

40:20-4 et al

LEGISLATIVE HISTORY CHECKLIST

NJSA 40:20-4 et al. (Freeholders--Boards of chosen--filling vacancies)

LAWS OF 1979 CHAPTER 340

Bill No. S3224

Sponsor(s) Merlino

Date Introduced May 3, 1979

Committee: Assembly County Government

Senate County and Municipal Government

Amended during passage Yes ~~xxx~~ Amendments during passage denoted by asterisks.

Date of Passage: Assembly Jan. 3, 1980

Senate Aug. 6, 1979

Date of approval Jan. 23, 1980

Following statements are attached if available:

Sponsor statement Yes ~~xxx~~

Committee Statement: Assembly ~~Yes~~ No

Senate Yes ~~xxx~~

Fiscal Note ~~Yes~~ No

Veto message ~~Yes~~ No

Message on signing ~~Yes~~ No

Following were printed:

Reports ~~Yes~~ No

Hearings ~~Yes~~ No

8/1/78

1-23-80

[OFFICIAL COPY REPRINT]
SENATE, No. 3224

STATE OF NEW JERSEY

INTRODUCED MAY 3, 1979

By Senator MERLINO

Referred to Committee on County and Municipal Government

AN ACT concerning boards of chosen freeholders **in certain counties**; repealing R. S. 40:20-4, 40:20-24, 40:20-36 to 40:20-70 inclusive, and P. L. 1964, c. 28, and supplementing chapter 20 of Title 40 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
 2 *of New Jersey:*

1 1. ***[Whenever]*** **In any county not having adopted the pro-*
 2 *visions of the "Optional County Charter Law," P. L. 1972, c. 154*
 3 *(C. 40:41A-1 et seq.), whenever** a vacancy occurs in the member-
 4 ship of the board of chosen freeholders for any reason other than
 5 the expiration of the term, it shall be filled for the unexpired term
 6 at the next general election occurring not less than 60 days from
 7 the date of the vacancy. If the vacancy occurs at any time after
 8 60 days prior to the general election occurring in the next to the
 9 last year in the term of office, the vacancy may be filled by appoint-
 10 ment for the remainder of the unexpired term in the same manner
 11 as hereinafter provided for temporary appointments. Nominations
 12 and elections for the filling of a vacancy for the unexpired term
 13 shall be made in accordance with the pertinent provisions of Title
 14 19 of the Revised Statutes.

1 2. The board of chosen freeholders may, by majority vote of its
 2 remaining members, fill a vacancy temporarily by **appointment**
 3 until the election and qualification of a successor. If the board of
 4 chosen freeholders shall fail to fill the vacancy within 30 days of
 5 its occurrence, the office shall remain vacant until the election and
 6 qualification of a person to fill the vacancy for the unexpired term
 7 or to fill a full new term, as the case may be.

1 3. Whenever the offices of all or a majority of the members of
 2 the board of chosen freeholders shall become vacant for any reason,

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
 is not enacted and is intended to be omitted in the law.**

3 the existence of the vacancies shall be immediately certified to the
4 Governor by any remaining member of the board of chosen free-
5 holders or by the county clerk. The Governor upon receipt of the
6 certification shall forthwith fill the vacancies temporarily by ap-
7 pointment until successors are elected and certified for the un-
8 expired terms at the next general election occurring not less than
9 60 days subsequent to the certification of the existence of the
10 vacancies. Any appointment made pursuant to this section to fill
11 a vacancy occurring in the next to the last year of the term and
12 certified any time after 60 days prior to the holding of the general
13 election, shall be made for the remainder of the term.

1 4. Any person appointed by the board of chosen freeholders or
2 the Governor to fill a vacancy either for the unexpired term or
3 temporarily, shall have all the qualifications required by statute to
4 qualify for election to the office. If the previous incumbent had
5 been elected to office as the nominee of a political party as defined
6 in Title 19 of the Revised Statutes, the person so appointed shall
7 be of the same political party as the preceding incumbent.

1 5. The following sections, acts and parts of acts, together with
2 all amendments and supplements thereto, are hereby repealed:

3 R. S. 40:20-4, 40:20-24, 40:20-36 to 40:20-70 inclusive;

4 P. L. 1964, c. 28 (C. 40:20-24.1).

1 6. This act shall take effect immediately.

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 7 pointment until successors are elected and certified for the un-
 8 expired terms at the next general election occurring not less than
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3 R. S. 40:20-4, 40:20-24, 40:20-36 to 40:20-70 inclusive;

4 P. L. 1964, c. 28 (C. 40:20-24.1).

1 6. This act shall take effect immediately.

STATEMENT

This bill has been drafted by the Division of Legal Services in furtherance of its duty to conduct a continuous examination and revision of the general and permanent statutory law of this State.

The purpose of this bill is to conform the manner in which vacancies in boards of chosen freeholders shall be filled in those counties which have not adopted a form of government under the "Optional County Charter Law" with the manner in which such vacancies are filled under the "Optional County Charter Law."

