



**REPORTS:**

No

**HEARINGS:**

No

**NEWSPAPER ARTICLES:**

No

# ASSEMBLY, No. 2271

## STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED MARCH 20, 2000

**Sponsored by:**

**Assemblyman DAVID C. RUSSO**

**District 40 (Bergen and Passaic)**

**Assemblyman GERALD H. ZECKER**

**District 34 (Essex and Passaic)**

**SYNOPSIS**

Clarifies certain duties of the municipal prosecutor.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning municipal prosecutors and amending P.L.1999,  
2 c.349.

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

6  
7 1. Section 5 of P.L.1999, c.349 (C.2B:25-5) is amended to read as  
8 follows:

9 5. a. A municipal prosecutor, except as provided by [paragraph]  
10 subsection b. of this section and sections 6 and 7 of this act, shall  
11 represent the State, the county or the municipality in the prosecution  
12 of all offenses[, except for zoning violations,] within the statutory  
13 jurisdiction of the municipal court as defined by law; except that  
14 zoning violations may be prosecuted by an appropriate local official or  
15 by the municipal prosecutor. A municipal prosecutor shall be  
16 responsible for handling all phases of the prosecution of an offense,  
17 including but not limited to discovery, pretrial and post-trial hearings,  
18 motions, dismissals, removals to Federal District Court and other  
19 collateral functions authorized to be performed by the municipal  
20 prosecutor by law or Rule of Court. As used in this subsection, the  
21 term "post-trial hearing" shall not include de novo appeals in Superior  
22 Court.

23 b. A municipal prosecutor may, with the approval of the court and  
24 pursuant to the Rules of Court, authorize private attorneys to  
25 prosecute citizen complaints filed in the municipal court. A municipal  
26 prosecutor may, with the approval of the court, decline to participate  
27 in municipal court proceedings in which the defendant is not  
28 represented by counsel. The court shall afford the citizen complainant  
29 an opportunity to be heard prior to determining whether to approve a  
30 municipal prosecutor's decision to authorize a private attorney to  
31 prosecute a citizen complaint or to decline to participate in a municipal  
32 court proceeding in which the defendant is not represented by counsel.  
33 When the municipal prosecutor declines to prosecute, the prevailing  
34 complainant may make an application to the court for counsel fee  
35 reimbursement to be paid out of applicable fines, but such  
36 reimbursement shall not exceed the amount of the applicable fines.  
37 Upon a finding that a conflict of interest precludes a municipal  
38 prosecutor from participating in a proceeding, the court shall excuse  
39 the municipal prosecutor and may, in such a case, request the county  
40 prosecutor to provide representation in accordance with section 6 of  
41 this act unless the municipality has provided for alternative  
42 representation.

43 c. A municipal prosecutor may at any time move before the

**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 municipal court to amend or dismiss any complaint for good cause  
2 shown in accordance with the Rules of the Court.  
3 (cf: P.L.1999, c.349, s.5)

4

5 2. This act shall take effect on April 13, 2000.

6

7

8

STATEMENT

9

10 This bill will clarify that municipal prosecutors are not precluded  
11 from prosecuting zoning violations but rather that other officials may  
12 handle those matters, in addition to the municipal prosecutor.

13 It is the intent of section 5 of P.L.1999, c.349 (C.2B:25-2) to  
14 provide that the municipal prosecutor did not have to prosecute all  
15 zoning violations given the language in that section that ". . . the  
16 prosecutor shall represent the State, the county or the municipality in  
17 the prosecution of all offenses. . . " (Emphasis added). Confusion has  
18 resulted among municipal prosecutors from the phrasing of the 1999  
19 law and this bill is an effort to rectify the misunderstanding, by  
20 providing that municipal prosecutors or other local officials, as  
21 appropriate, may handle zoning violations.

22 The effective date is intended to coincide with the effective date of  
23 P.L.1999, c.349.

# ASSEMBLY JUDICIARY COMMITTEE

## STATEMENT TO

### **ASSEMBLY, No. 2271**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: MARCH 23, 2000

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 2271.

This bill will clarify that municipal prosecutors are not precluded from prosecuting certain violations pertaining to zoning, land or property use, property maintenance, building or construction but rather that other appropriate officials may handle these matters, in addition to the municipal prosecutor.

