

40A:9-1.11 to 40A:9-1.14

LEGISLATIVE HISTORY CHECKLIST

40A:9-1.11 to 40A:9-1.14; 40:72-1; (Municipalities--Elective offices--
WSA 40:75-4; Repeals 40:125-36 & 40:69A-167.1 uniform residency requirement)

LAWS OF 1980 CHAPTER 94

Bill No. S1282

Sponsor(s) Perskie

Date Introduced May 15, 1980

Committee: Assembly Municipal Government

Senate County & Municipal Government

Amended during passage Yes Amendments during passage denoted by asterisks

Date of Passage: Assembly July 28, 1980

Senate June 12, 1980

Date of approval August 28, 1980

Following statements are attached if available:

Sponsor statement Yes

Committee Statement: Assembly Yes

Senate Yes

Fiscal Note No

Veto message No

Message on signing No

Following were printed:

Reports No

Hearings No

Cited in committee statements:

Matthews vs. City of Atlantic City, 84 N.J. 153 (July 30, 1980).

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CHAPTER 94 LAWS OF N. J. 1980
APPROVED 8-28-80

[OFFICIAL COPY REPRINT]

SENATE, No. 1282

STATE OF NEW JERSEY

INTRODUCED MAY 15, 1980

By Senator PERSKIE

Referred to Committee on County and Municipal Government

AN ACT concerning residency requirements for local elective office, amending R. S. 40:72-1, R. S. 40:75-4 and R. S. 40:81-1, and repealing R. S. 40:125-36 and P. L. 1960, c. 84.

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

1 1. As used in this act:

2 a. "Candidate" means any person who shall file, or cause to have
3 filed, a petition of nomination for election, or for election, to any
4 local elective office***[**, or who shall accept appointment to any local
5 elective office**]**;

6 b. "Local elective office" means any office of a local unit regu-
7 larly filled at an election by the voters, but does not mean any
8 office established by the State Constitution;

9 c. "Local unit" means a county or municipality, and, whenever
10 an office is required to be filled by election from a district, ward or
11 other subdivision means the district, ward or subdivision to which
12 the office pertains;

13 d. "Resident" means a person having, within the territorial
14 limits of the local unit, a place of abode, which has not been adopted
15 for any mere special or temporary purpose, but is his ordinary
16 and permanent domicile.

1 2. No person shall be a candidate for, nor hold, any local elective
2 office unless he is a resident of the local unit to which the office
3 pertains. If any person nominated for, or holding, any local elective
4 office shall cease to be a resident of the local unit to which the
5 office pertains, the nomination or office, as the case may be, shall
6 be vacant, and shall be filled in the manner prescribed by law.

1 3. Except as provided in section 9 of this act, no person shall,
2 on or after the effective date of this act, be eligible to become a

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 candidate for any local elective office ***[**unless he has been a resident
4 of the local unit to which the office pertains for at least 60 days
5 prior to becoming a candidate**]** * *, *or to be appointed to any local*
6 *elective office, unless he is registered to vote in the local unit to*
7 *which the office pertains, and has been a resident of that local unit*
8 *for at least 1 year prior to the date upon which the election for the*
9 *office is to be held, or prior to the date upon which the appointment*
10 *is made, as the case may be*.*

1 4. R. S. 40:72-1 is amended to read as follows :

2 40:72-1. The commission shall consist of three members in municipi-
3 palities having less than twelve thousand inhabitants; and of five
4 members in municipalities having twelve thousand inhabitants or
5 more, subject to the provisions of sections 40:72-1.1 to 40:72-1.3
6 of this Title.

7 **[**Each member shall have been a citizen and resident of the
8 municipality for at least 2 years immediately preceding his
9 election.**]**

1 5. R. S. 40:75-4 is amended to read as follows :

2 40:75-4. The petition of nomination shall read substantially as
3 follows :

“PETITION OF NOMINATION.

4 Each of the undersigned, a qualified elector of
5 residing at the residence stated opposite his name below, certifies
6 that he does hereby join in a petition for the nomination of
7, whose residence is at, for the
8 office of commissioner, to be voted for at the municipal election to
9 be held in such municipality on the day of, 19....,
10 and he further certifies that he knows this **[**candidate**]** *person* to
11 be **[**a**]** *legally* qualified **[**elector of the municipality**]** *to be a candi-*
12 *date for this office* and a person of good moral character, and
13 qualified in his judgment for the duties of such office, and he further
14 certifies that he has not signed more petitions or certificates of
15 nomination than there are places to be filled in the above office.

	<i>Signature</i>	<i>Residence</i>
16 (Signed)
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26 Each of the undersigned, being duly sworn, deposes and says
27 that he is the person who signed the foregoing certificate; that the
28 statements contained therein are true and correct.

29 (Signed)
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39 Subscribed and sworn to before me
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41 The municipal clerk shall furnish upon application a reasonable
42 number of forms of individual certificates of the above character.

