40: 69A -160; 40: 69A - 761

NJSA	40:69A-160; 40:69A-161; Repeals 40:69A-161.1	(Elections--Municipal--Eliminate certain runoffs)

LAWS OF ___1980___   CHAPTER ___75___

Bill No. ___S738___

Sponsor(s) ___Hirkala___

Date Introduced ___Pre-filed___

Committee: Assembly ___Municipal Government___

          Senate ___County and Municipal Government___

Amended during passage   Yes   xx Substituted for A2
                                                  (not attached since
Date of Passage: Assembly ___June 23, 1980___   to S738)

                 Senate ___June 12, 1980___

Date of approval ___July 24, 1980___

Following statements are attached if available:

Sponsor statement	Yes	No (Below)	Also attached: Senate amendments adopted 6-9-80 (with statements)
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	

Sponsor's statement:

This bill eliminates runoff elections in municipalities organized under the Faulkner Act by allowing candidates receiving the greatest number of votes cast to be elected to office and eliminating the requirement for majority votes.

(over)

2/1/83

Report mentioned in committee statements:

974.90   Reock, Ernest C.
M966   Forms of municipal government in
1979   New Jersey. County and Municipal
            Government Study Commission...January,
            1979. Trenton, 1979.
                (see pp 100-102)

[OFFICIAL COPY REPRINT]

SENATE, No. 738

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1980 SESSION

By Senator HIRKALA

AN ACT to amend the "Optional Municipal Charter Law," approved June 8, 1950 (P. L. 1950, c. 210), and repealing *[section 17-12 thereof and]* section 2 of P. L. 1956, c. 24.

1   BE IT ENACTED by the Senate and General Assembly of the State
2   of New Jersey:
1   1. Section 17-11 of P. L. 1950, c. 210 (C. 40:69A-160) is amended
2   to read as follows:
3   17-11. *a.* At the regular municipal election in any municipality
4   which has adopted articles [4 or 5] 3 through 6, inclusive, or
5   9 through 12, inclusive, of this act, the candidates receiving the
6   greatest number [and a majority] of votes cast shall be elected
7   to the respective offices[; provided, however, that if:
8   (a) Nine councilmen at large are to be elected and four or more
9   candidates for said office receive a majority of the votes cast, the
10   nine candidates receiving the greatest number of votes shall be
11   elected; or
12   (b) Seven councilmen at large are to be elected and three or
13   more candidates for said office receive a majority of the votes cast,
14   the seven candidates receiving the greatest number of votes shall
15   be elected; or
16   (c) Five councilmen at large are to be elected and two or more
17   candidates for said office receive a majority of the votes cast, the
18   five candidates receiving the greatest number of votes shall be
19   elected; or
20   (d) Four councilmen at large are to be elected and two or more
21   candidates for said office receive a majority of the votes cast, the
22   four candidates receiving the greatest number of votes shall be
23   elected; or
24   (e) Three councilmen at large are to be elected and one or
25   more candidates for said office receive a majority of the votes cast,

