

40:81-11

LEGISLATIVE HISTORY CHECKLIST

40:81-11; 40:87-15; 40:125-3;  
40:132-3; 40:158-4; 40A:9-133; (Municipal clerks--uniform 3-year  
NJSA Repeals 40:125-10 term of office)

LAWS 1980 CHAPTER 147

Bill No. S220 Substituted for A994 (not attached since substantially similar to S220)

Sponsor(s) Feldman

Date Introduced Pre-filed

Committee: Assembly Municipal Government

Senate County and Municipal Government

Amended during passage Yes No Amendments denoted by asterisks  
according to Governor's recommendations

Date of Passage: Assembly May 19, 1980 Re-enacted 10-16-80

Senate April 17, 1980 Re-enacted 10-6-80

Date of approval Nov. 22, 1980

Following statements are attached if available:

Sponsor statement Yes No Also attached: Assembly amendment, adopted 5-19-80  
Committee Statement: Assembly Yes No (with statement)

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

147 11-22-80 80

[THIRD OFFICIAL COPY REPRINT]

SENATE, No. 220

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1980 SESSION

By Senator FELDMAN

AN ACT concerning the term of office of municipal clerks and amending sections \*\*\*40:81-11,\*\*\* 40:87-15, 40:125-3, 40:132-3 and 40:158-4 of the Revised Statutes, and N. J. S. 40A:9-133, \*supplementing chapter 9 of Title 40A of the New Jersey Statutes\* and repealing R. S. 40:125-10.

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

1 1. 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 however, all exemptions from residency requirements shall only be  
18 made pursuant to the adoption of a municipal ordinance to that  
19 effect. No officer shall be removed without being afforded an  
20 opportunity to be heard. Unless sooner removed, however, they  
21 shall hold office for 1 year, or for such specific term as is generally  
22 provided by law, and until their successors shall have qualified.

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

2 40:125-3. The treasurer, attorney, \*\*[overseer of the poor,]\*\*

**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 chief of police, chief engineer of the fire department, surveyor and  
 4 pound-keepers shall be appointed by the council in the manner and  
 5 for the terms hereinafter provided. In towns having a population not  
 6 in excess of 25,000, the clerk, collector and members of the board of  
 7 assessors 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*. The term  
 10 of office of any appointed officer not otherwise provided for may be  
 11 fixed by the council by ordinance. The council may by ordinance  
 12 appoint such other subordinate officers as it may deem necessary,  
 13 fix their terms of office and compensation, and define their duties.

1 3. 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 members  
 4 of the board of assessors shall be appointed by the mayor and  
 5 council by a majority vote of said mayor and council, and the  
 6 appointments of town clerk, collector and members of the board  
 7 of assessors respectively shall be for such respective terms as the  
 8 town council may fix by ordinance, *unless a specific term is gener-*  
 9 *ally provided by law*.

1 4. 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 shall each hold office for 1 year from the date of the annual  
 5 meeting, *unless a specific term is generally provided by law*, and  
 6 until their successors are appointed and shall receive such com-  
 7 pensation as the trustees shall fix and determine. The board may  
 8 appoint a resident and voter of the village or one of its own mem-  
 9 bers as clerk and one as treasurer, but no trustee shall serve as  
 10 treasurer after the expiration of his term as trustee.

1 5. 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 elected,  
 4 otherwise he shall be appointed by the governing body of the  
 5 municipality. **【Unless otherwise provided by law his】** *His* term of  
 6 office shall be 3 years. If elected, his term shall commence on  
 7 January 1 following his election and when appointed, his term  
 8 shall run from January 1 in the year in which he was appointed.

1 \*6. (New section) *Nothing contained in this act shall be deemed*  
 2 *to affect the term of office of any municipal clerk serving on the*  
 3 *effective date of this act a specified term of more than 3 years dur-*  
 4 *ing such term.\**

1     \*\*\*7. 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 assessors,  
 4     an auditor, a treasurer, a clerk, and an attorney. One person may  
 5     be appointed to two or more such offices, except that the offices of  
 6     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.*\*\*\*

1     \***[6.]**\* \*\*\***[\*7.\*]**\*\*\* \*\*\*8.\*\*\* R. S. 40:125-10 is repealed.

1     \***[7.]**\* \*\*\***[\*8.\*]**\*\*\* \*\*\*9.\*\*\* This act shall take effect imme-  
 2     diately.

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## STATEMENT

This bill would provide for a uniform 3-year term of office for all municipal clerks. The bill amends various sections of the law concerning the government of towns, boroughs and villages to remove therefrom specified terms of office for clerks, and brings those statutes into accord with N. J. S. 40A:9-133. The section repealed, R. S. 40:125-10, provides for a different term of office for clerks in towns of over 25,000 persons, than for clerks in towns of less than 25,000 persons. The purpose of this bill being uniformity, R. S. 40:125-10 requires repeal.

