

LEGISLATIVE HISTORY CHECKLIST

NJSA: 40:69A-32 et al (Municipal government-- clarify separation of executive and legislative powers.)

LAWS OF: 1985 **CHAPTER:** 374

BILL NO: S1206

Sponsor(s): Lynch

Date Introduced: February 6, 1984

Committee: Assembly: Municipal Government
Senate: County and Municipal Government

Amended during passage: Yes Amendments denoted by asterisks.
according to Governor's recommendations

Date of Passage: **Assembly:** June 17, 1985 Re-enacted 11-18-85
Senate: November 19, 1984 Re-enacted 9-12-85

Date of Approval: November 26, 1985

Following statements are attached if available:

Sponsor statement: Yes Attached: Senate amendments, adopted 10-22-84 and 9-20-84 (with statements)

Committee statement: **Assembly** Yes
Senate No

Fiscal Note: No

Veto Message: Yes

Message on Signing: No

Following were printed:

Reports: Yes

Hearings: No

(OVER)

See newspaper clippings--attached:

"Assembly approves Mayor-Council Bill," 11-19-85 Asbury Park Press.
"Bill would boost power of mayors," 7-10-85 Asbury Park Press.

Report, referred to in veto:

974.90 Reock, Ernest
M966 Forms of municipal government in New Jersey . . . 17th report.
1979 January, 1979. New Brunswick, 1979.

11-26-85

[FOURTH OFFICIAL COPY REPRINT]

SENATE, No. 1206

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 6, 1984

By Senator LYNCH

Referred to Committee on County and Municipal Government

AN ACT concerning ****[the mayor-council plan of government under the "Optional Municipal Charter Law,"]**** ****mayors and local governing bodies in certain instances,**** amending and supplementing P. L. 1950, c. 210 and amending N. J. S. 40A:9-165 ******[**and P. L. 1975, c. 291**]****.**

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

1 1. Section 3-2 of P. L. 1950, c. 210 (C. 40:69A-32) is amended
2 to read as follows:

3 3-2. a. Each municipality hereunder shall be governed by an
4 elected council, and an elected mayor and by such other officers
5 and employees as may be duly appointed pursuant to this article,
6 general law or ordinance.

7 b. ******[In each municipality adopting the mayor-council plan of**
8 *government, the term "governing body" shall be construed to*
9 *include both the mayor and the municipal council.]***** For the
10 purpose of the construction of all other applicable statutes, unless
11 the explicit terms and context of the statute require a contrary con-
12 struction, any administrative or executive functions assigned by
13 general law to the governing body shall be exercised by the mayor,
14 and any legislative and investigative functions assigned by general
15 law to the governing body shall be exercised by the council. Those
16 functions shall be exercised pursuant to the procedures set forth
17 in this plan of government, unless other procedures are required
18 by the specific terms of the general law.

1 2. Section 3-6 of P. L. 1950, c. 210 (C. 40:69A-36) is amended to
2 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 printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

***—Senate committee amendments adopted April 30, 1984.**

****—Senate amendments adopted September 20, 1984.**

*****—Senate amendments adopted October 22, 1984.**

******—Senate amendments adopted in accordance with Governor's recommendations September 9, 1985.**

3 3-6. The legislative power of the municipality shall be exercised
 4 by the municipal council, [except as may be otherwise provided
 5 by general law] *subject to the procedures set forth in this plan*
 6 *of government. Legislative powers shall be exercised by ordi-*
 7 *nance, except for the exercise of those powers ****[which]*****
 8 *****that, under this plan of government or general law,**** do not*
 9 *require action by the ****[governing body as a whole]*****
 9A *****mayor as a condition of approval for the exercise thereof****,*
 9C *and may, therefore, be exercised by resolution, including****, but*
 9D *not limited to****:*

- 10 a. *The override of a veto of the mayor;*
- 11 b. *The exercise of advice and consent to actions of the mayor;*
- 12 c. *The conduct of a legislative inquiry or investigation;*
- 13 d. *The expression of disapproval of the removal by the mayor*
 14 *of officers or employees;*
- 15 e. *The removal of any municipal officer for cause;*
- 16 f. *The adoption of rules for the council;*
- 17 g. *The establishment of times and places for council meetings;*
- 18 h. *The establishment of the council as a committee of the whole*
 19 *and the delegation of any number of its members as an ad hoc*
 19A *committee;*
- 20 i. *The declaration of emergencies respecting the passage of*
 21 *ordinances;*
- 22 j. *The election, appointment****, setting of salaries**** and re-*
 23 *moval of officers and employees of the council****, subject to any*
 23A *pertinent civil service requirements and any pertinent contractual*
 23B *obligations, and within the general limits of the municipal*
 23C *budget****;*
- 24 k. *Designation of official newspapers;*
- 25 l. *Approval of contracts presented by the mayor;*
- 26 m. *Actions specified as resolutions in the "Local Budget Law"*
 27 *(N. J. S. 40A:4-1 et seq.) ****and the "Local Fiscal Affairs Law"*
 27A *(N. J. S. 40A:5-1 et seq.)****; and*
- 28 n. *The expression of council policies or opinions which require*
 29 *no formal action by the ****[governing body]**** ****mayor****.*

1 3. Section 3-7 of P. L. 1950, c. 210 (C. 40:69A-37) is amended
 2 to read as follows:

3 3-7. The council, in addition to such other powers and duties as
 4 may be conferred upon it by this charter or otherwise by general
 5 law, may:

- 6 (a) require any municipal officer, in its discretion, to prepare
 7 and submit sworn statements regarding his official duties in the

8 performance thereof, and otherwise to investigate the conduct of
9 any department, office or agency of the municipal government;

10 (b) remove, *by at least two-thirds vote of the whole number of*
11 *the council*, any municipal officer, other than the mayor or a
12 member of council, for cause, upon notice and an opportunity to
13 be heard.

1 4. Section 3-9 of P. L. 1950, c. 210 (C. 40:69A-39) is amended
2 to read as follows:

3 3-9. The executive power of the municipality shall be exercised
4 by the mayor, *subject to the procedures set forth in this plan of*
5 *government*.

1 5. Section 3-10 of P. L. 1950, c. 210 (C. 40:69A-40) is amended
2 to read as follows:

3 3-10. The mayor shall [enforce the charter and ordinances of
4 the municipality and all general laws applicable thereto. He shall
5 annually report to the council and the public on the work of the
6 previous year and on the condition and requirements of the
7 municipal government and shall from time to time make such
8 recommendations for action by the council as he may deem in the
9 public interest. He shall supervise all of the departments of the
10 municipal government and shall require each department to make
11 an annual and such other reports of its work as he may deem
12 desirable]:

13 a. *Enforce the charter and ordinances of the municipality and*
14 *all general laws applicable thereto;*

15 b. *Report annually to the council and to the public on the state*
16 *of the municipality, and the work of the previous year; he shall*
17 *also recommend to the council whatever action or programs he*
18 *deems necessary for the improvement of the municipality and the*
19 *welfare of its residents. He may from time to time recommend any*
20 *action or programs he deems necessary or desirable for the munici-*
21 *pality to undertake;*

22 c. *Supervise, direct and control all departments of the municipal*
23 *government and shall require each department to make an annual*
24 *and such other reports of its work as he may deem desirable;*

25 d. *Require such reports and examine such accounts, records and*
26 *operations of any board, commission or other agency of municipal*
27 *government, as he deems necessary;*

