

SENATE, No. 1225

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED MAY 4, 2000

Sponsored by:

Senator JAMES S. CAFIERO

District 1 (Cape May, Atlantic and Cumberland)

SYNOPSIS

Clarifies that municipalities may regulate nudity on certain lands within municipal borders.

CURRENT VERSION OF TEXT

As introduced.



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1 AN ACT concerning municipal authority to regulate nudity on all lands
2 with the borders of and under the jurisdiction of the State and
3 amending R.S.40:48-1.

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

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8 1. R.S.40:48-1 is amended to read as follows:

9 40:48-1. Ordinances; general purpose. The governing body of
10 every municipality may make, amend, repeal and enforce ordinances
11 to:

12 Finances and property. 1. Manage, regulate and control the
13 finances and property, real and personal, of the municipality;

14 Contracts and contractor's bonds. 2. Prescribe the form and
15 manner of execution and approval of all contracts to be executed by
16 the municipality and of all bonds to be given to it;

17 Officers and employees; duties, terms and salaries. 3. Prescribe
18 and define, except as otherwise provided by law, the duties and terms
19 of office or employment, of all officers and employees; and to
20 provide for the employment and compensation of such officials and
21 employees, in addition to those provided for by statute, as may be
22 deemed necessary for the efficient conduct of the affairs of the
23 municipality;

24 Fees. 4. Fix the fees of any officer or employee of the municipality
25 for any service rendered in connection with his office or position, for
26 which no specific fee or compensation is provided. In the case of
27 salaried officers or employees, such fee shall be paid into the municipal
28 treasury;

29 Salaries instead of fees; disposition of fees. 5. Provide that any
30 officer or employee receiving compensation for his services, in whole
31 or in part by fees, whether paid by the municipality or otherwise, shall
32 be paid a salary to be fixed in the ordinance, and thereafter all fees
33 received by such officer or employee shall be paid into the municipal
34 treasury;

35 Maintain order. 6. Prevent vice, drunkenness and immorality; to
36 preserve the public peace and order; to prevent and quell riots,
37 disturbances and disorderly assemblages;

38 Punish beggars; prevention of loitering. 7. Restrain and punish
39 drunkards, vagrants, mendicants and street beggars; to prevent
40 loitering, lounging or sleeping in the streets, parks or public places;

41 Auctions and noises. 8. Regulate the ringing of bells and the
42 crying of goods and other commodities for sale at auction or
43 otherwise, and to prevent disturbing noises;

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 Swimming; bathing costume; prohibition of public nudity. 9.
2 Regulate or prohibit swimming or bathing in the waters of, in, or
3 bounding the municipality, and to regulate or prohibit persons from
4 appearing upon the public streets, parks and places clad in bathing
5 costumes or robes, or costumes of a similar character; regulate or
6 prohibit persons from appearing in a state of nudity upon
7 [State-owned lands within its borders in a state of nudity] all lands
8 within its borders which are under the jurisdiction of the State
9 including, without limitation, all lands owned by, controlled by,
10 managed by or leased by the State;

11 Prohibit annoyance of persons or animals. 10. Regulate or prohibit
12 any practice tending to frighten animals, or to annoy or injure persons
13 in the public streets;

14 Animals; pounds; establishment and regulation. 11. Establish and
15 regulate one or more pounds, and to prohibit or regulate the running
16 at large of horses, cattle, dogs, swine, goats and other animals, and to
17 authorize their impounding and sale for the penalty incurred, and the
18 costs of impounding, keeping and sale; to regulate or prohibit the
19 keeping of cattle, goats or swine in any part of the municipality; to
20 authorize the destruction of dogs running at large therein;

21 Hucksters. 12. Prescribe and regulate the place of vending or
22 exposing for sale articles of merchandise from vehicles;

23 Building regulations; wooden structures. 13. Regulate and control
24 the construction, erection, alteration and repair of buildings and
25 structures of every kind within the municipality; and to prohibit, within
26 certain limits, the construction, erection or alteration of buildings or
27 structures of wood or other combustible material;

28 Inflammable materials; inspect docks and buildings. 14. Regulate
29 the use, storage, sale and disposal of inflammable or combustible
30 materials, and to provide for the protection of life and property from
31 fire, explosions and other dangers; to provide for inspections of
32 buildings, docks, wharves, warehouses and other places, and of goods
33 and materials contained therein, to secure the proper enforcement of
34 such ordinance;

35 Dangerous structures; removal or destruction; procedure. 15.
36 Provide for the removal or destruction of any building, wall or
37 structure which is or may become dangerous to life or health, or might
38 tend to extend a conflagration; and to assess the cost thereof as a
39 municipal lien against the premises;

40 Chimneys and boilers. 16. Regulate the construction and setting
41 up of chimneys, furnaces, stoves, boilers, ovens and other contrivances
42 in which fire is used;

43 Explosives. 17. Regulate, in conformity with the statutes of this
44 State, the manufacture, storage, sale, keeping or conveying of
45 gunpowder, nitroglycerine, dynamite and other explosives;

46 Firearms and fireworks. 18. Regulate and prohibit the sale and use

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1 of guns, pistols, firearms, and fireworks of all descriptions;

2 Soft coal. 19. Regulate the use of soft coal in locomotives,
3 factories, power houses and other places;

4 Theaters, schools, churches and public places. 20. Regulate the
5 use of theaters, cinema houses, public halls, schools, churches, and
6 other places where numbers of people assemble, and the exits
7 therefrom, so that escape therefrom may be easily and safely made in
8 case of fire or panic; and to regulate any machinery, scenery, lights,
9 wires and other apparatus, equipment or appliances used in all places
10 of public amusement;

