

ASSEMBLY, No. 824

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman ARNONE

1 AN ACT concerning the professionalization of the office of municipal
2 clerk, amending various parts of the statutory law, and
3 supplementing Chapter 9 of Title 40A of the New Jersey Statutes.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

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

9 40A:9-133. a. In every municipality there shall be a municipal
10 clerk appointed for a three-year term by the governing body of the
11 municipality. Commencing January 1 following the third anniversary
12 of the effective date of P.L. c. (C.) (pending before the
13 Legislature as this bill), no person shall be appointed or reappointed
14 as a municipal clerk unless that person holds a registered municipal
15 clerk certificate issued pursuant to section 3 or section 4 of P.L.1985,
16 c.174 (C.40A:9-133.3 or C.40A:9-133.4).

17 b. For the purposes of tenure, the term of a municipal clerk shall
18 be deemed to have begun as of the actual date upon which a person
19 serving as municipal clerk is appointed. In the event of a vacancy in
20 the office of municipal clerk, an appointment shall be made for a new
21 term and not for the unexpired term. A reappointment of an
22 incumbent municipal clerk made within 60 days following the
23 expiration of the prior term shall not be considered to be a new
24 appointment and the effective date of the reappointment shall date
25 back to the date of expiration of the initial term of appointment.

26 c. [The governing body of a municipality shall appoint a person to
27 a three-year term as municipal clerk within six months after the
28 previous municipal clerk has resigned or the office has otherwise
29 become vacant.] Within 90 days of the occurrence of a vacancy in the
30 office of municipal clerk by reason of the departure of a registered
31 municipal clerk, the governing body may appoint a person who does
32 not hold a registered municipal clerk certificate to serve as acting

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

Matter underlined thus is new matter.

1 municipal clerk for a period not to exceed one year and commencing
2 on the date of the vacancy. Any person so appointed may, with the
3 approval of the director of the Division of Local Government Services
4 in the Department of Community Affairs, be reappointed as acting
5 municipal clerk for a maximum of two subsequent one-year terms
6 following the termination of the temporary appointment. No local unit
7 shall fill the position of acting municipal clerk for more than three
8 consecutive years. Time served as acting municipal clerk may be
9 credited toward the experience authorized as a substitute for the
10 college education requirement pursuant to section 2 of P.L.1985,
11 c.174 (C.40A:9-133.2). Time served as acting municipal clerk may
12 not be credited as time served as municipal clerk for the purpose of
13 acquiring tenure pursuant to section 7 of P.L.1985, c.174
14 (C.40A:9-133.7).

15 d. [Should the office of municipal clerk become vacant, the
16 governing body of a municipality may appoint a person to serve as
17 acting municipal clerk for a period of not more than six months.]
18 (deleted by amendment, P.L. ,c. (C.)(pending before the
19 Legislature as this bill).

20 e. The municipal clerk shall:

21 (1) act as secretary of the municipal corporation and custodian of
22 the municipal seal and of all minutes, books, deeds, bonds, contracts,
23 and archival records of the municipal corporation. The governing
24 body may, however, provide by ordinance that any other specific
25 officer shall have custody of any specific other class of record;

26 (2) act as secretary to the governing body, prepare meeting
27 agendas at the discretion of the governing body, be present at all
28 meetings of the governing body, keep a journal of the proceedings of
29 every meeting, retain the original copies of all ordinances and
30 resolutions, and record the minutes of every meeting;

31 (3) serve as the chief administrative officer in all elections held in
32 the municipality, subject to the requirements of Title 19 of the Revised
33 Statutes;

34 (4) serve as chief registrar of voters in the municipality, subject to
35 the requirements of Title 19 of the Revised Statutes;

36 (5) serve as the administrative officer responsible for the
37 acceptance of applications for licenses and permits and the issuance of
38 licenses and permits, except where statute or municipal ordinance has
39 delegated that responsibility to some other municipal officer;

40 (6) serve as coordinator and records manager responsible for
41 implementing local archives and records retention programs as
42 mandated pursuant to Title 47 of the Revised Statutes;

43 (7) perform such other duties as are now or hereafter imposed by
44 statute, regulation or by municipal ordinance or regulation.

45 f. If a governing body fails or refuses to comply with subsections
46 a., b. or c. of this section, the director may order the governing body

1 to comply by a date certain which shall afford the governing body a
2 reasonable time within which to comply. The members of a governing
3 body who willfully fail or refuse to comply shall each be subject to a
4 personal penalty of \$25 for each day after the date fixed for final
5 action that failure or refusal to comply continues. The amount of the
6 penalty may be recovered by the director in the name of the State as
7 a personal debt of the member of the governing body, and shall be
8 paid, upon receipt, into the State Treasury.