28 e. *Prepare and submit to the council for its consideration and*
29 *adoption an annual operating budget and a capital budget, estab-*
30 *lish the schedules and procedures to be followed by all municipal*
31 *departments, offices and agencies in connection therewith, and*
32 *supervise and administer all phases of the budgetary process;*

33 *f. Supervise the care and custody of all municipal property,*
 34 *institutions and agencies, and make recommendations concerning*
 35 *the nature and location of municipal improvements and execute*
 36 *improvements determined by the governing body;*

37 *g. Sign all contracts, bonds or other instruments requiring the*
 38 *consent of the municipality;*

39 *h. Review, analyze and forecast trends of municipal services*
 40 *and finances and programs of all boards, commissions, agencies*
 41 *and other municipal bodies, and report and recommend thereon*
 42 *to the council;*

43 *i. ***[Develop,install and maintain]*** *Supervise the development,*
 43A *installation and maintenance of* centralized budgeting, personnel*
 44 *and purchasing procedures as may be authorized by ordinance;*

45 *j. Negotiate contracts for the municipality subject to council*
 46 *approval;*

47 *k. Assure that all terms and conditions imposed in favor of the*
 48 *municipality or its inhabitants in any statute, franchise or other*
 49 *contract are faithfully kept and performed;*

50 *l. Serve as an ex officio nonvoting member of all appointive*
 51 *bodies in municipal government of which he is not an official voting*
 52 *member.*

1 6. Section 3-13 of P. L. 1950, c. 210 (C. 40:69A-43) is amended
 2 to read as follows:

3 3-13. (a) The municipality shall have a department of adminis-
 4 tration and such other departments, *not less than two and not*
 5 *exceeding nine in number, as council may establish by ordinance.*
 6 *All of the administrative functions, powers and duties of the*
 7 *municipality, other than those vested in the offices of the municipal*
 8 *clerk and the municipal tax assessor, shall be allocated and*
 9 *assigned among and within such departments.*

10 The offices of the municipal clerk and the municipal tax assessor
 11 shall be subject to such general administrative procedures and
 12 requirements as are departments of the municipal government,
 13 including, but not limited to, the preparation and submission of an
 14 annual budget and of such periodic budget reports as are generally
 15 required of departments, and such accounting controls, central
 16 purchasing practices, personnel procedures and regulations, and
 17 central data processing services as are generally required of
 18 departments.

19 (b) Each department shall be headed by a director, who shall be
 20 appointed by the mayor with the advice and consent of the council.
 21 Each department head shall serve during the term of office of the
 22 mayor appointing him, and until the appointment and qualification

23 of his successor. *The mayor shall, with the advice and consent of*
 24 *the council, appoint *the municipal assessor and* all other municipi-*
 25 *pal officers *not assigned within municipal departments,* subject*
 26 *to the terms of any general law providing for these offices, unless*
 26A *a different appointment procedure is clearly required ****by this*
 27 *plan of government or**** by general law.*

28 (c) The mayor may in his discretion remove any department
 29 head, and, subject to any general provisions of law concerning
 30 term of office or tenure, any other municipal ****executive****
 31 officer *who is not a subordinate departmental officer or employee*,
 31A after notice and an opportunity to be heard. Prior to [removing a
 32 department head] removal the mayor shall first file written notice
 33 of his intention with the council, and such removal shall become
 34 effective on the twentieth day after the filing of such notice unless
 35 the council shall prior thereto have adopted a resolution by a
 36 two-thirds vote of the whole number of the council, disapproving
 36A the removal.

37 (d) Department heads shall appoint subordinate officers and
 38 employees within their respective departments and may, with
 39 approval of the mayor, remove such officers and employees subject
 40 to the provisions of the Revised Statutes, Title 11, Civil Service,
 41 where that Title is effective in the municipality, or other general
 42 law[; provided, however, that council may provide by ordinance
 43 for the appointment and removal of specific boards or commissions
 44 by the mayor].

45 (e) Notwithstanding the foregoing provisions of this section in
 46 any city of the first class, there shall be, and in any municipality
 47 having a population of 15,000 or more, there may be, a board of
 48 alcoholic beverage control which shall exercise the powers con-
 49 ferred upon municipal boards of alcoholic beverage control under
 50 Title 33 of the Revised Statutes. Such boards shall be comprised
 51 of three members, no more than two of whom shall be of the same
 52 political party, who shall be appointed by the mayor, with the
 53 advice and consent of the council, each to serve for a term of three
 54 years, provided that of those first appointed, one shall be appointed
 55 to serve for a term of one year, one for two years, and one for
 56 three years. Any vacancy in such office shall be filled in the same
 57 manner as the original appointment for the balance of the unex-
 58 pired term. Except in cities of the first class the members of
 59 such board shall serve without compensation but may be reim-
 60 bursed for necessary expenses incurred in the performance of
 61 their duty; in cities of the first class, the members of such board
 62 shall receive such compensation as shall be established by ordi-

63 nance of the municipality. They shall be removable by the mayor
 64 for cause. Any person appointed hereunder shall not be subject to
 65 the provisions of Title 11 of the Revised Statutes, Civil Service,
 66 and no such person shall be a member of the city council.

67 Nothing in this subsection shall be construed to limit the general
 68 power of the municipal council under this act to establish, alter
 69 and abolish offices, boards and commissions in any municipality
 70 other than a city of the first class.

71 (f) Whenever [in any city of the first class] the governing body
 72 is authorized by any provision of general law to appoint the
 73 members of any board, authority or commission, such power of
 74 appointment shall be deemed to vest in the mayor with the advice
 75 and consent of the council, *unless the specific terms of that general*
 76 *law clearly require a different appointment procedure****, or*
 77 *appointment by resolution in which case the appointment shall be*
 78 *by the council****.*

1 7. Section 3-18 of P. L. 1950, c. 210 (C. 40:69A-48) is amended
 2 to read as follows:

3 3-18. ****[The [council] governing body shall provide]****
 4 *****Provision shall be made***** by ordinance for the exercise of a
 5 control function, in the management of the finances of the munic-
 6 ipality, by some officer other than the business administrator. The
 7 control function shall include provision for an encumbrance system
 8 of budget operation, for expenditures only upon written requisition,
 9 for the pre-audit of all claims and demands against the municipality
 10 prior to payment, and for the control of all payments out of any
 11 public funds by individual warrants for each payment to the official
 12 having custody thereof.

1 8. (New section) In any municipality adopting the mayor-
 2 council plan of government, the municipal council shall deal with
 3 employees of the department of administration and other admin-
 4 istrative departments solely through the mayor or his designee.
 5 All contact with the employees, and all actions and communica-
 6 tions concerning the administration of the government and the
 7 provision of municipal services shall be through the mayor or his
 8 designee, except as otherwise provided by law.

9 Nothing in this section shall be construed to prohibit the coun-
 10 cil's inquiry into any act or problem of the administration of the
 11 municipality. Any council member may, at any time, require a
 12 report on any aspect of the government of the municipality by
 13 making a written request to the mayor. The council may, by a
 14 majority vote of the whole number of its members, require the
 15 mayor or his designee to appear before the council sitting as a

16 committee of the whole, and to bring before the council those
17 records and reports, and officials and employees of the munici-
18 pality as the council may determine necessary to ensure clarifica-
19 tion of the matter under study. The council may further, by a
20 majority of the whole number of its members, designate any
21 number of its members as an ad hoc committee to consult with
22 the mayor or his designee to study any matter and to report to
23 the council thereon. It is the intent of the mayor-council plan
24 of government to confer on the council general legislative powers,
25 and such investigative powers as are germane to the exercise of
26 its legislative powers, but to retain for the mayor full control
27 over the municipal administration and over the administration of
28 municipal services.

