

ASSEMBLY, No. 2709

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

SYNOPSIS

Revises statutes concerning permissible length of time between certain public questions in certain municipalities.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning initiative and referendum in certain
2 municipalities and amending various parts of the statutory law.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. R.S.40:74-18 is amended to read as follows:

8 40:74-18. If a majority of the qualified electors voting on the
9 proposed ordinance shall vote in favor thereof, such ordinance shall
10 thereupon become a valid and binding ordinance of the
11 municipality. An ordinance proposed by petition, or which shall be
12 adopted by a vote of the people, shall not be repealed or amended
13 within 3 years of the date of adoption by the voters, except by a
14 vote of the people; except that **[an ordinance proposed by petition]**
15 following the approval by the voters of the municipality of a
16 proposition to increase or decrease either the term of office of the
17 members of the governing body or the number of members of the
18 governing body, or regarding the division of the municipality into a
19 number of wards, no proposal to repeal or amend that proposition
20 shall **[not]** be submitted to the voters of the municipality **[more**
21 **than once in any 10-year period]** until after the fifth calendar year
22 next following that approval.

23 (cf: P.L.2009, c.339, s.1)

24

25 2. R.S.40:76-26 is amended to read as follows:

26 40:76-26. If a majority of the votes cast at the special election
27 are against the proposition submitted, no other petition for the
28 submission, to the voters of such municipality, of the same
29 proposition, as provided for in this chapter shall be filed with the
30 clerk within two years thereafter, except that **[an ordinance**
31 **proposed by petition]** following the approval by the voters of the
32 municipality of a proposition to increase or decrease either the term
33 of office of the members of the governing body or the number of
34 members of the governing body, or regarding the division of the
35 municipality into a number of wards, no proposal to repeal or
36 amend that proposition shall **[not]** be submitted to the voters of the
37 municipality **[more than once in any 10-year period]** until after the
38 fifth calendar year next following that approval **[, after which date,**
39 upon the presentation of another petition or request as provided for
40 herein, the same procedure shall be had, and the same proposition
41 shall be again submitted to a vote in the manner herein prescribed
42 and with the same force and effect**].**

43 (cf: P.L.2009, c.339, s.2)

44

45 3. Section 17-47 of P.L.1950, c.210 (C.40:69A-196) is

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 underlined thus is new matter.

1 amended to read as follows:

2 17-47. a. If a majority of the qualified electors voting on the
3 proposed ordinance shall vote in favor thereof, such ordinance shall
4 thereupon become a valid and binding ordinance of the municipality
5 and be published as in the case of other ordinances. No such
6 ordinance shall be amended or repealed within 3 years immediately
7 following the date of its adoption by the voters, except by a vote of
8 the people. The council may, within 3 years immediately following
9 the date of adoption of the ordinance, submit a proposition for the
10 repeal or amendment of that ordinance to the voters at any
11 succeeding general election or regular municipal election. If the
12 proposition submitted shall receive a majority of the votes cast at
13 that election, the ordinance shall be repealed or amended
14 accordingly. If the provisions of two or more measures approved or
15 adopted at the same election conflict then the measure receiving the
16 greatest affirmative vote shall control.

17 b. Notwithstanding the provisions of this section, **[an**
18 ordinance proposed by petition] following the approval by the
19 voters of the municipality of a proposition to increase or decrease
20 the term of office of the members of the governing body or the
21 number of members of the governing body, or the division of the
22 municipality into a number of wards, no proposal to repeal or
23 amend that proposition shall **[not]** be submitted to the voters of the
24 municipality **[more than once in any 10-year period]** until after the
25 fifth calendar year next following that approval.

26 (cf: P.L.2009, c.339, s.4)

27

28 4. Section 1 of P.L.1988, c.7 (C.40A:62-2) is amended to read
29 as follows:

30 1. a. The mayor shall be elected by the voters of the
31 municipality at large and shall be known as the councilman-at-
32 large. The mayor shall serve for a term of four years.

33 b. (Deleted by amendment, P.L.2005, c.93).

34 c. The council shall consist of eight members, two elected from
35 each of four wards. The members of council shall serve for a term
36 of four years.

