

40: 45B-1 to 6

November 13, 1975

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Legislative Notes on R.S. 40:45B-1 to 6  
 40A:9-11  
 40A:69A-35 et al.  
 40:72-15  
 40:81-18  
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 40:171-5

"Municipal Governing Body Vacancy Law"

Laws of 1975, Chapter 213, S 419

Pre-filed by Beadleston  
 April 16, 1974 - Reported with committee amendments.  
 April 25, 1974 - Passed in Senate, amended.  
 April 29, 1974 - Received in Assembly.  
 Jan. 23, 1975 - Passed in Assembly.  
 Sept. 29, 1975 - Approved.

Sponsor's statement and Senate Committee statement enclosed.

No hearings or reports discovered.

JA/ks

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## SENATE, No. 419

# STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1974 SESSION

By Senator BEADLESTON

AN ACT concerning vacancies in the membership of a governing body in any municipality, revising parts of the statutory law and amending N. J. S. 40A:9-11; P. L. 1950, c. 210, ss. 3-5, 4-6, 5-6, 6-7, 7-6, 8-7, 9-5, 10-5, 11-5, 12-6; P. L. 1953, c. 254, s. 12A-5; P. L. 1950, c. 210, ss. 13-5, 14-5, 15-5, 16-5; R. S. 40:72-15, 40:81-18, 40:84-11, 40:87-11, 40:87-12, 40:125-7, 40:145-1, 40:146-20, 40:158-2, 40:159-1 and 40:171-5; and repealing N. J. S. 40A:9-162; R. S. 40:87-13, 40:125-6, 40:125-8, 40:171-3, 40:171-4; P. L. 1962, c. 13 and P. L. 1949, c. 1.

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

1 1. This act shall be known and cited as the "Municipal Gov-  
2 erning Body Vacancy Law."

1 2. Whenever a vacancy occurs in the membership of the gov-  
2 erning body of any municipality for any reason other than the  
3 expiration of term of office, the vacancy shall be filled in the follow-  
4 ing manner:

5 a. If the vacancy occurs subsequent to September 1 preceding  
6 the general election which will occur in the next-to-the-last year of  
7 the term of the member whose office has become vacant, the office  
8 shall be filled for its unexpired term by appointment by a majority  
9 vote of the whole membership of the governing body.

10 b. If the vacancy occurs prior to September 1 preceding the  
11 general election in the next-to-the-last year of the term of the  
12 member whose office has become vacant, the vacancy shall be filled  
13 for the unexpired term at the next ensuing general election. The  
14 governing body by a vote of the majority of its whole membership  
15 may fill the vacancy temporarily by appointment until the election  
16 and qualification of a successor.

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

17 c. Whenever a vacancy to be filled for the unexpired term by  
18 the governing body is not filled within 30 days of the occurrence  
19 of the vacancy, the municipal clerk shall forthwith call a special  
20 election to be held as soon as practicable to fill the vacancy. No  
21 appointment shall be made by the governing body to fill the va-  
22 cancy after a special election has been called. If the vacancy occurs  
23 within 6 months prior to the end of the term of office, the pro-  
24 visions of this subsection shall not apply and the governing body  
25 shall continue to have the power to fill the vacancy.

26 d. Whenever the offices of all or a majority of the members  
27 shall become vacant for any reason, the fact of the vacancies shall  
28 be immediately certified to the Governor by any remaining member  
29 of the governing body or by the municipal clerk. The Governor  
30 upon receipt of such certifications shall forthwith fill the vacancies  
31 temporarily by appointment until their successors are elected for  
32 the unexpired terms at the next general election or next regularly  
33 scheduled municipal election occurring not less than 60 days sub-  
34 sequent to the appointment.

1 3. Every person appointed by the governing body or by the  
2 Governor to fill a vacancy, either for the unexpired term or  
3 temporarily, shall have the qualifications required by statute to  
4 permit the appointee to qualify for election to said office, and if  
5 the previous incumbent had been elected to office as the nominee  
6 of a political party, the person so appointed shall be of the same  
7 political party.

1 4. Nomination for a successor to a vacancy to be filled by elec-  
2 tion shall be made upon direct nomination by petition in the manner  
3 provided by law for the filling of vacancies in municipal offices  
4 where candidates are nominated by direct petition for a general  
5 election.

1 5. All appointees to fill a vacancy, whether appointed to fill the  
2 unexpired term or temporarily, shall take office immediately after  
3 appointment and qualification. All persons elected to serve the  
4 unexpired term of the vacant office shall take office immediately on  
5 qualifying therefor.