1 9. (New section) The mayor shall, subject to any pertinent civil
2 service requirements and any pertinent contractual obligations,
3 and within the general limits of the municipal budget, fix the
4 amount of salary, wages or other compensation to be paid to
5 employees of the administrative departments of the municipal
6 government, except that the salary, wages or other compensation
7 paid the director of each department shall be fixed by the council
8 pursuant to subsection (c) of section 17-31 of P. L. 1950, c. 210
9 (C. 40:69A-180), and except that salaries of officers which are
10 required by law to be fixed by ordinance shall be fixed by ordinance.

1 10. N. J. S. 40A:9-165 is amended to read as follows:

2 40A:9-165. The governing body of a municipality, by ordinance,
3 *unless otherwise provided by law*, shall fix and determine the
4 salaries, wages or compensation to be paid to the officers and
5 employees of the municipality, including the members of the
6 governing body and the mayor or other chief executive, who by
7 law are entitled to salaries, wages, or compensation. [Such salaries,
8 wages or compensation may be from time to time, by ordinance,
9 increased, decreased or altered.]

10 *Salaries, wages or compensation fixed and determined by ordi-*
11 *nance may, from time to time, be increased, decreased or altered*
12 *by ordinance.* No such ordinance shall reduce the salary of, or
13 deny without good cause an increase in salary given to all other
14 municipal officers and employees to, any tax assessor, tax collector
15 or municipal clerk during the term for which he shall have been
16 appointed. Except with respect to an ordinance or a portion
17 thereof fixing salaries, wages or compensation of elective officials
18 or any managerial, executive or confidential employee as defined
19 in section 3 of the New Jersey Employer-Employee Relations Act,
20 P. L. 1941, c. 100 (C. 34:13A-3) as amended, the ordinance shall

21 take effect as provided therein. In municipalities wherein the
 22 provisions of Title 11 (Civil Service) of the Revised Statutes are
 23 in operation, this section shall be subject thereto.

24 Where any such ordinance shall provide for increases in salaries,
 25 wages or compensation of elective officials or any managerial
 26 executive or confidential employee, the ordinance or that portion
 27 thereof which provides an increase for such elective or appointive
 28 officials, shall become operative in 20 days after the publication
 29 thereof, after final passage, unless within said 20 days, a petition
 30 signed by voters of such municipality, equal in number to at least
 31 5% of the registered voters of the municipality, protesting against
 32 the passage of such ordinance, be presented to the governing body,
 33 in which case such ordinance shall remain inoperative unless and
 34 until a proposition for the ratification thereof shall be adopted at
 35 an election by a majority of the voters voting on said proposition.
 36 The question shall be submitted at the next general election,
 37 occurring not less than 40 days from the date of the certification of
 38 the petition. The submission of the question to the voters shall
 39 be governed by the provisions of Title 19 (Elections) of the
 40 Revised Statutes, as in the case of public questions to be voted
 41 upon in a single municipality.

1 ****[**11. Section 14 of P. L. 1975, c. 291 (C. 40:55D-23) is
 2 amended to read as follows:

3 14. Planning board membership. a. The governing body may,
 4 by ordinance, create a planning board of seven or nine members.
 5 The membership shall consist of, for convenience in designating
 6 the manner of appointment, the four following classes:

7 Class I—the mayor or, in the case of the council-manager form
 8 of government pursuant to the “Optional Municipal Charter Law,”
 9 P. L. 1950, c. 210 (C. 40:69A-1 et seq.) or “The Municipal Manager
 10 Form of Government Law” (Subtitle 5 of Title 40 of the Revised
 11 Statutes), the manager, if so provided by the aforesaid ordinance.

12 Class II—one of the officials of the municipality other than a
 13 member of the governing body, to be appointed by the
 14 mayor***[.]*** ***,*** with the advice and consent of the
 15 ***[governing]*** body ***exercising general legislative powers
 16 in the municipality***; provided that if there be an environmental
 17 commission, the member of the environmental commission who is
 18 also a member of the planning board as required by section 1 of
 19 P. L. 1968, c. 245 (C. 40:56A-1), shall be deemed to be the Class II
 20 planning board member for purposes of this act in the event that
 21 there be among the Class IV or alternate members of the planning
 21A board both a member of the zoning board of adjustment and a
 21B member of the board of education.

22 Class III—a member of the governing body to be appointed by
 23 it, except that no member for Class III shall be appointed to the
 24 planning board if the governing body consists of only three mem-
 25 bers.

26 Class IV—other citizens of the municipality, to be appointed by
 27 the mayor***,*** *with the advice and consent of the ***[govern-*
 28 *ing]*** body ***exercising general legislative powers in the munici-*
 29 *pality,**** or, in the case of the council-manager form of govern-
 30 ment pursuant to the “Optional Municipal Charter Law,” P. L.
 31 1950, c. 210 (C. 40:69A-1 et seq.) or “The Municipal Manager Form
 32 of Government Law” (Subtitle 5 of Title 40 of the Revised
 32A Statutes), by the council, if so provided by the aforesaid ordinance.

33 The members of Class IV shall hold no other municipal office,
 34 except that in the case of nine-member boards, one such member
 35 may be a member of the zoning board of adjustment. No member of
 36 the board of education may be a Class IV member of the planning
 37 board, except that in the case of a nine-member board, one Class
 38 IV member may be a member of the board of education. If there
 39 be a municipal environmental commission, the member of the en-
 40 vironmental commission who is also a member of the planning
 41 board, as required by section 1 of P. L. 1968, c. 245 (C. 40:56A-1),
 42 shall be a Class IV planning board member, unless there be among
 43 the Class IV or alternate members of the planning board both a
 44 member of the zoning board of adjustment and a member of the
 45 board of education, in which case the member common to the plan-
 46 ning board and municipal environmental commission shall be
 47 deemed a Class II member of the planning board.

48 b. The term of the member composing Class I shall correspond
 49 to his official tenure. The terms of the members composing Class
 50 II and Class III shall be for one year or terminate at the completion
 51 of their respective terms of office, whichever occurs first except
 51A for a Class II member who is also a member of the environmental
 52 commission. The term of a Class II or Class IV member who is
 53 also a member of the environmental commission shall be for three
 54 years or terminate at the completion of his term of office as a mem-
 55 ber of the environmental commission, whichever occurs first. The
 56 term of a Class IV member who is also a member of the board of
 57 adjustment, or board of education shall terminate whenever he is
 58 no longer a member of such other body or at the completion of his
 59 Class IV term, whichever occurs first. The terms of all Class IV
 60 members first appointed under this act shall be so determined that
 61 to the greatest practicable extent the expiration of such terms shall
 62 be distributed evenly over the first four years after their appoint-

63 ment; provided that the initial Class IV terms of no member shall
 64 exceed four years. Thereafter, the Class IV term of each such
 65 member shall be four years. If a vacancy in any class shall occur
 66 otherwise than by expiration of the planning board term, it shall
 67 be filled by appointment, as above provided, for the unexpired
 68 term. No member of the planning board shall be permitted to act
 69 on any matter in which he has, either directly or indirectly, any
 70 personal or financial interest. Any member other than a Class I
 71 member, after a public hearing if he requests one, may be removed
 72 by the governing body for cause.**]****

1 **[11.]** ****[**12.**]**** ****11.**** This act shall take
 2 effect immediately.

