

2A:15-59.1

LEGISLATIVE HISTORY CHECKLIST
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LAWS OF: 1995 CHAPTER: 13

NJSA: 2A:15-59.1 (Frivolous lawsuits—municipalities)

BILL NO: A1012/S1399/S1290

SPONSOR(S): Mikulek and others

DATE INTRODUCED: Pre-filed

COMMITTEE: ASSEMBLY: Local Government

SENATE: Community Affairs

AMENDED DURING PASSAGE: No Senate Committee Substitute
A1012, S1399, S1290 enacted

DATE OF PASSAGE: ASSEMBLY: June 27, 1994

SENATE: November 10, 1994

DATE OF APPROVAL: January 20, 1995

FOLLOWING ARE ATTACHED IF AVAILABLE:

SPONSORS STATEMENT:		Yes
COMMITTEE STATEMENT:	ASSEMBLY:	Yes
	SENATE:	Yes
FISCAL NOTE:		No
MESSAGE ON SIGNING:		Yes

FOLLOWING WERE PRINTED:

REPORTS:	No
HEARINGS:	No

See newspaper clippings—attached:

"New law takes aim at frivolous lawsuits," 1-21-95, Star Ledger.
"Law discourages suits against officials," 1-21-95, Asbury Park Press.

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SENATE COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 1012,
SENATE, Nos. 1399 and 1290

STATE OF NEW JERSEY

ADOPTED OCTOBER 13, 1994

Sponsored by Assemblymen MIKULAK, LUSTBADER,
Senators SCOTT and McGREEVEY

1 AN ACT concerning certain lawsuits and amending P.L.1988, c.46.

2

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

5 1. Section 1 of P.L.1988, c.46 (C.2A:15-59.1) is amended to
6 read as follows:

7 1. a. (1) A party who prevails in a civil action, either as
8 plaintiff or defendant, against any other party may be awarded
9 all reasonable litigation costs and reasonable attorney fees, if the
10 judge finds at any time during the proceedings or upon judgment
11 that a complaint, counterclaim, cross-claim or defense of the
12 nonprevailing person was frivolous.

13 (2) When a public entity is required or authorized by law to
14 provide for the defense of a present or former employee, the
15 public entity may be awarded all reasonable litigation costs and
16 reasonable attorney's fees if the individual for whom defense was
17 provided is the prevailing party in a civil action, and if there is a
18 judicial determination at any time during the proceedings or upon
19 judgment that a complaint, counterclaim, cross-claim, or defense
20 of the nonprevailing party was frivolous.

21 b. In order to find that a complaint, counterclaim, cross-claim
22 or defense of the nonprevailing party was frivolous, the judge
23 shall find on the basis of the pleadings, discovery, or the evidence
24 presented that either:

25 (1) The complaint, counterclaim, cross-claim or defense was
26 commenced, used or continued in bad faith, solely for the purpose
27 of harassment, delay or malicious injury; or

28 (2) The nonprevailing party knew, or should have known, that
29 the complaint, counterclaim, cross-claim or defense was without
30 any reasonable basis in law or equity and could not be supported
31 by a good faith argument for an extension, modification or
32 reversal of existing law.

33 c. A party or public entity seeking an award under this section
34 shall make application to the court which heard the matter. The
35 application shall be supported by an affidavit stating in detail:

36 (1) The nature of the services rendered, the responsibility
37 assumed, the results obtained, the amount of time spent by the
38 attorney, any particular novelty or difficulty, the time spent and
39 services rendered by secretaries and staff, other factors
40 pertinent in the evaluation of the services rendered, the amount

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

Matter underlined thus is new matter.

1 of the allowance applied for, an itemization of the disbursements
2 for which reimbursement is sought, and any other factors
3 relevant in evaluating fees and costs; and

4 (2) How much has been paid to the attorney and what
5 provision, if any, has been made for the payment of these fees in
6 the future.

7 (cf: P.L.1988, c.46, s.1)

8 2. This act shall take effect immediately.

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13 Allows public entity to recover costs in frivolous suit against
14 employee.

ASSEMBLY, No. 1012
STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1994 SESSION

By Assemblymen MIKULAK and LUSTBADER

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13 b. In order to find that a complaint, counterclaim, cross-claim
14 or defense of the nonprevailing party was frivolous, the judge
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18 commenced, used or continued in bad faith, solely for the purpose
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21 the complaint, counterclaim, cross-claim or defense was without
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24 reversal of existing law.

25 c. A party seeking an award under this section shall make
26 application to the court which heard the matter. The application
27 shall be supported by an affidavit stating in detail:

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29 assumed, the results obtained, the amount of time spent by the
30 attorney, any particular novelty or difficulty, the time spent and
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32 pertinent in the evaluation of the services rendered, the amount
33 of the allowance applied for, an itemization of the disbursements
34 for which reimbursement is sought, and any other factors
35 relevant in evaluating fees and costs; and

36 (2) How much has been paid to the attorney and what
37 provision, if any, has been made for the payment of these fees in
38 the future.

