

40A:62-1 et al.

LEGISLATIVE HISTORY CHECKLIST

NJSA: 40A:62-1 et al

(Town form of government--revise law)

LAWS OF: 1988

CHAPTER: 7

Bill No: S86

Sponsor(s): Van Wagner

Date Introduced: Pre-filed

Committee: Assembly: -----

Senate: County and Municipal Government

Amended during passage: Yes Amendments during passage denoted by asterisks.

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Senate: February 22, 1988

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Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: No

Senate: Yes

Fiscal Note: No

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New Jersey. County and Municipal Government Study Commission.
Functional fragmentation and the traditional forms of
municipal government in New Jersey. November 1985 Trenton, 1985.

4-4-88

[FIRST REPRINT]

SENATE, No. 86

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Senator VAN WAGNER

1 AN ACT providing for the town form of government, repealing
parts of the statutory law, amending P. L. 1884, c. 31 and
3 adding chapter 62 to Title 40A of the New Jersey Statutes.

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

7 1.

TITLE 40A

9 CHAPTER 62

TOWNS

11 40A:62-1 Incorporation, Corporate Seal

40A:62-2 Elected Officers

13 40A:62-3 Organization, Officers

40A:62-4 General Powers

15 40A:62-5 Powers of the Mayor

40A:62-6 Powers of the Council

17 40A:62-7 Miscellaneous

40A:62-8 Statutes Repealed

19 40A:62-1. Incorporation; Corporate Seal

a. The inhabitants of each of the several towns are hereby
21 continued as a body politic and corporate in law as heretofore
constituted and established and shall be known by the name of
23 "the mayor and council of the town of.", in
the county of " (as the case may be), and the
25 boundaries of the several towns shall be and remain as
heretofore established by law.

27 b. This act shall apply to all towns which, prior to the
effective date of this act, used the provisions applicable to
29 towns as set out in the Revised Statutes, Title 40, chapter 123
to 141 inclusive, and those towns whose incorporation was by
31 special act of the Legislature prior to 1875.

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.

Matter enclosed in superscript numerals has been adopted as follows:
1 Senate SCM committee amendments adopted January 28, 1988.

1 c. Each town governed by the laws pertaining to the town
 form of government shall have full power to sue and be sued and
 3 have a corporate seal.

d. Any existing town may, by resolution of the council, adopt
 5 a name, as prescribed in subsection a. of this section, and the
 town clerk shall then file a copy of the resolution adopting the
 7 name with the county clerk, certified by the town clerk. After
 the filing of the certificate, the town shall be known and
 9 designated by the name so adopted, but no suit, proceeding or
 instrument shall abate or in anywise be affected by any change
 11 of corporate name.

(Source: R. S. 40:86-2, R. S. 40:142-1, and New.)

13 40A:62-2. Elected Officers

a. The mayor shall be elected by the voters of the
 15 municipality at large and shall be known as the
 councilman-at-large. He shall serve for a term of two years,
 17 except as otherwise provided by referendum of the voters.

b. The legal voters of any town divided into wards, in which
 19 the mayor and council members are elected for two-year terms
 of office, may by petition and referendum, require that the
 21 mayor shall be elected for a three-year term of office.

Upon the submission to the town clerk of a petition, signed at
 23 least fifteen per centum (15%) of the legal voters of the
 municipality who cast their votes in the municipality at the last
 25 election in which members of the General Assembly were
 elected, the proposition shall be submitted to the voters at the
 27 next general election. The proposition shall not be submitted
 more than once in any three-year period.

29 The notice, advertisement and conduct of the election shall be
 in the same manner as for offices voted at the election.

31 The proposition shall be submitted to the voters at the
 election in substantially the following form:

33 "Shall the term of the mayor in. (name of town). . . .
 . . . be increased to three years?"