1 6. The office of any member of the governing body of any mu-  
2 nicipality shall be deemed vacant under any of the following con-  
3 ditions:

4 a. It shall be so declared by virtue of judicial determination;

5 b. A member's written resignation shall be filed with the mu-  
6 nicipal clerk;

7 c. A member shall refuse to qualify or to serve;

8 d. A member shall become incapable of serving;

9 e. A member shall have died;

10 f. A member shall no longer reside within the corporate limits  
11 of the municipality;

12 g. A member shall for a period of 8 consecutive weeks, without  
13 being excused by the majority of the members of the governing  
14 body, fail to attend and participate as a member of any of its  
15 meetings; or

16 h. It comes within the purview of R. S. 19:3-25.

1 7. N. J. S. 40A:9-11 is amended to read as follows:

2 40A:9-11. Whenever a county or municipal officer, *other than*  
3 *a member of the governing body of a municipality*, who is required  
4 to be a resident shall cease to be a bona fide resident of the county  
5 or municipality, as the case may be, or whenever the resignation  
6 of any such officer shall have been accepted by the proper authority,  
7 his office shall immediately be deemed to be vacant. The county  
8 or municipality, by the proper authority, shall thereupon proceed  
9 to fill the vacancy in the manner prescribed by law. *Vacancies in*  
10 *the membership of the governing body of a municipality shall be*  
11 *filled in the manner provided by the "Municipal Governing Body*  
12 *Vacancy Law."*

13 A nonresident of any municipality may hold office as counsel,  
14 attorney, engineer, health officer, auditor or comptroller of such  
15 municipality and no such office shall be deemed vacated by a change  
16 of residence of any such person.

1 8. Section 3-5 of P. L. 1950, c. 210 (C. 40:69A-35) is amended  
2 to read as follows:

3 3-5. Vacancies in any elective office shall be filled [by election  
4 for the remainder of the unexpired term at the next general election  
5 occurring not less than 60 days after the occurrence of the vacancy.  
6 Such election to fill a vacancy shall be upon direct nomination by  
7 petition in the manner provided by law for the filling of vacancies  
8 in municipal offices where candidates are nominated by direct  
9 petition for a general election. Council shall fill such vacancies  
10 temporarily by appointment to serve until the qualification of a  
11 person so elected] *in the manner provided by the "Municipal*  
12 *Governing Body Vacancy Law."*

1 9. Section 4-6 of P. L. 1950, c. 210 (C. 40:69A-54) is amended  
2 to read as follows:

3 4-6. Vacancies in any elective office shall be filled [by election  
4 for the remainder of the unexpired term at the next general or  
5 regular municipal election occurring not less than 60 days after

6 the occurrence of the vacancy. Whenever such election to fill a  
 7 vacancy shall be at the general election, the nomination of candi-  
 8 dates shall be by petition in the manner provided by law for the  
 9 filling of vacancies in municipal offices where candidates are  
 10 nominated by direct petition for a general election. Council shall  
 11 fill vacancies temporarily by appointment to serve until the qualifi-  
 12 cation of a person so elected] *in the manner provided by the "Mu-*  
 13 *nicipal Governing Body Vacancy Law."*

1 10. Section 5-6 of P. L. 1950, c. 210 (C. 40:69A-60) is amended  
 2 to read as follows:

3 5-6. Vacancies in any elective office [occurring prior to the ninth  
 4 Friday before general election day of any year shall be filled by  
 5 election for the unexpired term at the next general election except  
 6 as hereinafter otherwise provided. Such election to fill a vacancy  
 7 shall be upon direct nomination by petition in the manner provided  
 8 by law for the filling of vacancies in municipal offices where candi-  
 9 dates are nominated by direct petition for a general election.  
 10 Council shall fill such vacancies temporarily by appointment to  
 11 serve until the qualification of a person so elected.

12 When any such vacancy occurs on or after the ninth Friday  
 13 before general election day, it shall be filled by election for the  
 14 unexpired term at the general election to be held in the following  
 15 year, but if it occurs on or after such Friday in the third year of  
 16 the term of such office, the council shall fill such vacancy by ap-  
 17 pointment to serve for the remainder of the term] *shall be filled*  
 18 *in the manner provided by the "Municipal Governing Body*  
 19 *Vacancy Law."*

1 11. Section 6-7 of P. L. 1950, c. 210 (C. 40:69A-67) is amended  
 2 to read as follows:

3 6-7. Vacancies in any effective office shall be filled [by election  
 4 for the remainder of the unexpired term at the next general or  
 5 regular municipal election occurring not less than 60 days after the  
 6 occurrence of the vacancy. Whenever such election to fill a vacancy  
 7 shall be at the general election, the nomination of candidates shall  
 8 be by petition in the manner provided by law for the filling of  
 9 vacancies in municipal offices where candidates are nominated by  
 10 direct petition for a general election. Council shall fill vacancies  
 11 temporarily by appointment to serve until the qualification of a  
 12 person so elected] *in the manner provided by the "Municipal*  
 13 *Governing Body Vacancy Law."*

1 12. Section 7-6 of P. L. 1950, c. 210 (C. 40:69A-73) is amended  
 2 to read as follows:

3 7-6. Vacancies in any elective office shall be filled [for the  
 4 remainder of the unexpired term at the next general election to  
 5 be held not less than 60 days after the occurrence of the vacancy.  
 6 The council shall fill the vacancy temporarily by appointment to  
 7 serve until the qualification of the person so elected. Any person  
 8 appointed to fill a vacancy shall be a member of the same political  
 9 party as the prior incumbent] *in the manner provided by the*  
 10 *“Municipal Governing Body Vacancy Law.”*

1 13. Section 8-7 of P. L. 1950, c. 210 (C. 40:69A-80) is amended  
 2 to read as follows:

3 8-7. Vacancies in any elective office shall be filled [for the  
 4 remainder of the unexpired term at the next general election to be  
 5 held not less than 60 days after the occurrence of the vacancy.  
 6 The council shall fill the vacancy temporarily by appointment to  
 7 serve until the qualification of the person so elected. Any person  
 8 appointed to fill a vacancy shall be a member of the same political  
 9 party as the prior incumbent] *in the manner provided by the*  
 10 *“Municipal Governing Body Vacancy Law.”*

1 14. Section 9-5 of P. L. 1950, c. 210 (C. 40:69A-85) is amended  
 2 to read as follows:

3 9-5. Vacancies in the council shall be filled [by election for the  
 4 remainder of the unexpired term at the next general election  
 5 occurring not less than 60 days after the occurrence of the vacancy.  
 6 Such election to fill a vacancy shall be upon direct nomination by  
 7 petition in the manner provided by law for the filling of vacancies  
 8 in municipal offices where candidates are nominated by direct  
 9 petition for a general election. Council shall fill the vacancy  
 10 temporarily by appointment to serve until the qualification of a  
 11 person so elected] *in the manner provided by the “Municipal*  
 12 *Governing Body Vacancy Law.”*

1 15. Section 10-5 of P. L. 1950, c. 210 (C. 40:69A-103) is amended  
 2 to read as follows:

3 10-5. Vacancies in the council shall be filled [by election for the  
 4 remainder of the unexpired term at the next general or municipal  
 5 election occurring not less than 60 days after the occurrence of the  
 6 vacancy. Whenever such election to fill a vacancy shall be at the  
 7 general election, the nomination of candidates shall be by petition  
 8 in the manner provided by law for the filling of vacancies in mu-  
 9 nicipal offices where candidates are nominated by direct petition  
 10 for a general election. Council shall fill the vacancy temporarily  
 11 by appointment to serve until the qualification of a person so

12 elected] *in the manner provided by the "Municipal Governing*  
 13 *Body Vacancy Law."*

1 16. Section 11-5 of P. L. 1950, c. 210 (C. 40:69A-108) is amended  
 2 to read as follows:

3 11-5. Vacancies in the council shall be filled [by election for the  
 4 remainder of the unexpired term at the next general election  
 5 occurring not less than 60 days after the occurrence of the vacancy.  
 6 Such election to fill a vacancy shall be upon direct nomination by  
 7 petition in the manner provided by law for the filling of vacancies  
 8 in municipal offices where candidates are nominated by direct  
 9 petition for a general election. Council shall fill the vacancy tem-  
 10 porarily by appointment to serve until the qualification of a person  
 11 so elected] *in the manner provided by the "Municipal Governing*  
 12 *Body Vacancy Law."*

1 17. Section 12-6 of P. L. 1950, c. 210 (C. 40:69A-114) is amended  
 2 to read as follows:

3 12-6. Vacancies in the council shall be filled [by election for the  
 4 remainder of the unexpired term at the next general or municipal  
 5 election occurring not less than 60 days after the occurrence of the  
 6 vacancy, except that no election to fill vacancies in the council shall  
 7 be held at the general election or municipal election, as the case  
 8 may be, to be held in the last year of the term of the vacant office.  
 9 Whenever such election to fill a vacancy shall be at the general  
 10 election, the nomination of candidates shall be by petition in the  
 11 manner provided by law for the filling of vacancies in municipal  
 12 offices where candidates are nominated by direct petition for a  
 12A general election. Council shall fill the vacancy temporarily by  
 13 appointment to serve until the qualification of a person so elected]  
 14 *in the manner provided by the "Municipal Governing Body*  
 15 *Vacancy Law."*

