

40:69A - 184 et al

LEGISLATIVE HISTORY CHECKLIST

NJSA 40:69A-184 et al; 40:70-2, 40:74-4 (Initiative and referendum procedures, standardized, et al.)

LAWS 1982 CHAPTER 145

Bill No. S763

Sponsor(s) Perskie

Date Introduced Pre-filed

Committee: Assembly Municipal Government

Senate County and Municipal Government

Amended during passage Yes ~~No~~ Amendments denoted by asteri

according to Governor's recommendations

Date of Passage: Assembly May 20, 1982

Re-enacted 9-20-82

Senate March 15, 1982

Re-enacted 7-22-82

Date of approval Sept. 28, 1982

Following statements are attached if available:

Sponsor statement Yes ~~No~~ Also attached: Assembly amendme

Committee Statement: Assembly Yes ~~No~~ adopted 5-13-82 (with statement

Senate Yes ~~No~~ *missing*

Fiscal Note Yes ~~No~~

Veto Message Yes ~~No~~

Message on signing Yes ~~No~~

Following were printed:

Reports Yes ~~No~~

Hearings Yes ~~No~~

Report, referred to in committee statements:

- 974.90 Reock, Ernest
- M966 Forms of municipal government in New Jersey.
- 1979 County and Municipal Government Study Commission.
- 17th report. January, 1979. Trenton, 1979.
- (see pp vii, 103-108)

6/22/81

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SENATE, No. 763

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1982 SESSION

By Senator PERSKIE

AN ACT concerning municipal initiative and referendum procedures
and revising parts of the statutory law.

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

1 1. Section 17-35 of P. L. 1950, c. 210 (C. 40:69A-184) is amended
2 to read as follows:

3 17-35. The voters of any municipality may propose any ordinance
4 and may adopt or reject the same at the polls, such power being
5 known as the initiative. Any initiated ordinance may be submitted
6 to the municipal council by a petition signed [(a) in the case of
7 municipalities of 70,000 or less inhabitants, by 25% of the regis-
8 tered voters of the municipality, and (b) in the case of municipali-
9 ties of more than 70,000 inhabitants, by 15% of the registered voters
10 of the municipality; except that in the case of municipalities in
11 counties of the first class having a population in excess of 800,000,
12 any such initiated ordinance may be submitted to the municipal
13 council by a petition signed by voters of the municipality, equal
14 to, or in excess of, in numbers, 15% of the valid votes cast in the
15 municipality at the last preceding election for members of the
16 General Assembly] *by a number of the legal voters of the munici-*
17 *pality equal in number to at least 15% of the total votes cast in the*
18 *municipality at the last election at which members of the General*
19 *Assembly were elected. An initiated ordinance may be submitted*
20 *to the municipal council by **[at least 10% but not more than*
21 *15%]** ****a number**** of the legal voters ****of the municipality***
22 *equal in number to at least 10% but less than 15% of the total votes*

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 amendment adopted March 1, 1982.

**—Assembly amendments adopted May 13, 1982.

***—Senate amendment adopted in accordance with Governor's recommenda-
tions July 22, 1982.

23 *cast in the municipality at the last election at which members of the*
 24 *General Assembly were elected***, subject to the restrictions set
 25 *forth in section 17-43 (C. 40:69A-192) of this act.*

1 2. Section 17-36 of P. L. 1950, c. 210 (C. 40:69A-185) is amended
 2 to read as follows:

3 17-36. The voters shall also have the power of referendum which
 4 is the power to approve or reject at the polls any ordinance sub-
 5 mitted by the council to the voters or any ordinance passed by
 6 the council, against which a referendum petition has been filed as
 7 herein provided. No ordinance passed by the municipal council,
 8 except when otherwise required by general law or permitted by
 9 the provisions of section 17-32 (b) of this act, shall take effect
 10 before 20 days from the time of its final passage and its approval
 11 by the mayor where such approval is required. If within 20 days
 12 after such final passage and approval of such ordinance a petition
 13 protesting against the passage of such ordinance shall be filed
 14 with the municipal clerk and if the petition shall be signed [in the
 15 case of municipalities of 70,000 or less inhabitants by 25% of the
 16 registered voters of the municipality and in the case of municipali-
 17 ties of more than 70,000 inhabitants, by 15% of the registered voters
 18 of the municipality, or in the case of municipalities in counties of
 19 the first class having a population in excess of 800,000, by voters
 20 of the municipality, equal to, or in excess of, in numbers 15% of
 21 the valid votes cast in the municipality at the last preceding election
 22 for members of the General Assembly,] *by a number of the legal*
 23 *voters of the municipality equal in number to at least 15% of the*
 24 *total votes cast in the municipality at the last election at which*
 25 *members of the General Assembly were elected*, the ordinance shall
 26 be suspended from taking effect until proceedings are had as herein
 27 provided.

28 The provisions of this section shall not apply to any ordinance
 29 which by its terms or by law cannot become effective in the mu-
 30 nicipality unless submitted to the voters, or which by its terms
 31 authorizes a referendum in the municipality concerning the subject
 32 matter thereof.

1 3. Section 17-42 of P. L. 1950, c. 210 (C. 40:69A-191) is amended
 2 to read as follows:

3 17-42. If within [60] 20 days of the submission of a certified
 4 petition by the municipal clerk the council shall fail to pass an
 5 ordinance requested by an initiative petition in substantially the
 6 form requested or to repeal an ordinance as requested by a refer-
 7 endum petition, the municipal clerk shall submit the ordinance to
 8 the voters unless, within 10 days after final adverse action by the

9 council or after the expiration of the time allowed for such action,
 10 as the case may be, a paper signed by at least four of the five mem-
 11 bers of the Committee of the Petitioners shall be filed with the
 12 municipal clerk requesting that the petition be withdrawn. Upon
 13 the filing of such a request, the original petition shall cease to have
 14 any force or effect.