39 d. As used in this section, the term "party" includes a
40 municipality which provides the means for the defense of a
41 member or officer of its police department or force pursuant to
42 section 1 of P.L.1971, c.197 (C.40A:14-155).

43 (cf: P.L.1988, c.46, s.1)

44 2. This act shall take effect immediately.

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SPONSOR'S STATEMENT

This bill would allow a municipality to recover legal costs incurred in defending a police officer against a frivolous complaint. The proliferation of these complaints in recent years has made the cost of defending against them a significant municipal budget item.

Municipalities are required by section 1 of P.L.1971, c.197 (C.40A:14-155) to provide for the defense of their police officers against certain complaints. However, the law intended to discourage frivolous law suits, section 1 of P.L.1988, c.46 (C.2A:15-59.1), permits only a party to such a suit to petition for the recovery of costs. This bill would also permit a municipality which defends its police officer against a frivolous action to seek reimbursement of its legal costs.

Allows municipality to recover costs in frivolous suits against police.

SENATE, No. 1399

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 19, 1994

By Senator SCOTT

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9 reasonable litigation costs and reasonable attorney fees, if the
10 judge finds at any time during the proceedings or upon judgment
11 that a complaint, counterclaim, cross-claim or defense of the
12 nonprevailing person was frivolous.

13 b. In order to find that a complaint, counterclaim, cross-claim
14 or defense of the nonprevailing party was frivolous, the judge
15 shall find on the basis of the pleadings, discovery, or the evidence
16 presented that either:

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18 commenced, used or continued in bad faith, solely for the purpose
19 of harassment, delay or malicious injury; or

20 (2) The nonprevailing party knew, or should have known, that
21 the complaint, counterclaim, cross-claim or defense was without
22 any reasonable basis in law or equity and could not be supported
23 by a good faith argument for an extension, modification or
24 reversal of existing law.

25 c. A party seeking an award under this section shall make
26 application to the court which heard the matter. The application
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31 services rendered by secretaries and staff, other factors
32 pertinent in the evaluation of the services rendered, the amount
33 of the allowance applied for, an itemization of the disbursements
34 for which reimbursement is sought, and any other factors
35 relevant in evaluating fees and costs; and

36 (2) How much has been paid to the attorney and what
37 provision, if any, has been made for the payment of these fees in
38 the future.

39 d. As used in this section, the term "party" includes a
40 municipality which provides the means for the defense of a
41 member or officer of its police department or force pursuant to
42 N.J.S.40A:14-155.

43 (cf: P.L.1988, c.46, s.1)

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S' 1399

1 2. This act shall take effect immediately.

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STATEMENT

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6 This bill would allow a municipality to recover legal costs
7 incurred in defending a police officer against a frivolous
8 complaint. The proliferation of these complaints in recent years
9 has made the cost of defending against them a significant
10 municipal budget item.

11 Municipalities are required by section 1 of P.L.1971, c.197
12 (C.40A:14-155) to provide for the defense of their police officers
13 against certain complaints. However, the law intended to
14 discourage frivolous law suits, section 1 of P.L.1988, c.46
15 (C.2A:15-59.1), permits only a party to such a suit to petition for
16 the recovery of costs. This bill would also permit a municipality
17 which defends its police officer against a frivolous action to seek
18 reimbursement of its legal costs.

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23 _____
24 Allows municipality to recover costs in frivolous suits against
police.

SENATE, No. 1290

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INTRODUCED JUNE 30, 1994

By Senator McGREEVEY

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2

3 BE IT ENACTED *by the Senate and General Assembly of the*
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11 that a complaint, counterclaim, cross-claim or defense of the
12 nonprevailing person was frivolous.

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14 or defense of the nonprevailing party was frivolous, the judge
15 shall find on the basis of the pleadings, discovery, or the evidence
16 presented that either:

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18 commenced, used or continued in bad faith, solely for the purpose
19 of harassment, delay or malicious injury; or

20 (2) The nonprevailing party knew, or should have known, that
21 the complaint, counterclaim, cross-claim or defense was without
22 any reasonable basis in law or equity and could not be supported
23 by a good faith argument for an extension, modification or
24 reversal of existing law.

25 c. A party seeking an award under this section shall make
26 application to the court which heard the matter. The application
27 shall be supported by an affidavit stating in detail:

28 (1) The nature of the services rendered, the responsibility
29 assumed, the results obtained, the amount of time spent by the
30 attorney, any particular novelty or difficulty, the time spent and
31 services rendered by secretaries and staff, other factors
32 pertinent in the evaluation of the services rendered, the amount
33 of the allowance applied for, an itemization of the disbursements
34 for which reimbursement is sought, and any other factors
35 relevant in evaluating fees and costs; and

36 (2) How much has been paid to the attorney and what
37 provision, if any, has been made for the payment of these fees in
38 the future.