37 d. Notwithstanding the provisions of subsection c. of this
38 section, any town, whose council immediately prior to the effective
39 date of P.L.1988, c.7 had a council whose method of election,
40 composition or tenure of its membership differed in any way from
41 the provisions set out in subsection c. of this section, shall continue
42 to be governed by those provisions which determined the council's
43 method of election, composition or tenure of its membership, as the
44 case may be, until such time it wishes to adopt the provisions as set
45 out in subsection c. of this section. Any adoption shall be by
46 referendum of voters, after the town council shall have passed an
47 ordinance not less than 60 days preceding any general election
48 calling for the referendum to be placed upon the ballot. The

1 referendum shall not be submitted to the voters more than once in
2 any **【10-year】** three-year period. Notwithstanding the provisions of
3 this subsection, following the approval by the voters of the
4 municipality of a proposition to increase or decrease the term of
5 office of the members of the governing body or the number of
6 members of the governing body, or the division of the municipality
7 into a number of wards, no proposal to repeal or amend that
8 proposition shall be submitted to the voters of the municipality until
9 after the fifth calendar year next following that approval.

10 e. The annual election for town officers shall be held at the
11 same time and places as the general election. No person shall be
12 permitted to vote at any such election unless he is an actual resident
13 of the election district in which he offers his vote.

14 (cf: P.L.2009, c.339, s.5)

15

16 5. Section 1 of P.L.1991, c.227 (C.40A:62-2.1) is amended to
17 read as follows:

18 1. a. The legal voters of any town in which the mayor and
19 council members are elected for two-year terms of office, may by
20 petition and referendum, require that the mayor and council
21 members shall be elected for four-year terms of office.

22 b. Upon the submission to the town clerk of a petition, signed
23 by at least fifteen per centum (15%) of the legal voters of the
24 municipality who cast their votes in the municipality at the last
25 election in which members of the General Assembly were elected,
26 the proposition shall be submitted to the voters at the next general
27 election. The proposition shall not be submitted more than once in
28 any **【10-year】** three-year period; except that following the approval
29 by the voters of the municipality of a proposition to increase or
30 decrease the term of office of the members of the governing body or
31 the number of members of the governing body, or the division of
32 the municipality into a number of wards, no proposal to repeal or
33 amend that proposition shall be submitted to the voters of the
34 municipality until after the fifth calendar year next following that
35 approval.

36 c. The notice, advertisement and conduct of the referendum
37 shall be in the same manner as for offices voted at the general
38 election.

39 d. The proposition shall be submitted to the voters at the
40 election in substantially the following form: "Shall the term of the
41 mayor and council members in(name of town).....
42 be increased to four years?"

43 e. A canvass and return of the vote upon the proposition shall
44 be made by the election officers in the same manner as for officers
45 voted for at the general election, and a majority of all the votes cast
46 upon the proposition in favor of the proposition shall be sufficient
47 to adopt it.

48 (cf: P.L.2009, c.339, s.6)

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

2 40:81-1. The municipal council shall consist of three, five,
3 seven or nine members as authorized on the effective date of this
4 1981 amendatory act.

5 After the effective date of this 1981 amendatory act, the legal
6 voters of any municipality may, by petition and referendum,
7 increase or decrease the number of the municipal council to three,
8 five, seven or nine members. Upon the submission of a petition
9 signed by a number of the legal voters of the municipality equal in
10 number to at least 15% of the total votes cast in the municipality at
11 the last election at which members of the General Assembly were
12 elected, the proposition to increase or decrease the membership of
13 the municipal council shall be submitted to the voters at the next
14 general election. The proposition shall not be submitted more than
15 once in any **【10-year】** three-year period; except that following the
16 approval by the voters of the municipality of a proposition to
17 increase or decrease the term of office of the members of the
18 governing body or the number of members of the governing body,
19 or the division of the municipality into a number of wards, no
20 proposal to repeal or amend that proposition shall be submitted to
21 the voters of the municipality until after the fifth calendar year next
22 following that approval.

23 The signatures, verification, authentication, inspection,
24 certification, amendment and submission of the petition shall be the
25 same as for petitions to recall councilmen and shall be filed and
26 certified to by the municipal clerk at least 60 days before the
27 general election at which the proposition shall be submitted to a
28 vote.