It was the intent of section 5 of P.L.1999, c.349 (C.2B:25-2) to provide that municipal prosecutors did not have to prosecute all zoning violations. The 1999 law had excluded zoning violations from the mandatory language that stated ". . . the prosecutor shall represent the State, the county or the municipality in the prosecution of all offenses. . . ." (Emphasis added). Confusion has resulted among municipal prosecutors from the phrasing of the 1999 law which appeared to many to preclude municipal prosecutors from handling zoning matters entirely. This bill is an effort to rectify the misunderstanding. In discussing this bill the committee concluded that the mere reference to "zoning" may be inadequate so the committee amended the bill to provide that a municipal prosecutor or an appropriate local official may handle municipal ordinance or municipal code violations pertaining to zoning, land use regulation, property maintenance, building or construction. It is the committee's intent to be as inclusive as possible in this zoning-related category so that municipal prosecutors may handle these matters or may let other local officials handle them.

The effective date is intended to coincide with the effective date of P.L.1999, c.349.

[First Reprint]

**ASSEMBLY, No. 2271**

**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

INTRODUCED MARCH 20, 2000

**Sponsored by:**

**Assemblyman DAVID C. RUSSO**

**District 40 (Bergen and Passaic)**

**Assemblyman GERALD H. ZECKER**

**District 34 (Essex and Passaic)**

**SYNOPSIS**

Clarifies certain duties of the municipal prosecutor.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Judiciary Committee on March 23, 2000, with amendments.



1 AN ACT concerning municipal prosecutors and amending P.L.1999,  
2 c.349.

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

6  
7 1. Section 5 of P.L.1999, c.349 (C.2B:25-5) is amended to read as  
8 follows:

9 5. a. A municipal prosecutor, except as provided by **[paragraph]**  
10 **subsection b.** of this section and sections 6 and 7 of this act, shall  
11 represent the State, the county or the municipality in the prosecution  
12 of all offenses~~[, except for zoning violations,]~~ within the statutory  
13 jurisdiction of the municipal court as defined by law; ~~except that~~  
14 <sup>1</sup>~~[zoning] municipal ordinance and municipal code~~<sup>1</sup> violations  
15 <sup>1</sup>pertaining to zoning, land or property use regulation, property  
16 maintenance, building or construction<sup>1</sup> may be prosecuted by an  
17 appropriate local official or by the municipal prosecutor. A municipal  
18 prosecutor shall be responsible for handling all phases of the  
19 prosecution of an offense, including but not limited to discovery,  
20 pretrial and post-trial hearings, motions, dismissals, removals to  
21 Federal District Court and other collateral functions authorized to be  
22 performed by the municipal prosecutor by law or Rule of Court. As  
23 used in this subsection, the term "post-trial hearing" shall not include  
24 de novo appeals in Superior Court.

25 b. A municipal prosecutor may, with the approval of the court and  
26 pursuant to the Rules of Court, authorize private attorneys to  
27 prosecute citizen complaints filed in the municipal court. A municipal  
28 prosecutor may, with the approval of the court, decline to participate  
29 in municipal court proceedings in which the defendant is not  
30 represented by counsel. The court shall afford the citizen complainant  
31 an opportunity to be heard prior to determining whether to approve a  
32 municipal prosecutor's decision to authorize a private attorney to  
33 prosecute a citizen complaint or to decline to participate in a municipal  
34 court proceeding in which the defendant is not represented by counsel.  
35 When the municipal prosecutor declines to prosecute, the prevailing  
36 complainant may make an application to the court for counsel fee  
37 reimbursement to be paid out of applicable fines, but such  
38 reimbursement shall not exceed the amount of the applicable fines.  
39 Upon a finding that a conflict of interest precludes a municipal  
40 prosecutor from participating in a proceeding, the court shall excuse  
41 the municipal prosecutor and may, in such a case, request the county

**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:**

<sup>1</sup> Assembly AJU committee amendments adopted March 23, 2000.



1 prosecutor to provide representation in accordance with section 6 of  
2 this act unless the municipality has provided for alternative  
3 representation.

4 c. A municipal prosecutor may at any time move before the  
5 municipal court to amend or dismiss any complaint for good cause  
6 shown in accordance with the Rules of the Court.  
7 (cf: P.L.1999, c.349, s.5)

8

9 2. This act shall take effect on April 13, 2000.

# SENATE JUDICIARY COMMITTEE

## STATEMENT TO

[First Reprint]

## **ASSEMBLY, No. 2271**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 22, 2000

The Senate Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 2271 (1R).