1 18. Section 12A-5 of P. L. 1953, c. 254 (C. 40:69A-114.5) is  
 2 amended to read as follows:

3 12A-5. Vacancies in any elective office shall be filled [for the  
 4 remainder of the unexpired term at the next general election to  
 5 be held not less than 60 days after the occurrence of the vacancy.  
 6 The council shall fill the vacancy temporarily by appointment to  
 7 serve until the qualification of the person so elected. Any person  
 8 appointed to fill a vacancy shall be a member of the same political  
 9 party as the prior incumbent] *in the manner provided by the*  
 10 *"Municipal Governing Body Vacancy Law."*

1 19. Section 13-5 of P. L. 1950, c. 210 (C. 40:69A-119) is amended  
 2 to read as follows:

3 13-5. Vacancies [shall be filled by election for the remainder of  
 4 the unexpired term at the next general election occurring not less  
 5 than 60 days after the occurrence of the vacancy. Such election to  
 6 fill a vacancy shall be upon direct nomination by petition in the  
 7 manner provided by law for the filling of vacancies in municipal  
 8 offices where candidates are nominated by direct petition for a  
 9 general election. Council shall fill the vacancy temporarily by  
 10 appointment to serve until the qualification of a person so elected]  
 11 *in any elective office shall be filled in the manner provided by the*  
 12 *“Municipal Governing Body Vacancy Law.”*

1 20. Section 14-5 of P. L. 1950, c. 210 (C. 40:69A-137) is amended  
 2 to read as follows:

3 14-5. Vacancies [shall be filled by election for the remainder of  
 4 the unexpired term at the next general election occurring not less  
 5 than 60 days after the occurrence of the vacancy. Such election  
 6 to fill a vacancy shall be upon direct nomination by petition in the  
 7 manner provided by law for the filling of vacancies in municipal  
 8 offices where candidates are nominated by direct petition for a  
 9 general election. Council shall fill the vacancy temporarily by  
 10 appointment to serve until the qualification of a person so elected]  
 11 *in any elective office shall be filled in the manner provided by the*  
 12 *“Municipal Governing Body Vacancy Law.”*

1 21. Section 15-5 of P. L. 1950, c. 210 (C. 40:69A-143) is amended  
 2 to read as follows:

3 15-5. The mayor and councilmen shall be elected at the general  
 4 election to be held on the first Tuesday after the first Monday in  
 5 November or at such other time as may be provided by law for  
 6 holding general elections. Vacancies in the *office of mayor and*  
 7 council shall be filled [by election for the remainder of the un-  
 8 expired term at the next general election to be held not less than 60  
 9 days after the occurrence of the vacancy. Council shall fill the  
 10 vacancy temporarily by appointment to serve until the qualification  
 11 of a person so elected. Any person appointed to fill a vacancy shall  
 12 be a member of the same political party as the prior incumbent]  
 13 *in the manner provided by the “Municipal Governing Body Va-*  
 14 *cancy Law.”*

1 22. Section 16-5 of P. L. 1950, c. 210 (C. 40:69A-148) is amended  
 2 to read as follows:

3 16-5. Members of the council shall be elected at the general  
 4 election to be held on the first Tuesday after the first Monday in  
 5 November or at such other time as may be provided by law for hold-  
 6 ing general elections. Vacancies in the *office of mayor and council*



7 shall be filled [by election for the remainder of the unexpired term  
 8 at the next general election to be held not less than 60 days after the  
 9 occurrence of the vacancy. Council shall fill the vacancy tempo-  
 10 rarily by appointment to serve until the qualification of a person  
 11 so elected. Any person appointed to fill a vacancy shall be a mem-  
 12 ber of the same political party as the prior incumbent] *in the man-*  
 13 *ner provided by the "Municipal Governing Body Vacancy Law."*

1 23. R. S. 40:72-15 is amended to read as follows:

2 40:72-15. When a vacancy occurs in the office of commissioner,  
 3 [the remaining commissioners shall, within 30 days thereafter,  
 4 elect a properly qualified person to fill such vacancy for the un-  
 5 expired term] *the vacancy shall be filled in the manner provided*  
 6 *by the "Municipal Governing Body Vacancy Law."*

1 24. R. S. 40:81-18 is amended to read as follows:

2 40:81-18. Vacancies in the municipal council, except those cre-  
 3 ated by recall, shall be filled [temporarily by the municipal council  
 4 by appointing a properly qualified citizen thereto, who shall serve  
 5 until a successor can be elected at the next general election, at  
 6 which time such successor shall be elected to serve for the unex-  
 7 pired term] *in the manner as provided by the "Municipal Govern-*  
 8 *ing Body Vacancy Law."* [The petition for nomination, the form  
 9 of ballot, excepting the stub and the numbering which shall be  
 10 omitted, shall be the same as provided for the election of council-  
 11 men, and such form shall be made a part of the ballot used in such  
 12 general election. The method of canvassing and computing the vote  
 13 shall be the same as provided for the canvassing and computing  
 14 the vote for the election of councilmen. If the regular municipal  
 15 election for the election of councilmen shall occur within 12 months  
 16 from the date of such appointment, the appointment shall be for  
 17 the unexpired term of the office of councilman wherein a vacancy  
 18 exists.]

1 25. R. S. 40:84-11 is amended to read as follows:

2 40:84-11. In cases provided for in this article the municipal  
 3 elections to be held in accordance with sections 40:81-5 and 40:84-2  
 4 of this Title shall be held on the second Tuesday in May in each  
 5 year, and the number of persons to be elected at such municipal  
 6 elections shall be equal to the number of vacancies which are then  
 7 to be filled, and the terms of office of the persons so elected shall  
 8 be 3 years and until their successors are elected and qualified,  
 9 unless their places become vacant as prescribed in [this subtitle]  
 10 *the "Municipal Governing Body Vacancy Law."* [In cases pro-  
 11 vided for in this article, vacancies] *Vacancies* in the municipal

12 council, except those created by recall, shall be filled [temporarily  
 13 by the municipal council by the appointment of a properly qualified  
 14 citizen thereto who shall serve until a successor can be elected at  
 15 the next municipal election at which members of the municipal  
 16 council are elected, at which time the successor shall be elected to  
 17 serve for the unexpired term. The provisions of article 2 of this  
 18 chapter (§ 40:84-2 et seq.) relative to municipal elections shall  
 19 apply to the election of such successor] *in the manner provided*  
 20 *by the "Municipal Governing Body Vacancy Law."*

1 26. R. S. 40:87-11 is amended to read as follows:

2 40:87-11. [Whenever the mayor shall present to the council his  
 3 resignation from office such resignation may be accepted by a vote  
 4 of the council and the office of mayor shall thereupon be deemed  
 5 vacant.] A vacancy occurring in the office of mayor *or any member*  
 6 *of the council*, [whether by resignation or otherwise,] shall be filled  
 7 *in the manner provided by the "Municipal Governing Body Va-*  
 8 *cancy Law"* [by the council until the next annual election and  
 9 until the election and qualification of a successor. At such next  
 10 annual election the person elected to fill such vacancy shall be  
 11 elected for the unexpired term only].

1 27. R. S. 40:87-12 is amended to read as follows:

2 40:87-12. All vacancies in [other] elective offices *other than*  
 3 *mayor or members of the council* shall be filled by nomination by  
 4 the mayor and appointment by him by and with the advice and  
 5 consent of the council, expressed by the vote of a majority of the  
 6 members of the council present at the meeting; provided that at  
 7 least three affirmative votes shall be required for such purpose,  
 8 the mayor to have no vote thereon except in the case of a tie.

1 28. R. S. 40:125-7 is amended to read as follows:

2 40:125-7. [Whenever a vacancy occurs by reason of the death,  
 3 resignation, inability, disqualification, removal or refusal to serve  
 4 of or by any town or ward officer, elected as aforesaid, the council  
 5 shall fill the vacancy by the appointment of a suitable and quali-  
 6 fied elector to hold until his successor shall have been duly elected  
 7 and qualified, and the unexpired portion of the term, if any remains,  
 8 shall be filled at the next succeeding general election. If at any  
 9 town election there shall be a vacancy in any office to be filled and  
 10 at the same time an election for a full term of such office, the term  
 11 for which each person shall be voted for shall be designated on the  
 12 ballots.] *Whenever a vacancy occurs in the membership of the town*  
 13 *council, the vacancy shall be filled in the manner provided by the*  
 14 *"Municipal Governing Body Vacancy Law."*

1 29. R. S. 40:145-1 is amended to read as follows:

2 40:145-1. If two or more persons at any township election *for*  
3 *public offices other than for members of the township committee*  
4 have an equal number of votes for the same office, or there be a  
5 failure to elect **any** *such* officer, or a refusal by any person elected  
6 or appointed to **any** *such* office to accept the same, or if any  
7 person shall die or resign from office, or shall remove out of the  
8 township except in the case of the township attorney, engineer or  
9 building inspector, or become incapable of serving, or fail to take  
10 or subscribe the oath prescribed by law for his office, or shall fail  
11 to file such oath with the township clerk within the time prescribed  
12 by law, or shall not give such security as may be by law required  
13 within the time prescribed by law, then such office shall be deemed  
14 to be vacant and the township committee shall forthwith, by reso-  
15 lution, fill such vacancy.

