

40A:9-133.1 et al

LEGISLATIVE HISTORY CHECKLIST

NJSA 40A:9-133.1 et al; 40:81-11 et al (Eliminates election of certain municipal officers)

LAWS 1981 CHAPTER 394

Bill No. S3155

Sponsor(s) Perskie and Musto

Date Introduced March 23, 1981

Committee: Assembly Municipal Gov't.

Senate County and Municipal Gov't

Amended during passage Yes ~~XX~~ Amendments during passage denoted by asterisks

Date of Passage: Assembly Jan. 4, 1982

Senate June 15, 1981

Date of approval Jan. 6, 1982

Following statements are attached if available:

Sponsor statement Yes ~~No~~

Committee Statement: Assembly Yes ~~No~~

Senate Yes ~~No~~

Fiscal Note ~~Yes~~ No

Veto Message ~~Yes~~ No

Message on signing ~~Yes~~ No

Following were printed:

Reports Yes ~~No~~

Hearings ~~Yes~~ No

Report cited in statements:

974.90 Reock, Ernest C.

M966 Forms of municipal government in New Jersey...January, 1979.

1979 Rutgers University, New Brunswick, 1979.

/see pp. vii,89-96/

6/22/81

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SENATE, No. 3155

STATE OF NEW JERSEY

INTRODUCED MARCH 23, 1981

By Senators PERSKIE and MUSTO

Referred to Committee on County and Municipal Government

AN ACT concerning the professionalization of various administrative offices of municipalities, supplementing chapter 9 of Title 40A of the New Jersey Statutes and revising and repealing parts of the statutory law.

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

1 1. (New section) a. The provisions of any other law to the
2 contrary notwithstanding, commencing on the effective date of
3 this act, all municipal clerks shall hold office by virtue of appoint-
4 ment pursuant to the provisions of N. J. S. 40A:9-133, except as
5 otherwise provided in this section.

6 b. All municipal clerks holding office on the effective date of
7 this act shall continue in office until their successors are appointed
8 in the manner provided by N. J. S. 40A:9-133.

9 c. Nothing contained in this act or in any other statute shall
10 prevent any municipal clerk who, upon the effective date of this
11 act, holds office by virtue of his election thereto, from acquiring
12 tenure upon being appointed thereto after the effective date of
13 this act, if he otherwise qualifies for tenure pursuant to N. J. S.
14 40A:9-134.

1 2. N. J. S. 40A:9-133 is amended to read as follows:

2 40A:9-133. In every municipality there shall be a municipal
3 clerk~~].~~ When so provided by law the municipal clerk shall be
4 elected, otherwise he shall be~~]~~ appointed by the governing body
5 of the municipality. His term of office shall be 3 years~~].~~ If elected,
6 his term shall commence on January 1 following his election and
7 when appointed, his term~~]~~, *which* shall run from January 1 in the
8 year in which he was appointed.

1 3. N. J. S. 40A:9-134 is amended to read as follows:

2 40A:9-134. Any person holding the office of municipal clerk in

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

3 any municipality and having held such office continuously for 5
 4 years from the date of his original appointment [or election]
 5 shall have tenure in such office and shall not be removed therefrom
 6 except for good cause shown after a fair and impartial hearing.

1 4. N. J. S. 40A:9-156 is amended to read as follows:

2 40A:9-156. Except as otherwise provided by law, the terms of
 3 office of all elective officers in any municipality shall commence
 4 at 12 o'clock noon on January 1 next succeeding their election and
 5 continue for the terms prescribed by law[, except the term of office
 6 of the assessor shall commence on July 1 next following his election
 7 or appointment and continue for the prescribed number of years].

8 The terms of office of all officers appointed by the mayor or other
 9 chief executive officer or by the governing body of any munici-
 10 pality, except to fill vacancies, shall commence on January 1 of
 11 the year in which they are appointed and continue for the terms
 12 prescribed by law*, *except that the term of office of the assessor*
 12A *shall commence on July 1 next following appointment and continue*
 12B *for the prescribed number of years*.*

13 No appointment of any officer shall be made by the mayor or
 14 other chief executive officer or by the governing body of any mu-
 15 nicipality where the term of the office is to commence after the
 16 expiration of the term of the officer making the appointment or of
 17 any member of the governing body.