1 4. Section 17-43 of P. L. 1950, c. 210 (C. 40:69A-192) is amended
 2 to read as follows:

3 17-43. Any ordinance to be voted on by the voters in accordance
 4 with section 17-36 or section 17-42 of this [article] act
 5 (C. 40:69A-185 or C. 40:69A-191) shall be submitted at the next
 6 general or regular municipal election occurring not less than [60]
 7 40 days after the [date of final action by council or the expiration
 8 of the time allowed for action by council] *final date for withdrawal*
 9 *of the petition as provided for in section 17-42 of this [article, as*
 10 *the case may be] act (C. 40:69A-191), provided that if no such*
 11 *election is to be held within 90 days the council [may in its dis-*
 12 *cretion] shall provide for a special election to be held not less than*
 13 *40 nor more than 60 days from the final date for withdrawal of the*
 14 *petition as provided for in section 17-42 (C. 40:69A-191) of this*
 15 *act.*

16 *In the case of an initiated petition signed by not less than 10%*
 17 *nor more than 15% of the legal voters, the ordinance shall be sub-*
 18 *mitted at the next general or regular municipal election occurring*
 19 *not less than 40 days after the final date for withdrawal of the pe-*
 20 *tition as provided for in section 17-42 (C. 40:69A-191) of this act.*

21 ****In any instance where a referendum election is to be held as a*
 22 *result of an ordinance of the council which by its terms or by law*
 23 *cannot become effective in the municipality unless submitted to the*
 24 *voters, or which by its terms authorizes a referendum in the munici-*
 25 *pality concerning the subject matter thereof, the time for submission*
 26 *of the question to the voters shall be calculated for the purposes of*
 27 *this section and section 17-44 of P. L. 1950, c. 210 (C. 40:69A-193)*
 28 *from the date of final passage and approval of the ordinance.****

1 5. Section 17-44 of P. L. 1950, c. 210 (C. 40:69A-193) is amended
 2 to read as follows:

3 17-44. Any number of proposed ordinances may be voted upon
 4 at the same election in accordance with the provisions of this
 5 article, but there shall not be more than one special election in
 6 any period of 6 months for such purpose.

7 *During that 6 month period, any ordinance which would other-*
 8 *wise be submitted to the voters at a special election if one were*
 9 *not already scheduled, shall be submitted at the scheduled special*

10 election if at least 30 days shall remain prior thereto from the
 11 final date for withdrawal of the petition, otherwise, the ordinance
 12 shall be submitted at the next general election or regular municipal
 13 election, whichever shall first occur.

1 6. Section 17-47 of P. L. 1950, c. 210 (C. 40:69A-196) is amended
 2 to read as follows:

3 17-47. If a majority of the qualified electors voting on the
 4 proposed ordinance shall vote in favor thereof, such ordinance shall
 5 thereupon become a valid and binding ordinance of the municipality
 6 and be published as in the case of other ordinances. *No such*
 7 *ordinance shall be amended or repealed within 3 years immediately*
 8 *following the date of its adoption by the voters, except by a vote*
 9 *of the people. The council may, within 3 years immediately follow-*
 10 *ing the date of adoption of the ordinance, submit a proposition for*
 11 *the repeal or amendment of that ordinance to the voters at any*
 12 *succeeding general election or regular municipal election. If the*
 13 *proposition submitted shall receive a majority of the votes cast*
 14 *at that election, the ordinance shall be repealed or amended*
 15 *accordingly. If the provisions of two or more measures approved*
 16 *or adopted at the same election conflict then the measure receiving*
 17 *the greatest affirmative vote shall control.*

1 7. R. S. 40:70-2 is amended to read as follows:

2 40:70-2. As used in chapters 70 to 76 of this Title (§ 40:70-1
 3 et seq.):

4 "General election" means the annual election [to be] held on the
 5 first Tuesday after the first Monday in November.

6 ["Last general election" means the last preceding annual election
 7 held on the first Tuesday after the first Monday in November.]

8 "Regular municipal election" means the election held pursuant
 9 to R. S. 40:75-2 on the second Tuesday in May in any year in
 10 which such an election is required.

11 "Electors" means such citizens of the municipality as were
 12 registered as voters at the last general election or regular muni-
 13 cipal election, whichever occurred last in the municipality.

14 "Voters" mean such citizens of the municipality as were regis-
 15 tered as voters at the last general election or regular municipal
 16 election, whichever occurred last in the municipality, and also those
 17 citizens who may register in time to vote at the special election.

18 "Municipal clerk" means the officer acting under the provisions
 19 hereof as the clerk of the municipality.

20 "Agent" or "agents" means a person or persons designated in a
 21 petition to file the petition and to act on behalf of the petitioners.

22 "Municipality" means any city, town, township, borough, village

23 or other municipality which has heretofore adopted the provisions
 24 of the act entitled "An act relating to, regulating and providing for
 25 the government of cities, towns, townships, boroughs, villages and
 26 municipalities governed by boards of commissioners or improve-
 27 ment commissioners in this State" (title as amended), approved
 28 April 25, 1911, or which shall hereafter adopt the provisions of
 29 said chapters 70 to 76 of this Title.

30 "Majority of ballots cast" means more than one-half of the total
 31 number of valid ballots cast at such election.

1 8. R. S. 40:74-4 is amended to read as follows:

2 40:74-4. No ordinance, except when otherwise required by the
 3 general laws of the State or the provisions of chapters 70 to 76 of
 4 this Title (40:70-1 et seq.), and except an ordinance for the immedi-
 5 ate preservation of the public, peace, health or safety which con-
 6 tains a statement of its urgency and is passed by a two-thirds vote
 7 of the board of commissioners, shall take effect before **[ten]** 20
 8 days from the time of its final passage.