38 the petition. The submission of the question to the voters shall
39 be governed by the provisions of Title 19 (Elections) of the
40 Revised Statutes, as in the case of public questions to be voted
41 upon in a single municipality.

1 11. This act shall take effect immediately.

STATEMENT

This bill clarifies the separation of executive and legislative powers in any municipality which has adopted the mayor-council plan of government under the "Optional Municipal Charter Law," P. L. 1950, c. 210 (C. 40:69A-1 et seq.). The bill also strengthens the mayor's authority over the executive branch of municipal government, and establishes certain appointment powers for the mayor.

51206(1985)

9-20-84

Senate Amendments

to

Senate Bill No. 1206 OCR

(Senator Lynch)

Amend:

Page	Sec.	Line
8	11	1

board of education, in which case the member common to the planning board and municipal environmental commission shall be deemed a Class II member of the planning board.

b. The term of the member composing Class I shall correspond to his official tenure. The terms of the members composing Class II and Class III shall be for 1 year or terminate at the completion of their respective terms of office, whichever occurs first except for a Class II member who is also a member of the environmental commission. The term of a Class II or Class IV member who is also a member of the environmental commission shall be for 3 years or terminate at the completion of his term of office as a member of the environmental commission, whichever occurs first. The term of a Class IV member who is also a member of the board of adjustment, or board of education shall terminate whenever he is no longer a member of such other body or at the completion of his Class IV term, whichever occurs first. The terms of all Class IV members first appointed under this act shall be so determined that to the greatest practicable extent the expiration of such terms shall be distributed evenly over the first 4 years after their appointment; provided that the initial Class IV term of no member shall exceed 4 years. Thereafter, the Class IV term of each such member shall be 4 years. If a vacancy in any class shall occur otherwise than by expiration of the planning board term, it shall be filled by appointment, as above provided, for the unexpired term. No member of the planning board shall be permitted to act on any matter in which he has, either directly or indirectly, any personal or financial interest. Any member other than a Class I member, after a public hearing if he requests one, may be removed by the governing body for cause.

Omit "11." insert "12."

STATEMENT

The purpose of these Senate Amendments is to require that all appointments by the mayor to the planning board be subject to the advice and consent of the governing body.

SEP 9 1985

OPIL
OCT 22 1984

SENATE Amendments
 (Proposed by Senator Lynch)

to

SENATE Bill No. 1206 20CR
 (Sponsored by Senator Lynch)

Amend:

Page	Sec.	Line	
8	11	13	Omit ";" insert ","
8	11	14	Omit "governing"
			After "body" insert "exercising general legislative powers in the municipality"
8	11	27	After "mayor" insert ","
			Omit "governing"
			After "body" insert "exercising general legislative powers in the municipality,"

STATEMENT

The purpose of these Senate Amendments is to clarify that the powers of "advice and consent" are accorded to the body which exercises general legislative powers in the municipality.

ASSEMBLY MUNICIPAL GOVERNMENT COMMITTEE

STATEMENT TO

SENATE, No. 1206

with Senate committee amendments and Senate amendments

STATE OF NEW JERSEY

DATED: DECEMBER 13, 1984

Senate Bill No. 1206 amends various sections of the "Optional Municipal Charter Law," P. L. 1950, c. 210 (C. 40:69A-1 et seq.) to clarify the separation of legislative and executive power in municipalities which operate under the mayor-council form of government.

The separation of powers is a problem unique to the mayor-council form of government. In the other forms of municipal government, the general powers of the government are vested in the township committee, the borough council, the commission, or, in the case of the council-manager form, the council. The powers and responsibilities accorded to the mayor (or manager) under those forms are specifically defined by statute.

In the mayor-council form, however, the general powers of the government are vested in the "municipal governing body," an inclusive term which encompasses both the mayor and the council. While various court decisions have held that the concept of the separation of powers and functions is inherent in the mayor-council form of government, the courts have, at the same time, noted that the statutes are not very explicit as to the respective responsibilities, duties and powers of the mayor and council. In general, executive and administrative powers are vested in the executive (the mayor), while legislative and investigative are vested with the council. To provide a check and balance, particular powers are accorded the mayor with respect to legislative functions (the veto) and the council with respect to executive functions (powers of advice and consent).

Senate Bill No. 1206 defines the relationship between the executive and legislative branches by clarifying the separation of powers in municipalities operating under the mayor-council form of government. The bill has eight major provisions:

(1) Section 1 of the bill defines "governing body" to include both the mayor and the council and provides for the basic separation of powers, and requires that legislative and executive functions be "exercised pur-

suant to the procedures set forth in this plan of government, unless other procedures are required by the specific terms of the general law.

(2) Section 2 of the bill amends section 3-6 of P. L. 1950, c. 210 (C. 40:69A-36) to require that legislative powers be exercised by ordinance, except for those powers which do not require action by the governing body as a whole, and provides a list of actions which the council may take by resolution.

(3) Section 5 of the bill, for the same reason, amends section 3-10 of P. L. 1950, c. 210 (C. 40:69A-40) to set forth procedures for the exercise of executive functions. The bill attempts to spell out in far greater detail than before the powers, duties and responsibilities of the mayor, and provides a list of executive functions based upon the list provided in the county executive plan of the "Optional County Charter Law." The power of the mayor over boards, commissions and agencies created in the municipal government is also strengthened.

(4) Section 6 of the bill (amending subsections (b), (d) and (f) of section 3-13 of P. L. 1950, c. 210 (C. 40:69A-43)) provides a general procedure of appointment for municipal officers, department heads and members of boards, commissions and agencies; mayoral appointment with the advice and consent of the council.

(5) Section 6 of the bill (amending subsection (a) of section 3-13 of P. L. 1950, c. 210 (C. 40:69A-43)) also requires that, in municipalities governed by the mayor-council plan, there shall be at least two municipal departments in addition to the department of administration. Under the current law, a municipality is required to have a department of administration, and such other departments, not to exceed nine, as the municipal council may provide. The intent is clearly to provide latitude for municipalities to organize efficiently the executive and administrative functions of the government according to the size and circumstances of the municipality. In a few instances, however, the municipal council has provided in its administrative code for only the single legally required department of administration, effectively depriving the mayor of his ability to put together a policy-making administrative team—a "cabinet"—which is essential to strong executive policy-making.

(6) Section 8 of the bill inserts a provision for the protection of the municipal administrative departments from legislative interference, which is copied virtually verbatim from the "Optional County Charter Law."

(7) Section 9 of the bill inserts a provision clarifying that the mayor shall fix the salaries, wages and other compensation to be paid to municipal employees, subject to civil service requirements, contractual obligations and the general limits fixed by the council in the municipal

budget. Exceptions to this would be the salaries of directors of municipal departments required by law to be fixed by the council, and salaries of those municipal officers which are required by law to be fixed by ordinance.

(8) Section 14 of the bill clarifies that certain members of municipal planning boards shall be appointed by the mayor, with the advice and consent of the legislative body.

In addition, the bill clarifies the respective duties of the mayor and the various municipal department heads with respect to the development, installation and maintenance of centralized budgeting, certain personnel and purchasing procedures and the appointment and removal of subordinate department personnel.

Further, the bill amends N. J. S. 40A :9-165 in order to avoid a possible conflict of laws situation between the salary-fixing provisions of that statute and the salary-fixing provisions of the bill.