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

26 the three candidates receiving the greatest number of votes shall be
27 elected; or
28 (f) Two councilmen at large are to be elected and one or more
29 candidates for said office receive a majority of the votes cast, the
30 two candidates receiving the greatest number of votes shall be
31 elected.
32 As used in this section, the number constituting a majority of
33 the votes cast shall be computed by dividing by two the number of
34 voters who cast a vote for at least one candidate for councilman
35 at large, and then adding one. Voting machines to be used in such
36 election shall be equipped, as soon as practicable, with one or
37 more counters so connected as to keep a tally of the number of
38 voters who cast votes for one or more of the candidates for council-
39 man at large. Until such time as suitable counters have been so
40 provided, or whenever the tally of the number of voters cannot
41 be determined for any reason, then the number constituting said
42 majority of the votes cast shall be computed by adding all the
43 votes cast for each candidate for said office, dividing that total by
44 twice the number of councilmen at large to be elected and then
45 adding one].
46 *b. Notwithstanding the provisions of subsection a. of this
47 section, the charter of any municipality adopting, on or after the
48 effective date of this amendatory act, articles 3 through 6, inclusive,
49 or 9 through 12, inclusive, may provide that at the regular municipal
50 election the candidates receiving the greatest number and a majority
51 of votes cast shall be elected to the respective offices; provided,
52 however, that if:
53   (1) Nine councilmen-at-large are to be elected and four or
54   more candidates for said office receive a majority of the votes
55   cast, the nine candidates receiving the greatest number of votes
56   shall be elected; or
57   (2) Seven councilmen-at-large are to be elected and three or
58   more candidates for said office receive a majority of the votes
59   cast, the seven candidates receiving the greatest number of
60   votes shall be elected; or
61   (3) Five councilmen-at-large are to be elected and two or
62   more candidates for said office receive a majority of the votes
63   cast, the five candidates receiving the greatest number of votes
64   shall be elected; or
65   (4) Four councilmen-at-large are to be elected and two or
66   more candidates for said office receive a majority of the votes
67   cast, the four candidates receiving the greatest number of votes
68   shall be elected; or

69   *(5) Three councilmen-at-large are to be elected and one or*
70   *more candidates for said office receive a majority of the votes*
71   *cast, the three candidates receiving the greatest number of*
72   *votes shall be elected; or*
73   *(6) Two councilmen-at-large are to be elected and one or*
74   *more candidates for said office receive a majority of the votes*
75   *cast, the two candidates receiving the greatest number of votes*
76   *shall be elected.*

77 *As used in this subsection, the number constituting a majority of*
78 *the votes cast shall be computed by dividing by two the number of*
79 *voters who cast a vote for at least one candidate for councilman-*
80 *at-large, and then adding one. Voting machines to be used in such*
81 *election shall be equipped, as soon as practicable, with one or more*
82 *counters so connected as to keep a tally of the number of voters*
83 *who cast votes for one or more of the candidates for councilman-at-*
84 *large. Until such time as suitable counters have been so provided,*
85 *or whenever the tally of the number of voters cannot be determined*
86 *for any reason, then the number constituting said majority of the*
87 *votes cast shall be computed by adding all the votes cast for each*
88 *candidate for said office, dividing that total by twice the number of*
89 *councilmen-at-large to be elected and then adding one.*

90   *c. Any municipality which was governed by the provisions of this*
91 *section prior to the effective date of this amendatory act shall be*
92 *governed by the provisions of subsection b. of this section on and*
93 *after the effective date of this amendatory act for so long as it*
94 *continues to be governed by articles 3 through 6, inclusive, or 9*
95 *through 12, inclusive, except as provided in subsection d. of this*
96 *section.*

97   *d. On and after the effective date of this amendatory act, any*
98 *municipality in which run-off elections are held pursuant to the*
99 *provisions of subsection b. or c. above may adopt by referendum the*
100 *provisions of subsection a. above; and any municipality governed by*
101 *articles 3 through 6, inclusive, or 9 through 12, inclusive, in which*
102 *runoff elections are not held, may adopt by referendum the pro-*
103 *visions of subsection b. above. In either case, the question of adop-*
104 *tion may be initiated by the voters pursuant to, and subject to the*
105 *pertinent provisions of, sections 17–35 through 17–47 (C.*
106 *40:69A–184 through 40:69A–196) of the act of which this act is*
107 *amendatory; or the question of adoption may be submitted to the*
108 *voters by ordinance adopted by the governing body, in which case*
109 *the question and ordinance shall be subject to the pertinent pro-*
110 *visions of sections 17–42 through 17–47 of the act of which this act*

111 *is amendatory (C. 40:69A-191 through 40:69A-196), except that no.*
112 *petition of the voters shall be necessary in order to submit the*
113 *question.*