1 9. R. S. 40:74-5 is amended to read as follows:

2 40:74-5. If within **[10]** 20 days after the final passage of an
 3 ordinance, except ordinances, or any portion thereof, fixing the
 4 salaries, wages or compensation of the employees of the municipi-
 5 pality, as defined in section 3 of the New Jersey Employer-
 6 Employee Relations Act P. L. 1941, c. 100 (C. 34:13A-3), or ordi-
 7 nances authorizing an improvement or the incurring of an
 8 indebtedness, other than for current expenses, where other require-
 9 ments are made by law, or ordinances which by their terms or by
 10 law cannot become effective in the municipality unless submitted
 11 to the voters, or which by its terms authorizes a referendum in
 12 the municipality concerning the subject matter thereof, a petition
 13 signed by electors of the municipality equal in number to at least
 14 15% of the entire vote cast at the last preceding general **[municipal]**
 15 **[election]** *at which members of the General Assembly were*
 16 *elected* protesting against the passage of such ordinance, be pre-
 17 sented to the board, it shall thereupon be suspended from going
 18 into operation and the board of commissioners shall reconsider the
 19 ordinance *within 20 days of the presentation of the petition to the*
 20 *board*. If the ordinance is not entirely repealed, the board shall
 21 submit it, in the manner provided in paragraph b. of **[section]**
 22 *R. S. 40:74-14* and **[sections]** *R. S. 40:74-15 to R. S. 40:74-18* **[of**
 23 *this Title]* to the vote of the electors of the municipality. *The*
 24 *ordinance shall be submitted* either at the *next* general election or
 25 *regular municipal election, whichever shall first occur, not less than*
 26 *40 days from the final date for withdrawal of the petition as pro-*

27 *vided for in this section, except that if no such election is to be held*
 28 *within 90 days of that date, [at] a special municipal election [to]*
 29 *shall be called for that purpose, and [such] be held not less than*
 30 *40 nor more than 60 days from the final date for withdrawal of the*
 31 *petition as provided for in this section. An ordinance so submitted*
 32 *shall not become operative unless a majority of the qualified elec-*
 33 *tors voting on the ordinance shall vote in favor thereof.*

34 *The names and addresses of five voters, designated as the Com-*
 35 *mittee of the Petitioners shall be included in the petition. If within*
 36 *10 days after final adverse action by the board or after the expira-*
 37 *tion of the time allowed for board action, as the case may be, a*
 38 *written request, signed by at least four of the five members of the*
 39 *Committee of the Petitioners, is filed with the municipal clerk re-*
 40 *questing that the petition be withdrawn, the petition shall have*
 41 *no effect.*

1 10. R. S. 40:74-7 is amended to read as follows:

2 40:74-7. Any ordinance or measure, except an ordinance, or
 3 portion thereof, fixing the salaries, wages or compensation of the
 4 employees of the municipality, that the board of commissioners
 5 or the qualified electors of the municipality shall have authority
 6 to enact, the board may of its own motion submit to the electors
 7 for adoption or rejection at a general *election, regular municipal*
 8 *election, or special municipal election in the same manner and with*
 9 *the same effect as is herein provided for ordinances or measures*
 10 *submitted on petition. At any special election called under the pro-*
 11 *visions of chapters 70 to 76 of this Title (§40:70-1 et seq.), there*
 12 *shall be no bar to the submission of other questions to a vote of the*
 13 *electors in addition to the ordinances or measures provided for in*
 14 *this section and [section] R. S. 40:74-5 [of this Title] and R. S.*
 15 *40:74-9 if the other questions are such as may legally be submitted*
 16 *at such election. If the provisions of two or more measures approved*
 17 *or adopted at the same election conflict, then the measure receiving*
 18 *the highest affirmative vote shall control.*

1 11. R. S. 40:74-10 is amended to read as follows:

2 40:74-10. A petition signed by electors equal in number to the
 3 percentage provided by [section] R. S. 40:74-14 [of this Title]
 4 requesting that the proposed ordinance be submitted to the board
 5 of commissioners, or to the vote of the people if not passed by the
 6 board, shall be filed with the municipal clerk. *The names and*
 7 *addresses of five voters, designated as the Committee of the*
 8 *Petitioners, shall be included in the petition.*

1 12. R. S. 40:74-12 is amended to read as follows:

2 40:74-12. Within [ten] 20 days after the filing of the petition,
 3 the municipal clerk shall examine the same and ascertain whether

4 or not is signed by the requisite number of qualified electors as
 5 hereinafter provided, and shall attach his certificate thereto show-
 6 ing the result of such examination. If by the clerk's certificate the
 7 petition is shown to be insufficient he shall forthwith [return the
 8 same to the person filing it] *notify at least two members of the*
 9 *Committee of the Petitioners of his findings.* The petition may be
 10 amended and refiled within 10 days after the receipt thereof from
 11 the clerk.

1 13. R. S. 40:74-13 is amended to read as follows:

2 40:74-13. The clerk shall, within [ten] *five* days after such
 3 refiled, make a similar examination of the amended petition and
 4 if his certificate shall show the same to be insufficient he shall
 5 forthwith return it to the [person filing it] *Committee of the*
 6 *Petitioners*, without prejudice to the filing of a new petition to
 7 the same effect. If the petition or amended petition shall be deemed
 8 to be sufficient the clerk shall submit the same to the board of
 9 commissioners without delay.

1 14. R. S. 40:74-14 is amended to read as follows:

2 40:74-14. If the petition accompanying the proposed ordinance
 3 be signed by electors equal in number to *at least 15%*
 4 *of the votes cast at the last preceding general election at which*
 5 *members of the General Assembly were elected*, and contains a
 6 request that the ordinance be submitted to a vote of the people if
 7 not passed by the board of commissioners, the board shall *within*
 8 *20 days after attachment of the clerk's certificate to the accompany-*
 9 *ing petition* either:

10 a. Pass the ordinance without alteration [within twenty days
 11 after attachment of the clerk's certificate to the accompanying
 12 petition]; or

13 b. Forthwith, [after the clerk shall attach to the petition accom-
 14 panying such ordinance his certificate of sufficiency] *upon the*
 15 *expiration of that 20 day period*, call a special election *to be held*
 16 *not less than 40 nor more than 60 days from the final date for*
 17 *withdrawal of the petition as provided for in this section* unless a
 18 *general election or regular municipal election* is to be held ****[with-**
 19 **in]**** ****not less than 40 days nor more than**** 90 days thereafter,
 20 and at such [special or general municipal] election such ordinance
 21 shall be submitted without alteration to the vote of the electors of
 21A the municipality.

