

40:69A-12

LEGISLATIVE HISTORY CHECKLIST
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(Optional municipal plans
of government)

NJSA: 40:69A-12

LAWS OF: 1991 CHAPTER: 430

BILL NO: S268

SPONSOR(S) Lynch

DATE INTRODUCED: Pre-filed

COMMITTEE: ASSEMBLY: Municipal Government
SENATE: County & Municipal Government

AMENDED DURING PASSAGE: Yes Amendments during passage denoted by
asterisks

DATE OF PASSAGE: ASSEMBLY: January 13, 1992
SENATE: May 17, 1991

DATE OF APPROVAL: January 18, 1992

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBG/pp

[FIRST REPRINT]

SENATE, No. 268

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1990 SESSION

By Senator LYNCH

1 AN ACT concerning optional municipal plans of government and
2 amending P.L.1950, c.210 and P.L.1981, c.465.

3

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

6 1. Section 1-12 of P.L.1950, c.210 (C.40:69A-12) is amended
7 to read as follows:

8 1-12. The charter commission may report and recommend:

9 (a) That a referendum shall be held to submit to the qualified
10 voters of the municipality the question of adopting one of the
11 plans of government authorized in this act, and such of the
12 alternative provisions as permitted thereunder, to be specified by
13 the commission; or

14 (b) That the governing body shall petition the Legislature for
15 the enactment of a special charter or for one or more specific
16 amendments of or to the charter of the municipality, the text of
17 which shall be appended to the charter commission's report
18 pursuant to Article IV, Section VII, Paragraph 10, of the
19 Constitution of 1947 and to the enabling legislation enacted
20 thereunder to the extent that such legislation is not inconsistent
21 herewith; or

22 (c) That the form of government of the municipality shall
23 remain unchanged; or

24 (d) That the charter of the municipality adopted under
25 P.L.1950, c.210 (C.40:69A-1 et seq.) be amended to adopt one of
26 the alternative provisions authorized under the current plan of
27 government of the municipality, in which case a referendum shall
28 be held to submit the question to the qualified voters of the
29 municipality in the same manner as required for an ordinance
30 adopted to that effect pursuant to sections 7 through 11 of
31 P.L.1981, c.465 (40:69A-25.1 through 40:69A-25.5) and sections
32 17-42 through 17-47 of P.L.1950, c.210 (C.40:69A-191 through
33 40:69A-196); or

34 [(d)] (e) Such other action as it may deem advisable consistent
35 with its functions as set forth in section 1-7 of this article.

36 (cf: P.L.1981, c.465, s.1)

37 2. Section 1-14 of P. L.. 1950, c. 210 (C. 40:69A-14) is
38 amended to read as follows:

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 Assembly floor amendments adopted January 6, 1992.

1 1-14. The question to be submitted to the voters for the
2 adoption of any of the optional plans of government authorized by
3 this act, including any of the alternatives contained in this act,
4 shall be submitted in the following form or such part thereof as
5 shall be applicable:

6 "Shall(insert name of plan)..... of the Optional Municipal
7 Charter Law, providing for (a division of the municipality into
8(insert number)..... wards, with(insert number).....
9 council members (one to be elected from each ward and
10 ...(insert number)... to be elected at large) for(insert
11 "concurrent" or "staggered" terms)at elections held
12 in ...(insert May or November)... , with the mayor elected
13(insert "directly by the voters" or "by the council from
14 among its members"), (insert, if appropriate) with run-off
15 elections to be held thereafter if a sufficient number of
16 candidates fail to attain a majority of votes, be adopted by
17 ...(insert name of municipality)... ?".

18 (cf: P.L.1989, c.221, s.1)

19 3. Section 1-25 of P.L.1950, c.210 (C.40:69A-25) is amended
20 to read as follows:

21 1-25. Any municipality may, subject to the provisions of
22 section 1-23 of this act, abandon its optional plan and revert to
23 the form of government under which it was governed immediately
24 prior thereto, upon the filing of a petition and referendum as
25 follows:

26 (a) Upon petition of the registered voters of the municipality
27 signed by the same number thereof as required in section 1-19,
28 for an election to submit the question of abandonment and
29 reversion as herein provided, the municipal clerk shall provide for
30 submission of the question in like manner as provided in section
31 1-20.