9 (cf: P.L.1991, c.73, s.1)

10

11 2. Section 1 of P.L.1981, c.394 (C.40A:9-133.1) is amended to
12 read as follows:

13 1. a. The provisions of any other law to the contrary
14 notwithstanding, commencing on the effective date of [this act]
15 P.L.1981, c.394, all municipal clerks shall hold office by virtue of
16 appointment pursuant to the provisions of N.J.S. 40A:9-133, except
17 as otherwise provided in this section.

18 b. All municipal clerks holding office on the effective date of [this
19 act] P.L.1981, c.394 shall continue in office until their successors are
20 appointed in the manner provided by N.J.S. 40A:9-133.

21 c. Nothing contained in [this act] P.L.1981, c.394 or in any other
22 statute shall prevent any municipal clerk who, upon the effective date
23 of [this act] P.L.1981, c.394, holds office by virtue of [his] election
24 thereto, from acquiring tenure upon being appointed thereto after the
25 effective date of [this act] P.L.1981, c.394, if [he] the clerk otherwise
26 qualifies for tenure pursuant to N.J.S.40A:9-134.

27 (cf: P.L.1981, c.394, s.1)

28

29 3. Section 2 of P.L.1985, c.174 (C.40A:9-133.2) is amended to
30 read as follows:

31 2. Commencing on the effective date of [this act] P.L.1985, c.174,
32 the Director of the Division of Local Government Services in the
33 Department of Community Affairs shall hold examinations
34 semiannually, and at such other times as he may deem appropriate, for
35 certification as municipal clerk. An applicant for examination shall
36 furnish proof to the director, not less than 30 days before an
37 examination, that the applicant is not less than 21 years of age, is a
38 citizen of the United States, is of good moral character, has obtained
39 a certificate or diploma issued after at least four years of study at an
40 approved secondary school or has received an academic education
41 considered and accepted by the Commissioner of Education as fully
42 equivalent, and has completed at least two years of education at [an
43 institution of higher education] a college of recognized standing. For
44 purposes of this section, 30 college credits will be considered
45 equivalent to one year of college. An applicant who does not meet the
46 two year [higher education] college requirement may substitute on a

1 year for year basis full-time experience in [federal, State or local
2 government in the performance of] a position as deputy municipal
3 clerk, assistant municipal clerk or other position of county or
4 municipal government which performs duties relative to those
5 performed by a municipal clerk as described in subsection e. of
6 N.J.S.40A:9-133. An applicant shall also present proof of completion
7 of the following courses offered through Rutgers, The State University
8 or similar courses offered at a college or university [certified]
9 approved by the [Department of Education] Division of Local
10 Government Services in the Department of Community Affairs:

11 Introduction of the Duties of the Municipal Clerk;

12 Advanced Duties of the Municipal Clerk;

13 Local Election Administration;

14 Information and Records Management[;]and

15 Municipal Finance Administration for Municipal Clerks.

16 Every applicant submitting an application prior to January 1, 1997
17 may present proof of satisfactory completion of a course in Municipal
18 Finance Administration, in lieu of the course in Municipal Finance
19 Administration for Municipal Clerks.

20 The proofs required pursuant to this section shall be provided on
21 the application forms and in the manner as shall be prescribed by the
22 director. Each completed application shall be accompanied by a fee in
23 the amount of[\$25.00] \$50 payable to the order of the State
24 Treasurer. Examinations shall be written, or both written and oral, and
25 shall be of such character as fairly to test and determine the
26 qualifications, fitness and ability of the person tested to actually
27 perform the duties of municipal clerk.

28 (cf: P.L. 1985, c.174, s.2)

29

30 4. Section 3 of P.L.1985, c.174 (C.40A:9-133.3) is amended to
31 read as follows:

32 3. Upon the successful completion of the examination by an
33 applicant, a certificate shall be issued to [him] the applicant as a
34 registered municipal clerk. The certificate fee shall be[\$25.00] \$50
35 payable to the order of the State Treasurer.