P.L.1994, c.349 (C. 2B:25-1 et seq.) which took effect April 13 of this year, delineates the duties of municipal prosecutors. Section 5 of chapter 349 (C. 2B:25-5) requires a municipal prosecutor to represent the State, the county or the municipality in the prosecution of all offenses within the statutory jurisdiction of the municipal court except for zoning violations. This exception with regard to zoning violators was intended to indicate that the handling of cases involving zoning violations by municipal prosecutors was not mandatory. However, this language has been interpreted as entirely precluding municipal prosecutors from handling zoning matters. This bill is intended to clarify that municipal prosecutors are not precluded from prosecuting violations pertaining to zoning, land or property use.

[Second Reprint]

**ASSEMBLY, No. 2271**

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**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

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INTRODUCED MARCH 20, 2000

**Sponsored by:**

**Assemblyman DAVID C. RUSSO**

**District 40 (Bergen and Passaic)**

**Assemblyman GERALD H. ZECKER**

**District 34 (Essex and Passaic)**

**Co-Sponsored by:**

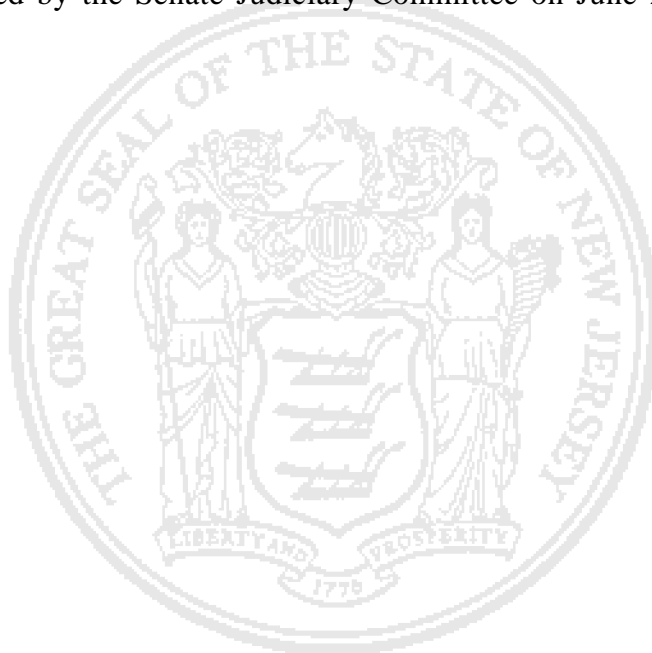
**Senator Bennett**

**SYNOPSIS**

Clarifies certain duties of the municipal prosecutor.

**CURRENT VERSION OF TEXT**

As reported by the Senate Judiciary Committee on June 22, 2000, with amendments.



**(Sponsorship Updated As Of: 10/3/2000)**

1 AN ACT concerning municipal prosecutors and amending P.L.1999,  
2 c.349.

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

6  
7 1. Section 5 of P.L.1999, c.349 (C.2B:25-5) is amended to read as  
8 follows:

9 5. a. A municipal prosecutor, except as provided by **[paragraph]**  
10 **subsection b.** of this section and sections 6 and 7 of this act, shall  
11 represent the State, the county or the municipality in the prosecution  
12 of all offenses **[, except for zoning violations,]** within the statutory  
13 jurisdiction of the municipal court as defined by law; <sup>2</sup>**[except that]**  
14 **including<sup>2</sup> <sup>1</sup>[zoning] municipal ordinance and municipal code<sup>1</sup>**  
15 **violations <sup>1</sup>pertaining to zoning, land or property use regulation,**  
16 **property maintenance, building or construction<sup>1</sup> <sup>2</sup>[may be prosecuted**  
17 **by an appropriate local official or by the municipal prosecutor]**. Such  
18 **other local officials as may be deemed appropriate may be called by**  
19 **the municipal prosecutor in such prosecutions. Nothing contained**  
20 **herein shall prohibit a municipality from hiring special counsel to act**  
21 **as municipal prosecutor for these types of offenses<sup>2</sup>.** A municipal  
22 prosecutor shall be responsible for handling all phases of the  
23 prosecution of an offense, including but not limited to discovery,  
24 pretrial and post-trial hearings, motions, dismissals, removals to  
25 Federal District Court and other collateral functions authorized to be  
26 performed by the municipal prosecutor by law or Rule of Court. As  
27 used in this subsection, the term "post-trial hearing" shall not include  
28 de novo appeals in Superior Court.