32 (b) The form of the question shall be as follows:

33 Shall abandon its present
34 Name of Municipality
35 form of government and revert to its prior form of government,
36 known as as provided
37 Popular Name of Plan
38 by
39 Statutory Reference of Prior Plan

40 (c) If a majority of those voting on the question vote in the
41 affirmative the municipality shall revert to its prior form of
42 government as of 12 m. of the fifty-ninth day following the
43 election of officers under the form of government to which the
44 municipality will revert. The first officers under such form of
45 government shall be elected at the next regular municipal or
46 general election, as appropriate to the form of government to
47 which the municipality will revert, occurring not less than 60
48 days following the referendum. It shall be the duty of the
49 municipal clerk to perform all the duties respecting such election

1 as would be required of a municipal clerk for elections under the
2 form of government to which the municipality will revert.
3 Whenever a municipality has reverted to any form of government
4 other than the commission form of government law (R.S.40:79-1
5 et seq.), or the municipal manager form of government
6 (R.S.40:70-1 et seq.), at a later date than the one fixed for the
7 filing of nominating petitions at the primary election, the
8 candidates to be first elected shall be nominated by direct
9 petition in the manner provided by law for nomination, by direct
10 petition for a general election.

11 Any law to the contrary notwithstanding, persons holding office
12 at the time of a referendum approving reversion shall continue to
13 hold office until the municipality reverts to the previous form of
14 government. Vacancies existing at the holding of the referendum
15 or which occur between the holding of the referendum and the
16 reversion of the municipality to its previous form of government,
17 shall be filled by appointment pursuant to procedures for the
18 filing of vacancies appropriate to the "Optional Municipal
19 Charter Law."

20 If a majority of those voting on the question vote in the
21 negative, the question of abandonment and reversion shall not
22 again be submitted for five years.

23 (d) The reversion to a prior form of government shall take
24 effect as provided in sections 17-57 through 17-59 of this act for
25 transition to an optional plan hereunder.

26 (e) No petition shall be filed nor referendum held pursuant to
27 this section which would provide for the reversion of a
28 municipality to a form of government which it is not currently
29 authorized to adopt by law.

30 (cf: P.L.1980, c.82, s.1)

31 4. Section 8 of P.L.1981, c.465 (C.40:69A-25.2) is amended to
32 read as follows:

33 8. a. Whenever any municipality, pursuant to the authority
34 granted in section 7 of this act, shall amend its charter to include
35 an alternative permitted under its plan of government and
36 included in [either Group A. or] Group B. of subsection b. of
37 section 7 of this act, the terms of all council members, and
38 directly elected mayor if affected, currently serving in the
39 municipality on the date of the election at which the amendment
40 was adopted, and of all affected officers elected at that election,
41 shall terminate on June 30, or December 31, as appropriate to the
42 election provisions of the amended charter, next following the
43 date of the first election of officers under the amended charter.
44 The nomination and election of those municipal officers as are
45 required shall be conducted in accordance with the provisions of
46 the amended charter and appropriate law for the election to be
47 held on the second Tuesday in May next following the date of
48 adoption, or on the first Tuesday after the first Monday in
49 November next following the date of adoption. If the amendment

1 adopted to the charter shall provide for the division of the
2 municipality into wards, or by its terms require an increase or
3 decrease in the number of wards into which the municipality is
4 divided, the ward boundaries required by the amended charter
5 shall be fixed and determined pursuant to law within 90 days of
6 the date of adoption.

7 If the municipality shall at the same time amend its charter to
8 include an alternative permitted under its plan of government and
9 included in Group A., Group C., Group D. or Group E. of
10 subsection b. of section 7 of this act, the transitional provisions
11 of this section shall apply and the provisions of all amendments
12 shall take effect for the election to be held pursuant to this
13 section.

14 b. In any municipality which has amended its charter with
15 regard to the holding of elections according to the alternatives
16 set forth in Group A of section 7 of P.L.1981, c.465
17 (C.40:69A-25.1), where council members are elected for
18 concurrent terms, the first election of council members following
19 the referendum adopting the charter amendment shall take place
20 at the next regular municipal election or general election, as
21 appropriate to the election provisions of the amended charter,
22 which shall occur in the final year of the terms of those council
23 members serving at the time the referendum is adopted. Where
24 council members are elected for staggered terms, except as
25 provided below, each council member serving or elected at the
26 time that the referendum adopting the charter amendment takes
27 place, shall complete the term of office which he is currently
28 -serving, or to which he is elected at the time of the referendum.
29 At the regular municipal election or general election, as
30 appropriate to the election provisions of the amended charter,
31 which shall occur in the final year of the term of each member,
32 the office shall be filled according to the election provisions of
33 the amended charter, and the term of the affected council
34 member shall terminate on June 30 or December 31, as
35 appropriate to the election provisions of the amended charter.

