending a background, physical or psychological investigation, and did not start working until after September 1, what date is considered the start date for purposes of the residency law? If the person lives outside New Jersey, is he subject to the residency requirement if his offer of employment was made prior to September 1?

The date which triggers the application of the "grandfather" provision is the date he actually starts work, not the date he received the offer of employment. If he does not begin actually working until after September 1, the "grandfather" provision does not apply to him.

9. Does the residency law apply to temporary or seasonal employees? Does it apply to part-time employees? Does it apply to employees of temporary agencies or other service providers who are assigned to work at government locations? Does it apply to unclassified employees?

No distinction is made between types of appointments, that is, temporary appointments, part-time appointments, or unclassified appointments. All appointments are treated similarly under the law - that is, New Jersey residency is required of all individuals on a government agency payroll or holding an office with a government agency. However, in the case of employees who work less than a year (Civil Service appointing authorities have specific rules to follow concerning temporary employees) the requirement that the

employee attain New Jersey residency within one year may ultimately be moot since the appointment will have expired by that time.

By contrast, those individuals who are employees of temporary agencies or other service providers under contract with State and local governmental entities are not subject to the law. No contractual or other type of relationship exists between those individuals and the public entity, other than the fact that they are assigned to work at that location. The individuals' salaries are paid by the private organization and the terms of employment are governed by that relationship. Therefore, those individuals who are stationed to work at public offices are not required to live in New Jersey.

10. How should employees be removed from employment for failure to satisfy the residency requirement?

Employers may, if they so choose, develop an internal process which gives employees notice and opportunity to be heard when an action to remove them for failure to satisfy the residency requirement is contemplated, however such a process is not required under the law. If such a process is developed, it must be followed consistently in all residency removal actions. In the event the employer does not act to remove an employee who is not a New Jersey resident, the statute provides that any officer or citizen may bring an action in Superior Court for a judgment to oust the unclassified employee from his position.

11. How is residency defined? What process should be used to initially declare residency of employees hired on or after September 1, 2011? If an issue arises as to an employee's residency, does the employer have a duty to investigate the employee's residency status?

Residency is defined in the statute as meaning "the state (1) where the person spends the majority of his or her nonworking time, and (2) which is most clearly the center of his or her domestic life, and (3) which is designated as his or her legal address and legal residence for voting." Upon the appointment of a new employee, the employer should request documentation of the person's residence, or it may accept a certification of State residency signed by the employee which includes the above statutory language. If the employer becomes aware that an employee may not reside in New Jersey despite certifying or documenting that he or she is in compliance with the law, then it should investigate the issue to determine whether or not the employee is actually a resident of New Jersey.

12. What is the role of the employer in applying for an exemption from the residency requirement on behalf of an employee?

The statute allows an employee to request an exemption from the provisions of the residency law "on the basis of critical need or hardship." It provides that "any person" may request the exemption. If the employer wishes to assist in the exemption application process on behalf of the employee, it may do that, but the law does not require its involvement. The employee can apply individually and present the case regarding critical need or hardship to the committee.

13. Is there a recommended statement that employers should use to inform new or prospective employees of the new residency requirement?

Employers may advise prospective and new hires of the following: "Effective September 1, 2011, all employees of State and local government must reside in the State of New Jersey, unless exempted under law. If you already work for State or local government as of September 1, 2011, and you do not live in New Jersey, you are not required to move to New Jersey if there is no more than a seven day break in employment. However, if you begin your office, position or employment on September 1, 2011 or later, you must reside in New Jersey. If you do not reside in New Jersey, you have one year after the date you take your office, position or employment to relocate your residence to New Jersey. If you do not do so, you are subject to removal from your office, position or employment."