CONDITIONAL
VETO
8-28-85

[THIRD OFFICIAL COPY REPRINT]

SENATE, No. 1206

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 6, 1984

By Senator LYNCH

Referred to Committee on County and Municipal Government

AN ACT concerning ******[the mayor-council plan of government under the "Optional Municipal Charter Law,"]****** ***mayors and local governing bodies in certain instances,*** amending and supplementing P. L. 1950, c. 210 and amending N. J. S. 40A:9-165 ***and P. L. 1975, c. 291***.

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

1 1. Section 3-2 of P. L. 1950, c. 210 (C. 40:69A-32) is amended
2 to read as follows:

3 3-2. *a.* Each municipality hereunder shall be governed by an
4 elected council, and an elected mayor and by such other officers
5 and employees as may be duly appointed pursuant to this article,
6 general law or ordinance.

7 *b.* *In each municipality adopting the mayor-council plan of*
8 *government, the term "governing body" shall be construed to*
9 *include both the mayor and the municipal council. For the purpose*
10 *of the construction of all other applicable statutes, unless the*
11 *explicit terms and context of the statute require a contrary con-*
12 *struction, any administrative or executive functions assigned by*
13 *general law to the governing body shall be exercised by the mayor,*
14 *and any legislative and investigative functions assigned by general*
15 *law to the governing body shall be exercised by the council. Those*
16 *functions shall be exercised pursuant to the procedures set forth*
17 *in this plan of government, unless other procedures are required*
18 *by the specific terms of the general law.*

1 2. Section 3-6 of P. L. 1950, c. 210 (C. 40:69A-36) is amended to
2 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 printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate committee amendments adopted April 30, 1984.

**—Senate amendments adopted September 20, 1984.

***—Senate amendments adopted October 22, 1984.

3 3-6. The legislative power of the municipality shall be exercised
 4 by the municipal council, [except as may be otherwise provided
 5 by general law] *subject to the procedures set forth in this plan*
 6 *of government. Legislative powers shall be exercised by ordi-*
 7 *nance, except for the exercise of those powers which do not require*
 8 *action by the governing body as a whole, and may, therefore, be*
 9 *exercised by resolution, including:*

- 10 a. *The override of a veto of the mayor;*
- 11 b. *The exercise of advice and consent to actions of the mayor;*
- 12 c. *The conduct of a legislative inquiry or investigation;*
- 13 d. *The expression of disapproval of the removal by the mayor*
 14 *of officers or employees;*
- 15 e. *The removal of any municipal officer for cause;*
- 16 f. *The adoption of rules for the council;*
- 17 g. *The establishment of times and places for council meetings;*
- 18 h. *The establishment of the council as a committee of the whole*
 19 *and the delegation of any number of its members as an ad hoc*
 19A *committee;*
- 20 i. *The declaration of emergencies respecting the passage of*
 21 *ordinances;*
- 22 j. *The election, appointment and removal of officers and em-*
 23 *ployees of the council;*
- 24 k. *Designation of official newspapers;*
- 25 l. *Approval of contracts presented by the mayor;*
- 26 m. *Actions specified as resolutions in the "Local Budget Law"*
 27 *(N. J. S. 40A:4-1 et seq.); and*
- 28 n. *The expression of council policies or opinions which require*
 29 *no formal action by the governing body.*

1 3. Section 3-7 of P. L. 1950, c. 210 (C. 40:69A-37) is amended
 2 to read as follows:

3 3-7. The council, in addition to such other powers and duties as
 4 may be conferred upon it by this charter or otherwise by general
 5 law, may:

- 6 (a) require any municipal officer, in its discretion, to prepare
 7 and submit sworn statements regarding his official duties in the
 8 performance thereof, and otherwise to investigate the conduct of
 9 any department, office or agency of the municipal government;
- 10 (b) remove, *by at least two-thirds vote of the whole number of*
 11 *the council*, any municipal officer, other than the mayor or a
 12 member of council, for cause, upon notice and an opportunity to
 13 be heard.

1 4. Section 3-9 of P. L. 1950, c. 210 (C. 40:69A-39) is amended
 2 to read as follows:

3 3-9. The executive power of the municipality shall be exercised
4 by the mayor, *subject to the procedures set forth in this plan of*
5 *government.*

1 5. Section 3-10 of P. L. 1950, c. 210 (C. 40:69A-40) is amended
2 to read as follows:

3 3-10. The mayor shall [enforce the charter and ordinances of
4 the municipality and all general laws applicable thereto. He shall
5 annually report to the council and the public on the work of the
6 previous year and on the condition and requirements of the
7 municipal government and shall from time to time make such
8 recommendations for action by the council as he may deem in the
9 public interest. He shall supervise all of the departments of the
10 municipal government and shall require each department to make
11 an annual and such other reports of its work as he may deem
12 desirable]:

13 a. *Enforce the charter and ordinances of the municipality and*
14 *all general laws applicable thereto;*

15 b. *Report annually to the council and to the public on the state*
16 *of the municipality, and the work of the previous year; he shall*
17 *also recommend to the council whatever action or programs he*
18 *deems necessary for the improvement of the municipality and the*
19 *welfare of its residents. He may from time to time recommend any*
20 *action or programs he deems necessary or desirable for the munici-*
21 *pality to undertake;*

22 c. *Supervise, direct and control all departments of the municipal*
23 *government and shall require each department to make an annual*
24 *and such other reports of its work as he may deem desirable;*

25 d. *Require such reports and examine such accounts, records and*
26 *operations of any board, commission or other agency of municipal*
27 *government, as he deems necessary;*

28 e. *Prepare and submit to the council for its consideration and*
29 *adoption an annual operating budget and a capital budget, estab-*
30 *lish the schedules and procedures to be followed by all municipal*
31 *departments, offices and agencies in connection therewith, and*
32 *supervise and administer all phases of the budgetary process;*

33 f. *Supervise the care and custody of all municipal property,*
34 *institutions and agencies, and make recommendations concerning*
35 *the nature and location of municipal improvements and execute*
36 *improvements determined by the governing body;*

37 g. *Sign all contracts, bonds or other instruments requiring the*
38 *consent of the municipality;*

39 h. *Review, analyze and forecast trends of municipal services*
40 *and finances and programs of all boards, commissions, agencies*

41 *and other municipal bodies, and report and recommend thereon*
 42 *to the council;*

43 *i. ***[Develop,install and maintain]*** *Supervise the development,*
 43A *installation and maintenance of* centralized budgeting, personnel*
 44 *and purchasing procedures as may be authorized by ordinance;*

45 *j. Negotiate contracts for the municipality subject to council*
 46 *approval;*

47 *k. Assure that all terms and conditions imposed in favor of the*
 48 *municipality or its inhabitants in any statute, franchise or other*
 49 *contract are faithfully kept and performed;*

50 *l. Serve as an ex officio nonvoting member of all appointive*
 51 *bodies in municipal government of which he is not an official voting*
 52 *member.*

1 6. Section 3-13 of P. L. 1950, c. 210 (C. 40:69A-43) is amended
 2 to read as follows:

3 3-13. (a) The municipality shall have a department of adminis-
 4 tration and such other departments, *not less than two and not*
 5 *exceeding nine in number, as council may establish by ordinance.*
 6 *All of the administrative functions, powers and duties of the*
 7 *municipality, other than those vested in the offices of the municipal*
 8 *clerk and the municipal tax assessor, shall be allocated and*
 9 *assigned among and within such departments.*