11 Excavations. 21. Regulate excavations below the established grade
12 or curb line of any street, not greater than eight feet, which the owner
13 of any land may make, in the erection of any building upon his own
14 property; and to provide for the giving of notice, in writing, of such
15 intended excavation to any adjoining owner or owners, and that they
16 will be required to protect and care for their several foundation walls
17 that may be endangered by such excavation; and to provide that in
18 case of the neglect or refusal, for 10 days, of such adjoining owner or
19 owners to take proper action to secure and protect the foundations of
20 any adjacent building or other structure, that the party or parties
21 giving such notice, or their agents, contractors or employees, may
22 enter into and upon such adjoining property and do all necessary work
23 to make such foundations secure, and may recover the cost of such
24 work and labor in so protecting such adjacent property; and to make
25 such further and other provisions in relation to the proper conduct and
26 performance of said work as the governing body or board of the
27 municipality may deem necessary and proper;

28 Sample medicines. 22. Regulate and prohibit the distribution,
29 depositing or leaving on the public streets or highways, public places
30 or private property, or at any private place or places within any such
31 municipality, any medicine, medicinal preparation or preparations
32 represented to cure ailments or diseases of the body or mind, or any
33 samples thereof, or any advertisements or circulars relating thereto,
34 but no ordinance shall prohibit a delivery of any such article to any
35 person above the age of 12 years willing to receive the same;

36 Boating. 23. Regulate the use of motor and other boats upon
37 waters within or bounding the municipality;

38 Fire escapes. 24. Provide for the erection of fire escapes on
39 buildings in the municipality, and to provide rules and regulations
40 concerning the construction and maintenance of the same, and for the
41 prevention of any obstruction thereof or thereon;

42 Care of injured employees. 25. Provide for the payment of
43 compensation and for medical attendance to any officer or employee
44 of the municipality injured in the performance of his duty;

45 Bulkheads and other structures. 26. Fix and determine the lines of
46 bulkheads or other works or structures to be erected, constructed or

1 maintained by the owners of lands facing upon any navigable water in
2 front of their lands, and in front of or along any highway or public
3 lands of said municipality, and to designate the materials to be used,
4 and the type, height and dimensions thereof;

5 Lifeguard. 27. Establish, maintain, regulate and control a lifeguard
6 upon any beach within or bordering on the municipality;

7 Appropriation for life-saving apparatus. 28. Appropriate moneys
8 to safeguard people from drowning within its borders, by location of
9 apparatus or conduct of educational work in harmony with the plans
10 of the United States volunteer life-saving corps in this State;

11 Fences. 29. Regulate the size, height and dimensions of any fences
12 between the lands of adjoining owners, whether built or erected as
13 division or partition fences between such lands, and whether the same
14 exist or be erected entirely or only partly upon the lands of any such
15 adjoining owners, or along or immediately adjacent to any division or
16 partition line of such lands. To provide, in such ordinance, the manner
17 of securing, fastening or shoring such fences. In the case of fences
18 thereafter erected contrary to the provisions thereof, the governing
19 body may provide for a penalty for the violation of such ordinance,
20 and in the case of such fence or fences erected or existing at the time
21 of the passage of any such ordinance, may provide therein for the
22 removal, change or alteration thereof, so as to make such fence or
23 fences comply with the provisions of any such ordinance;

24 Advertise municipality. 30. Appropriate funds for advertising the
25 advantages of the municipality;

26 Government Energy Aggregation Programs. 31. Establish
27 programs and procedures pursuant to which the municipality may act
28 as a government aggregator pursuant to sections 40 through 45 of
29 P.L.1999, c.23 (C.48:3-89 through C.48:3-94). Notwithstanding the
30 provisions of any other law, rule or regulation to the contrary, a
31 municipality acting as a government aggregator pursuant to P.L.1999,
32 c.23 (C.48:3-49 et al.) shall not be deemed to be a public utility
33 pursuant to R.S.40:62-24 or R.S.48:1-1 et seq. or be deemed to be
34 operating any form of public utility service pursuant to R.S.40:62-1 et
35 seq., to the extent such municipality is solely engaged in the provision
36 of such aggregation service and not otherwise owning or operating any
37 plant or facility for the production or distribution of gas, electricity,
38 steam or other product as provided in R.S.40:62-12.

39 (cf: P.L.1999, c.141, s.1)

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41 2. This act shall take effect immediately.

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STATEMENT

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46 The purpose of this bill is to clarify that municipal governing bodies
47 are authorized to enact and enforce ordinances to regulate or prohibit

1 persons from appearing in a state of nudity upon all lands within the
2 municipality's borders that are under the jurisdiction of the State,
3 rather than upon State-owned lands within its borders.

4 As reported in an unpublished opinion State v. William and Arlene
5 Vogt, Lower Township Municipal Court Appeal No. 36-9-99 and 46-
6 10-99, issued on March 30, 2000, William Vogt challenged whether
7 the Lower Township Municipal Ordinance could be enforced on the
8 federally owned portions of Higbee Beach in Lower Township. The
9 ordinance prohibits a person from appearing on any beach, beach
10 front, or waterway or in any public place located in the township of
11 Lower in a state of nudity. The Superior Court held that since the
12 land in question was not State-owned, the municipality does not have
13 the authority to enforce its ordinance on these lands. According to the
14 court, "although the intent of the legislature in enacting this statute
15 was to prohibit nude bathing, specifically on Higbee Beach, the
16 wording of the statute does not allow the municipality to enforce its
17 ordinance on federally-owned lands under state control."