36 (cf: P.L. 1985, c.174, s.3)

37

38 5. Section 7 of P.L.1985, c.174 (C.40A:9-133.7) is amended to
39 read as follows:

40 7. Notwithstanding the provisions of any other law to the contrary,
41 any person who:

42 a. Shall be reappointed municipal clerk subsequent to having
43 received a registered municipal clerk certificate pursuant to [this act]
44 P.L.1985, c.174 and having served as municipal clerk or performed the
45 duties of municipal clerk for not less than three consecutive years
46 immediately prior to such reappointment; or

1 b. Shall have acquired tenure; shall hold [his] office during good
2 behavior and efficiency, and compliance with the continuing education
3 requirements set forth in section 8 of P.L. c. (C.) (pending
4 before the Legislature as this bill), notwithstanding that such
5 reappointment was for a fixed term of years; and [he] shall not be
6 removed therefrom for political reasons but only for good cause shown
7 and after a proper hearing before the director or [his] the director's
8 designee. The removal of a registered municipal clerk shall be only
9 upon a written complaint setting forth with specificity the charge or
10 charges against [him. The complaint shall be filed with the director
11 and] the clerk. The complaint shall be filed with the director and a
12 certified copy [thereof] of the complaint shall be served upon the
13 person so charged, with notice of a designated hearing date before the
14 director or [his] the director's designee, which shall be not less than 30
15 days nor more than 60 days from the date of service of the complaint.
16 Such date may be extended by the Superior Court for good cause
17 shown upon the application of either party. The person so charged
18 and the complainant shall have the right to be represented by counsel
19 and the power to subpoena witnesses and documentary evidence
20 together with discovery proceedings. The provisions of this section
21 shall apply to every person actually in office as registered municipal
22 clerk, whether or not in the classified service under Title [11 of the
23 Revised Statutes] 11A of the New Jersey Statutes (Civil Service).

24 For the purposes of this section, the definition of good cause for
25 removal of a municipal clerk may include the failure of the clerk to
26 meet the continuing education requirements set forth in section 8 of
27 P.L. , c. (C.) (pending before the Legislature as this bill).
28 (cf: P.L.1985, c.174, s.7)

29

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

31 40A:9-134. On or before December 31, 1985, any person holding
32 the office of municipal clerk in any municipality and having held such
33 office continuously for five years from the date of his original
34 appointment shall have tenure in such office and shall not be removed
35 therefrom except for good cause shown after a fair and impartial
36 hearing.

37 For the purposes of this section, the definition of good cause for
38 removal of a municipal clerk may include the failure of the clerk to
39 meet the continuing education requirements set forth in section 8 of
40 P.L. , c. (C.) (pending before the Legislature as this bill).
41 (cf: P.L.1986, c.181, s.1)

1 7. (New section) Within six months of the effective date of P.L.
2 , c. (C.) (pending before the Legislature as this bill), any
3 municipal clerk who has been granted tenure pursuant to P.L.1981,
4 c.394, or P.L.1985, c.174 but does not hold a registered municipal
5 clerk certificate shall apply to the director for a registered municipal
6 clerk certificate. Application shall be made on a form approved by the
7 director at no cost to the applicant. Upon verification of the
8 applicant's tenured status, the director shall issue a registered
9 municipal clerk certificate, marked as restricted to the municipality
10 employing the municipal clerk. A municipal clerk holding such a
11 certificate shall then be subject to all provisions affecting other
12 certificate holders under P.L. , c. (C.) (pending before the
13 Legislature as this bill) including but not limited to renewal, continuing
14 education and maintenance of tenure rights.

15

16 8. (New section) a. Commencing July 1, 1996 all registered
17 municipal clerk certificates issued pursuant to section 3 or section 4
18 of P.L.1985, c.174 (C.40A:9-133.3 or C.40A:9-133.4), or section 7
19 of P.L. , c. (C.) (pending before the Legislature as this bill)
20 shall be renewed upon application, payment of the required fee, and
21 verification that the applicant has met the requirements as set forth in
22 this section. Each renewal shall be for a period of two years. The
23 renewal date shall be 30 days prior to the expiration date.

24 b. All registered municipal clerk certificates subject to renewal
25 pursuant to this section issued prior to July 1, 1996 shall have an
26 expiration date of June 30, 1998. All registered municipal clerk
27 certificates issued on or after July 1, 1996 shall expire two years from
28 the date on which the certificate was originally issued.

29 c. Each applicant for renewal of a registered municipal clerk
30 certificate shall, on a form prescribed by the director, furnish proof of
31 having earned at least 2.0 continuing education units in subject areas
32 related to the statutory duties of the municipal clerk and minimum
33 contact hours as prescribed by the director. For the purposes of this
34 section, 1.0 continuing education unit equals 10 contact hours. Upon
35 verification of this requirement, and upon payment of a fee of \$50 to
36 the order of the Treasurer of the State of New Jersey, the director
37 shall renew the registered municipal clerk certificate.

38 d. Where the holder of a registered municipal clerk certificate has
39 allowed the certificate to lapse by failing to renew the certificate, a
40 new application and certificate shall be required. If application is
41 made within six months of the expiration of the certificate, then
42 application may be made in the same manner as renewal but the
43 application shall be accompanied by the fee for a new application.