29 The question of the increase in the number of commissioners
30 shall be submitted to the voters at the election in substantially the
31 following form:

32 "Shall the membership of the municipal council of (name
33 of municipality) be (insert "increased" or "decreased"
34 as appropriate) from to members?" (insert current
35 number) (insert proposed number)

36 A canvass and return of the vote upon the proposition shall be
37 made by the election officers in the same manner as for officers
38 voted for at the election, and a majority of all the votes cast upon
39 the proposition in favor of the proposition shall be sufficient to
40 make the change.

41 When the legal voters shall have voted to increase or decrease
42 the membership of the municipal council as provided in this section,
43 the increase or decrease shall take effect for the next regular
44 municipal election of councilmen.

45 (cf: P.L.2009, c.339, s.7)

46

47 7. Section 4 of P.L.1981, c.427 (C.40:81-5.1) is amended to
48 read as follows:

- 1 4. Where the members of the municipal council in any
2 municipality adopting the municipal manager form of government
3 have 4-year terms of office pursuant to R.S.40:81-5, the legal voters
4 of the municipality, by petition and referendum, may provide that
5 the terms of office of the members of the municipal council shall
6 expire in staggered years as provided in this section.
- 7 a. An election upon the proposition to elect members of the
8 municipal council to terms of office which expire in staggered years
9 shall be ordered by the municipal council upon the submission of a
10 petition signed by a number of the legal voters of the municipality
11 equal to not less than 15% of the total votes cast in the municipality
12 at the last preceding election at which members of the General
13 Assembly were elected. The proposition shall be submitted at the
14 next general election. The proposition shall not be submitted more
15 than once in any 3-year period;
- 16 b. The signatures, verification, authentication, inspection,
17 certification, amendment and submission of the petition shall be the
18 same as for petitions to recall councilmen and shall be filed and
19 certified to by the municipal clerk at least 60 days before the
20 general election at which the proposition shall be submitted to a
21 vote;
- 22 c. The question of the election of members of the municipal
23 council to staggered terms of office shall be submitted to the voters
24 at such election in substantially the following form:
25 "Shall the terms of office of members of the municipal council of
26 expire in staggered years?" (name of municipality)
- 27 d. A canvass and return of the vote upon the proposition shall
28 be made by the election officers in the same manner as for officers
29 voted for at the election, and a majority of all the votes cast upon
30 the proposition in favor of the proposition shall be sufficient to
31 make the change;
- 32 e. When the legal voters shall have voted to have the terms of
33 office of members of the municipal council expire in staggered
34 years, there shall be elected at the next regular municipal election of
35 councilmen the following:
- 36 (1) If the municipal council consists of three members, two of
37 the members shall be elected for 4 years, and one for 2 years, the
38 respective terms of each to be designated on the ballot;
- 39 (2) If the municipal council consists of five members, two of the
40 members shall be elected for 4 years, and three for 2 years, the
41 respective terms of each to be designated on the ballot;
- 42 (3) If the municipal council consists of seven members, three of
43 the members shall be elected for 4 years, and four for 2 years, the
44 respective terms of each to be designated on the ballot;
- 45 (4) If the municipal council consists of nine members, four of
46 the members shall be elected for 4 years, and five for 2 years, the
47 respective terms of each to be designated on the ballot.
- 48 Each council member elected thereafter shall serve for a 4-year
49 term of office.

1 Notwithstanding the provisions of this section, **【an ordinance**
2 **proposed by petition】** following the approval by the voters of the
3 municipality of a proposition to increase or decrease the term of
4 office of the members of the governing body or the number of
5 members of the governing body, or the division of the municipality
6 into a number of wards, no proposal to repeal or amend that
7 proposition shall **【not】** be submitted to the voters of the
8 municipality **【more than once in any 10-year period】** until after the
9 fifth calendar year next following that approval.