1 5. 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 shall fix and determine the salaries, wages or compensation to be
 4 paid to the officers and employees of the municipality, including
 5 the members of the governing body and the mayor or other chief
 6 executive, who by law are entitled to salaries, wages, or compen-
 7 sation. Such salaries, wages or compensation **may be** from time
 8 to time, by ordinance, **[may be]** increased, decreased or altered
 9 **[but no]**. **No** such ordinance shall reduce the salary of*, *or*
 10 *deny without good cause an increase in salary given to all other*
 11 *municipal officers and employees to,** any [appointed or elected]
 12 tax assessor, tax collector or municipal clerk during the term for
 13 which he shall have been appointed [or elected] **[and, except]** *.
 15 *Except** with respect to an ordinance or a portion thereof fixing
 16 salaries, wages or compensation of elective officials or any man-
 17 agerial executive or confidential employee as defined in section 3
 18 of the New Jersey Employer-Employee Relations Act, P. L. 1941,
 19 c. 100 (C. 34:13A-3) as amended, the ordinance shall take effect
 19A as provided therein. In municipalities wherein the provisions of

19B Title 11 (Civil Service) of the Revised Statutes are in operation,
 19c this section shall be subject thereto.

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

1 6. R. S. 40:81-11 is amended to read as follows:

2 40:81-11. The municipal council shall appoint a municipal man-
 3 ager, an assessor, ***[**or where required by law, a board of asses-
 4 sors,**]*** an auditor, a treasurer, a clerk, and an attorney. One person
 5 may be appointed to two or more such offices, except that the offices
 6 of municipal manager and auditor or assessors shall not be held by
 7 the same person. In municipalities containing more than 10,000
 8 inhabitants the municipal attorney must have been admitted in the
 9 State of New Jersey to practice as an attorney-at-law for a period
 10 of 5 years or more. All such officers appointed by the council shall
 11 hold office during the pleasure of the council, **[**unless a specific term
 12 is generally provided by law**]** *except the clerk***[**,**]*** *and* the asses-
 13 sor, ***[**and members of the board of assessors**]*** who serve for terms
 14 as provided in chapter 9 of Title 40A of the New Jersey Statutes.*

1 7. R. S. 40:87-1 is amended to read as follows:

2 40:87-1. The elective officers of every borough shall be a mayor**[**,**]**
 3 and six councilmen**[**, a collector and, except where such office has
 4 been abolished, an assessor**]**.

1 8. R. S. 40:87-8 is amended to read as follows:

2 40:87-8. The term of office of all elective officers, other than those
 3 first elected in newly created boroughs, shall begin at noon on
 4 January first, next after their election**[**, except that of the assessor,
 5 which shall begin on July 1 next following his election**]**.

1 9. R. S. 40:87-15 is amended to read as follows :

2 40:87-15. In addition to the officers to be elected there shall be
 3 appointed a clerk. In boroughs, with a population of less than
 4 10,000, the **【elected】** tax collector may also be appointed the clerk.
 5 There may be appointed a borough treasurer, a borough attorney,
 6 a borough engineer, a borough building inspector, one or more
 7 marshals, a poundkeeper, a superintendent of highways, and such
 8 other officers as the council may deem necessary. They shall per-
 9 form the duties required by law and the ordinances of the council.
 10 All of these officers, except the borough attorney, borough engineer,
 11 borough building inspector, borough poundkeeper and, in boroughs
 12 with a population of less than 2,500, the clerk and the borough
 13 treasurer, where such officeholders do not at the same time occupy
 14 a second office for which residency is required, shall be residents of
 15 the borough, and all of them shall hold office during the pleasure of
 16 the council **【unless a specific term is generally provided by law】**
 17 *except the clerk, tax collector, and tax assessor who shall serve*
 18 *for terms as provided in chapter 9 of Title 40A of the New Jersey*
 19 *Statutes*; however, all exemptions from residency requirements
 20 shall only be made pursuant to the adoption of a municipal ordin-
 21 ance to that effect. No officer shall be removed without being
 22 afforded an opportunity to be heard. Unless sooner removed, how-
 22A ever, they shall hold office for 1 year, **【or for such specific term as**
 23 **is generally provided by law,】** and until their successors shall
 24 have qualified, *except the clerk, tax collector, and tax assessor who*
 25 *shall serve for terms as provided in chapter 9 of Title 40A of the*
 26 *New Jersey Statutes.*

1 10. R. S. 40:125-2 is amended to read as follows :

2 40:125-2. The councilmen from each ward, *and* the councilman
 3 at large or mayor, **【the assessor and, in towns having a population**
 4 **in excess of 25,000, the clerk and collector,】** shall be elected at the
 5 annual town election. The term of office of any elected officer not
 6 otherwise provided for may be fixed by the council by ordinance.