29 b. A municipal prosecutor may, with the approval of the court and  
30 pursuant to the Rules of Court, authorize private attorneys to  
31 prosecute citizen complaints filed in the municipal court. A municipal  
32 prosecutor may, with the approval of the court, decline to participate  
33 in municipal court proceedings in which the defendant is not  
34 represented by counsel. The court shall afford the citizen complainant  
35 an opportunity to be heard prior to determining whether to approve a  
36 municipal prosecutor's decision to authorize a private attorney to  
37 prosecute a citizen complaint or to decline to participate in a municipal  
38 court proceeding in which the defendant is not represented by counsel.  
39 When the municipal prosecutor declines to prosecute, the prevailing  
40 complainant may make an application to the court for counsel fee  
41 reimbursement to be paid out of applicable fines, but such

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

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**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Assembly AJU committee amendments adopted March 23, 2000.

<sup>2</sup> Senate SJU committee amendments adopted June 22, 2000.

1 reimbursement shall not exceed the amount of the applicable fines.  
2 Upon a finding that a conflict of interest precludes a municipal  
3 prosecutor from participating in a proceeding, the court shall excuse  
4 the municipal prosecutor and may, in such a case, request the county  
5 prosecutor to provide representation in accordance with section 6 of  
6 this act unless the municipality has provided for alternative  
7 representation.

8 c. A municipal prosecutor may at any time move before the  
9 municipal court to amend or dismiss any complaint for good cause  
10 shown in accordance with the Rules of the Court.

11 (cf: P.L.1999, c.349, s.5)

12

13 2. This act shall take effect on April 13, 2000.

P.L. 2000, CHAPTER 178, *approved January 8, 2001*  
Assembly, No. 2271 (*Second Reprint*)

1 AN ACT concerning municipal prosecutors and amending P.L.1999,  
2 c.349.

3

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

6

7 1. Section 5 of P.L.1999, c.349 (C.2B:25-5) is amended to read as  
8 follows:

9 5. a. A municipal prosecutor, except as provided by **[paragraph]**  
10 subsection b. of this section and sections 6 and 7 of this act, shall  
11 represent the State, the county or the municipality in the prosecution  
12 of all offenses **[, except for zoning violations,]** within the statutory  
13 jurisdiction of the municipal court as defined by law; <sup>2</sup>**[except that]**  
14 including<sup>2</sup> <sup>1</sup>[zoning] municipal ordinance and municipal code<sup>1</sup>  
15 violations <sup>1</sup>pertaining to zoning, land or property use regulation,  
16 property maintenance, building or construction<sup>1</sup> <sup>2</sup>[may be prosecuted  
17 by an appropriate local official or by the municipal prosecutor]. Such  
18 other local officials as may be deemed appropriate may be called by  
19 the municipal prosecutor in such prosecutions. Nothing contained  
20 herein shall prohibit a municipality from hiring special counsel to act  
21 as municipal prosecutor for these types of offenses<sup>2</sup>. A municipal  
22 prosecutor shall be responsible for handling all phases of the  
23 prosecution of an offense, including but not limited to discovery,  
24 pretrial and post-trial hearings, motions, dismissals, removals to  
25 Federal District Court and other collateral functions authorized to be  
26 performed by the municipal prosecutor by law or Rule of Court. As  
27 used in this subsection, the term "post-trial hearing" shall not include  
28 de novo appeals in Superior Court.

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30 pursuant to the Rules of Court, authorize private attorneys to  
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32 prosecutor may, with the approval of the court, decline to participate  
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34 represented by counsel. The court shall afford the citizen complainant  
35 an opportunity to be heard prior to determining whether to approve a  
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38 court proceeding in which the defendant is not represented by counsel.  
39 When the municipal prosecutor declines to prosecute, the prevailing

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**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Assembly AJU committee amendments adopted March 23, 2000.

<sup>2</sup> Senate SJU committee amendments adopted June 22, 2000.

1 complainant may make an application to the court for counsel fee  
2 reimbursement to be paid out of applicable fines, but such  
3 reimbursement shall not exceed the amount of the applicable fines.  
4 Upon a finding that a conflict of interest precludes a municipal  
5 prosecutor from participating in a proceeding, the court shall excuse  
6 the municipal prosecutor and may, in such a case, request the county  
7 prosecutor to provide representation in accordance with section 6 of  
8 this act unless the municipality has provided for alternative  
9 representation.

10 c. A municipal prosecutor may at any time move before the  
11 municipal court to amend or dismiss any complaint for good cause  
12 shown in accordance with the Rules of the Court.