10 (cf: P.L.2009, c.339, s.8)

11
12 8. Section 1-21 of P.L.1950, c.210 (C.40:69A-21) is amended
13 to read as follows:

14 1-21. No petition for submission of the question of adopting an
15 optional plan of government pursuant to section 1-18 et seq. of **【this**
16 **act】** P.L.1950, c.210 (C.40:69A-18 et seq.) may be filed while
17 proceedings are pending pursuant to another such petition, or under
18 an ordinance passed or petition filed pursuant to section 1-1 of **【this**
19 **act】** P.L.1950, c.210 (C.40:69A-1), or while proceedings are
20 pending pursuant to any other statute for the adoption of any other
21 charter or form of government available to the municipality, **【nor**
22 **within four years】** or until after the fourth calendar year after an
23 election shall have been held pursuant to any such petition filed
24 pursuant to section 1-18 et seq. of **【this act】** P.L.1950, c.210
25 (C.40:69A-18 et seq.) at which election the voters of the
26 municipality do not approve the adoption of an optional plan of
27 government pursuant to P.L.1950, c.210 (C.40:69A-1 et seq.).
28 Following such an election at which the voters of the municipality
29 do approve the adoption of an optional plan of government pursuant
30 to P.L.1950, c.210 (C.40:69A-1 et seq.), no petition to adopt an
31 optional plan of government pursuant to section 1-18 et seq. of
32 P.L.1950, c.210 (C.40:69A-18 et seq.) shall be submitted to the
33 voters of the municipality until after the fifth calendar year next
34 following that approval.

35 (cf: P.L.1953, c.254, s.11)

36
37 9. Section 1-23 of P.L.1950, c.210 (C.40:69A-23) is amended
38 to read as follows:

39 1-23. The voters of any municipality which has adopted an
40 optional form of government pursuant to **【this act】** P.L.1950, c.210
41 (C.40:69A-1 et seq.) may not vote on the question of adopting
42 another form of government until **【10 years thereafter】** after the
43 fifth calendar year next following that approval. The voters of any
44 municipality which has held an election but has not adopted an
45 optional form of government pursuant to **【this act】** P.L.1950, c.210
46 (C.40:69A-1 et seq.) may not vote on the question of adopting

1 another form of government until **【10 years thereafter】** the third
2 calendar year next following that election.

3 (cf: P.L.2009, c.339, s.3)

4
5 10. Section 7 of P.L.1981, c.465 (C.40:69A-25.1) is amended to
6 read as follows:

7 7. a. (1) Any municipality governed by a plan of government
8 adopted pursuant to P.L.1950, c.210 (C.40:69A-1 et seq.) may, by
9 referendum, amend its charter to include any alternative permitted
10 under that plan of government. Except as provided in paragraph (2)
11 of this subsection, the question of adopting an alternative may be
12 initiated by the voters pursuant to, and subject to the pertinent
13 provisions of, sections 17-35 through 17-47 (C.40:69A-184 through
14 40:69A-196); or may be submitted to the voters by ordinance
15 adopted by the governing body, in which case the question and
16 ordinance shall be subject to the pertinent provisions of sections 17-
17 42 through 17-47 (C.40:69A-191 through 40:69A-196), except that
18 no petition of the voters shall be necessary in order to submit the
19 question.

20 (2) (a) The voters may initiate the question of amending the
21 municipal charter to hold elections according to an alternative set
22 forth in Group A. of subsection b. of this section pursuant to, and
23 subject to the pertinent provisions of, sections 17-35 through 17-47
24 (C.40:69A-184 through 40:69A-196), however, the petition
25 submitting the ordinance to the municipal council pursuant to
26 section 17-35 of P.L.1950, c.210 (C.40:69A-184) shall be signed by
27 a number of the legal voters of the municipality equal in number to
28 at least 25 percent of the total votes cast in the municipality at the
29 last election at which members of the General Assembly were
30 elected.

31 (b) A governing body may submit to the voters a question to
32 amend the municipal charter to hold elections according to an
33 alternative set forth in Group A. of subsection b. of this section,
34 subject to the pertinent provisions of sections 17-42 through 17-47
35 (C.40:69A-191 through 40:69A-196), however, the ordinance shall
36 receive an affirmative vote of at least two-thirds of the fully
37 constituted membership of the municipal council.

38 b. At any election at which the question of adopting an
39 alternative is to be submitted to the voters pursuant to this section,
40 the question shall be submitted in substantially the following form:
41 "Shall the charter of (insert name of municipality) governed by
42 (insert plan of government) be amended, as permitted under that
43 plan, to provide for (insert appropriate language from below for the
44 alternative to be voted upon)?"