5220 (1980)

ASSEMBLY AMENDMENT TO  
**SENATE, No. 220**  
[OFFICIAL COPY REPRINT]

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**STATE OF NEW JERSEY**

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ADOPTED MAY 19, 1980

Amend page 1, section 2, line 2, omit "overseer of the poor,".

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STATEMENT

This amendment removes an archaic reference in the law to "overseer of the poor." In so doing, the amendment also brings Senate No. 220 (OFFICIAL COPY REPRINT) into conformity with Assembly No. 994 (OFFICIAL COPY REPRINT).

SENATE COUNTY AND MUNICIPAL  
GOVERNMENT COMMITTEE

STATEMENT TO

**SENATE, No. 220**

with Senate committee amendments

**STATE OF NEW JERSEY**

DATED: FEBRUARY 11, 1980

Senate No. 220 would provide for a uniform 3-year term of office for all municipal clerks. The bill amends various sections of the law concerning the government of towns, boroughs and villages to remove therefrom specified terms of office for clerks, and brings those statutes into accord with N. J. S. 40A:9-133. The section repealed, R. S. 40:125-10, provides for a different term of office for clerks in towns of over 25,000 persons, than for clerks in towns of less than 25,000 persons. The purpose of this bill being uniformity, R. S. 40:125-10 requires repeal.

The Senate committee amendments, proposed by the Department of Community Affairs, would provide that the bill shall not affect the term of any municipal clerk currently serving a term of more than 3 years, during such term. It appears that in some towns of under 25,000 the council has, by ordinance, established a longer term than 3 years (see R. S. 40:125-3 and 40:132-3, sections 2 and 3 of the bill, for authorization to do so).

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

September 22, 1980

SENATE BILL NO. 220 (2nd OCR)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14(b) of the Constitution, I am returning Senate Bill No. 220 (2nd OCR) with my objections, for reconsideration.

This bill amends various laws concerning municipal clerks with the intent of providing a uniform term of three years for all municipal clerks. At present, such terms vary significantly with some clerks serving at the pleasure of the governing body and others serving terms longer than three years. I note that the act will not affect a term in excess of three years now being served by a municipal clerk.

I am advised that the bill contains a technical defect in that P.L. 1957, c. 190 (R.S. 40:81-11) also was not amended in the bill. That statute provides that in municipalities with the council-manager form of government, clerks serve at the pleasure of the council. Such a rule would be in conflict with N.J.S. 40A:9-133, as amended by this bill, making terms a uniform three years.

Accordingly, I am returning Senate Bill No. 220 (2nd OCR) for your reconsideration and recommend that it be amended as follows:

Page 2, add a new Section 7 as follows:

"7. R.S. 40:81-11 is amended to read as follows:

"The municipal council shall appoint a municipal manager, an assessor, or where required by law a board of assessors, an auditor, a treasurer, a clerk, and an attorney. One person may be appointed to 2 or more such offices, except that the offices of municipal manager and auditor or assessor shall not be held by the same person. In municipalities containing more than 10,000 inhabitants the municipal attorney must have been admitted in the State of New Jersey to practice as an attorney-at-law for a period of five years or more. All such officers appointed by the council shall hold office during the pleasure of the council, unless a specific term is generally provided by law."

Page 2, Section 7, line 1: Delete "7" and insert "8".

Page 2, Section 8, line 1: Delete "8" and insert "9".

Respectfully,

/s/ Brendan Byrne  
GOVERNOR

[seal]

Attest:

/s/ Harold L. Hodes

CHIEF OF STAFF, SECRETARY



FROM THE OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE

NOVEMBER 24, 1980

FOR FURTHER INFORMATION

KATHRYN FORSVIH

Governor Brendan Byrne today signed the following bills:

S-220, sponsored by Senator Matthew Feldman (D-Bergen) which amends the laws concerning municipal clerks to provide a uniform term of three years for all municipal clerks.

The Governor conditionally vetoed the bill on September 22, saying it contained a technical defect. The Legislature concurred with the Governor's recommendations.

S-1311, sponsored by Senator Frank Dodd (D-Essex) which established a general civil penalty of \$3,000 per day for violations of the 1977 Department of Energy Act or any rule, regulation or order adopted pursuant to that act.

The Governor conditionally vetoed the bill on September 22, recommending a lower maximum penalty of \$300 for first-time offenders of energy regulations be included.

The Legislature concurred with the Governor's recommendations.

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