13 (cf: P.L.1999, c.349, s.5)

14

15 2. This act shall take effect on April 13, 2000.

16

17

18

19

20 Clarifies certain duties of the municipal prosecutor.

## CHAPTER 178

AN ACT concerning municipal prosecutors and amending P.L.1999, c.349.

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

1. Section 5 of P.L.1999, c.349 (C.2B:25-5) is amended to read as follows:

C.2B:25-5 Duties of municipal prosecutor; use of special counsel, private attorneys.

5. a. A municipal prosecutor, except as provided by subsection b. of this section and sections 6 and 7 of this act, shall represent the State, the county or the municipality in the prosecution of all offenses within the statutory jurisdiction of the municipal court as defined by law; including municipal ordinance and municipal code violations pertaining to zoning, land or property use regulation, property maintenance, building or construction. Such other local officials as may be deemed appropriate may be called by the municipal prosecutor in such prosecutions. Nothing contained herein shall prohibit a municipality from hiring special counsel to act as municipal prosecutor for these types of offenses. A municipal prosecutor shall be responsible for handling all phases of the prosecution of an offense, including but not limited to discovery, pretrial and post-trial hearings, motions, dismissals, removals to Federal District Court and other collateral functions authorized to be performed by the municipal prosecutor by law or Rule of Court. As used in this subsection, the term "post-trial hearing" shall not include de novo appeals in Superior Court.

b. A municipal prosecutor may, with the approval of the court and pursuant to the Rules of Court, authorize private attorneys to prosecute citizen complaints filed in the municipal court. A municipal prosecutor may, with the approval of the court, decline to participate in municipal court proceedings in which the defendant is not represented by counsel. The court shall afford the citizen complainant an opportunity to be heard prior to determining whether to approve a municipal prosecutor's decision to authorize a private attorney to prosecute a citizen complaint or to decline to participate in a municipal court proceeding in which the defendant is not represented by counsel. When the municipal prosecutor declines to prosecute, the prevailing complainant may make an application to the court for counsel fee reimbursement to be paid out of applicable fines, but such reimbursement shall not exceed the amount of the applicable fines. Upon a finding that a conflict of interest precludes a municipal prosecutor from participating in a proceeding, the court shall excuse the municipal prosecutor and may, in such a case, request the county prosecutor to provide representation in accordance with section 6 of this act unless the municipality has provided for alternative representation.

c. A municipal prosecutor may at any time move before the municipal court to amend or dismiss any complaint for good cause shown in accordance with the Rules of Court.

2. This act shall take effect on April 13, 2000.

Approved January 8, 2001.



PO BOX 004  
TRENTON, NJ 08625

*Office of the Governor*  
**NEWS RELEASE**

CONTACT: Jayne O'Connor  
Laura Otterbourg  
609-777-2600

RELEASE: January 9, 2001

Governor Whitman today signed the following legislation:

**S-968**, sponsored by Senators Vitale (D-Middlesex) and Bennett (R-Monmouth) and Assembly Members Weinberg (D-Bergen) and Zisa (D-Bergen), creates the new third-degree offense of endangering an injured victim.

**S-1383**, sponsored by Senators Bucco (R-Morris) and Littell (R-Sussex/Hunterdon/ Morris) and Assembly Members Gregg (R-Sussex/Hunterdon/Morris) and Carroll (R-Morris), creates the Lake Hopatcong Commission and appropriates \$3 million.

**S-572**, sponsored by Senators Robertson (R-Essex/Passaic) and Codey (D-Essex) and Assembly Member O'Toole (R-Essex/Union), permits simulated voting for minors at polling places.

**S-454**, sponsored by Senators Girgenti (D-Passaic) and Kosco (R-Bergen) and Assembly Member Wisniewski (D-Middlesex), raises the maximum age for appointment for exempt firemen to age 45. Additionally, the bill removes the residency and citizenship requirements for qualification for an exempt fireman certificate.

**A-1710**, sponsored by Assembly Members Wisniewski (D-Middlesex) and Kelly (R-Bergen/Essex/Passaic) and Senators Bucco (R-Morris) and Girgenti (D-Passaic), makes a designated command structure a required element in municipal and county Emergency Operations Plans involving responses to mutual-aid fires.

**A-2271**, sponsored by Assembly Members Russo (R-Bergen/Passaic) and Zecker (R-Essex/Passaic) and Senator Bennett (R-Monmouth), clarifies certain duties of the municipal prosecutor with respect to zoning and building code violations.