16 **【If the township committee shall be unable to agree, by resolu-**  
17 **tion, who shall fill such vacancy then any member of the township**  
18 **committee or any taxpayer of the township may apply to a judge**  
19 **of the superior court, who is hereby empowered to appoint any**  
20 **person over the age of 21 years, who shall be a taxpayer and**  
21 **resident in said township, to fill such vacancy.】**

1 30. R. S. 40:146-20 is amended to read as follows:

2 40:146-20. **【Whenever all or a majority of the members of the**  
3 **township committee of any township have or shall resign or refuse**  
4 **to act, or shall have died, or become incapable of serving, shall**  
5 **have moved out of the township, or where that portion of any**  
6 **township in which such members of the township committee reside**  
7 **has been set off from and annexed to or become incorporated in the**  
8 **corporate limits of any other municipality, then such offices shall**  
9 **be deemed to be vacant, and the fact of such vacancy shall be**  
10 **immediately certified by the remaining member or members of any**  
11 **such township committee or by the township clerk to the Governor,**  
12 **who shall forthwith, on receipt of such certificate, fill such vacancies**  
13 **by appointment. The commissions of the persons so appointed**  
14 **shall expire when their successors are elected and qualified, which**  
15 **successors shall be elected at the next ensuing general election for**  
16 **township officers, for the full term of 3 years.】**

17 *Whenever a vacancy occurs in the membership of the township*  
18 *committee of any township, the vacancy shall be filled in the manner*  
19 *provided by the "Municipal Governing Body Vacancy Law."*

1 31. R. S. 40:158-2 is amended to read as follows:

2 40:158-2. The officers to be elected shall be five village trustees,  
 3 who shall constitute the governing board of the village. At their  
 4 first meeting after the first election in any village incorporated  
 5 under or adopting this part of this subtitle the trustees shall decide  
 6 their term of office by lot. The term of one trustee shall expire at  
 7 noon on January 1 next ensuing; the terms of two trustees shall  
 8 expire 1 year thereafter, and the terms of the remaining two  
 9 trustees 2 years thereafter. The terms of the trustees elected after  
 10 the first election shall be 3 years, and all vacancies shall be filled  
 11 **[for the unexpired term only]** *in the manner provided by the*  
 12 *“Municipal Governing Body Vacancy Law.”* The board shall  
 13 organize by the election of one of its number as president, who  
 14 shall be the village president for 1 year and until his successor shall  
 15 be elected, but the president shall not remain in office after the  
 16 expiration of his term as trustee.

1 32. R. S. 40:159-1 is amended to read as follows:

2 40:159-1. No person shall be eligible to the office of trustee unless  
 3 he shall be at the time a resident and voter of the village. When-  
 4 ever a trustee shall cease to be a resident thereof, his office shall  
 5 become vacant.

6 Vacancies in the board of trustees **[from any cause]** shall be  
 7 filled **[by the remaining members of the board until the next annual**  
 8 **election]** *in the manner provided by the Municipal Governing Body*  
 9 *Vacancy Law.”*

1 33. R. S. 40:171-5 is amended to read as follows:

2 40:171-5. 1. In every city in the State which has a board of  
 3 aldermen *or common council*, in case of a vacancy in the board  
 4 *or common council* **[by death, resignation or otherwise]**, the **[said]**  
 5 vacancy shall be filled **[by an appointment to be made by the presi-**  
 6 **dent of the board of aldermen for the balance of the year or until**  
 7 **his successor shall be elected and qualified; provided, however,**  
 8 **that the president of said board of aldermen shall appoint a citizen**  
 9 **who is a resident of the ward from which the vacancy occurs; and**  
 10 **provided, further, that the appointment made by the president of**  
 11 **the board shall be for the remainder of the year in which such**  
 12 **vacancy occurred until the first Monday of January succeeding, or**  
 13 **until his successor shall be elected and qualified, and at the first**  
 14 **annual election held after such vacancy occurred some fit person**  
 15 **shall be elected to fill such vacancy for the unexpired time only]**  
 16 *in the manner provided by the Municipal Governing Body Vacancy*  
 17 *Law.”*

1 34. Sections 40A:9-162 of the New Jersey Statutes; 40:87-13,  
 2 40:125-6, 40:125-8, 40:171-3 and 40:171-4 of the Revised Statutes;  
 3 P. L. 1962, c. 13 (C. 40:72-15.1 to C. 40:72-15.3); and P. L. 1949,  
 4 c. 1 (C. 40:75-24.1 to C. 40:75-24.10) are repealed.