36 (cf: P.L.1981, c.465, s.8)

37 ¹[5. Section 33 of P.L.1981, c.465 (C.40:69A-117.2) is amended
38 to read as follows:

39 33. Any municipality adopting a small municipality plan of
40 government may provide in its charter that the council members
41 elected at the first regular municipal election or general
42 election, as the charter shall provide, following the adoption of
43 the plan shall serve for the following terms: if the municipal
44 council is to consist of three members, one shall serve for one
45 year, one for two years and one for three years; if the municipal
46 council is to consist of five members, two shall serve for one
47 year, two for two years and one for three years; or if the
48 municipal council is to consist of seven members, three shall
49 serve for a term of one year, two for a term of two years and two

1 for a term of three years. The length of the respective term of
2 each member of the first council shall be determined by lot at
3 the organization of the council immediately following their
4 election; except that if, pursuant to the charter, the mayor is
5 elected directly by the voters, the mayor shall, for the purposes
6 of this section, be counted among those first council members to
7 serve a [4] three year term.

8 (cf: P.L.1989, c.221, s.9)]¹

9 ¹[6. Section 34 of P.L.1981, c.465 (C.40:69A-117.3) is amended
10 to read as follows:

11 34. Any municipality adopting a small municipality plan of
12 government shall provide in its charter either:

13 a. That the mayor shall be elected by the members of the
14 council; in which case on the first day of July or January, as
15 appropriate, following their election the members-elect of the
16 municipal council shall assemble at the usual place of meeting of
17 the governing body of the municipality and organize and elect one
18 of their number as mayor; that the mayor shall be chosen by
19 ballot by majority vote of members of the municipal council; that
20 if the members shall be unable, within five ballots to be taken
21 within two days of the organization meeting, to elect a mayor,
22 then the member who in the election for members of the
23 municipal council received the greatest number of votes shall be
24 mayor; and that should that person decline to accept the office,
25 then the person receiving the next highest vote shall be the
26 mayor, and so on, until the office is filled; or

27 b. That the mayor shall be elected directly by the voters of
28 the municipality at the regular municipal election, or general
29 election, as the charter shall provide; that at the first election
30 following the adoption of the charter, and each appropriate
31 subsequent election, one position of council member to be elected
32 at large shall be designated and voted for under the title of
33 mayor, and candidates for the position shall be clearly designated
34 as candidates for mayor in their respective nominating petitions;
35 and that the candidate for mayor receiving the greatest number
36 of votes shall be elected and shall serve for a term of [4] three
37 years.

38 (cf: P.L.1981, c.465, s.34)]¹

39 ¹[7.] 5.¹ Section 17-43 of P.L.1950, c.210 (C.40:69A-192) is
40 amended to read as follows:

41 17-43. a. Any ordinance to be voted on by the voters in
42 accordance with section 17-36 or section 17-42 of this act
43 (C.40:69A-185 or C.40:69A-191) shall be submitted at the next
44 general or regular municipal election occurring not less than 40
45 days after the final date for withdrawal of the petition as
46 provided for in section 17-42 of this act (C.40:69A-191.),
47 provided that if no such election is to be held within 90 days the
48 council shall provide for a special election to be held not less
49 than 40 nor more than 60 days from the final date for withdrawal

1 of the petition as provided for in section 17-42 (C.40:69A-191) of
2 this act.

3 b. In the case of an initiated petition signed by not less than
4 10% nor more than 15% of the legal voters, the ordinance shall be
5 submitted at the next general or regular municipal election
6 occurring not less than 40 days after the final date of withdrawal
7 of the petition as provided for in section 17-42 (C.40:69A-191) of
8 this act.