35 A canvass and return of the vote upon the proposition shall be
 made by the election officers in the same manner as for officers
 37 voted for at the election, and a majority of all the votes cast
 upon the proposition in favor of the proposition shall be
 39 sufficient to make the change.

1 Notwithstanding any other provisions of law to the contrary,
 2 upon approval by the legal voters of the town of the proposition
 3 to increase the term of the mayor to three years, the mayor
 4 elected at the first annual election after the approval of the
 5 proposition, and at an election held every third year thereafter,
 shall serve for a term of three years.

7 c. The council shall consist of eight members, two elected
 8 from each of four wards, and they shall serve for a term of two
 9 years. Their terms shall be arranged, to be designated on the
 10 ballot if necessary, so that one member of the council shall be
 11 elected from each ward at each election.

12 d. Notwithstanding the provisions of subsection c. of this
 13 section, any town, whose council ¹immediately¹ prior to the
 14 effective date of this act had ¹[members with terms different
 15 from the provisions] a council whose method of election,
 16 composition or tenure of its membership differed in any way
 17 from the provisions¹ set out in subsection c. of this section,
 18 shall continue to ¹[elect its council in the manner it is presently
 19 constituted] be governed by those provisions which determined
 20 the council's method of election, composition or tenure of its
 21 membership, as the case may be¹, until such time it wishes to
 22 adopt the provisions as set out in subsection c. of this section.
 23 Any adoption shall be by referendum of voters, after the town
 24 council shall have passed an ordinance not less than 60 days
 25 preceding any general election calling for the referendum to be
 26 placed upon the ballot. The referendum shall not be submitted to
 27 the voters more than once in any three-year period.

28 e. The annual election for town officers shall be held at the
 29 same time and places as the general election. No person shall be
 30 permitted to vote at any such election unless he is an actual
 31 resident of the election district in which he offers his vote.

(Source: R. S. 40:124-1 to R. S. 40:124-3, R. S. 40:131-2 to R. S.
 32 40:131-3, P. L. 1981, c. 427, § 17.)

40A:62-3. Organization; Officers

35 a. The mayor and council members of every town shall
 36 constitute the council thereof. They shall hold an annual
 37 meeting on the first day of January at twelve o'clock noon, or
 during the first seven days of January in any year.

1 b. The mayor, heretofore known as the councilman-at-large,
2 shall be chairman of the council and preside at all meetings of
3 the council. In his absence, the council may elect one of its own
4 as chairman for the time being.

5 c. The council shall appoint the times of meetings and
6 determine and establish the rules of its own proceedings.

7 d. A majority of the council shall constitute a quorum for the
8 transaction of business, but a smaller number may meet and
9 adjourn from day to day.

10 e. The mayor or any two councilmen may call for a special
11 meeting by written notice to each of the members, served
12 personally or left at the member's usual place of residence at
13 least twenty-four hours before the time appointed for the
14 meeting. No other business than that specified in the call for the
15 meeting shall be discussed or transacted.

16 f. The council may, at its annual meeting, establish for its
17 members such committees of the council as will assist it for the
18 ensuing year.

19 g. No officer, who has obtained tenure by any provision of any
20 section herein repealed by section 40A:62-8 of this act, shall be
21 affected in any way by such repeal.

(Source: R. S. 40:125-1, R. S. 40:125-4, R. S. 40:126-1, R. S.
22 40:146-2, and New.)

23 40A:62-4. General Powers

24 Every town, governed by the town form of government
25 pursuant to this act, shall, subject to the provisions of this act
26 or other general law, have full power to exercise all powers of
27 local government in such manner as council may determine.

28 (Source: P.L. 1950, c. 210, ss. 2-4)

29 40A:62-5. Powers of the Mayor

30 a. The councilman-at-large shall be officially known and
31 designated as the mayor of. (the name of the
32 town in which he is elected). He shall be so designated in all
33 official documents and instruments of every kind, and shall sign
34 all ordinances, warrants, bonds, notes, contracts and all other
35 official documents and instruments by said title.

