

SENATE, No. 258

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Senator GIRGENTI

1 AN ACT establishing the position of municipal prosecutor in each
2 municipal court of this State, providing for the appointment,
3 defining the duties and authorizing the training of municipal
4 prosecutors and supplementing Title 2A of the New Jersey Statutes.
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6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

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9 1. The Legislature finds and declares that municipal prosecutors
10 are a critical component of New Jersey's system for the administration
11 of justice, that the role of municipal prosecutors is not statutorily
12 defined, and that in order to ensure the uniform and proper
13 administration of justice in this State, it is necessary to define the
14 duties of municipal prosecutors.
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16 2. As used in this act:

17 a. "Municipal prosecutor" means a person appointed to prosecute
18 all offenses over which the municipal court has jurisdiction.

19 b. "Governing body" of a municipality means the officer or body
20 that is the appropriate appointing authority for municipal attorney or
21 corporation counsel under the laws applicable to the form of municipal
22 government established in the municipality pursuant to law; provided
23 that in a municipality that has a corporation counsel, that entity shall
24 be the appointing authority.

25 c. "Municipal court" means any municipal or intermunicipal court
26 established pursuant to statute.

27 d. "Attorney General" includes the Attorney General of New Jersey
28 and any assistants or deputies who may be designated to carry out the
29 responsibilities conferred on the Attorney General by this act.

30 e. "County prosecutor" shall mean the prosecutor of the county in
31 which the municipal court is situated and any assistant prosecutors of
32 that county who may be designated by this act.

33 f. "Intermunicipal court" shall mean a court established by two or
34 more municipalities in accordance with statutes authorizing
35 municipalities to combine for the purposes of establishing a single

1 court with jurisdiction over the territory of the participating
2 municipalities.

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4 3. Any person serving as a municipal prosecutor on the effective
5 date of this act shall be exempt from its requirements for a period of
6 either one year or for the expiration of his or her current term of
7 office, whichever is shorter, except that the provisions of the act
8 pertaining to supersession (section 7) and removal (section 9) shall be
9 in full force on the effective date of this act.

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11 4. a. Each municipal court in this State shall have at least one
12 municipal prosecutor appointed by the governing body of the
13 municipality in accordance with applicable laws, ordinances and
14 resolutions.

15 b. A municipal prosecutor shall be an attorney-at-law of this State
16 in good standing, and shall serve for a term of one year from the date
17 of his or her appointment, except as determined by the governing body
18 of a city of the first class with a population greater than 270,000,
19 according to the latest federal decennial census, or the governing body
20 of a city of the second class with a population of greater than 30,000
21 but less than 43,000, according to the latest decennial census, which
22 city of the second class is located in a county of the first class with a
23 population less than 600,000 according to the latest federal decennial
24 census, and may continue to serve in office pending re-appointment or
25 appointment of a successor. A municipal prosecutor may be appointed
26 to that position in one or more municipal courts. The provisions of
27 this act shall apply to each such position held.

28 c. A municipal prosecutor of an intermunicipal court shall be
29 appointed upon the concurrence of the governing bodies of each of the
30 municipalities in accordance with applicable laws, ordinances or
31 resolutions.

32 d. Municipal prosecutors shall be compensated at an annual salary
33 to be fixed and paid by the municipality or municipalities served. In
34 the case of an intermunicipal court, municipalities shall, by similar
35 ordinances, enter into an agreement fixing the salary of the municipal
36 prosecutor and providing for its payment.

37 The salary of municipal prosecutors shall be in lieu of any and all
38 other fees; provided, however that when a municipal prosecutor is
39 assigned to prosecute a de novo appeal in the Superior Court, the
40 prosecutor shall be entitled to additional compensation unless the
41 municipality expressly provides otherwise at the time the salary is
42 fixed.

43 e. In accordance with applicable laws, ordinances and resolutions,
44 a municipality may appoint additional municipal prosecutors as
45 necessary to administer justice in a timely and effective manner in its
46 municipal court. Such appointments shall be subject to this act. This

1 subsection also applies to intermunicipal courts.

2 f. Any municipal court having two or more municipal prosecutors
3 shall have a "chief municipal prosecutor" who shall be appointed by
4 the governing body of the municipality. The chief municipal
5 prosecutor of an intermunicipal court shall be appointed upon the
6 concurrence of the governing bodies of each municipality. The chief
7 municipal prosecutor shall have authority over other prosecutors
8 serving that court with respect to the performance of their duties.

9 g. (1) Nothing in this act shall affect the appointment of municipal
10 attorneys in accordance with N.J.S.40A:9-139; provided, however,
11 that a person appointed to the positions of both municipal prosecutor
12 and municipal attorney shall be subject to all of the provisions of this
13 act while serving in the capacity of municipal prosecutor.

14 (2) In addition to any other duties proscribed by the provisions of
15 this act, a person serving as both a municipal prosecutor and a
16 municipal attorney may prosecute municipal ordinance violations.

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18 5. a. A municipal prosecutor, except as provided by paragraph b.
19 of this section and sections 6 and 7 of this act, shall represent the State
20 or the municipality in the prosecution of all offenses within the
21 statutory jurisdiction of the municipal court as defined by law. A
22 municipal prosecutor shall be responsible for handling all phases of the
23 prosecution of an offense, including but not limited to discovery,
24 pretrial and post-trial hearings, motions dismissals, removals to
25 Federal District Court and other collateral functions authorized to be
26 performed by the municipal prosecutor by law or Rule of Court. As
27 used in this subsection, the term "post-trial hearing" shall not include
28 de novo appeals in Superior Court.