10 *The offices of the municipal clerk and the municipal tax assessor*
 11 *shall be subject to such general administrative procedures and*
 12 *requirements as are departments of the municipal government,*
 13 *including, but not limited to, the preparation and submission of an*
 14 *annual budget and of such periodic budget reports as are generally*
 15 *required of departments, and such accounting controls, central*
 16 *purchasing practices, personnel procedures and regulations, and*
 17 *central data processing services as are generally required of*
 18 *departments.*

19 (b) Each department shall be headed by a director, who shall be
 20 appointed by the mayor with the advice and consent of the council.
 21 Each department head shall serve during the term of office of the
 22 mayor appointing him, and until the appointment and qualification
 23 of his successor. *The mayor shall, with the advice and consent of*
 24 *the council, appoint *the municipal assessor and* all other munici-*
 25 *pal officers *not assigned within municipal departments,* subject*
 26 *to the terms of any general law providing for these offices, unless*
 26A *a different appointment procedure is clearly required by general*
 27 *law.*

28 (c) The mayor may in his discretion remove any department
 29 head, *and, subject to any general provisions of law concerning*

30 *term of office or tenure, any other municipal officer *who is not a*
31 *subordinate departmental officer or employee**, after notice and
31A an opportunity to be heard. Prior to [removing a department
32 head] *removal* the mayor shall first file written notice of his inten-
33 tion with the council, and such removal shall become effective on
34 the twentieth day after the filing of such notice unless the council
35 shall prior thereto have adopted a resolution by a two-thirds vote
36 of the whole number of the council, disapproving the removal.

37 (d) Department heads shall appoint subordinate officers and
38 employees within their respective departments and may, with
39 approval of the mayor, remove such officers and employees subject
40 to the provisions of the Revised Statutes, Title 11, Civil Service,
41 where that Title is effective in the municipality, or other general
42 law[; provided, however, that council may provide by ordinance
43 for the appointment and removal of specific boards or commissions
44 by the mayor].

45 (e) Notwithstanding the foregoing provisions of this section in
46 any city of the first class, there shall be, and in any municipality
47 having a population of 15,000 or more, there may be, a board of
48 alcoholic beverage control which shall exercise the powers con-
49 ferred upon municipal boards of alcoholic beverage control under
50 Title 33 of the Revised Statutes. Such boards shall be comprised
51 of three members, no more than two of whom shall be of the same
52 political party, who shall be appointed by the mayor, with the
53 advice and consent of the council, each to serve for a term of three
54 years, provided that of those first appointed, one shall be appointed
55 to serve for a term of one year, one for two years, and one for
56 three years. Any vacancy in such office shall be filled in the same
57 manner as the original appointment for the balance of the unex-
58 pired term. Except in cities of the first class the members of
59 such board shall serve without compensation but may be reim-
60 bursed for necessary expenses incurred in the performance of
61 their duty; in cities of the first class, the members of such board
62 shall receive such compensation as shall be established by ordi-
63 nance of the municipality. They shall be removable by the mayor
64 for cause. Any person appointed hereunder shall not be subject to
65 the provisions of Title 11 of the Revised Statutes, Civil Service,
66 and no such person shall be a member of the city council.

67 Nothing in this subsection shall be construed to limit the general
68 power of the municipal council under this act to establish, alter
69 and abolish offices, boards and commissions in any municipality
70 other than a city of the first class.

71 (f) Whenever [in any city of the first class] the governing body

72 is authorized by any provision of general law to appoint the
73 members of any board, authority or commission, such power of
74 appointment shall be deemed to vest in the mayor with the advice
75 and consent of the council, *unless the specific terms of that general*
76 *law clearly require a different appointment procedure.*

1 7. Section 3-18 of P. L. 1950, c. 210 (C. 40:69A-48) is amended
2 to read as follows:

3 3-18. The **[council]** *governing body* shall provide by ordinance
4 for the exercise of a control function, in the management of the
5 finances of the municipality, by some officer other than the business
6 administrator. The control function shall include provision for an
7 encumbrance system of budget operation, for expenditures only
8 upon written requisition, for the pre-audit of all claims and
9 demands against the municipality prior to payment, and for the
10 control of all payments out of any public funds by individual
11 warrants for each payment to the official having custody thereof.

1 8. (New section) In any municipality adopting the mayor-
2 council plan of government, the municipal council shall deal with
3 employees of the department of administration and other admin-
4 istrative departments solely through the mayor or his designee.
5 All contact with the employees, and all actions and communica-
6 tions concerning the administration of the government and the
7 provision of municipal services shall be through the mayor or his
8 designee, except as otherwise provided by law.

9 Nothing in this section shall be construed to prohibit the coun-
10 cil's inquiry into any act or problem of the administration of the
11 municipality. Any council member may, at any time, require a
12 report on any aspect of the government of the municipality by
13 making a written request to the mayor. The council may, by a
14 majority vote of the whole number of its members, require the
15 mayor or his designee to appear before the council sitting as a
16 committee of the whole, and to bring before the council those
17 records and reports, and officials and employees of the munic-
18 ipality as the council may determine necessary to ensure clarifica-
19 tion of the matter under study. The council may further, by a
20 majority of the whole number of its members, designate any
21 number of its members as an ad hoc committee to consult with
22 the mayor or his designee to study any matter and to report to
23 the council thereon. It is the intent of the mayor-council plan
24 of government to confer on the council general legislative powers,
25 and such investigative powers as are germane to the exercise of
26 its legislative powers, but to retain for the mayor full control
27 over the municipal administration and over the administration of
28 municipal services.

1 9. (New section) The mayor shall, subject to any pertinent civil
2 service requirements and any pertinent contractual obligations,
3 and within the general limits of the municipal budget, fix the
4 amount of salary, wages or other compensation to be paid to
5 employees of the administrative departments of the municipal
6 government, except that the salary, wages or other compensation
7 paid the director of each department shall be fixed by the council
8 pursuant to subsection (c) of section 17-31 of P. L. 1950, c. 210
9 (C. 40:69A-180), and except that salaries of officers which are
10 required by law to be fixed by ordinance shall be fixed by ordinance.

1 10. N. J. S. 40A:9-165 is amended to read as follows:

2 40A:9-165. The governing body of a municipality, by ordinance,
3 *unless otherwise provided by law*, shall fix and determine the
4 salaries, wages or compensation to be paid to the officers and
5 employees of the municipality, including the members of the
6 governing body and the mayor or other chief executive, who by
7 law are entitled to salaries, wages, or compensation. [Such salaries,
8 wages or compensation may be from time to time, by ordinance,
9 increased, decreased or altered.]

10 *Salaries, wages or compensation fixed und determined by ordi-*
11 *nance may, from time to time, be increased, decreased or altered*
12 *by ordinance.* No such ordinance shall reduce the salary of, or
13 deny without good cause an increase in salary given to all other
14 municipal officers and employees to, any tax assessor, tax collector
15 or municipal clerk during the term for which he shall have been
16 appointed. Except with respect to an ordinance or a portion
17 thereof fixing salaries, wages or compensation of elective officials
18 or any managerial, executive or confidential employee as defined
19 in section 3 of the New Jersey Employer-Employee Relations Act,
20 P. L. 1941, c. 100 (C. 34:13A-3) as amended, the ordinance shall
21 take effect as provided therein. In municipalities wherein the
22 provisions of Title 11 (Civil Service) of the Revised Statutes are
23 in operation, this section shall be subject thereto.

