



NEW JERSEY LAW REVISION COMMISSION
Draft Tentative Report
Relating to Interpretive Statement's in New Jersey's
Statutes (N.J.S. 19:3-6)

March 9, 2020

The New Jersey Law Revision Commission is required to “[c]onduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it” and to propose to the Legislature revisions to the statutes to “remedy defects, reconcile conflicting provisions, clarify confusing language and eliminate redundant provisions.” *N.J.S. 1:12A-8*.

This Report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. Comments should be received by the Commission no later than **May 11, 2020**.

The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the Report, please inform the Commission so that your approval can be considered along with other comments. Please send comments concerning this Report or direct any related inquiries, to:

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Executive Summary

As of this date, N.J.S. 19:3-6 does not designate which municipal actor has the authority to draft and submit an interpretive statement with a referendum ballot. In *Desanctis v. Borough of Belmar*,¹ the Appellate Division considered whether the interpretive statement that accompanies a public ballot question must be drafted by the governing body.

The ambiguity created by the absence of a designated individual authorized to draft such statements resulted in the research summary that follows.

Relevant Statute

The relevant portion of N.J.S. 19:3-6 states the following:

[...] In [the] event that in any statute the public question to be voted upon is so stated as not clearly to set forth the true purpose of the matter being voted upon and no provision is made in said statute for presenting the same in simple language or printing upon the ballots a brief statement interpreting the same, there may be added on the ballots to be used in voting upon the question, a brief statement interpreting the same and setting forth the true purpose of the matter being voted upon in addition to the statement of the public question required by the statute itself. [...]

Background

In the 1930's the Legislature addressed who would be responsible for writing a summary statement regarding a State constitutional question for a referendum. N.J.S. 19:3-6 provides that any public question to be voted on by referendum may have a brief statement interpreting the question so the public may know the true purpose of that question.² The intention of this statement was to ensure that the public was able to discern the true purpose of that question. As originally drafted, N.J.S. 19:3-6, the Legislature vested the Attorney General with the authority to create a "summary statement in order to inform the voters of the effect that the adoption or rejection of the question will have on [...] the State Constitution."³

In 2015, the mayor and the council of Belmar adopted an ordinance appropriating \$4.1 million for the construction of a pavilion, and authorizing the issuance of bonds and notes to finance part of the construction.⁴ Belmar voters filed a protest petition seeking to have a referendum on the ordinance.⁵ The Borough Administrator drafted an interpretive statement for the proposed ordinance to be voted on during the referendum.⁶ The Administrator circulated the

¹ *Desanctis v. Borough of Belmar*, 455 N.J. Super. 316 (App. Div. 2018).

² N.J.S. 19:3-6.

³ *Desanctis v. Borough of Belmar*, 455 N.J. Super. 325.

⁴ *Id.* at 321.

⁵ *Id.*

⁶ *Id.* at 322.

interpretive statement to the borough attorney, council, and mayor, but it was never submitted to a vote by the mayor and governing body.⁷

The Plaintiffs filed suit to invalidate the interpretive statement because “it was never voted on by the mayor and council, thereby depriving plaintiffs and the public an opportunity to comment on and object to its content, which contained ‘inaccurate, misleading and extraneous information,’ presenting another ground for invalidation.”⁸

Analysis

The Appellate Division examined N.J.S. 19:3-6 as well as its predecessor⁹, to determine whether the trial court correctly held that an interpretive statement submitted by the borough administrator, without a resolution by the council and mayor, is invalid. It determined that an interpretive statement must be passed by resolution or ordinance voted upon by the governing body of the municipality.¹⁰

The Appellate Division also examined whether the trial court’s decision was based on principles that are “well established and consistent with the longstanding tradition[s] of our State and our Country to ensure fairness of our election system.”¹¹ The Court reviewed both N.J.S. 19:3-6 and N.J.S. 19:14-31.¹² The Appellate Division did not find any legislative intent to vest a borough administrator or municipal attorney with the authority to author and submit an interpretive statement with a referendum ballot.¹³ The Court found that the Attorney General may do so when an interpretive statement is mandated, but that authority is derived from the statutory framework pertinent only to the scenario regarding mandating the Attorney General to draft a statement.¹⁴

The Appellate Division determined that the statutory scheme weighs against allowing a mayor and council to outsource the approval of an interpretive statement.¹⁵ Pursuant to the Home Rule Act¹⁶, a clerk is required to submit a petition, once it is found sufficient, “to the governing body of the municipality without delay [so that they may approve it through a vote].”¹⁷ Various cases dealing with municipal actions, make it clear that a “board or body can act only by ordinance or resolution; these are the alternative methods. Any action of the body which does not rise to the

⁷ *Id.*

⁸ *Id.* at 323.

⁹ *See* L. 1930, c. 187.

¹⁰ *Desanctis v. Borough of Belmar*, 455 N.J. Super. at 326.

¹¹ *Id.* at 323.

¹² *Id.* at 326.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *See* Home Rule Act of 1917, now N.J.S. 40:42-1 *et seq.*, which requires a clerk to submit a petition, once it is found sufficient, to the governing body of the municipality without delay, *see also* N.J.S. 40:49–27b, and vests the governing body with the authority to call a special election therefore.