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

2 40:81-1. The municipal council shall consist of three members
3 in municipalities having less than 25,000 inhabitants, save in those
4 cases in which prior to the adoption of the municipal manager form
5 of government the municipal council shall have consisted of five
6 or more members, in which event the municipal council provided
7 for herein shall consist of five members; of five members in munici-
8 palities having more than 25,000 and less than 40,000 inhabitants;
9 of seven members in municipalities having more than 40,000 and
10 less than 100,000 inhabitants; and of nine members in municipali-
11 ties having 100,000 or more inhabitants. The number of councilmen
12 shall not be changed by reason of an increase or decrease of
13 population until the regular election for councilmen next following
14 the promulgation of the last legally ascertained enumeration of
15 the people, whether by Federal or State authority.

16 [Each member shall have been a citizen and a resident of such
17 municipality for at least 2 years immediately preceding his elec-
18 tion; except that in any municipality having a population of less
19 than 1,000, each such member shall have been a citizen and resident
20 of such municipality for at least 90 days immediately preceding
21 his election.]

1 7. R. S. 40:125-36 and P. L. 1960, c. 84 (C. 40:69A-167.1) are
2 repealed.

1 8. Nothing contained in this act shall affect or invalidate the
2 candidacy of any person who has filed a petition of nomination for

3 election, or for election, to any local elective office prior to the
4 effective date of this act.

1 9. Nothing contained in section 3 of this act shall affect the provi-
2 sions of any special municipal charter heretofore provided by the
3 Legislature and adopted by the voters pursuant to Article IV,
4 Section VII, paragraph 10 of the Constitution.

1 10. This act shall take effect January 1, 1981.

SENATE, No. 1282

STATE OF NEW JERSEY

INTRODUCED MAY 15, 1980

By Senator PERSKIE

Referred to Committee on County and Municipal Government

AN ACT concerning residency requirements for local elective office, amending R. S. 40:72-1, R. S. 40:75-4 and R. S. 40:81-1, and repealing R. S. 40:125-36 and P. L. 1960, c. 84.

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

1 1. As used in this act:

2 a. "Candidate" means any person who shall file, or cause to have
3 filed, a petition of nomination for election, or for election, to any
4 local elective office, or who shall accept appointment to any local
5 elective office;

6 b. "Local elective office" means any office of a local unit regu-
7 larly filled at an election by the voters, but does not mean any
8 office established by the State Constitution;

9 c. "Local unit" means a county or municipality, and, whenever
10 an office is required to be filled by election from a district, ward or
11 other subdivision means the district, ward or subdivision to which
12 the office pertains;

13 d. "Resident" means a person having, within the territorial
14 limits of the local unit, a place of abode, which has not been adopted
15 for any mere special or temporary purpose, but is his ordinary
16 and permanent domicile.

1 2. No person shall be a candidate for, nor hold, any local elective
2 office unless he is a resident of the local unit to which the office
3 pertains. If any person nominated for, or holding, any local elective
4 office shall cease to be a resident of the local unit to which the
5 office pertains, the nomination or office, as the case may be, shall
6 be vacant, and shall be filled in the manner prescribed by law.

1 3. Except as provided in section 9 of this act, no person shall,
2 on or after the effective date of this act, be eligible to become a
3 candidate for any local elective office unless he has been a resident

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

4 of the local unit to which the office pertains for at least 60 days
5 prior to becoming a candidate.

1 4. R. S. 40:72-1 is amended to read as follows:

2 40:72-1. The commission shall consist of three members in municipi-
3 palities having less than twelve thousand inhabitants; and of five
4 members in municipalities having twelve thousand inhabitants or
5 more, subject to the provisions of sections 40:72-1.1 to 40:72-1.3
6 of this Title.

7 [Each member shall have been a citizen and resident of the
8 municipality for at least 2 years immediately preceding his
9 election.]

1 5. R. S. 40:75-4 is amended to read as follows:

2 40:75-4. The petition of nomination shall read substantially as
3 follows:

“PETITION OF NOMINATION.

4 Each of the undersigned, a qualified elector of
5 residing at the residence stated opposite his name below, certifies
6 that he does hereby join in a petition for the nomination of
7, whose residence is at, for the
8 office of commissioner, to be voted for at the municipal election to
9 be held in such municipality on the day of, 19....,
10 and he further certifies that he knows this [candidate] person to
11 be [a] legally qualified [elector of the municipality] to be a candi-
12 date for this office and a person of good moral character, and
13 qualified in his judgment for the duties of such office, and he further
14 certifies that he has not signed more petitions or certificates of
15 nomination than there are places to be filled in the above office.

	<i>Signature</i>	<i>Residence</i>
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26 Each of the undersigned, being duly sworn, deposes and says
27 that he is the person who signed the foregoing certificate; that the
28 statements contained therein are true and correct.

29 (Signed)

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39 Subscribed and sworn to before me

40"

41 The municipal clerk shall furnish upon application a reasonable

42 number of forms of individual certificates of the above character.