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45 9. (New section) The director is authorized to adopt, in
46 accordance with the "Administrative Procedures Act," P.L.1968, c.410

1 (C.52:14B-1 et seq.), such regulations, forms and procedures as may
2 be necessary to carry out the terms of this act.

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4 10. This act shall take effect immediately.

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7 STATEMENT

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9 This bill modifies certain requirements concerning municipal clerks.
10 The bill would require all municipal clerks to hold a registered
11 municipal clerk certificate as a condition of appointment or
12 reappointment as of January 1 following the third anniversary of the
13 date this bill takes effect.

14 Under the bill, within 90 days of the occurrence of a vacancy in the
15 office of municipal clerk, a municipal governing body may appoint, as
16 acting municipal clerk for a one-year term, a person who does not hold
17 a registered municipal clerk certificate. An acting municipal clerk
18 would be allowed to serve up to two additional one-year terms with
19 the approval of the director of the Division of Local Government
20 Services. A local unit would not be permitted to fill the position of
21 acting municipal clerk for more than three consecutive terms. Under
22 current law, an acting clerk may serve only a six month term.

23 The bill would subject members of a governing body to a personal
24 penalty of \$25 a day for violating procedural requirements concerning
25 municipal clerks such as: failure or refusal to appoint a municipal
26 clerk; appointment or reappointment of a person as municipal clerk
27 who does not hold a registered municipal clerk certificate; and
28 allowing a person to fill the position of acting municipal clerk for more
29 than three consecutive years.

30 Section 3 of the bill clarifies that the higher education requirement
31 that an applicant for municipal clerk certification must submit proof of
32 to enable the applicant to sit for the examination is two years at a
33 college of recognized standing and that one year of college is
34 equivalent to 30 college credits. Section 3 of the bill also alters the
35 experience that an applicant can substitute for the college requirement.
36 According to this section of the bill only full-time experience in a
37 position as deputy municipal clerk, assistant municipal clerk, acting
38 municipal clerk or some other position of county or municipal
39 government which requires performance of duties relative to those
40 performed by a municipal clerk would qualify. Under current law,
41 full-time experience in federal, State or local government in a position
42 which performs duties relative to those performed by a municipal clerk
43 would qualify.

44 Section 3 of the bill would also require an applicant to have
45 completed a course in Municipal Finance Administration for Municipal
46 Clerks instead of the course in Municipal Finance Administration as a

1 condition of eligibility to take the examination for municipal clerk
2 certification; however, applicants submitting application prior to July
3 1, 1994 could submit proof of completion of the course in Municipal
4 Finance Administration in lieu of Municipal Finance Administration for
5 Municipal Clerks.

6 The bill would also raise the fee for applying to sit for the
7 examination, as well as the certificate fee from \$25 to \$50.

8 Section 5 of the bill clarifies the complaint procedures for the
9 removal of a municipal clerk. This section specifies that a complaint
10 shall be filed with the director and that a certified copy shall be served
11 upon the person so charged. A hearing on the complaint shall be held
12 by the director or his designee between 30 and 60 days after service,
13 unless extended by the Superior Court upon application and good
14 cause shown by either party.

15 Section 6 of the bill adds as grounds for the removal of a tenured
16 municipal clerk, the failure of the clerk to meet continuing education
17 requirements.

18 Section 7 of the bill provides that all tenured municipal clerks who
19 do not hold certificates shall, at no cost, apply to the director for a
20 registered municipal clerk certificate within six months after this bill
21 is enacted into law. Upon verification of the applicant's tenured status,
22 the director shall issue a registered municipal clerk certificate marked
23 as restricted to the municipality employing the municipal clerk. A
24 municipal clerk holding such a certificate shall then be subject to all
25 the provisions of this bill.

26 Section 8 of this bill provides that commencing July 1, 1995 all
27 registered municipal clerk certificates shall be renewed upon
28 application, payment of the required fee, and verification that the
29 continuing education requirement has been satisfied. Each renewal
30 shall be for a two-year period. All certificates issued prior to July 1,
31 1993 shall expire June 30, 1995 and all certificates issued on or after
32 July 1, 1993 shall expire two years from the date on which the
33 certificate was originally issued.

34 Section 8 of this bill also provides that each applicant for renewal
35 of a certificate shall furnish proof of satisfaction of the continuing
36 education requirements prescribed by the director and payment of a
37 \$50 renewal fee.

38 Section 9 of this bill authorizes the director to adopt regulations,
39 forms and procedures necessary to carry out the provisions of this bill.

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44 Concerns requirements for appointment and reappointment of
45 municipal clerk.