36 b. The mayor shall be the head of the municipal government.

37 c. The mayor shall have all those powers placed in the mayor
38 by general law.
39

1 d. The mayor shall be known as the chairman of the council,
preside at all its meetings and possess all the powers of a
3 member of council.

e. Every ordinance adopted by the council shall be presented
5 to the mayor within five days after its passage, Sundays
excepted, by the town clerk. The mayor shall, within ten days
7 after receiving the ordinance, either approve it by affixing his
signature thereto or return it to the council by delivering it to
9 the clerk together with a statement setting forth his objections
thereto. No ordinance shall take effect without the mayor's
11 approval, unless the mayor fails to return the ordinance to the
council, as prescribed above, or unless the council, upon
13 consideration of the ordinance following its return, shall, by a
vote of two-thirds of all members of the council, resolve to
15 override the veto.

f. No ordinance shall be passed except by a vote of a majority
17 of the members of the council present at the meeting, provided
that at least four affirmative votes shall be required for such
19 purpose.

(Source: R. S. 40:125-4, R. S. 40:126-1, R. S. 40:133-1 to R. S.
21 40:133-4 and New.)

40A:62-6. Powers of the Council

23 a. The council shall be the legislative body of the municipality.

b. The council may subject to general law and the provisions
25 of this act:

(1) Pass, adopt, amend and repeal any ordinance or, where
27 permitted, any resolution for any purpose required for the
government of the municipality or for the accomplishment of
29 any public purpose for which the municipality is authorized to
act under general law;

31 (2) Control and regulate the finances of the municipality and
raise money by borrowing and taxation;

33 (3) Create such offices and positions as it may deem
necessary. The officers appointed thereto shall perform the
35 duties required by law and the ordinances of the council.
Other than the town attorney, engineer, building inspector,
37 clerk, tax collector and tax assessor, these officers shall serve
at the pleasure of the council. The town attorney, engineer,
39 clerk, tax collector and tax assessor shall serve for terms as
provided in chapter 9 of the Title 40A of the New Jersey
41 Statutes;

(4) Investigate any activity of the municipality;

1 (5) Remove any officer of the municipality, other than those
officers excepted by law, for cause; and

3 (6) Override a veto of the mayor by a two-thirds majority of
all the members of the council.

5 c. The council shall have all the executive responsibilities of
the municipality not placed, by general law or this act, in the
7 office of the mayor.

d. The council may, by ordinance, appoint such subordinate
9 officers as it may deem necessary, except that the clerk, the
tax assessor and the tax collector shall be appointed by the
11 mayor and council.

e. Every officer appointed pursuant to this section shall hold
13 office during his official term and until his successor shall have
been duly appointed and qualified.

15 (Source: R. S. 40:125-3, R. S. 40:125-37, R. S. 40:133-3 and
New.)

17 40A:62-7. Miscellaneous

a. The town council may, by ordinance, delegate all or a
19 portion of the executive responsibilities of the municipality to
an administrator, who shall be appointed pursuant to N. J. S.
21 40A:9-136.

b. The town council may, by ordinance, adopt an
23 administrative code. The administrative code shall restate the
major provisions of the town's charter and the general law
25 supplementing the charter. The administrative code shall set
forth the manner in which the council shall perform its duties. If
27 the council organizes itself into standing committees or if the
council members serve as heads of departments, with
29 administrative control over said departments, the administrative
code shall specify the powers and duties of such committees or
31 department heads and the manner in which they are appointed.
The administrative code shall also set forth the titles of the
33 principal municipal officers, how the officers are appointed, how
they are organized into departments, boards, commissions, and
35 other agencies; whom they supervise; by whom they are
supervised; what powers they have; and what procedures should
37 be followed to carry on the activities of the city government.
The administrative code shall not grant any power or authority
39 nor authorize any procedure, unless such power, or authority or
procedure is authorized implicitly by the wording of the statute
41 or derived by reasonable implication therefrom.