The bill provides that a vacancy occurring for any reason other than the expiration of the term shall be filled for the unexpired term at the next general election occurring not less than 60 days from the date of the vacancy. If the vacancy occurs at any time after 60 days prior to the general election occurring in the next to last year in the term of office, the vacancy may be filled by appointment for the remainder of the unexpired term. Temporary appointments to fill vacancies until the election of a successor and appointments to fill vacancies for the unexpired term are to be made by a majority vote of the remaining members of the board. If the board fails to act within 30 days after the occurrence of the

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vacancy, the office shall remain vacant until the election of a successor to fill the unexpired term or to fill a full term, as the case may be.

The bill also authorizes the Governor to fill vacancies in boards in those cases where the offices of all or a majority of the members become vacant for any reason. Any remaining member of the board or the county clerk shall immediately certify the existence of the vacancies to the Governor. The Governor shall fill the vacancies temporarily until the next general election occurring not less than 60 days subsequent to the certification of the vacancies. A vacancy occurring in the next to the last year of the term and certified any time after 60 days prior to the holding of a general election shall be filled for remainder of the term.

Appointees shall have all of the qualifications required by law to qualify for election to the office. If the prior incumbent was elected to office as the nominee of a political party, the appointee shall be of the same political party. The requirement that the appointee be from the same political party as the prior incumbent will be in accord with the recent amendments to the "Optional County Charter Law" (P. L. 1978, c. 141, ss. 15, 16 and 17) and the more recently enacted "Municipal Vacancy Law" (P. L. 1979, c. 83).

R. S. 40:20-4, 40:20-24 and P. L. 1964, c. 28 (C. 40:20-24.1) will be repealed because the provisions of this bill will supersede them. These sections provide for the manner in which vacancies in boards of freeholders are filled in counties which have not adopted a form of government under the "Optional County Charter Law."

Article 3 of Chapter 20 of Title 40 of the Revised Statutes, which includes R. S. 40:20-36 to 40:20-70, was declared to be unconstitutional in the case of *Mauk v. Hoffman*, 87 N. J. Super. 276 (Chan. Div. 1965). The retention of these sections as part of the general and permanent statutory law of this State is no longer necessary. These sections provided for the election, representation and terms of office of members elected from municipalities in counties not governed by small boards of chosen freeholders. P. L. 1966, c. 62 (C. 40:20-35.1 et seq.) was enacted to provide for the election of boards of freeholders in those counties.

SENATE COUNTY AND MUNICIPAL GOVERNMENT
COMMITTEE

STATEMENT TO

SENATE, No. 3224

with Senate committee amendments

STATE OF NEW JERSEY

DATED: JUNE 14, 1979

As amended by the Senate committee, the bill would conform the manner in which vacancies in governing bodies shall be filled in those counties which have not adopted a form of government under the "Optional County Charter Law" with the manner in which such vacancies are filled under the "Optional County Charter Law."

The bill provides that a vacancy occurring for any reason other than the expiration of the term shall be filled for the unexpired term at the next general election occurring not less than 60 days from the date of the vacancy. If the vacancy occurs at any time after 60 days prior to the general election occurring in the next to last year in the term of office, the vacancy may be filled by appointment for the remainder of the unexpired term. Temporary appointments to fill vacancies for the unexpired term are to be made by a majority vote of the remaining members of the governing body. If the governing body fails to act within 30 days after the occurrence of the vacancy, the office shall remain vacant until the election of a successor to fill the unexpired term or to fill a term, as the case may be.

The bill also authorizes the Governor to fill vacancies in governing bodies in those cases where the offices of all or a majority of the members become vacant for any reason. Any remaining member of the governing body or the county clerk shall immediately certify the existence of the vacancies to the Governor. The Governor shall fill the vacancies temporarily until the next general election occurring not less than 60 days subsequent to the certification of the vacancies. A vacancy occurring in the next to the last year of the term and certified any time after 60 days prior to the holding of a general election shall be filled for remainder of the term.

Appointees shall have all of the qualifications required by law to qualify for election to the office. If the prior incumbent was elected to office as the nominee of a political party, the appointee shall be of the same political party. The requirement that the appointee be from the same political party as the prior incumbent will be in accord with the

recent amendments to the "Optional County Charter Law" (P. L. 1978, c. 141, ss. 15, 16 and 17) and the more recently enacted "Municipal Vacancy Law" (P. L. 1979, c. 83).

R. S. 40:20-4, 40:20-24 and P. L. 1964, c. 28 (C. 40:20-24.1) will be repealed because the provisions of this bill will supersede them. These sections provide for the manner in which vacancies in boards of freeholders are filled in counties which have not adopted a form of government under the "Optional County Charter Law."

Article 3 of Chapter 20 of Title 40 of the Revised Statutes, which includes R. S. 40:20-36 to 40:20-70, was declared to be unconstitutional in the case of *Mauk v. Hoffman*, 87 N. J. Super. 276 (Chan. Div. 1965). The retention of these sections as part of the general and permanent statutory law of this State is no longer necessary. These sections provided for the election, representation and terms of office of members elected from municipalities in counties not governed by small boards of chosen freeholders. P. L. 1966, c. 62 (C. 40:20-35.1 et seq.) was enacted to provide for the election of boards of freeholders in those counties.

The bill was drafted by the Division of Legal Services of the Office of Legislative Services as part of its continuing revision of the general and permanent statutory law.

The Senate committee amendments merely clarify in the body of the proposed statute the intent that the legislation shall apply only to counties not having adopted the "Optional County Charter Law."