1 11. R. S. 40:125-3 is amended to read as follows :

2 40:125-3. The treasurer, attorney, chief of police, chief engineer
 3 of the fire department, surveyor and poundkeepers shall be ap-
 4 pointed by the council in the manner and for the terms hereinafter
 5 provided. **【In towns having a population not in excess of 25,000,**
 6 **the】** *The* clerk, collector and ***【members of the board of assessors】***
 7 ***assessor*** shall be appointed by a majority vote of the mayor and
 8 council**【,** for such respective terms as the council may fix by ordi-
 9 nance, unless a specific term is generally provided by law**】** *for*
 10 *terms as provided in chapter 9 of Title 40A of the New Jersey*

11 *Statutes.* The term of office of any appointed officer not otherwise
 12 provided for may be fixed by the council by ordinance. The council
 13 may by ordinance appoint such other subordinate officers as it may
 14 deem necessary, fix their terms of office and compensation, and
 15 define their duties. *The clerk, tax collector, and tax assessor shall*
 16 *serve for terms as provided in chapter 9 of Title 40A of the New*
 17 *Jersey Statutes.*

1 12. R. S. 40:125-22 is amended to read as follows:

2 40:125-22. If a majority of the votes cast on such proposition
 3 shall be in favor of establishing the office of comptroller, the
 4 comptroller shall be [elected at the next succeeding general elec-
 5 tion,] *appointed* in the same manner as [other town officers are
 6 elected] *are the clerk and collector.* He shall be a resident of the
 7 town, and shall hold office for 3 years and until his successor
 8 shall have *[been elected and]* qualified.

1 13. R. S. 40:132-3 is amended to read as follows:

2 40:132-3. In all incorporated towns [having a population not in
 3 excess of 25,000 inhabitants] the town clerk, collector, and *[mem-
 4 bers of the board of assessors]* *assessor* shall be appointed by
 5 the mayor and council by a majority vote of said mayor and council,
 6 and the appointments of town clerk, collector and *[members of
 7 the board of assessors]* *assessor* respectively shall be for such
 8 respective terms as [the town council may fix by ordinance, unless
 9 a specific term is generally provided by law] *provided in chapter 9*
 10 *of Title 40A of the New Jersey Statutes.*

1 14. R. S. 40:132-12 is amended to read as follows:

2 40:132-12. The salary of the treasurer[, whether elected or ap-
 3 pointed,] shall not be increased or diminished during the term for
 4 which he shall have been [elected or] appointed.

1 15. R. S. 40:145-2 is amended to read as follows:

2 40:145-2. The elective officers of every township shall be [a
 3 township clerk, a collector of taxes, so many poundkeepers as shall
 4 be deemed necessary,] *the* members of the township committee as
 5 hereinafter prescribed[, and such other officers as may be autho-
 6 rized by law. There shall also be elected an assessor, and in town-
 7 ships having a population of not less than 4,500, a road supervisor,
 8 except where such office or officers have been or shall be abolished
 9 by ordinance].

10 All said officers shall be residents of the township, and except
 11 where otherwise provided, shall hold office for 1 year the term of
 12 which shall begin on January 1 next succeeding their election. No

13 township officer whether elected or appointed shall hold over in
 14 his office after the expiration of the term for which he was elected
 15 or appointed. A plurality of votes shall be sufficient to elect any
 16 township officer.

1 16. R. S. 40:145-10 is amended to read as follows:

2 40:145-10. The road supervisor **[elected]** in townships having
 3 a population of more than 4,500 shall hold office for 3 years, and,
 4 under the general direction of the township committee, shall have
 5 complete charge and supervision of the opening, making and re-
 6 pairing of the roads and streets controlled by the township com-
 7 mittee in such township. He shall receive such compensation as
 8 the township committee shall fix and determine. The township
 9 committee in every such township where a road supervisor shall
 10 have been **[elected]** *established* may, by ordinance, abolish the
 11 office of road supervisor.

1 17. R. S. 40:145-12 is amended to read as follows:

2 40:145-12. **[In addition to the officers to be elected the]** *The*
 3 township committee may appoint and employ a township attorney,
 4 a township engineer, a township building inspector, a township
 5 physician **[and]**, a treasurer, *an assessor, a township clerk, a col-*
 6 *lector of taxes, so many poundkeepers as shall be deemed neces-*
 7 *sary, and such other officers as may be authorized by law.* All such
 8 officers except the township attorney, engineer and building in-
 9 spector **[must]** *shall* be residents of the township.