1 35. This act shall take effect immediately.

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#### STATEMENT

There are presently 27 sections of the statutes dealing with the filling of vacancies on municipal governing bodies. Many of these are repetitious: others have differences, some of which seem to arise only from the draftman's choice of method or language since no practical reason for them can be discerned. All of them are incomplete in that they do not provide for all the problems which may arise.

In municipalities that have local May elections, vacancies are presently required to be filled either by appointment, which could run almost for a full 4-year term until the next municipal elections, or by special elections or by a combination of an appointment and a filling of the vacancy at the next general election. In municipalities where the offices are filled at general elections, some presently require special elections, some are by appointment and one provides that in some instances the vacancy would be filled by a judge of the superior court.

In cases where the offices are originally filled by a nominee of a political party, it is generally required that the person filling the vacancy be of the same political party.

Most of the statutes are tied in with the Election Law, and provide that a vacancy which occurs within 60 days of the next general election will not get filled until the following general election. In the case of one of the optional charter municipalities, the 60-day time limit was changed to the ninth Friday before the general election. This would avoid, in certain years, the 60-day time limit falling within the Labor Day weekend.

The purpose of this bill is to provide a single method to accomplish the single purpose of filling vacancies on a municipal governing body. It is prepared in anticipation of the proposed revision of Title 40 and will eventually eliminate 27 separate sections from the revision. It follows the substantive provisions of most of the existing statutes.

The provisions of the bill are tied in with the time when a vacancy will take place so that where it is practicable a vacancy may be filled at the next general election and where that is not practicable the vacancy is filled by the governing body for the unexpired term. The 60-day period prior to a general election and the provision for the ninth Friday prior to a general election have been changed to the fixed date of September 1, a few days difference.

If the vacancy occurs prior to September 1 in the next-to-the-last year of the term to be filled, it will be filled at the next general election for the unexpired term. In this instance the governing body may make a temporary appointment until a successor is elected.

If the vacancy occurs subsequent to September 1 in the next-to-the-last year of the term, the governing body is required to make an appointment for the unexpired term.

Under this bill, in May election municipalities, the governing body may make a permanent appointment for a maximum of 22 months. In November election municipalities the governing body may make a permanent appointment for a maximum of 16 months. This is shorter than the maximum length permitted for an appointment in most of the present statutes.

There is presently in the law a provision that in some municipalities where the governing body does not act to fill a vacancy for the unexpired term because of inability to agree, the vacancy is filled by a superior court judge. This is not a duty that is relished by the court, nor is it a proper method of filling the vacancy to an elective office. This bill abolishes this power. Instead, it states that where a vacancy to be filled for an unexpired term is not filled within 30 days of the occurrence of the vacancy, the municipal clerk shall call a special election unless the vacancy occurs within 6 months prior to the end of the term to be filled. This is the only occasion when a special election is called for the purpose of filling a vacancy.

Other existing statutes provide for the filling of some vacancies by the Governor when all or a majority of the offices of members become vacant at or around the same time. Such vacancies would give rise to an emergency situation and require emergency measures. Under this bill, the Governor may fill the vacancies temporarily until the next general election or regularly-scheduled municipal election at which the offices may be filled for the unexpired terms.

Both the governing body and the Governor, in filling vacancies, must select a person who can qualify for election to the office and

must pay attention to the party affiliation of the previous incumbent in the event he was elected as a party nominee.

The bill provides for the method of nomination for a successor to fill the vacancy such as is presently provided in many of the existing statutes. It provides, also, that all persons appointed or elected shall take office immediately.

Section 6 of the bill is generally a consensus of the various statutes in which vacancies are defined, except for subsection (g), which is new. This has been proposed as a result of reported instances where members have deliberately refused to attend meetings or have been forbidden by the court to participate because of a conflict of interest which only the member can resolve. When such absenteeism is uncontrolled, the public interest can be frustrated.

This bill has been prepared with the assistance of the Legislative Committee of the New Jersey Institute of Municipal Attorneys and has the approval of that committee.