22 If the petition is signed by not less than ten nor more than
 23 15% of the electors, as above defined, then the board of commis-
 24 sioners shall, within 20 days, pass said ordinance without change
 25 or submit the same at the next *general election or regular municipal*

26 election occurring not [more than thirty] less than 40 days after
 27 the clerk's certificate of sufficiency is attached to the petition.

29 *If, within 10 days after final adverse action by the board or after*
 30 *the expiration of the time allowed for board action, as the case may*
 31 *be, a written request, signed by at least four of the five members*
 32 *of the Committee of the Petitioners, is filed with the municipal clerk*
 33 *requesting that the petition be withdrawn, the petition shall have no*
 34 *effect.*

1 15. R. S. 40:74-15 is amended to read as follows:

2 40:74-15. Any number of proposed ordinances *submitted by the*
 3 *board or pursuant to R. S. 40:74-5 or R. S. 40:74-9* may be voted
 4 upon at the same election in accordance with the provisions of this
 5 article, but there shall not be more than one special election in any
 6 period of 6 months for such purpose. *During that 6 month period,*
 7 *any ordinance which would otherwise be submitted to the voters*
 8 *at a special election if one were not already scheduled, shall be*
 9 *submitted at the scheduled special election if at least 30 days shall*
 10 *remain prior thereto from the final date for withdrawal of the*
 11 *petition, otherwise the ordinance shall be submitted at the next*
 12 *general election or regular municipal election, whichever shall first*
 13 *occur.*

1 16. R. S. 40:74-18 is amended to read as follows:

2 40:74-18. If a majority of the qualified electors voting on the
 3 proposed ordinance shall vote in favor thereof, such ordinance
 4 shall thereupon become a valid and binding ordinance of the
 5 municipality. Any ordinance proposed by petition, or which shall
 6 be adopted by a vote of the people, shall not be repealed or amended
 7 *within 3 years of the date of adoption by the voters, except by*
 8 *a vote of the people.*

1 17. R. S. 40:74-19 is amended to read as follows:

2 40:74-19. The board of commissioners may, *within 3 years*
 3 *immediately following the adoption of any ordinance submitted by*
 4 *initiative or referendum and ratified by the voters, submit a*
 5 *proposition for the repeal or amendment of any such ordinance to*
 6 *the voters at any succeeding general election or regular municipal*
 7 *election. If the proposition so submitted shall receive a majority*
 8 *of the votes cast thereon at such election, such ordinance shall*
 9 *thereby be repealed or amended accordingly.*

1 18. This act shall take effect immediately*, *but shall not affect*
 2 *or invalidate any initiative or referendum petition which has been*
 3 *submitted to the municipal clerk for inspection and certification*
 4 *prior to that date, nor affect any action of the municipal governing*
 5 *body to be taken, or any election to be held, pursuant to any petition*
 6 *so submitted*.*

8 at a special election if one were not already scheduled, shall be
 9 submitted at the scheduled special election if at least 30 days shall
 10 remain prior thereto from the final date for withdrawal of the
 11 petition, otherwise the ordinance shall be submitted at the next
 12 general election or regular municipal election, whichever shall first
 13 occur.

1 16. R. S. 40:74-18 is amended to read as follows:

2 40:74-18. If a majority of the qualified electors voting on the
 3 proposed ordinance shall vote in favor thereof, such ordinance
 4 shall thereupon become a valid and binding ordinance of the
 5 municipality. Any ordinance proposed by petition, or which shall
 6 be adopted by a vote of the people, shall not be repealed or amended
 7 within 3 years of the date of adoption by the voters, except by
 8 a vote of the people.

1 17. R. S. 40:74-19 is amended to read as follows:

2 40:74-19. The board of commissioners may, within 3 years
 3 immediately following the adoption of any ordinance submitted by
 4 initiative or referendum and ratified by the voters, submit a
 5 proposition for the repeal or amendment of any such ordinance to
 6 the voters at any succeeding general election or regular municipal
 7 election. If the proposition so submitted shall receive a majority
 8 of the votes cast thereon at such election, such ordinance shall
 9 thereby be repealed or amended accordingly.

1 18. This act shall take effect immediately.

STATEMENT

This bill clarifies and makes uniform the initiative and referendum procedures of municipalities operating under the "Walsh Act" (commission form of government) and the "Faulkner Act" (Optional Municipal Charter Law). Current procedural requirements for initiative and referendum petitions in these municipalities are, in many instances, vague and inconsistent and, as a result, cause confusion in their application.

The bill standardizes a time span of 20 days for ordinances adopted by the governing body to take effect. A 20 day limit for the governing body to act on a petition initiating or protesting an ordinance is also standardized between the two acts. Sections 3 and 8 of the bill bring the Walsh Act into conformity with the Faulkner Act by incorporating provisions for withdrawal of a petition by the petitioners within 10 days of the governing body's action on the matter. Section 1 amends the Walsh Act by adopting the definition for "regular municipal election" used in the Faulkner Act. This conformity is necessary in order to clarify that the

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present definition, "general municipal election", refers to the May election.

The bill also clarifies the ability of Walsh Act municipalities to use either the general election or the regular municipal election to submit either initiative or referendum matters to the voters. Under this bill, the municipality would, in either case, use whichever of the elections occurs next in the municipality. Amendments to the Faulkner Act which establish standards of 10-15% of voters signatures as prerequisites for the filing of a petition promote uniformity in initiative petitions among municipalities governed under that act and further bring the act into conformity with the Walsh Act.