29 b. A municipal prosecutor may, with the approval of the court,
30 authorize private attorneys to prosecute citizen complaints filed in the
31 municipal court. A municipal prosecutor may, with the approval of the
32 court, decline to participate in municipal court proceedings in which
33 the defendant is not represented by counsel. Upon a finding that a
34 conflict of interest precludes a municipal prosecutor from participating
35 in a proceeding, the court shall excuse the municipal prosecutor and
36 may, in such a case, request the county prosecutor to provide
37 representation in accordance with section 6 of this act.

38 c. A municipal prosecutor may at any time move before the
39 municipal court to amend or dismiss any complaint for good cause
40 shown in accordance with the Rules of the Court.

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42 6. a. Appointments to fill vacancies in the position of municipal
43 prosecutor shall be made in accordance with the provisions of section
44 4 of this act as soon as practicable.

45 b. The Attorney General or the county prosecutor, with notice to
46 the Attorney General, may designate, at the request of the municipal

1 prosecutor or municipal court, one or more assistant or deputy
2 attorneys general or assistant prosecutors to prosecute the business of
3 any municipal court if there is a vacancy in the office of the municipal
4 prosecutor or the municipal prosecutor is temporarily unavailable and
5 the municipal prosecutor or the municipal court has requested such
6 designation.

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8 7. Whenever in the opinion of the Attorney General or a county
9 prosecutor the public interest of the State will be promoted by so
10 doing, the Attorney General or county prosecutor, with notice to the
11 Attorney General, may supersede a municipal prosecutor by
12 prosecuting any offense against the laws of this State within the
13 jurisdiction of a municipal court, or by intervening in any prosecution
14 before a municipal court.

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16 8. Whenever the Attorney General or county prosecutor shall
17 prosecute in a municipal court of this State pursuant to section 6 of
18 this act, the Attorney General or county prosecutor shall, upon
19 demand, be promptly reimbursed for costs, including the compensation
20 of any assistants or deputies attorney general or assistant prosecutors.

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22 9. In addition to any of the other means provided by law for the
23 removal from office of a public official, a municipal prosecutor may be
24 removed by the governing body of a municipality for good cause
25 shown and after a public hearing, and upon due notice and an
26 opportunity to be heard.

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28 10. The Attorney General in consultation with the county and
29 municipal prosecutors may develop curricula for training programs for
30 all municipal prosecutors. Participation in such training programs shall
31 be voluntary. An attorney successfully completing a training program
32 shall receive such certification or recognition as deemed appropriate
33 by the Attorney General.

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35 11. This act shall take effect 90 days after enactment.

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38 STATEMENT

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40 This bill gives statutory recognition to the office of the municipal
41 prosecutor and defines the role, responsibilities and duties of the
42 office.

43 The following is a summary of the bill's provisions:

44 1. Each municipal court shall have at least one municipal
45 prosecutor appointed by the municipal governing body.

46 2. Municipal prosecutors would be appointed for a term of one

1 year, except that the governing bodies in certain municipalities meeting
2 certain population criteria may designate different terms. They would
3 be compensated at an annual salary fixed by the municipality.

4 3. Municipalities may appoint more than one municipal prosecutor.
5 If a municipality does appoint more than one prosecutor, a "chief
6 municipal prosecutor," who would have authority over the other
7 prosecutors, would be designated by the municipality.

8 4. Municipal prosecutors would represent the State in the
9 prosecution of all offenses within the statutory jurisdiction of the
10 municipal court. A municipal prosecutor, with the approval of the
11 municipal court, would be empowered to authorize private attorneys
12 to prosecute citizens complaints and could decline to participate in
13 proceeding in which the defendant is not represented by counsel.

14 5. If a finding of conflict of interest precludes a municipal
15 prosecutor from handling a proceeding, the prosecutor may request
16 the county prosecutor to provide representation.

17 6. At the request of the municipal court or the municipal
18 prosecutor, the Attorney General could designate lawyers from his
19 office or assistant prosecutors to prosecute in a municipal court if
20 there is a vacancy in the office of municipal prosecutor or if the
21 prosecutor is temporarily unavailable.

22 7. The Attorney General or a county prosecutor may supersede a
23 municipal prosecutor and handle a prosecution in a municipal court if
24 in their opinion the public interest of the State would be promoted.

25 8. If because of a vacancy in the office of the municipal prosecutor,
26 the Attorney General or a county prosecutor is required to handle
27 matters in a municipal court, their offices would be entitled to
28 reimbursement for costs including the compensation of their staff.

29 9. A municipal prosecutor may be removed by the municipal
30 governing body for good cause after a hearing and an opportunity to
31 be heard.

32 10. The Attorney General is authorized to establish training
33 programs for municipal prosecutors.

34 Integrating the prosecutorial functions performed by municipal and
35 county prosecutors and the Attorney General will help provide for the
36 uniform and efficient administration of justice.

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41 Clarifies duties and responsibilities of municipal prosecutors.