39 d. As used in this section, the term "party" includes a
40 municipality which provides the means for the defense of a
41 member or officer of its police department or force pursuant to
42 N.J.S.40A:14-155.

43 (cf: P.L.1988, c.46, s.1)

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4 STATEMENT
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8 complaint. The proliferation of these complaints in recent years
9 has made the cost of defending against them a significant
10 municipal budget item.

11 Municipalities are required by section 1 of P.L.1971, c.197
12 (C.40A:14-155) to provide for the defense of their police officers
13 against certain complaints. However, the law intended to
14 discourage frivolous law suits, section 1 of P.L.1988, c.46
15 (C.2A:15-59.1), permits only a party to such a suit to petition for
16 the recovery of costs. This bill would also permit a municipality
17 which defends its police officer against a frivolous action to seek
18 reimbursement of its legal costs.

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23 _____
24 Allows municipality to recover costs in frivolous suits against
police.

ASSEMBLY LOCAL GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1012

STATE OF NEW JERSEY

DATED: MAY 12, 1994

The Assembly Local Government Committee reports favorably Assembly Bill No. 1012.

Assembly Bill No. 1012 would allow a municipality to recover legal costs incurred in defending a police officer against a frivolous complaint. The proliferation of these complaints in recent years has made the cost of defending against them a significant municipal budget item.

Municipalities are required by section 1 of P.L.1971, c.197 (C.40A:14-155) to provide for the defense of their police officers against certain complaints. However, the law intended to discourage frivolous law suits, section 1 of P.L.1988, c.46 (C.2A:15-59.1), permits only a party to such a suit to petition for the recovery of costs. This bill would also permit a municipality which defends its police officer against a frivolous action to seek reimbursement of its legal costs.

SENATE COMMUNITY AFFAIRS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 1012,
SENATE, Nos. 1399 and 1290

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 13, 1994

The Senate Community Affairs Committee reports favorably a Senate Committee Substitute for Assembly Bill No. 1012 and Senate Bill Nos. 1399 and 1290.

The committee substitute would allow a public entity that is required or authorized by law to provide for the defense of a present or former employee to recover reasonable litigation costs and attorney fees incurred in defending the employee if the individual for whom defense was provided is the prevailing party in a civil action and if there is a judicial determination at any time during the proceedings or upon judgment that a complaint, counterclaim, cross-claim, or defense of the nonprevailing party was frivolous.

As introduced, Assembly, No. 1012, and Senate, Nos. 1399 and 1290 would have permitted a municipality to recover litigation costs and attorney fees incurred in defending a police officer against a frivolous complaint. The committee substitute expands the scope of the bill in recognition of the numerous sections of law that require public entities to provide for the defense of employees.

Section 1 of P.L.1972, c.48 (C.59:10A-1) requires the Attorney General to provide for the defense of an employee or former employee of the State under certain circumstances. N.J.S.40A:14-117 requires the governing body of a county or county park commission to provide a member or officer of a county police or county park police department or force with the necessary means for the defense of that employee under certain circumstances. N.J.S.40A:14-28 requires the governing body of a municipality to provide a member or officer of a municipal fire department or force with counsel and costs incidental to representation for the defense of an action or proceeding under certain circumstances. N.J.S.40A:14-155 requires the governing body of a municipality to provide a member or officer of the municipal police department or force with necessary means for the defense of an action or proceeding under certain circumstances. Section 2 of P.L.1991, c.73 (C.40A:9-134.1) requires the governing body of a municipality to provide its municipal clerk with necessary means for the defense of an action or proceeding under certain circumstances. N.J.S.18A:16-6 requires a board of education to defray the costs of defending an action brought against any person holding any office, position or employment under the jurisdiction of the board under certain circumstances.

While the abovementioned statutes require various public entities to provide for the defense of their employees under certain circumstances, the law intended to discourage frivolous law suits, section 1 of P.L.1988, c.46 (C.2A:15-59.1), permits only a party to such a suit to petition for the recovery of costs and attorney fees. Because public entities that provide for the defense of their employees are not actually a party to the litigation, current law prohibits them from recovering costs and attorney fees.



OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001

Contact: RITA MANNO
609-777-2600

TRENTON, N.J. 08625

Release: FRIDAY,
JANUARY 20, 1995

Gov. Christie Whitman signed legislation today that permits a public entity that has defended a current or former employee to recover court costs and attorney fees from the losing party in a frivolous lawsuit. The Governor noted that this amendment to New Jersey's frivolous lawsuit statute is an important step in reforming the state's civil justice system and does not infringe on the Supreme Court's authority to regulate the conduct of attorneys.

The legislation, signed in a public ceremony, is a Senate Committee Substitute for Assembly Bill 1012 and Senate Bills 1399 and 1290. Sponsor of the bill is Assemblyman Stephen Mikulak R-Middlesex County.