Both acts are amended to include time frames of 40-60 days for the scheduling of a special election following action on a petition as well as a time lapse of 30 days for the submission of a petition prior to a scheduled special election. Finally, both acts are amended to establish a uniform 3 year time limit within which a governing body may, solely by submission to the voters, amend or repeal an ordinance adopted by initiative and referendum.

SENATE COUNTY AND MUNICIPAL GOVERNMENT
COMMITTEE

STATEMENT TO

SENATE, No. 763

with Senate committee amendments

STATE OF NEW JERSEY

DATED: MARCH 1, 1982

Senate Bill No. 763 clarifies and makes uniform the initiative and referendum procedures of municipalities operating under the "Walsh Act" (commission form of government) and the "Faulkner Act" (Optional Municipal Charter Law). In its January, 1979 report, *Forms of Municipal Government in New Jersey*, the County and Municipal Government Study Commission recommended a uniform local initiative and referendum law to be available to all municipalities in the State which choose to adopt it. This bill begins that process by making uniform the procedures of those municipalities already operating under a form of government requiring initiative and referendum. The initiative and referendum provisions of the "Walsh Act," which date from 1911, are rather vague, often confusing, and use archaic terms. Those of the "Faulkner Act," written in 1950, while more complete and modern, lack certain of the stronger provisions of the "Walsh Act."

Specifically, the bill would:

1. Provide for a standard 20 day period during which an ordinance could not take effect, in order to allow for a protest petition to be filed requiring a referendum. The "Faulkner Act" now provides for 20 days; the "Walsh Act" for 10 days.
2. Provide for a standard 20 day period for the governing body to act in response to an initiative or referendum petition. The "Faulkner Act" now provides for 60 days; the "Walsh Act" provides no deadline for governing body action on a referendum petition and for 20 days on an initiative petition;
3. Provide in the "Walsh Act" the procedures for a committee of petitioners and for the option of withdrawal of the petition by that committee, which are currently provided in the "Faulkner Act."
4. Clarify the terminology of the "Walsh Act" respecting general elections (November elections) and regular municipal elections (May elections). The current term, "general municipal election," is confusing and inappropriate.
5. Permit "Walsh Act" municipalities, like "Faulkner Act" municipi-

palties, to use either the general election or the regular municipal election to submit either initiative or referendum matters to the public. Under the bill a municipality would use whichever of these elections occurs next in the municipality.

6. Establish standard time deadlines for when to use a special election to submit an initiative or referendum matter to the voters, and when to use a general election or regular municipal election.

7. Standardize the number of signatures on a petition required to submit an initiative or referendum question to the voters. The bill requires a number of legal voters equal to at least 15% of the total votes cast in the municipality at the last election at which members of the General Assembly were elected—for any referendum petition and for any initiative petition where a special election is to be called. The bill requires 10% for an initiative petition to go on the general election or regular municipal election ballot. These are the requirements currently in effect for "Walsh Act" municipalities. The requirements for "Faulkner Act" municipalities are dependent on population of the municipality and of the county in which it is located:

a. Signatures of 25% of the registered voters in municipalities of 70,000 or less;

b. Signatures of 15% of the registered voters in municipalities of over 70,000;

c. Signatures of a number of voters equal to at least 15% of the votes cast in the municipality at the last election for the General Assembly, in municipalities located in counties of the first class having a population of over 800,000 (Essex and Bergen).

8. Establish a uniform 3 year period during which an ordinance adopted by initiative or referendum must be submitted to the voters for amendment or repeal. The "Faulkner Act" has no such requirement currently. The "Walsh Act" requires all ordinances adopted by initiative or referendum to be submitted to the voters for amendment or repeal, without any time limitation.

The Senate committee amendments change the effective date of the act to assure that the bill does not inadvertently affect or invalidate any initiative or referendum petitions already in the process of certification, or any elections to be held as a result of previously submitted petitions.

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ASSEMBLY MUNICIPAL GOVERNMENT COMMITTEE

STATEMENT TO

SENATE, No. 763

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STATE OF NEW JERSEY

DATED: MAY 3, 1982

The Senate County and Municipal Government Committee statement attached hereto expresses the Assembly Municipal Government Committee's understanding of the purposes and intent of Senate Bill No. 763 OCR.

Senate Bill No. 763 clarifies and makes uniform the initiative and referendum procedures of municipalities operating under the "Walsh Act" (commission form of government) and the "Faulkner Act" (Optional Municipal Charter Law). In its January, 1979 report, *Forms of Municipal Government in New Jersey*, the County and Municipal Government Study Commission recommended a uniform local initiative and referendum law to be available to all municipalities in the State which choose to adopt it. This bill begins that process by making uniform the procedures of those municipalities already operating under a form of government requiring initiative and referendum. The initiative and referendum provisions of the "Walsh Act," which date from 1911, are rather vague, often confusing, and use archaic terms. Those of the "Faulkner Act," written in 1950, while more complete and modern, lack certain of the stronger provisions of the "Walsh Act."

Specifically, the bill would:

1. Provide for a standard 20-day period during which an ordinance could not take effect, in order to allow for a protest petition to be filed requiring a referendum. The "Faulkner Act" now provides for 20 days; the "Walsh Act" for 10 days.
2. Provide for a standard 20-day period for the governing body to act in response to an initiative or referendum petition. The "Faulkner Act" now provides for 60 days; the "Walsh Act" provides no deadline for governing body action on a referendum petition and for 20 days on an initiative petition.
3. Provide in the "Walsh Act" the procedures for a committee of petitioners and for the option of withdrawal of the petition by that committee, which are currently provided in the "Faulkner Act."

4. Clarify the terminology of the "Walsh Act" respecting general elections (November elections) and regular municipal elections (May elections). The current term, "general municipal election," is confusing and inappropriate.

5. Permit "Walsh Act" municipalities, like "Faulkner Act" municipalities, to use either the general election or the regular municipal election to submit either initiative or referendum matters to the public. Under the bill a municipality would use whichever of these elections occurs next in the municipality.