1   2. Section 17-12 of P. L. 1950, c. 210 (C. 40:69A-161) is amended
2 to read as follows:
3   17-12. In any regular municipal election referred to in *subsection*
4 *b. of* section 17-11, if a sufficient number of candidates do not receive
5 a majority of the votes cast to elect the required number of council-
6 men-at-large, or no candidate for mayor or no candidate for ward
7 councilman receives a majority of the votes cast for his respective
8 office, a runoff election in the municipality or ward, as the case may
9 be, shall be held on the fifth Tuesday next following such municipal
10 election. The candidates for councilmen-at-large not elected at
11 such municipal election, equal in number to twice the number of
12 councilmen-at-large remaining to be elected, who received the
13 greatest number of votes at such municipal election and the two
14 candidates for mayor or for ward councilmen who received the
15 greatest number of votes at such election, shall be the candidates
15A for the office for which they were nominated, at such runoff elec-
16 tion.. Military service ballots shall forthwith be printed and
17 distributed for the runoff election in the same manner, so far as
18 possible, as for other municipal elections.
19   The candidate or candidates who receive the greatest number of
20 votes at such runoff election shall be elected to the office or offices
21 to be filled. If two or more candidates shall be equal and greatest in
22 votes for any of the purposes of this section, they shall draw lots
23 to determine which one shall enter the runoff election or be elected
24 therein, as the case may be.
25   If any candidate to be voted for at the runoff election dies 7 or
26 more days prior to the runoff election, the candidate for said office
27 not theretofore included in the runoff election but next in highest
28 number of votes for that purpose, shall be substituted at such elec-
29 tion in the place and stead of the deceased candidate and his name
30 shall be substituted on the ballots for that of the deceased candi-
31 date.*

1   *[2.]* *3.* Section *[17-12 of P. L. 1950, c. 210 (C. 40:69A-161)
2 and section]* 2 of P. L. 1956, c. 24 (C. 40:69A-161.1) *[are]* *is*
3 repealed.

1   *[3.]* *4.* This act shall take effect immediately.

ASSEMBLY MUNICIPAL GOVERNMENT COMMITTEE

STATEMENT TO

SENATE, No. 738

[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

DATED: JUNE 16, 1980

This bill, as amended in the Senate, permits those 27 municipalities holding non-partisan elections under Faulkner Act Council-Manager Plans A, B, C, and D and Mayor-Council Plans A and D (adopted prior to 1956) and Mayor-Council B and C Plans to eliminate run-off election requirements through initiative and referendum procedures. The option to eliminate the runoff elections is in keeping with the County and Municipal Government Study Commission recommendation.

As originally introduced and as approved by the Senate County and Municipal Government Committee, the bill would have simply eliminated all Faulkner Act runoffs without giving the voters in the 27 municipalities the opportunity to decide the question.

This committee endorses the making runoffs optional and has amended Assembly Bill No. 2 accordingly so as to conform with Senate Bill No. 738 (OCR) so that the two bills may be joined on the Assembly floor.

SENATE COUNTY AND MUNICIPAL GOVERNMENT COMMITTEE

STATEMENT TO

SENATE, No. 738

STATE OF NEW JERSEY

DATED: MAY 5, 1980

Senate Bill No. 738 would eliminate run-off elections in municipalities which have adopted a Mayor-Council Plan B or C, or Council-Manager Plan A, B, C or D, form of government under the Faulkner Act (P. L. 1950, c. 210; C. 40:69A–161), by allowing candidates receiving the greatest number of votes to be elected to office and eliminating the requirement for majority votes.

The run-off election provisions of the Faulkner Act apply only to non-partisan elections in Council-Manager Plans A, B, C, and D, to Mayor-Council Plans A and D up to 1956 (pursuant to P. L. 1956, c. 24; C. 40:69A–161.1; the courts held the application of the statute unconstitutional with respect to those adopting prior to 1956, *Batistich v. Brennan,* *88 N. J. Super. 84 (1965), affirmed 45 N. J. 533.)*

According to the recent report of the County and Municipal Study (Musto) Commission, *Forms of Municipal Government in New Jersey,* 15 Mayor-Council Form municipalities have run-off elections, 12 Council-Manager Form municipalities have run-off elections.