24 Where any such ordinance shall provide for increases in salaries,
25 wages or compensation of elective officials or any managerial
26 executive or confidential employee, the ordinance or that portion
27 thereof which provides an increase for such elective or appointive
28 officials, shall become operative in 20 days after the publication
29 thereof, after final passage, unless within said 20 days, a petition
30 signed by voters of such municipality, equal in number to at least
31 5% of the registered voters of the municipality, protesting against
32 the passage of such ordinance, be presented to the governing body,
33 in which case such ordinance shall remain inoperative unless and

34 until a proposition for the ratification thereof shall be adopted at
 35 an election by a majority of the voters voting on said proposition.
 36 The question shall be submitted at the next general election,
 37 occurring not less than 40 days from the date of the certification of
 38 the petition. The submission of the question to the voters shall
 39 be governed by the provisions of Title 19 (Elections) of the
 40 Revised Statutes, as in the case of public questions to be voted
 41 upon in a single municipality.

1 **11. Section 14 of P. L. 1975, c. 291 (C. 40:55D-23) is amended
 2 to read as follows:

3 14. Planning board membership. a. The governing body may,
 4 by ordinance, create a planning board of seven or nine members.
 5 The membership shall consist of, for convenience in designating
 6 the manner of appointment, the four following classes:

7 Class I—the mayor or, in the case of the council-manager form
 8 of government pursuant to the “Optional Municipal Charter Law,”
 9 P. L. 1950, c. 210 (C. 40:69A-1 et seq.) or “The Municipal Manager
 10 Form of Government Law” (Subtitle 5 of Title 40 of the Revised
 11 Statutes), the manager, if so provided by the aforesaid ordinance.

12 Class II—one of the officials of the municipality other than a
 13 member of the governing body, to be appointed by the
 14 mayor*****[,]***** ***,*** *with the advice and consent of the*
 15 ******[governing]***** body ***exercising general legislative powers*
 16 *in the municipality****; provided that if there be an environmental
 17 commission, the member of the environmental commission who is
 18 also a member of the planning board as required by section 1 of
 19 P. L. 1968, c. 245 (C. 40:56A-1), shall be deemed to be the Class II
 20 planning board member for purposes of this act in the event that
 21 there be among the Class IV or alternate members of the planning
 21A board both a member of the zoning board of adjustment and a
 21B member of the board of education.

22 Class III—a member of the governing body to be appointed by
 23 it, except that no member for Class III shall be appointed to the
 24 planning board if the governing body consists of only three mem-
 25 bers.

26 Class IV—other citizens of the municipality, to be appointed by
 27 the mayor***,*** *with the advice and consent of the *****[govern-***
 28 *ing]*** body ***exercising general legislative powers in the munici-*
 29 *pality,**** or, in the case of the council-manager form of govern-
 30 ment pursuant to the “Optional Municipal Charter Law,” P. L.
 31 1950, c. 210 (C. 40:69A-1 et seq.) or “The Municipal Manager Form
 32 of Government Law” (Subtitle 5 of Title 40 of the Revised
 32A Statutes), by the council, if so provided by the aforesaid ordinance.

33 The members of Class IV shall hold no other municipal office,
34 except that in the case of nine-member boards, one such member
35 may be a member of the zoning board of adjustment. No member of
36 the board of education may be a Class IV member of the planning
37 board, except that in the case of a nine-member board, one Class
38 IV member may be a member of the board of education. If there
39 be a municipal environmental commission, the member of the en-
40 vironmental commission who is also a member of the planning
41 board, as required by section 1 of P. L. 1968, c. 245 (C. 40:56A-1),
42 shall be a Class IV planning board member, unless there be among
43 the Class IV or alternate members of the planning board both a
44 member of the zoning board of adjustment and a member of the
45 board of education, in which case the member common to the plan-
46 ning board and municipal environmental commission shall be
47 deemed a Class II member of the planning board.

48 b. The term of the member composing Class I shall correspond
49 to his official tenure. The terms of the members composing Class
50 II and Class III shall be for one year or terminate at the completion
51 of their respective terms of office, whichever occurs first except
51A for a Class II member who is also a member of the environmental
52 commission. The term of a Class II or Class IV member who is
53 also a member of the environmental commission shall be for three
54 years or terminate at the completion of his term of office as a mem-
55 ber of the environmental commission, whichever occurs first. The
56 term of a Class IV member who is also a member of the board of
57 adjustment, or board of education shall terminate whenever he is
58 no longer a member of such other body or at the completion of his
59 Class IV term, whichever occurs first. The terms of all Class IV
60 members first appointed under this act shall be so determined that
61 to the greatest practicable extent the expiration of such terms shall
62 be distributed evenly over the first four years after their appoint-
63 ment; provided that the initial Class IV terms of no member shall
64 exceed four years. Thereafter, the Class IV term of each such
65 member shall be four years. If a vacancy in any class shall occur
66 otherwise than by expiration of the planning board term, it shall
67 be filled by appointment, as above provided, for the unexpired
68 term. No member of the planning board shall be permitted to act
69 on any matter in which he has, either directly or indirectly, any
70 personal or financial interest. Any member other than a Class I
71 member, after a public hearing if he requests one, may be removed
72 by the governing body for cause.**

1 **[11.]** **12.** This act shall take effect immediately.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

August 28, 1965

SENATE BILL NO. 1206 (3rd OCR)

To the Senate:

Pursuant to Article V, Section 1, Paragraph 14 of the Constitution, I herewith return Senate Bill No. 1206 (3rd OCR) with my objections and recommendations for amendment.

This bill would clarify the separation of powers between the executive and legislative branches of municipal governments operating under the mayor-council form of government authorized by the Optional Municipal Charter Law, otherwise known as the Faulkner Act.

This bill attempts to eliminate ambiguities concerning the role of the mayor and the council in mayor-council Faulkner Act municipalities, and it reflects the thinking of the Legislature following deliberations on this bill and its predecessors over the course of the last two years.

The County and Municipal Government Study Commission has pointed out, in its publication Forms of Municipal Government in New Jersey, that the mayor-council form of government under the Optional Municipal Charter Law is particularly important because most of the larger municipalities of the State operate under its provisions. The Study Commission has estimated that as many as one-third of New Jersey's people are governed locally under this version of the Faulkner Act. Newark, Jersey City, Paterson, Elizabeth, Trenton, Camden and Woodbridge Township, to name but seven of the almost 60 municipalities affected, operate under this form of government.

I agree with the intent of this legislation insofar as it clarifies the role of the mayor and the council in mayor-council Faulkner Act municipalities. Delineation between executive and legislative functions at the local level is compatible with the delineation that exists at the county level in those counties that have a county executive and a board of chosen freeholders under the Optional County Charter Law and, indeed, at the State level itself between the powers of the Governor and the Legislature.

Major provisions of this bill include placing in the applicable statute the presumption that administrative or executive functions assigned by general law to the governing body shall be exercised by the mayor, and any legislative and investigative functions assigned by general law to the governing body shall be exercised by the council. The bill goes on to list specific legislative

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

2

powers to be exercised by the council and specific executive powers to be exercised by the mayor. The bill clarifies certain appointment powers of the mayor, as well as authority to fix the amount of salary, wages or other compensation to be paid to employees of the administrative departments of the municipal government.