6. Establish standard time deadlines for when to use a special election to submit an initiative or referendum matter to the voters, and when to use a general election or regular municipal election.

7. Standardize the number of signatures on a petition required to submit an initiative or referendum question to the voters. The bill requires a number of legal voters equal to at least 15% of the total votes cast in the municipality at the last election at which members of the General Assembly were elected—for any referendum petition and for any initiative petition where a special election is to be called. The bill requires 10% for an initiative petition to go on the general election or regular municipal election ballot. These are the requirements currently in effect for "Walsh Act" municipalities. The requirements for "Faulkner Act" municipalities are dependent on population of the municipality and of the county in which it is located:

a. Signatures of 25% of the registered voters in municipalities of 70,000 or less;

b. Signatures of 15% of the registered voters in municipalities of over 70,000;

c. Signatures of a number of voters equal to at least 15% of the votes cast in the municipality at the last election for the General Assembly, in municipalities located in counties of the first class having a population of over 800,000 (Essex and Bergen).

8. Establish a uniform 3 year period during which an ordinance adopted by initiative or referendum must be submitted to the voters for amendment or repeal. The "Faulkner Act" has no such requirement currently. The "Walsh Act" requires all ordinances adopted by initiative or referendum to be submitted to the voters for amendment or repeal, without any time limitation.

The Senate committee amendments change the effective date of the act to assure that the bill does not inadvertently affect or invalidate any initiative or referendum petitions already in the process of certification, or any elections to be held as a result of previously submitted petitions.

EXECUTIVE DEPARTMENT
SENATE BILL NO. 763 (2nd OCR)

July 22, 1982

To the Senate:

Pursuant to Article V, Section 1, Paragraph 14 of the Constitution, I herewith return Senate Bill No. 763 (2nd OCR) with my objections for reconsideration.

This bill amends the initiative and referendum provisions of the Optional Municipal Charter Law ("Faulkner Act") and the commission form of government (the "Walsh Act") in order to provide a greater uniformity and efficiency in these procedures. While I have no problem with any of the substantive amendments made to the law by the bill, one technical problem has been called to my attention which I recommend be corrected.

In section 4 of the bill dealing with the timetables for submitting questions to the voters in Faulkner Act municipalities the time periods are computed from "the final date for withdrawal of the petition." This language is not relevant in instances where an ordinance adopted by the governing body requires an issue to be submitted to the voters. See section 17 of P.L. 1981, c. 379 and section 7 of P.L. 1981, c. 465. For this reason, I suggest that the bill be amended to provide that where the proposition is initiated by ordinance rather than by petition that the time periods be calculated from the date of final passage and approval of the ordinance.

Accordingly, I recommend the following amendment for concurrence by the Legislature:

Page 3, Section 4, line 20: After line 20, insert new paragraph as follows:

"In any instance where a referendum election is to be held as a result of an ordinance of the council which by its terms or by law cannot become effective in the municipality unless submitted to the voters, or which by its terms authorizes a referendum in the municipality concerning the subject matter thereof, the time for submission of the question to the voters shall be calculated for the purposes of this section and section 17-44 of this act (C.40:69A-193) from the date of final passage and approval of the ordinance."

Respectfully,

/s/ Thomas H. Kean

GOVERNOR

[seal]

Attest:

/s/ W. Cory Edwards



State of New Jersey

**COUNTY & MUNICIPAL GOVERNMENT
STUDY COMMISSION**

**FORMS OF MUNICIPAL
GOVERNMENT IN NEW JERSEY**

PREPARED FOR THE COMMISSION BY
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Seventeenth Report

January, 1979

large), N.J.S.A. 40:125-4 (specifying a two year term for the mayor), and N.J.S.A. 40:125-5 (specifying a two year term for councilmen). Additional procedural provisions for the petition and referendum and staggered terms would be required. In the township law, N.J.S.A. 40:144-1 (authorizing the establishment of wards), N.J.S.A. 40:144-11 (provides for 2 year terms for councilmen representing wards) would have to be amended.

- 9) It is recommended that the Municipal Manager Form of government be amended to permit the voters of a municipality, through a petition and referendum process, to choose to elect their governing body members for staggered terms of office. This could be realized by amending N.J.S.A. 40:81-4 providing for the term of office of members of the council) and supplementing chapter 81 with the necessary procedural requirements. See also N.J.S.A. 40:84-9 (providing for three year terms in certain cases).
- 10) It is recommended that all existing statutory salary limitations for governing body members be eliminated. This would require the repeal of various provisions in Title 40 and the adoption of suitable statutory language concerning salaries.
- 11) It is recommended that the City Form of government laws be amended to provide for at least a three-year term of office for the mayor, through a petition and referendum process. This could be realized by an amendment to the various city form statutes.
- 12) It is recommended that the Town and Township Form (with wards) of government laws be amended to permit a change, through a petition and referendum process, to the election of mayor, for or at least a three-year term of office. The Town law, N.J.S.A. 40:125-1 et seq., makes various references to the councilman-at-large designated as the mayor. N.J.S.A.40:125-4 providing for two year terms and other provisions in chapter 125 would have to be amended to implement this recommendation. The township form (with wards), N.J.S.A. 40:144-11, provides for the at-large election of one member of the township committee, who is designated as the chairman of the township committee, and in townships having a population of more than 10,000, who is known as the mayor. This section and other provisions in chapter 144 would have to be amended and supplemented to realize the objective.
- 13) It is recommended that the City, Town, Borough, and Township Form of government laws be amended to provide for appointment of all administrative officials now elected, with appropriate requirements to insure that professional qualifications are stressed. This could be realized by amendment to the pertinent sections to Titles 40 and 40A.
- 14) It is recommended that a uniform non-partisan election statute be enacted and made available on an optional basis, through a petition and referendum procedure, to every municipality in the state.
- 15) It is recommended that the uniform non-partisan election statute suggested earlier include run-off elections as an optional feature.
- 16) It is recommended that uniform initiative, referendum, and recall legislation be enacted on an optional basis, to be adopted by the voters of any municipality through a petition and referendum process.
- 17) It is recommended that the uniform initiative, referendum and recall legislation provide for filing petitions with the county board of elections or the county superintendent of

Direct Powers of the Voters

Part of the reform movement of the early 20th century was an effort to enable the voters of a community to play a direct role in their local government:

by proposing ordinances and enacting them by a referendum vote if the governing body declines to act (power of "initiative");

by vetoing the implementation of ordinances enacted by the governing body (power of "referendum"); and

by removing members of the governing body from office prior to the end of the term for which they were elected if they have not performed to the satisfaction of the voters (power of "recall").