9 c. In any instance where a referendum election is to be held as
10 a result of an ordinance of the council which by its terms or by
11 law cannot become effective in the municipality unless submitted
12 to the voters, or which by its terms authorizes a referendum in
13 the municipality concerning the subject matter thereof, the time
14 for submission of the question to the voters shall be [calculated
15 for the purposes of this section and section 17-44 of P.L.1950,
16 c.210 (C.40:69A-193)] at the next general or regular municipal
17 election occurring not less than 40 days from the date of final
18 passage and approval of the ordinance. Referenda held on
19 ordinances adopted pursuant to sections 7 through 11 of P.L.1981,
20 c.465 (C.40:69A-25.1 through 40:69A-25.5) shall be governed by
21 this subsection, except that if the referendum is held pursuant to
22 those sections as the result of the report of a charter study
23 commission, the time for submission of the question shall be
24 calculated from the date of that report.

25 (cf: P.L.1982, c.145, s.4)

26 ¹[8.] 6.¹ Section 17-58 of P.L.1950, c.210 (C.40:69A-207) is
27 amended to read as follows:

28 17-58. a. At 12 o'clock noon on the effective date of an
29 optional plan adopted pursuant to this act, all offices then
30 existing in such municipality shall be abolished and the terms of
31 all elected and appointed officers shall immediately cease and
32 determine; provided, that nothing in this section shall be
33 construed to abolish the office or terminate the term of office of
34 any member of the board of education, board of fire
35 commissioners of a township fire district, trustees of the free
36 public library, commissioners of a local housing authority,
37 members of a municipal shade tree commission, board of
38 managers of a municipal hospital, municipal magistrates or of any
39 official or employee now protected by any tenure of office law,
40 or of any policeman, fireman, teacher, principal or school
41 superintendent whether or not protected by a tenure of office
42 law. If the municipality is operating under the provisions of Title
43 11 of the Revised Statutes (Civil Service) at the time of the
44 adoption of an optional plan under this act, nothing herein
45 contained shall affect the tenure of office of any person holding
46 any position or office coming within the provisions of said Title
47 11 as it applies to said officers and employees. If the municipal
48 clerk has, prior to the effective date of the optional plan,
49 acquired a protected tenure of office pursuant to law, he shall

1 become the first municipal clerk under the optional plan.

2 b. Provision for officers and for the organization and
3 administration of the municipal government under the optional
4 plan may be made by an interim resolution pending the adoption
5 of [ordinances, but any such resolution shall expire not later than
6 30 days after the effective date of the optional plan] an
7 administrative code.

8 c. Within 90 days after the date of organization of the first
9 municipal council elected under the optional plan, the municipal
10 governing body shall adopt, by ordinance, an administrative code
11 organizing the administration of the municipal government,
12 setting forth the duties, responsibilities and powers of all
13 municipal officers, departments and agencies, and establishing
14 the manner of performance thereof.

15 The code shall restate the major provisions of the municipal
16 charter and the applicable sections of general law, and provide
17 such additional details as are necessary to present a complete
18 guide describing: the municipal offices; how municipal officers
19 are selected; how municipal departments, divisions, boards,
20 commissions, and agencies are organized; lines of supervisory
21 responsibility and accountability; and procedures to be followed
22 to carry out the functions and activities of the municipal
23 government.

24 d. The administrative code shall take effect 30 days after its
25 adoption. Thereupon, all municipal offices, departments,
26 divisions, boards, commissions, and agencies shall assume the
27 form, perform the duties and responsibilities, and exercise the
28 powers granted under the administrative code in the manner
29 prescribed therein.

30 e. The administrative code may be amended or supplemented
31 from time to time by ordinance, subject to the provisions of law.

32 (cf: P.L.1977, c.392, s.1)

33 ¹[9.] 7.1. This act shall take effect immediately.

34

35

36

LOCAL GOVERNMENT

37

38 Corrects and clarifies various sections of the "Optional Municipal
39 Charter Law."

STATEMENT

This bill makes technical corrections and clarifications in the "Optional Municipal Charter Law" P.L.1950, c.210 (C.40:69A-1 et seq.).

The bill:

1. Corrects a reference to a four-year term of office for the mayor under the small municipality plan of government; under that plan all terms of elected office are for three years;

2. Assures that the proposed manner of selecting the mayor (either by election directly by the voters, or by election by the council from among its members) and the proposed sequence of council members' terms of office (concurrent or staggered terms) are included in the public question submitted to the voters at the charter election;

3. Provides a mechanism through which a charter study commission studying the plan of government under which a municipality currently operates under the "Optional Municipal Charter Law" could recommend and place directly on the ballot for referendum the question of adopting an authorized amendment to the current charter while leaving the basic plan of government in place. Currently, the power to place on the ballot the question of amending the adopted charter is limited to the voters by petition or to the governing body by ordinance.