1 c. The assets and liabilities of any board, commission or
 2 district created pursuant to the statutes repealed in section
 3 40A:62-8 of this act shall be transferred to the municipality.

4 d. The town council may create such advisory councils to the
 5 municipality as it may choose, including councils for the
 6 functions absorbed by it of any heretofore existing board,
 7 commission or district.

(Source: New.)

9 40A:62-8. Statutes Repealed:

The following acts are hereby repealed:

- 11 P. L. 1981, c. 427, s. 8 (C. 40:123-6.1)
 R. S. 40:123-9
- 13 R. S. 40:124-1 to R. S. 40:124-3
 R. S. 40:125-1 to R. S. 40:125-5
- 15 P. L. 1981, c. 427, s. 9 (C. 40:125-4.1)
 R. S. 40:125-11 to R. S. 40:125-12
- 17 R. S. 40:125-14 to R. S. 40:125-24
 R. S. 40:125-30 to R. S. 40:125-35
- 19 R. S. 40:125-37 to R. S. 40:125-40
 R. S. 40:126-1 to R. S. 40:126-5
- 21 R. S. 40:127-1 to R. S. 40:127-3
 R. S. 40:128-1 to R. S. 40:128-5
- 23 R. S. 40:129-1 to R. S. 40:129-3
 R. S. 40:130-1 to R. S. 40:130-5
- 25 R. S. 40:131-1
 P. L. 1981, c. 427, s. 16 (C. 40:131-1.1)
- 27 R. S. 40:131-2 to R. S. 40:131-4
 R. S. 40:131-7 to R. S. 40:131-8
- 29 R. S. 40:132-1
 P. L. 1981, c. 427, §17 (C. 40:132-1a)
- 31 R. S. 40:132-3
 R. S. 40:132-10
- 33 R. S. 40:132-12 to R. S. 40:132-16
 R. S. 40:133-1 to R. S. 40:133-4
- 35 R. S. 40:134-1 to R. S. 40:134-2
 R. S. 40:135-1 to R. S. 40:135-2
- 37 R. S. 40:136-1 to R. S. 40:136-2
 R. S. 40:137-1 to R. S. 40:137-2
- 39 R. S. 40:138-1 to R. S. 40:138-7
 R. S. 40:138A-1 to R. S. 40:138A-6
- 41 R. S. 40:139-1 to R. S. 40:139-6
 R. S. 40:140-1 to R. S. 40:140-3
- 43 L., 1902, c. 124

1 L. 1914, c. 126

L. 1917, c. 67

3 L. 1917, c. 165

2. Section 1 of P. L. 1884, c. 31 (C. 40:141-1 (1)) is amended
5 to read as follows:

1. a. [That any] Any incorporated town in this State which has
7 adopted the provisions of this act and its supplements prior to
the effective date of this act, [be, and it is hereby authorized, in
9 the manner hereinafter provided, to take and convey from such
source or sources as may be practicable, into and through said
11 town, such quantity or pure and wholesome water as may be
required for domestic use, the extinguishment of fires and other
13 purposes by the inhabitants residing within the corporate limits
of said town; and to this end such town] is hereby authorized to
15 establish and continue a Board of Water Commissioners,
empowered to construct waterworks for the extinguishment of
17 fires and supplying the inhabitants of the town with pure and
wholesome water. The governing body of such town shall [by its
19 board of commissioners or other governing body by whatever
name it may be called, to] appoint three commissioners to be
21 called "water commissioners", who shall have the powers and
perform the duties hereinafter mentioned; the first of said
23 water commissioners shall hold his office until the first Monday
in May succeeding his appointment, the second for one year, and
25 the third for two years from the first Monday in May succeeding
their appointment; on the first Monday in May in each year after
27 their appointment, one water commissioner shall be appointed
by such town, who shall hold his office for the term of three
29 years; in case a vacancy should occur in the office of water
commissioners, the governing body of such town[, by its
31 commissioners or other governing power,] shall appoint a proper
person to fill the same and serve the unexpired term; no member
33 of the governing body [board of commissioners or other
governing power] of such town shall be eligible to the office of
35 water commissioner.