1 18. R. S. 40:158-4 is amended to read as follows:

2 40:158-4. The board of trustees shall appoint at its annual
 3 meeting or as soon thereafter as possible a treasurer and a clerk.
 4 **[They]** *The treasurer* shall hold office for 1 year from the date
 5 of the annual meeting, **[unless a specific term is generally provided**
 6 **by law,]** and until **[their successors are]** *his successor is* appointed;
 7 *the clerk shall serve for a term as provided in chapter 9 of Title*
 8 *40A of the New Jersey Statutes.* **[and]** *The treasurer and the*
 9 *clerk* shall receive such compensation as the trustees shall fix and
 10 determine. The board may appoint a resident and voter of the
 11 village or one of its own members as clerk and one as treasurer,
 12 but no trustee shall serve as treasurer after the expiration of his
 13 term as trustee.

1 19. Section 6 of P. L. 1967, c. 44 (C. 54:1-35.30) is amended
 2 to read as follows:

3 6. Except as herein otherwise provided, no person shall on and
 4 after July 1, 1971, be appointed or reappointed**[, or elected or re-**
 5 **elected,]** as tax assessor in any municipality in this State unless

6 he shall hold a tax assessor certificate. The foregoing limitation
7 **【as to reappointment or reelection】** shall not apply to an assessor
8 who shall have served continuously in office from July 1, 1967 to
9 the date of reappointment **【or reelection. In the case of a candidate**
10 **for election as municipal tax assessor for a term commencing on**
11 **or after July 1, 1971, other than a candidate for reelection who**
12 **shall have served continuously in office from July 1, 1967 to the**
13 **date designated for inclusion on the ballot, the municipal clerk**
14 **shall not certify the name of such person for inclusion on the ballot**
15 **as a candidate unless there shall be filed with the municipal clerk**
16 **proof that such person is the holder of a valid tax assessor cer-**
17 **tificate】.**

1 20. The following are repealed:

2 R. S. 40:87-12;

3 R. S. 40:132-2;

4 R. S. 40:132-7;

5 R. S. 40:132-11;

5A **R. S. 40:139-7;**

6 R. S. 40:145-8;

7 R. S. 40:145-11; and

8 R. S. 40:158-3.

1 21. This act shall take effect ***【January 1, 1982】*** **immediately**.

12 shall have served continuously in office from July 1, 1967 to the
 13 date designated for inclusion on the ballot, the municipal clerk
 14 shall not certify the name of such person for inclusion on the ballot
 15 as a candidate unless there shall be filed with the municipal clerk
 16 proof that such person is the holder of a valid tax assessor cer-
 17 tificate].

1 20. The following are repealed:

2 R. S. 40:87-12;

3 R. S. 40:132-2;

4 R. S. 40:132-7;

5 R. S. 40:132-11;

6 R. S. 40:145-8;

7 R. S. 40:145-11; and

8 R. S. 40:158-3.

1 21. This act shall take effect January 1, 1982.

STATEMENT

This bill would implement Recommendation 13 of the County and Municipal Government Study (Musto) Commission in its report, *Forms of Municipal Government in New Jersey*. In that report the commission recommended the elimination of the appointment of all municipal administrative officers currently elected in order to stress professional qualifications for such offices.

Since that report, the Legislature has accomplished a major portion of that recommendation through the enactment of P. L. 1978, c. 128, which eliminated the election of municipal tax assessors, and P. L. 1979, c. 384, which eliminated the election of municipal tax collectors and established a professional certification procedure for tax collectors.

This bill would continue the progress toward the professionalization of municipal administrative offices by eliminating the election of municipal clerks, and of poundkeepers, comptrollers and road supervisors in certain forms of government. It also would revise or repeal certain statutes requiring change in light of the provisions of P. L. 1978, c. 128 and P. L. 1979, c. 384, mentioned above. With respect to municipal clerks, the bill also incorporates and clarifies the provisions of P. L. 1980, c. 147, which established a uniform 3-year term for municipal clerks.

The bill provides that same safeguards with respect to the acquisition and holding of tenure by elected municipal clerks to be appointed, as did P. L. 1978, c. 128 and P. L. 1979, c. 384 with respect to tax assessors and tax collectors, respectively.

53135 (1981)

ASSEMBLY MUNICIPAL GOVERNMENT COMMITTEE

STATEMENT TO

SENATE, No. 3155

STATE OF NEW JERSEY

DATED: JUNE 29, 1981

Senate Bill No. 3155 would eliminate the election of all administrative officers currently elected in order to stress the professional qualifications needed to hold these positions. The provisions of the bill are based on recommendation 13 of the County and Municipal Government Commission's report, *Forms of Municipal Government in New Jersey*.