45 GROUP A.

46 (1)"the holding of regular municipal elections in May;"

47 (2)"the holding of general elections in November;"

48 GROUP B.

49 (3)"the election of all council members at large;"

1 (4)"the division of the municipality into (insert number) wards
2 with (insert number) council members to be elected at large and one
3 from each ward;"

4 GROUP C.

5 (5)"the election of all council members for concurrent terms;"

6 (6)"the election of council members for staggered terms;"

7 GROUP D.

8 (7)"the election of the mayor by the members of the council
9 from among their own number;"

10 (8)"the election of the mayor directly by the voters of the
11 municipality;"

12 GROUP E.

13 (9)"a municipal council to consist of three members;"

14 (10) "a municipal council to consist of five members;"

15 (11) "a municipal council to consist of seven members;"

16 (12) "a municipal council to consist of nine members."

17 If more than one alternative is to be submitted to the voters at the
18 same time, each alternative shall be separately stated on the ballot
19 in the form of a question as set forth above. If the provisions of two
20 or more alternatives adopted at the same election conflict, then that
21 receiving the greatest affirmative vote shall control. Nothing
22 contained in this section shall authorize the submission to the voters
23 of the question of adopting any alternative not authorized by the
24 plan of government under which the municipality is governed. No
25 question shall be submitted to the voters pursuant to this section
26 **【within 4 years】** until after the fifth calendar year next following
27 the adoption by the municipality of a plan of government authorized
28 by P.L.1950, c.210 (C.40:69A-1 et seq.) or P.L.1981, c.465
29 (C.40:69A-25.1 et al.), or **【within 4 years】** until after the fifth
30 calendar year next following the date on which the question of
31 adopting it or any alternative in the same group was last submitted
32 to the voters pursuant to this section, but was not approved by the
33 voters.

34 c. In any municipality having adopted a charter providing for
35 the division of the municipality into wards, the question of
36 increasing or decreasing the number of council members to be
37 elected in the municipality shall be submitted to the voters in the
38 manner set forth in alternative (4) of Group B. of subsection b. of
39 this section. None of the alternatives set forth in Group E. of that
40 subsection shall be submitted to the voters in any municipality
41 divided into wards, unless at the same election alternative (3) of
42 Group B. of that subsection is also submitted, in which case both
43 alternatives shall be approved by the voters in order for either to
44 take effect.

45 (cf: P.L.2019, c.161, s.1).

46

47 11. This act shall take effect immediately.

STATEMENT

This bill would revise statutes concerning permissible length of time between public questions in municipalities operating under the “Optional Municipal Charter Law,” and the commission, town, and municipal manager forms of government. These forms of municipal government permit initiative and referendum, or simply referendum, in order to effect public policy (or a change in public policy) on the local level, including the number of members of the governing body, the terms of office of those governing body members, and the method by which those governing body members are elected (either at-large or by ward). P.L.2009, c.339 revised prior law to set the time period in those municipalities for consideration of referendum questions concerning the number, terms of office, or the method of election of local governing body members to once every 10 years. P.L.2009, c.339 also set a once-per-10-year limit on the ability of the voters of any municipality which has adopted an optional form of government under the “Optional Municipal Charter Law” to vote on the question of adopting another form of government.

This bill would revise the changes made to these laws by the enactment of P.L.2009, c.339. The bill would provide that, with respect to propositions to increase or decrease the term of office of the members of the governing body or the number of members of the governing body, or the division of the municipality into a number of wards, if such a proposition is approved by the voters of the municipality, no similar proposition shall be submitted to the voters of the municipality until after the fifth calendar year next following that approval.

The bill also revises three sections of the “Optional Municipal Charter Law,” P.L.1950, c.210 (C.40:69A-1 et seq.): N.J.S.A.40:69A-21 (concerning the adoption of an optional plan of government under the “Optional Municipal Charter Law”), N.J.S.A.40:69A-23 (concerning the adoption of another form of government under the “Optional Municipal Charter Law”), and N.J.S.A.40:69A-25.1 (concerning the adoption of alternatives to a municipal charter under the “Optional Municipal Charter Law”) to also provide that if a proposition under those statutes is approved by the voters of a municipality, no similar proposition shall be submitted to the voters of the municipality until after the fifth calendar year next following that approval.

The sponsor believes that any such change to the government of a municipality should have five years, which is a significant period of time, to prove effective or ineffective prior to the contemplation by the voters of the municipality of another change to the municipal government.