I believe, however, that certain technical amendments should be incorporated into the provisions of this bill. Specifically, I am opposed to defining the term "governing body" in mayor-council Faulkner Act municipalities to include both the mayor and the municipal council. I am advised that the language is not necessary because the Optional Municipal Charter Law currently contains no ambiguous use of the term "governing body." Current law adequately and clearly expresses the form of government in question, and to infer that the mayor is a member of the governing body is misleading in that he has no voting rights and, indeed, need not attend council meetings. Therefore, my suggestions include amending the legislation to continue to define the term "governing body" in a manner consistent with the intent of the Optional Municipal Charter Law.

I am suggesting technical amendments to ensure that where general law now clearly requires action by council resolution in these Faulkner Act municipalities, this legislation will not modify that procedure. I note that the bill now specifies the "Local Budget Law" (N.J.S. 40A:4-1 et seq.) as such a possible area, and my amendments cite the "Local Fiscal Affairs Law" (N.J.S. 48:5-1 et seq.), as another possible area where council action is mandated. Other similar sections of general law may also exist.

Other technical amendments make clear that the municipal council shall be able to set the salaries of council employees, subject to pertinent civil service requirements and any pertinent contractual obligations, and within the general limits of the municipal budget. Another amendment limits the right of the mayor to remove municipal officers who are neither department heads nor subordinate departmental officers or employees to other municipal executive officers. As the bill reached my desk, it did not specify that this power of removal of other municipal officers was to be confined to municipal executive officers, as should be the case.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

3

I am also suggesting technical amendments to ensure that the municipal tax collector shall continue to be appointed by the procedure currently in force. I also wish to clarify the section of the bill that extends the right of the mayor in any municipality operating under this form of government to make appointments to boards, authorities or commissions with the advice and consent of the council to ensure that specific terms of general law now on the books continue to operate for appointments to such entities as zoning boards of adjustments and municipal utilities authorities.

I am also suggesting that the section amending the Municipal Land Use Law concerning the appointment of certain classes of planning board members be deleted. I believe that amendments to the Municipal Land Use Law or any other similar general legislation should be considered separately and not as part of a clarifying statute related to the Optional Municipal Charter Law.

Therefore, I herewith return Senate Bill No. 1206 (3rd OCR) and recommend that it be amended as follows:

- | | |
|--------------------------------------|---|
| <u>Page 1, Section 1, Lines 7-9:</u> | Delete "In each municipality adopting the mayor-council plan of government, the term "governing body" shall be construed to include both the mayor and the municipal council." |
| <u>Page 2, Section 2, Line 7:</u> | Delete "which", insert "that, under this plan of government or general law,". |
| <u>Page 2, Section 2, Line 8:</u> | Delete "governing body as a whole", insert "mayor as a condition of approval for the exercise thereof". |
| <u>Page 2, Section 2, Line 9:</u> | After "including", insert ", but not limited to". |
| <u>Page 2, Section 2, Line 22:</u> | After "appointment", insert ", setting of salaries". |
| <u>Page 2, Section 2, Line 23:</u> | After "council", insert ", subject to any pertinent civil service requirements and any pertinent contractual obligations, and within the general limits of the municipal budget". |
| <u>Page 2, Section 2, Line 27:</u> | After "(N.J.S. 40A:4-1 et seq.)", insert "and the "Local Fiscal Affairs Law" (N.J.S. 40A:5-1 et seq.)". |
| <u>Page 2, Section 2, Line 29:</u> | Delete "governing body", insert "mayor". |
| <u>Page 4, Section 6, Line 26A:</u> | After "required", insert "by this plan of government or". |

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

4

Page 5, Section 6, Line 30: After "municipal", insert "executive".

Page 6, Section 6, Line 76: After "procedure", insert ", or appointment by resolution in which case the appointment shall be by the council".

Page 6, Section 7, Line 3: Delete "The governing body shall provide", insert "Provision shall be made".

Pages 8 and 9, Section 11, Lines 1-72: Delete in their entirety.

Page 9, Section 12, Line 1: Delete "12", insert "11".

Respectfully,
/s/ Thomas H. Kean
GOVERNOR

[seal]

Attest:
/s/ W. Cary Edwards
Chief Counsel

New Version OK'd

Assembly Approves Mayor-Council Bill

ACP - 11/14/85

By JOHN FROONJIAN
Press Staff Writer

TRENTON — The state Assembly, acting Monday on legislation conditionally vetoed by the governor, passed a new version of a bill that clarifies the separation of powers in the mayor-council form of government.

As originally written, the bill would have greatly restricted the ability of city councils to act without mayoral approval while increasing the mayor's individual powers, particularly in making certain appointments.

But in late August, Gov. Thomas Kean conditionally vetoed the bill that would have clarified the separation of powers in mayor-council governments under the Optional Municipal Charter Law. The bill was sponsored by Sen. John Lynch, D-Middlesex, Union.

As passed with the conditions enunciated by Kean, the new version restores certain council powers that would have been taken away. The Senate passed the new version of the bill Sept. 9.

The original measure had been passed 31-6 by the Senate and 47-23 by the Assembly, although some legislators said they didn't realize the effect the bill could have on the governments of 59 municipalities in the state, includ-

ing Atlantic City, Ocean City, Wildwood, Bridgeton and Vineland.

Kean's veto called for changing the bill's definition of "governing body" to show that the mayor is not included as a member of council. Under Kean's interpretation, the mayor is an executive officer who oversees government operations, while council constitutes the legislative branch.

As originally written, the bill would have restricted the types of business that could be done by resolution and required councils to do much of their business by passing ordinances, which could be vetoed by mayors.

That clause was at odds with existing state laws that require certain actions to be done by resolution.

Another of Kean's conditions for approving the legislation re-

(See CITIES on Page 30)

Separation

Of Powers

Bill OK'd

CITIES, from Page 29

sulted in the deletion of a section stripping council of its power to make appointments to municipal boards and commissions, particularly the planning board.

Other changes outlined by Kean in his four-page veto message call for council to continue to establish the salaries of municipal employees and limit the mayor's ability to remove municipal employees who are not department heads or their subordinate department officers.

The bill was originally introduced in the Legislature by former Assemblyman Michael Matthews, who was also the mayor of Atlantic City at the time. Matthews currently is serving a federal prison sentence for extortion.

Awaits Kean's Action

Bill Would Boost Power of Mayors

By ALYN ACKERMANN
Press Staff Writer

The government operations of some five dozen New Jersey cities that have mayor-council formats may be profoundly changed by a bill that was quietly passed by the state Legislature and is awaiting action by Governor Thomas H. Kean.

Although the bill was passed by the Senate 31-6 on Nov. 19 and by the Assembly 47-23 on June 17, a number of officials in affected towns contacted during the last week said they were unaware of the legislation.

The bill was approved as a means of clarifying the sometimes-hazy distribution of power between mayors and city councils by amending the 35-year-old Faulkner Act, the state law under which mayor-council governments are organized. The vagaries of the law, enacted as reform legislation in 1950, have led to numerous lawsuits among elected

officials and conflicting court decisions.

While aiming for clarification, the amendments are worded in such a way that certain key issues — such as financial responsibility — remain muddled.

In addition, through errors and unintended deletions, the bill as it now reads restricts the authority of city councils beyond the intentions of those who drafted it.

The bill:

- Requires even the most rudimentary of council functions — ruling on planning and zoning board appeals and transfers of mercantile or liquor licenses — be done by the passing of city laws subject to mayoral veto.

- May leave council members, who under state law are liable for improprieties in the payment of city bills, with little or no control over such payments.

- Strips city councils of all appointment power for municipal boards and commissions, giving

(See BILL on Page 12)

NJ-MUNICIPAL GOVERNMENT

ACP 7-10-95