4. Clarifies the process by which a municipality adopting the "Optional Municipal Charter Law" adopts an administrative code, and provides direction regarding the nature and contents of that code.

5. Clarifies that municipalities which abandon the "Optional Municipal Charter Law" may not revert to a form of government which is not currently authorized by law. This provision acknowledges that several old statutes authorizing forms of government have been repealed as antiquated and are no longer in use.

6. Clarifies that in municipalities operating under the "Optional Municipal Charter Law" which by referendum change from partisan to nonpartisan elections, or vice versa, incumbent council members will serve their complete terms before a new election or elections, as appropriate, are held.

LOCAL GOVERNMENT

Corrects and clarifies various sections of the "Optional Municipal Charter Law."

ASSEMBLY MUNICIPAL GOVERNMENT COMMITTEE

STATEMENT TO

SENATE, No. 268

STATE OF NEW JERSEY

DATED: JUNE 10, 1991

The Assembly Municipal Government Committee favorably reports Senate Bill No. 268.

Senate Bill No. 268 makes technical corrections and clarifications in the "Optional Municipal Charter Law" P.L.1950, c.210 (C.40:69A-1 et seq.).

The bill:

1. Corrects a reference to a four-year term of office for the mayor under the small municipality plan of government; under that plan all terms of elected office are for three years;

2. Assures that the proposed manner of selecting the mayor (either by election directly by the voters, or by election by the council from among its members) and the proposed sequence of council members' terms of office (concurrent or staggered terms) are included in the public question submitted to the voters at the charter election;

3. Provides a mechanism through which a charter study commission studying the plan of government under which a municipality currently operates under the "Optional Municipal Charter Law" could recommend and place directly on the ballot for referendum the question of adopting an authorized amendment to the current charter while leaving the basic plan of government in place. Currently, the power to place on the ballot the question of amending the adopted charter is limited to the voters by petition or to the governing body by ordinance.

4. Clarifies the process by which a municipality adopting the "Optional Municipal Charter Law" adopts an administrative code, and provides direction regarding the nature and contents of that code.

5. Clarifies that municipalities which abandon the "Optional Municipal Charter Law" may not revert to a form of government which is not currently authorized by law. This provision acknowledges that several old statutes authorizing forms of government have been repealed as antiquated and are no longer in use.

6. Clarifies that in municipalities operating under the "Optional Municipal Charter Law" which by referendum change from partisan to nonpartisan elections, or vice versa, incumbent council members will serve their complete terms before a new election or elections, as appropriate, are held.

SENATE COUNTY AND MUNICIPAL
GOVERNMENT COMMITTEE

STATEMENT TO

SENATE, No. 268

STATE OF NEW JERSEY

DATED: FEBRUARY 5, 1990

The Senate County and Municipal Government Committee reports favorably Senate Bill No. 268.

Senate Bill No. 268 makes technical corrections and clarifications in the "Optional Municipal Charter Law" P.L.1950, c.210 (C.40:69A-1 et seq.).

The bill:

1. Corrects a reference to a four-year term of office for the mayor under the small municipality plan of government; under that plan all terms of elected office are for three years;

2. Assures that the proposed manner of selecting the mayor (either by election directly by the voters, or by election by the council from among its members) and the proposed sequence of council members' terms of office (concurrent or staggered terms) are included in the public question submitted to the voters at the charter election;

3. Provides a mechanism through which a charter study commission studying the plan of government under which a municipality currently operates under the "Optional Municipal Charter Law" could recommend and place directly on the ballot for referendum the question of adopting an authorized amendment to the current charter while leaving the basic plan of government in place. Currently, the power to place on the ballot the question of amending the adopted charter is limited to the voters by petition or to the governing body by ordinance.

4. Clarifies the process by which a municipality adopting the "Optional Municipal Charter Law" adopts an administrative code, and provides direction regarding the nature and contents of that code.

5. Clarifies that municipalities which abandon the "Optional Municipal Charter Law" may not revert to a form of government which is not currently authorized by law. This provision acknowledges that several old statutes authorizing forms of government have been repealed as antiquated and are no longer in use.

6. Clarifies that in municipalities operating under the "Optional Municipal Charter Law" which by referendum change from partisan to nonpartisan elections, or vice versa, incumbent council members will serve their complete terms before a new election or elections, as appropriate, are held.

This bill was pre-filed for introduction in the 1990 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.