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

2 40:81-1. The municipal council shall consist of three members

3 in municipalities having less than 25,000 inhabitants, save in those

4 cases in which prior to the adoption of the municipal manager form

5 of government the municipal council shall have consisted of five

6 or more members, in which event the municipal council provided

7 for herein shall consist of five members; of five members in munici-

8 palities having more than 25,000 and less than 40,000 inhabitants;

9 of seven members in municipalities having more than 40,000 and

10 less than 100,000 inhabitants; and of nine members in municipali-

11 ties having 100,000 or more inhabitants. The number of councilmen

12 shall not be changed by reason of an increase or decrease of

13 population until the regular election for councilmen next following

14 the promulgation of the last legally ascertained enumeration of

15 the people, whether by Federal or State authority.

16 **Each member shall have been a citizen and a resident of such**

17 **municipality for at least 2 years immediately preceding his elec-**

18 **tion; except that in any municipality having a population of less**

19 **than 1,000, each such member shall have been a citizen and resident**

20 **of such municipality for at least 90 days immediately preceding**

21 **his election.]**

1 7. R. S. 40:125-36 and P. L. 1960, c. 84 (C. 40:69A-167.1) are

2 repealed.

1 8. Nothing contained in this act shall affect or invalidate the

2 candidacy of any person who has filed a petition of nomination for

3 election, or for election, to any local elective office prior to the

4 effective date of this act.

1 9. Nothing contained in section 3 of this act shall affect the provi-
2 sions of any special municipal charter heretofore provided by the
3 Legislature and adopted by the voters pursuant to Article IV,
4 Section VII, paragraph 10 of the Constitution.

1 10. This act shall take effect January 1, 1981.

STATEMENT

This bill would establish a uniform residency requirement for candidates for, and holders of, local elective offices. The bill would require residency of candidates for, and holders of, all local elective offices, except those established by the State Constitution, which are provided for elsewhere. The bill would require that any person who becomes a candidate for local elective office on or after January 1, 1981, shall have been a resident for at least 60 days prior to filing for candidacy. The bill would impose this 60 day residency requirements with respect to persons who accept appointment to any local elective office.

Current residency requirements range from as long as 2 years in a few municipalities, to as little as the 30 day requirement to be a legal voter in most municipalities. The bill amends or repeals those sections of law which provide for differing residency requirements, thereby subjecting all local elective offices uniformly to the provisions of this act.

ASSEMBLY MUNICIPAL GOVERNMENT COMMITTEE

STATEMENT TO

SENATE, No. 1282

STATE OF NEW JERSEY

DATED: JUNE 23, 1980

This bill establishes a uniform minimum 1 year residency requirement for all county and municipal elected officials. The New Jersey Supreme Court in *Cherrick v. Smith* 148 N. J. Super. 299 (1977) and most recently in *Mathews v. Atlantic City* invalidated all existing local residency requirements. What the courts said, in essence, was that a municipality, neither on the basis of its size (*Cherrick decision*), nor its form of government (*Mathews*), could impose a 2 year residency requirement for local officials while many other municipalities had no such requirement.

Currently, absent statutory residency requirements, a local elective official need only be a U.S. citizen, at least 18 years old, and a resident of the appropriate county for at least 30 days.

Prior to the above-mentioned court rulings, the following municipal forms had 2 year residency requirements:

1. The commission form of government pursuant to R. S. 40:72-1, which is amended to 1 year by this bill.
2. The municipal manager form pursuant to R. S. 40:81-1, which is amended to 1 year by this bill.
3. First class cities (Newark and Jersey City) under the Faulkner Act (P. L. 1960, c. 84; C. 40:69A-167.1) which is repealed and superseded by provisions of this bill.
4. All other forms of government had no specific residency requirements.

Note: In addition to the changes cited above, this bill repeals R. S. 40:25-36, establishing a 1 year residency for elected officers in the town form of government. This is superseded by the proposed enactment.

SENATE COUNTY AND MUNICIPAL
GOVERNMENT COMMITTEE

STATEMENT TO

SENATE, No. 1282

with Senate committee amendments

STATE OF NEW JERSEY

DATED: MAY 19, 1980

Senate Bill No. 1282, as amended, would establish a uniform residency requirement for candidates for, and holders of, local elective offices. The bill would require residency of candidates for, and holders of, all local elective offices, except those established by the State Constitution, which are provided for elsewhere. The bill would require that any person who becomes a candidate for local elective office on or after January 1, 1981, shall be a registered voter of the local unit, and shall have been a resident for at least 1 year prior to the date of the election for the office. The bill requires that any person who accepts appointment to any local elective office shall be a registered voter of the local unit, and shall have been a resident of the local unit for at least 1 year prior to appointment.

Current residency requirements range from as long as 2 years in a few municipalities, to no specific residency requirement in most municipalities. The New Jersey Supreme Court has recently invalidated existing statutory residency requirements in *Matthews vs. City of Atlantic City* because of the lack of uniformity. Absent statutory residency requirements, the only remaining requirements for candidacy are those for legal voter -- citizenship, age and 30 days residency in the county. The bill amends or repeals those sections of law which provide for differing residency requirements, thereby subjecting all local elective offices uniformly to the provisions of this act.

The committee amendments were suggested by the New Jersey Taxpayers Association and were approved by the sponsor.