

[First Reprint]
SENATE, No. 258

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Senators GIRGENTI and Baer

1 AN ACT establishing the position of municipal prosecutor ¹[in] for¹
2 each 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.

5
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.

15
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 ¹[in a municipality that has a] the municipal¹ corporation counsel
24 ¹[, that entity]¹ shall be the appointing authority ¹in any city of the first
25 class with a population greater than 270,000, according to the latest
26 federal decennial census and in any city of the second class with a
27 population of greater than 30,000 but less than 43,000, according to
28 the latest decennial census, which city of the second class is located in
29 a county of the first class with a population less than 600,000
30 according to the latest federal decennial census¹.

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate floor amendments adopted June 16, 1997.

1 c. "Municipal court" means any municipal or intermunicipal court
2 established pursuant to statute.

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

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

9 f. "Intermunicipal court" shall mean a court established by two or
10 more municipalities in accordance with statutes authorizing
11 municipalities to combine for the purposes of establishing a single
12 court with jurisdiction over the territory of the participating
13 municipalities.

14

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

21

22 4. a. Each municipal court in this State shall have at least one
23 municipal prosecutor appointed by the governing body of the
24 municipality in accordance with applicable laws, ordinances and
25 resolutions.

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

39 c. A municipal prosecutor of an intermunicipal court shall be
40 appointed upon the concurrence of the governing bodies of each of the
41 municipalities in accordance with applicable laws, ordinances or
42 resolutions.

43 d. Municipal prosecutors shall be compensated ¹[at an annual
44 salary to be fixed and paid by the municipality or municipalities
45 served] either on an hourly, per diem, annual or other basis as the
46 municipality or municipalities provide¹. In the case of an

1 intermunicipal court, municipalities shall, by similar ordinances, enter
2 into an agreement fixing the ¹[salary] compensation¹ of the municipal
3 prosecutor and providing for its payment.

4 The ¹[salary]compensation¹ of municipal prosecutors shall be in lieu
5 of any and all other fees; provided, however that when a municipal
6 prosecutor is assigned to prosecute a de novo appeal in the Superior
7 Court, the prosecutor shall be entitled to additional compensation
8 unless the municipality expressly provides otherwise at the time the
9 ¹[salary] compensation¹ is fixed.

10 e. In accordance with applicable laws, ordinances and resolutions,
11 a municipality may appoint additional municipal prosecutors as
12 necessary to administer justice in a timely and effective manner in its
13 municipal court. Such appointments shall be subject to this act. This
14 subsection also applies to intermunicipal courts.

15 f. Any municipal court having two or more municipal prosecutors
16 shall have a "chief municipal prosecutor" who shall be appointed by
17 the governing body of the municipality. The chief municipal
18 prosecutor of an intermunicipal court shall be appointed upon the
19 concurrence of the governing bodies of each municipality. The chief
20 municipal prosecutor shall have authority over other prosecutors
21 serving that court with respect to the performance of their duties.

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

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

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31 5. a. A municipal prosecutor, except as provided by paragraph b.
32 of this section and sections 6 and 7 of this act, shall represent the State
33 or the municipality in the prosecution of all offenses within the
34 statutory jurisdiction of the municipal court as defined by law. A
35 municipal prosecutor shall be responsible for handling all phases of the
36 prosecution of an offense, including but not limited to discovery,
37 pretrial and post-trial hearings, motions dismissals, removals to
38 Federal District Court and other collateral functions authorized to be
39 performed by the municipal prosecutor by law or Rule of Court. As
40 used in this subsection, the term "post-trial hearing" shall not include
41 de novo appeals in Superior Court.

42 b. A municipal prosecutor may, with the approval of the court,
43 authorize private attorneys to prosecute citizen complaints filed in the
44 municipal court. A municipal prosecutor may, with the approval of the
45 court, decline to participate in municipal court proceedings in which
46 the defendant is not represented by counsel. Upon a finding that a

1 conflict of interest precludes a municipal prosecutor from participating
2 in a proceeding, the court shall excuse the municipal prosecutor and
3 may, in such a case, request the county prosecutor to provide
4 representation in accordance with section 6 of this act ¹unless the
5 municipality has provided for alternative representation¹.

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

9
10 6. a. Appointments to fill vacancies in the position of municipal
11 prosecutor shall be made in accordance with the provisions of section
12 4 of this act as soon as practicable.

13 b. ¹[The] Unless the municipality has provided for alternative
14 representation, the¹ Attorney General or the county prosecutor, with
15 notice to the Attorney General, may designate, at the request of the
16 municipal prosecutor or municipal court, one or more assistant or
17 deputy attorneys general or assistant prosecutors to prosecute the
18 business of any municipal court if there is a vacancy in the office of the
19 municipal prosecutor or the municipal prosecutor is temporarily
20 unavailable and the municipal prosecutor or the municipal court has
21 requested such designation.

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23 7. Whenever in the opinion of the Attorney General or a county
24 prosecutor the public interest of the State will be promoted by so
25 doing, the Attorney General or county prosecutor, with notice to the
26 Attorney General, may supersede a municipal prosecutor by
27 prosecuting any offense against the laws of this State within the
28 jurisdiction of a municipal court, or by intervening in any prosecution
29 before a municipal court.

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

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

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43 10. The Attorney General in consultation with the county and
44 municipal prosecutors may develop curricula for training programs for
45 all municipal prosecutors. Participation in such training programs shall
46 be voluntary. An attorney successfully completing a training program

1 shall receive such certification or recognition as deemed appropriate
2 by the Attorney General.

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

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9 Clarifies duties and responsibilities of municipal prosecutors.