b. Notwithstanding any provisions of law to the contrary, the
37 governing body of any town, which has established a board of
water commissioners pursuant to this act, may, by ordinance,

1 abolish the board and assume to itself the functions exercised by
2 the board. Upon the adoption of an ordinance abolishing the
3 board, all of the assets and liabilities of the board shall be
4 transferred to the municipality.

5 (cf: P.L. 1884, c.31, s.1)

6 3. This act shall take effect January 1, 1989.

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8

MUNICIPALITIES

9

Elections

10

11 Revises the law concerning town form of government.

12

13

1

STATEMENT

3

This bill is a revision of the laws pertaining to the town form of government. It repeals all the laws presently enacted concerning the organization of the town form of government, and rewrites them in a clear and simplified form. The aim of the bill is to provide a law describing the town form of government which is readily understandable by citizens and municipal officials alike.

9

This bill is a result of the recommendations of a report made to the Legislature and Governor by the County and Municipal Government Study Commission on the traditional forms of municipal government in New Jersey. A major finding of the report was that these municipal laws were last revised thoroughly in the 1890's and contain much which is now outdated, redundant and even in conflict with more modern general municipal law. Thus, the bill aims to provide for town officials clear guidelines as to the operation of their municipal government and, at the same time, to reduce the ambiguity or conflict with more recent general law inherent in the present town laws, while retaining for its citizens all the positive characteristics of this form of government.

21

The town council is to consist of eight members, with two elected from each ward for two year terms and one additional member elected at large for a two or three-year term who is also the mayor. Of the eight towns using this present town form of government, three, Dover, Harrison and Kearny, follow this pattern for the election of mayor and council. This bill provides also for such variations of this pattern as presently exist in the five other towns operating under the town form of government: they are Belvidere, Boonton, Guttenberg, Hammonton and Secaucus towns.

31

This bill also amends the law concerning the establishment of a board of water commissioners in towns. In the present law, there is no mechanism to abolish or otherwise absorb the functions of the water commissioners into the municipality should the municipality wish to do so. This bill amends the law to allow the municipal governing body to absorb the functions by ordinance.

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MUNICIPALITIES

39

Elections

41

Revises the law concerning town form of government.

SENATE COUNTY AND MUNICIPAL GOVERNMENT
COMMITTEE

STATEMENT TO

SENATE, No. 86

with Senate committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 28, 1988

The Senate County and Municipal Government Committee reports favorably and with committee amendments Senate Bill 86.

Senate Bill 86 as amended is a revision of the laws pertaining to the town form of government. It repeals all the laws presently enacted concerning the organization of the town form of government, and rewrites them more simply. The aim of the bill is to provide a law describing the town form of government which is readily understandable by citizens and municipal officials alike.

This bill is a result of the recommendations of a report made to the Legislature and Governor by the County and Municipal Government Study Commission on the traditional forms of municipal government in New Jersey. A major finding of the report was that these municipal laws contain much which is now outdated, redundant and even in conflict with more modern general municipal law. Accordingly, the bill aims to reduce the ambiguity or conflict with more recent general law inherent in the present town laws while retaining for its citizens all the positive characteristics of this form of government.

The town council is to consist of eight members, with two elected from each ward for two year terms and one additional member elected at large for a two or three-year term who is also the mayor. Of the nine towns using the present town form of government, three, Dover, Harrison and Kearny, follow this pattern for the election of mayor and council. The bill provides also for such variations of this pattern as presently exist in the six other towns operating under the town form of government: they are Belvidere, Clinton, Boonton, Guttenberg, Hammonton and Secaucus towns.