The Legislature has enacted several laws and is currently considering several bills to accomplish the purposes of the commission's recommendation. P. L. 1978, c. 128 eliminated the election of municipal tax assessors. P. L. 1979, c. 384 eliminated the election of tax collectors and provided for their professional certification. P. L. 1980, c. 147 established a uniform 3 year term for municipal clerks. In addition, Senate Bill No. 3131, currently under consideration by the Legislature, provides uniform procedures for the appointment, term and powers of assessors and Assembly Bill No. 3019, also being considered by the Legislature, clarifies the laws providing for the terms of clerks.

This bill amends numerous sections of law governing municipalities to bring these statutes into conformity with the statutes and bills enacted and currently being considered by the Legislature concerning the offices of assessor, tax collector and clerk. It also eliminates the election of clerks, poundkeepers, comptrollers and road supervisors in certain forms of government. The bill provides the same safeguards with respect to the acquisition of tenure by elected clerks and assessors as incorporated into P. L. 1978, c. 128 and P. L. 1979, c. 384. It further provides that agreements between an assessor and a municipality regarding hours of work shall not be affected by this bill but shall be the subject of further agreement.

The bill, as amended by the Senate County and Municipal Government Committee and passed by the Senate, incorporates the provisions of Senate Bill No. 3131 and Assembly Bill No. 3109. Because of this, the bill is dependent on Senate Bill No. 3131 and Assembly Bill No. 3019 for its meaning and intent. The committee recommends that they be considered as a package.

SENATE COUNTY AND MUNICIPAL
GOVERNMENT COMMITTEE

STATEMENT TO

SENATE, No. 3155

with Senate committee amendments

STATE OF NEW JERSEY

DATED: MAY 4, 1981

Senate Bill No. 3155 would implement Recommendation 13 of the County and Municipal Government Study (Musto) Commission in its report, *Forms of Municipal Government in New Jersey*. In that report the commission recommended the elimination of the election of all municipal administrative officers currently elected in order to stress professional qualifications for such offices.

Since that report, the Legislature has accomplished a major portion of that recommendation through the enactment of P. L. 1978, c. 128, which eliminated the election of municipal tax assessors, and P. L. 1979, c. 384, which eliminated the election of municipal tax collectors and established a professional certification procedure for tax collectors.

This bill would continue the progress toward the professionalization of municipal administrative offices by eliminating the election of municipal clerks, and of poundkeepers, comptrollers and road supervisors in certain forms of government. It also would revise or repeal certain statutes requiring change in light of the provisions of P.L. 1978, c. 128 and P. L. 1979, c. 384, mentioned above. With respect to municipal clerks, the bill also incorporates and clarifies the provisions of P. L. 1980, c. 147, which established a uniform 3-year term for municipal clerks.

The bill provides that same safeguards with respect to the acquisition and holding of tenure by elected municipal clerks to be appointed, as did P. L. 1978, c. 128 and P. L. 1979, c. 384 with respect to tax assessors and tax collectors, respectively.

The Senate committee amendments bring this bill into conformity with the provisions of Senate Bill No. 3131 and Assembly Bill No. 3019. As amended by the committee, these three bills are a package and are dependent upon one another for their meaning and intent.

The bill provides that agreements entered into between an assessor and a municipality regarding his hours of work shall not be affected by the act. Any change in hours shall be subject to further agreement.

As revised by the Senate Committee, with the assistance of the Tax Assessor Association and the Director of Taxation, the bill would additionally:

1. Amend the "Optional Municipal Charter Law" to provide that the office of municipal tax assessor, as well as that of municipal clerk, shall not be assigned to a department of municipal government. The Committee amendments require that these offices shall be subject, however, to those administrative procedures and requirements that departments are generally, including budgetary procedures, central personnel requirements, accounting controls, central purchasing procedures and central data processing.

2. Amend certain sections of the law to clarify that the specific statutory hearing and removal procedures for certain officers (including assessor and collector) shall supersede any statutory procedures set forth for municipal officers generally.

3. Amend N. J. S. 40A:9-165 to require that no tax assessor, tax collector, or municipal clerk shall be denied without good cause an increase in salary given to all other municipal officers and employees. That law currently prohibits a municipality from reducing the salary of an assessor, collector or clerk during his term.

4. Amend the bill generally throughout to make its provisions consistent with those of Senate Bill No. 3155 and Assembly Bill No. 3019. With the amendments to these three bills they are a package, dependent upon one another for their meaning and intent.

5. Require that tax court complaints under R. S. 54:2-40 go directly to the assessor, as well as the municipal clerk.

6. Repeal various additional antiquated statutes of the city forms of government laws involving the performance of the assessment function, which are outdated and no longer in use.