Municipalities adopting Mayor-Council Plan A or D prior to 1956 (Vineland and Hoboken) would be included in the provisions of the bill. The bill would, thus, eliminate run-off elections entirely from the Faulkner Act.

Section 17-12 of P. L. 1950, c. 210 (C. 40:69A–161) to be repealed by the bill sets forth procedural requirements for the holding of run-off elections, which will no longer be necessary once run-off elections are eliminated. Section 2 of P. L. 1956, c. 24 (C. 40:69A–161.1) to be repealed is the section construed by the court to eliminate run-offs in Mayor-Council Plans A and D after 1956. The provisions of this section would be incorporated into section 17-11 of P. L. 1950, c. 210 (C. 40:69A–160).

This bill, as Senate 1384, was favorably released with amendments by this committee in the 1978-1979 session. Those amendments were incorporated into Senate 738 upon introduction. Senate Bill 1384 passed the Senate by a vote of 22-12, and did not reach a vote in the General Assembly.

SENATE, No. 738

STATE OF NEW JERSEY

ADOPTED JUNE 9, 1980

Amend page 1, title, lines 2 and 3, omit "section 17–12 thereof and".

Amend page 1, section 1, line 3, after "17–11.", insert "a.".

Amend page 2, section 1, after line 45, insert new subsection b., c. and d., and new section 2, as follows:

"b. Notwithstanding the provisions of subsection a. of this section, the charter of any municipality adopting, on or after the effective date of this amendatory act, articles 3 through 6, inclusive, or 9 through 12, inclusive, may provide that at the regular municipal election the candidates receiving the greatest number and a majority of votes cast shall be elected to the respective offices; provided, however, that if:

(1) Nine councilmen-at-large are to be elected and four or more candidates for said office receive a majority of the votes cast, the nine candidates receiving the greatest number of votes shall be elected; or

(2) Seven councilmen-at-large are to be elected and three or more candidates for said office receive a majority of the votes cast, the seven candidates receiving the greatest number of votes shall be elected; or

(3) Five councilmen-at-large are to be elected and two or more candidates for said office receive a majority of the votes cast, the five candidates receiving the greatest number of votes shall be elected; or

(4) Four councilmen-at-large are to be elected and two or more candidates for said office receive a majority of the votes cast, the four candidates receiving the greatest number of votes shall be elected; or

(5) Three councilmen-at-large are to be elected and one or more candidates for said office receive a majority of the votes cast, the three candidates receiving the greatest number of votes shall be elected; or

(6) Two councilmen-at-large are to be elected and one or more candidates for said office receive a majority of the votes cast, the two candidates receiving the greatest number of votes shall be elected.

As used in this subsection, the number constituting a majority of the votes cast shall be computed by dividing by two the number of voters who cast a vote for at least one candidate for councilman-at-large, and then adding one. Voting machines to be used in such election shall be equipped, as soon as practicable, with one or more counters so connected as to keep a tally of the number of voters who cast votes for one or more of the candidates for councilman-at-large. Until such time as suitable counters have been so provided, or whenever the tally of the number of voters cannot be determined for any reason, then the number constituting said majority of the votes cast shall be computed by adding all the votes cast for each candidate for said office, dividing that total by twice the number of councilmen-at-large to be elected and then adding one.

c. Any municipality which was governed by the provisions of this section prior to the effective date of this amendatory act shall be governed by the provisions of subsection b. of this section on and after the effective date of this amendatory act for so long as it continues to be governed by articles 3 through 6, inclusive, or 9 through 12, inclusive, except as provided in subsection d. of this section.

d. On and after the effective date of this amendatory act, any municipality in which run-off elections are held pursuant to the provisions of subsection b. or c. above may adopt by referendum the provisions of subsection a. above; and any municipality governed by articles 3 through 6, inclusive, or 9 through 12, inclusive, in which run-off elections are not held, may adopt by referendum the provisions of subsection b. above. In either case, the question of adoption may be initiated by the voters pursuant to, and subject to the pertinent provisions of, section 17–35 through 17–47 (C. 40:69A–184 through 40:69A–196) of the act of which this act is amendatory; or the question of adoption may be submitted to the voters by ordinance adopted by the governing body, in which case the question and ordinance shall be subject to the pertinent provisions of sections 17–42 through 17–47 of the act of which this act is amendatory (C. 40:69A–191 through 40:69A–196), except that no petition of the voters shall be necessary in order to submit the question.