¹⁷ *See* N.J.S. 40:49–27b.

dignity of an ordinance, is a resolution.”¹⁸

The enactment of the Home Rule Act and the common law addressing municipal actions, led the Appellate Division to conclude that “when the Legislature provided the option for an interpretive statement [...] [the] interpretive statement had to be approved by the mayor and council.”¹⁹ This procedure promotes government transparency which is one aim derived from the Open Public Meetings Act.^{20, 21} The Appellate Division did “not see that submission of an interpretive statement to a county clerk without open approval of the governing body [was] consonant with the public spirit of the referendum laws.”²²

Having examined *Gormley v. Lan*, the Court noted that the public should have the opportunity to “object or propose alternative language” to the wording of the interpretive statement.²³ The final wording, however, should be given to the governing body, subject to “the requirement that it fairly interpret the public question and set forth its true purpose [of the ordinance].”²⁴

Pending Legislation

Staff reviewed A281, which seeks to “require interpretive statements of State general obligation bond act public questions to include certain fiscal information.”²⁵ The bill does not address who is responsible for drafting the interpretive statement nor does it address whether the interpretive statement should be approved by a governing body.

Conclusion

In its current form, N.J.S. 19:3-6 does not designate the municipal actor with authority to draft and submit an interpretive statement with a referendum ballot. In order to help make clear the statute for both practitioners, the general public, and municipalities this statute may benefit from the addition of the clarifying language.

¹⁸ *Desanctis v. Borough of Belmar*, 455 N.J. Super. at 327.

¹⁹ *Id.*

²⁰ *Id.*

²¹ See *Polillo v. Deane*, 74 N.J. 562, (1977) (“acknowledging the importance of allowing voters: to follow the progress of public bodies that can “influence in a material way a person's vote”; and to “have access to the information considered by [such bodies] in arriving at [a] decision.”)

²² See *Tumpson v. Farina*, 218 N.J. 467 (2014).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

Appendix

The proposed modifications to **N.J.S. 19:3-6. Form of public question; when question deemed approved; “legal voters”**, (shown with ~~strikethrough~~, and underlining), follow:

a. Any public question voted upon at an election including any amendment to the State Constitution, any act, statute or other legal titles shall:

(1) be presented in simple language that can be easily understood by the voter;

(2) ~~The printed phrasing of said question on the ballots shall~~ clearly set forth the true purpose of the matter being voted upon;

(3) ~~Where the question concerns any amendment to the State Constitution, or any act or statute or other legal titles of any nature, the printed phrasing on the ballots shall~~ include a brief statement interpreting same the question.

b. There may be added on the ballots a brief statement interpreting the public question and setting forth the true purpose of the matter being voted upon, in addition to the statement of the public question required by the statute itself, if the public question to be voted upon: ~~In event that in any statute the public question to be voted upon is so stated as~~

(1) ~~does not clearly to set forth the true purpose of the matter being voted upon; and~~

(2) ~~no provision is made in said the statute for presenting the same true purpose in simple language or printing upon the ballots a brief statement interpreting the same; it, there may be added on the ballots to be used in voting upon the question, a brief statement interpreting the same and setting forth the true purpose of the matter being voted upon in addition to the statement of the public question required by the statute itself.~~

c. For purposes of this section, the brief statement interpreting the public question shall be approved by the governing body of the governmental unit placing the public question on the ballot. The governing body shall not delegate the duty of approving the interpretive statement.

d. ~~Such~~ The public question, when duly voted upon at an election, shall be deemed to be is approved when that percentage of the ~~legal voters~~ votes of the State or any subdivision thereof as required by the statute authorizing the proposal of such public question ~~shall vote in favor of its adoption is achieved.~~

~~For the purpose of this Title it is hereby declared that the intent and meaning in any such statute of the words “legal voters” are persons entitled to vote, and who do vote, at the time and in the manner prescribed in and by such statute upon the public question submitted; and for the purpose of ascertaining what is the percentage of the legal voters of any district defined in such statute, upon the public question therein directed to be submitted, the persons who do not vote at~~

~~such election, the persons who do not vote upon the public question and the persons whose ballots may be declared invalid, shall not be estimated, counted or considered.~~

Comments

The first three sentences of N.J.S. 19:3-6 have been separated into section (a) and three subsections, to increase the accessibility of the statute.

Section (b) was added from the last sentence of the first paragraph. This was done to allow a clearer reading of the section.

Pursuant to *Desanctis v. Borough of Belmar* and *Gormley v. Lan*, section (c) reflects the court's recognition of the ability to delegate the writing of a brief statement, but not its approval.

Section (d) consists of the language from the last paragraph of the existing statute. Replacing "legal voters" with "votes" is not intended to change the substance of the statute, and allows for the removal of the final sentence of the statute.

The mayor and governing body do not necessarily have to draft the statement. An administrator may draft the brief statement, but the mayor and governing body must approve of it. This was derived from the determination of the court in *Desanctis v. Borough of Belmar*.