All three of these general powers were written into the Commission Form of Government Law (1911) and the Optional Municipal Charter Law (1950). The Municipal Manager Form of Government Law (1923) provides for recall, but not for initiative or referendum. No other forms of government currently authorize initiative, referendum or recall as general local powers. However, there are a variety of statutes which permit action by the voters through a petition and referendum process in specialized cases.¹

Power of Initiative

About one-fourth of the municipalities in New Jersey have forms of government including the power of initiative (See Table III-53). Municipal respondents to the survey from municipalities where the power of initiative exists are generally very supportive of it, as shown in Table III-54. Only the municipal clerks show some coolness although, even here, the degree of support is higher than the Median Degree of Agreement on All Statements. Except for the clerks, there was less support among the respondents from those places not having the power of initiative for their own system.

The Power of Referendum

The power of referendum appears to be available in the same municipalities as the power of initiative (See Table III-55). This is not quite so, since the three special charter communities shown in Tables III-53 and III-55 are not the identical places.

The reaction to a question on the power of Referendum is more unanimous than for the power of Initiative (See Table III-56). Every group of municipal respondents from places having this power authorized for the voters give it a substantial measure of support. Where the power is not available, the respondents still support their own pattern, but to a lesser degree.

¹ See, for example: N.J.S.A. 40:49-27 regarding referendum on incurring of indebtedness; 40:12-10 regarding establishment of a recreation system; 40:60-46 regarding leasing of a municipal casino or bathing establishment; 40:178-18 regarding construction of streets along streams.

Table III-53 Availability of the Power of Initiative in New Jersey Municipalities, as of January 1, 1978.

Form of Government	Voters Have the Power of Initiative	Voters Do Not Have the Power of Initiative	Total Number of Municipalities
City Form	—	17	17
Town Form	—	9	9
Borough Form	—	222	222
Township Form	—	174	174
Village Form	—	1	1
Commission Form	42	—	42
Municipal Manager Form (1923)	—	8	8
Mayor-Council Form (OMCL)	46	—	46
Council Manager Form (OMCL)	30	—	30
Small Municipality Form (OMCL)	10	—	10
Special Charters	3	5	8
Total	131	436	567

Table III-54 Percentage of Municipal Officials Having Experience With and Without the Power of INITIATIVE, Who Regard That Power as "Desirable" or "Not Desirable".

Statements	Mayors	Members of Governing Bodies	CAAO's and Clerk-CAAO's	Municipal Clerks	All* Respondents
It is <u>desirable</u> for the voters of the municipality to have the power of Initiative.	<u>86.8%</u>	<u>90.5%</u>	<u>87.2%</u>	83.6%	<u>87.2%</u>
It is <u>not</u> desirable for the voters of the municipality to have the power of Initiative.	81.6	70.7	77.1	<u>84.7</u>	78.9
Median Degree of Agreement on All Statements	81.6	78.5	78.6	82.8	78.4

* Including unidentified respondents

Table III-55 Availability of the Power of Referendum in New Jersey Municipalities, as of January 1, 1978.

Form of Government	Voters Have the Power of Referendum	Voters Do Not Have the Power of Referendum	Total Number of Municipalities
City Form	—	17	17
Town Form	—	9	9
Borough Form	—	222	222
Township Form	—	174	174
Village Form	—	1	1
Commission Form	42	—	42
Municipal Manager Form (1923)	—	8	8
Mayor-Council Form (OMCL)	46	—	46
Council-Manager Form (OMCL)	30	—	30
Small Municipality Form (OMCL)	10	—	10
Special Charters	3	5	8
Total	131	436	567

Table III-56 Percentage of Municipal Officials Having Experience With and Without the Power of REFERENDUM, Who Regard That Power as "Desirable" or "Not Desirable".

Statements	Mayors	Members of Governing Bodies	CAAO's and Clerk-CAAO's	Municipal Clerks	All* Respondents
It is <u>is</u> desirable for the voters of the municipality to have the power of REFERENDUM.	<u>81.9%</u>	<u>84.9%</u>	<u>88.5%</u>	<u>83.6%</u>	<u>86.4%</u>
It is <u>not</u> desirable for the voters of the municipality to have the power of REFERENDUM.	85.7	68.3	80.5	78.2	77.7
Median Degree of Agreement on All Statements	81.6	78.5	78.6	82.8	78.4

*Including unidentified respondents

Table III-57 Availability of the Power of Recall in New Jersey Municipalities, as of January 1, 1978.

Form of Government	Voters Have the Power of Recall	Voters Do Not Have the Power of Recall	Total Number of Municipalities
City Form	—	17	17
Town Form	—	9	9
Borough Form	—	222	222
Township Form	—	174	174
Village Form	—	1	1
Commission Form	42	—	42
Municipal Manager Form (1923)	8	—	8
Mayor-Council Form (OMCL)	46	—	46
Council-Manager Form (OMCL)	30	—	30
Small Municipality Form (OMCL)	10	—	10
Special Charters	3	5	8
Total	139	428	567

Table III-58 Percentage of Municipal Officials Having Experience With and Without the Power of RECALL, Who Regard That Power as "Desirable" or "Not Desirable".