2. Section 17–12 of P. L. 1950, c. 210 (C. 40:69A–161) is amended to read as follows:

17–12. In any regular municipal election referred to in *subsection b. of* section 17–11, if a sufficient number of candidates do not receive a majority of the votes cast to elect the required number of councilmen-at-large, or no candidate for mayor or no candidate for ward councilman receives a majority of the votes cast for his respective office, a runoff election in the municipality or ward, as the case may be, shall be held on the fifth Tuesday next following such municipal election. The

candidates for councilmen-at-large not elected at such municipal election, equal in number to twice the number of councilmen-at-large remaining to be elected, who received the greatest number of votes at such municipal election and the two candidates for mayor or for ward councilmen who received the greatest number of votes at such election, shall be the candidates for the office for which they were nominated, at such runoff election. Military service ballots shall forthwith be printed and distributed for the runoff election in the same manner, so far as possible, as for other municipal elections.

The candidate or candidates who receive the greatest number of votes at such runoff election shall be elected to the office or offices to be filled. If two or more candidates shall be equal and greatest in votes for any of the purposes of this section, they shall draw lots to determine which one shall enter the runoff election or be elected therein, as the case may be.

If any candidate to be voted for at the runoff election dies 7 or more days prior to the runoff election, the candidate for said office not theretofore included in the runoff election but next in highest number of votes for that purpose, shall be substituted at such election in the place and stead of the deceased candidate and his name shall be substituted on the ballots for that of the deceased candidate.".

Amen page 2, section 2, line 1, omit "2.", insert "3."; after "Section", omit this line.

Amend page 2, section 2, line 2, omit "are", insert "is".

Amend page 2, section 3, line 1, omit "3.", insert "4.".

STATEMENT

These amendments would make run-off elections entirely optional in the non-partisan forms of government under the Faulkner Act, as recommended in the recent report of the County and Municipal Government Study (Musto) Commission, *Forms of Municipal Government in New Jersey*. Run-off elections are continued for those Faulkner Act municipalities currently having them, but the amendments provide an initiative and referendum provision under which those municipalities may eliminate them.

FROM THE OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE .   FOR FURTHER INFORMATION

JULY 24, 1980   KATHRYN FORSYTH

Governor Brendan Byrne today signed S-738, sponsored by Senator Joseph Hirkala

(D-Passaic) which permits municipalities organized under certain sections of the

1950 Optional Municipal Charter Act (the Faulkner Act) to eliminate runoff elections

for the office of Councilman.

Municipalities affected are those governed by Mayor-Council Plans A, B, C, or D.

These include: Bayonne, Brick Township, Camden, Cedar Grove, Cherry Hill, Delran,

Hoboken, Irvington, Jersey City, Long Branch, Newark, Passaic, Paterson, Perth Amboy,

Saddle Brook, South Amboy, Trenton, Vineland and West Orange.

Also affected are municipalities organized under Council-Manager Plans A, B, C or D

These are: Evesham, Franklin, Mount Holly, Newton, Ocean, Phillipsburg, Sparta and

West Milford.

Under the original Faulkner Act, winning candidates were required to receive

a majority of votes, thus necessitating runoff elections when no candidate received

a majority.

S-738 permits a municipality to give the office to the candidate receiving

a plurality, thus obviating the need for and eliminating the cost of runoff elections.

However, the bill does give municipalities the alternative of retaining, .

eliminating or adding the runoff provision through the petition and referendum

process.

# # # # #