Statements	Mayors	Members of Governing Bodies	CAAO's and Clerk-CAAO's	Municipal Clerks	All* Respondents
It is <u>desirable</u> for the voters of the municipality to have the power of RECALL	<u>89.9%</u>	<u>87.3%</u>	<u>84.9%</u>	<u>77.5%</u>	<u>84.6%</u>
It is <u>not</u> desirable for the voters of the municipality to have the power of RECALL	64.5	58.5	76.3	75.0	68.6
Median Degree of Agreement on All Statements	81.6	78.5	78.6	82.8	78.4

*Including unidentified respondents

The Power of Recall

Recall is available to the voters in a few more places than Initiative and Referendum (See Table III-57). The third of the direct powers of voters -- the power of recall -- also gains general support from those municipal officials having experience with it, while the persons in other communities give relatively lukewarm support to their own plan, which lacks the power of recall (See Table III-58).

The powers of initiative, referendum, and recall, which are now available to voters only in communities that have adopted one of the 20th century optional charter forms of government or a special charter, have received substantial endorsement in the municipal officials survey. Bills have been introduced in the present legislative session which would extend these powers to all communities.¹ No detailed analysis of these proposals has been made here; however, the availability of such powers to all communities appears desirable. The major questionable feature of many of the recent bills is that the proposed legislation would impose these powers on all municipalities by State mandate. In order to remove this criticism, it is **recommended that uniform initiative, referendum, and recall legislation be enacted on an optional basis, to be adopted by the voters of any municipality through a petition and referendum process.**

Although extension of the powers of initiative, referendum, and recall is recommended, there are some problems with existing procedures which do not appear to be addressed by the proposed legislation. One problem, which has led to frequent and extensive litigation, is the requirement that the process be initiated by accumulating signatures on a petition which is then submitted to the local municipal clerk for validation of the signatures as those of registered voters within the municipality. An initiative, referendum, or recall petition, by its very nature, represents a conflict between a group of citizens and the municipal governing body. While not intended as a criticism of any municipal clerk, it must be pointed out that his responsibility in some communities may constitute an inordinate burden on a local official who frequently must depend upon the municipal governing body for reappointment, and always depends upon that body for budgetary support. Furthermore, the clerk generally must rely for legal advice upon the municipal attorney, who holds one of the most important appointments made by the mayor or governing body of the municipality. Validation of petition signatures is a task which may occur only occasionally in a given municipality, thus providing little chance for the clerk or the attorney to develop a high level of expertise in the subject.

Some alternative to local validation of signatures is desirable. No substitute for the voter's signature appears readily available. It would be possible, however, to transfer the responsibility for certifying the validity of the signatures to some agency having a less immediate interest in the outcome. An obvious place to assign the task is the county board of elections or the county superintendent of elections, who maintain the basic voting records against which the signatures must be checked.²

¹ A uniform recall bill, A1482, is pending in committee; a uniform initiative and referendum proposal, A362, has passed the Assembly and received second reading in the Senate.

² In some cases, the task already is being "subcontracted" by the municipality to the county superintendent of elections; see *D'Ascensio v. Benjamin*, 137 N. J. Super. 155 (Ch. Div. 1975), *aff'd* 142 N. J. Super. 52 (App. Div. 1976), *certif. den.* 71 N. J. 526 (1976).

This would remove the responsibility from the municipality concerned; moreover, in most cases, it would assign the duty to a bi-partisan agency which, through the frequency of petitions from a larger number of municipalities, might be in a better position to develop personnel with the particular skills required.

If such a transfer were made, the county board of elections or the superintendent of elections should be reimbursed by the municipality for the costs incurred. Data included in a recent judicial decision involving validation of signatures on an initiative petition in Essex County, can provide some guideline to the work units and costs involved.¹ In this instance, the signatures were checked in a so-called Phase I at a rate of about 19 per hour, with labor costs set at \$9.00 per hour, for a cost of \$.475 per signature. In this Phase, the signatures on the petition were identified with election districts according to the addresses attached, and were checked against signatures in the election binder book to determine if they matched. A Phase II was included, in which those signatures which did **not** match any signature in the election binder book were checked against other records, such as active and inactive alphabetical voter card files and lists of address transfers, marriages, and changes of name. In this case, Phase II was necessary because the signatures had been gathered over an 18-month period. The work pace for Phase II averaged 6.3 signatures checked per hour which, at \$9.00 per hour, came to \$1.43 per signature. These unit costs, if substantiated from other parts of the state, could serve as a basis for a formula by which a municipality could repay the county agency for its services. It is recommended that the uniform initiative, referendum, and recall legislation provide for filing petitions with the county board of elections or the county superintendent of elections, for certification of validity by that board or officer, and for reimbursement of the county by the municipality according to a uniform unit cost per signature.

All three types of direct voter participation -- initiative, referendum, and recall - suffer from the problem that they frequently are started by groups of citizens having little experience in government and inadequate legal advice. Too often, the attempt to prepare petitions results in technical errors which may invalidate the work after an extensive effort to gather signatures. If the citizens have the right to petition for some action, they should have the right to some assistance in eliminating technical errors. One way in which this might be done is to have government, itself, provide standard, approved petition forms on which signatures may be gathered. It is recommended that legislation require the Secretary of State to develop and promulgate standard initiative, referendum, and recall petition forms, and require the municipal clerk in all municipalities having adopted these powers to make copies of the forms available to any citizen upon request.

A third problem involving initiative and recall petitions concerns the time period during which signatures may be gathered. Currently, there is no limit to this time period, and courts have accepted initiative petitions gathered over as much as an 18-month period. Since opinions change over time, it would appear that there should be some limitation to the period during which a voter's signature may be carried on a petition. Moreover, as has been described above, permitting a long time period makes the checking of signatures a costly and involved task. A 90-day period for gathering signatures appears reasonable. It is recommended that the standard initiative and recall petitions include provisions for the municipal clerk, when issuing them, to insert a deadline date, 120 days in the future, by which they must be filed or become invalid.

¹ Ibid.