SENATE COUNTY AND MUNICIPAL  
GOVERNMENT COMMITTEE

STATEMENT TO

**SENATE, No. 419**

With Senate Committee Amendments

**STATE OF NEW JERSEY**

DATED: APRIL 16, 1974

Senate Bill 419, to be known as the "Municipal Governing Body Vacancy Law", provides uniform procedures for filling vacancies, other than those resulting from the expiration of the term of office, in the membership of the governing body of certain municipalities.

Among other things, this bill prescribes:

(1) two separate procedures for filling vacancies occurring after September 1 of next-to-the-last year of a term, and for vacancies occurring at any other time (section 2a and 2b),

(2) special procedures for filling a vacancy when the office is not filled within 30 days of the vacancy's occurrence, or when all or a majority of said offices fall simultaneously vacant (sections 2c and 2d),

(3) the qualifications of gubernatorial appointments (section 3),

(4) the manner of nominating candidates to a vacant office to be filled by election (section 4),

(5) the time for assuming an office vacated under any of the conditions defined in section 6 (section 5), and

(6) the conditions under which an office shall be deemed vacant (section 6).

Section 7 amends N. J. S. 40A:9-11, concerning resignations from office for failure to comply with residency requirements, so as to bring it into conformity with the provisions of this bill.

The remaining sections apply the main provisions of the "Municipal Governing Body Vacancy Law" to the various forms of municipal government operating under the general laws of the State, with the exception of special charter and referendum charter laws.

The Committee amendments include (1) a technical amendment to section 2, (2) application of the aforesaid provisions to municipalities having adopted council-manager Plan F of the Optional Municipal Charter Law, and (3) the exclusion from the provisions of this bill of certain incorporated (special charter) villages, the general statutory authority for whose incorporation has been repealed.



SENATE COMMITTEE AMENDMENTS TO

SENATE, No. 419

STATE OF NEW JERSEY

ADOPTED APRIL 16, 1974

Amend page 1, section 2, line 11, omit "the next-to-the-last", insert "any year other than the last".

Amend page 6, section 18, line 10, after line 10, insert new section as follows:

"19. Section 12B-6 of P. L. 1973, c. 234 (C. 40:69A-114.11) is amended to read as follows:

12B-6. Vacancies in the council shall be filled **[for the remainder of the unexpired term at the next general election to be held not less than 60 days after the occurrence of the vacancy. The council shall fill the vacancy temporarily by appointment to serve until the qualification of the person so elected. Any person appointed to fill a vacancy shall be a member of the same political party as the prior incumbent.]** *in the manner provided by the 'Municipal Governing Body Vacancy Law.'* "

Amend page 6, section 19, line 1, omit "19", insert "20", and renumber all following sections.

Amend page 11, section 31, line 2, omit "The", insert "Unless otherwise provided for by any law or charter incorporating any village, the".

Amend page 11, section 32, line 6, omit "Vacancies", insert "Unless otherwise provided for by any law or charter incorporating any village, the vacancies".

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

213 9/29/75

[OFFICIAL COPY REPRINT]  
**SENATE, No. 419**

**STATE OF NEW JERSEY**

PRE-FILED FOR INTRODUCTION IN THE 1974 SESSION

By Senator BEADLESTON

AN ACT concerning vacancies in the membership of a governing body in any municipality, revising parts of the statutory law and amending N. J. S. 40A:9-11; P. L. 1950, c. 210, ss. 3-5, 4-6, 5-6, 6-7, 7-6, 8-7, 9-5, 10-5, 11-5, 12-6; P. L. 1953, c. 254, s. 12A-5; P. L. 1950, c. 210, ss. 13-5, 14-5, 15-5, 16-5; R. S. 40:72-15, 40:81-18, 40:84-11, 40:87-11, 40:87-12, 40:125-7, 40:145-1, 40:146-20, 40:158-2, 40:159-1 and 40:171-5; and repealing N. J. S. 40A:9-162; R. S. 40:87-13, 40:125-6, 40:125-8, 40:171-3, 40:171-4; P. L. 1962, c. 13 and P. L. 1949, c. 1.

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

1 1. This act shall be known and cited as the "Municipal Gov-  
2 erning Body Vacancy Law."

1 2. Whenever a vacancy occurs in the membership of the gov-  
2 erning body of any municipality for any reason other than the  
3 expiration of term of office, the vacancy shall be filled in the follow-  
4 ing manner:

5 a. If the vacancy occurs subsequent to September 1 preceding  
6 the general election which will occur in the next-to-the-last year of  
7 the term of the member whose office has become vacant, the office  
8 shall be filled for its unexpired term by appointment by a majority  
9 vote of the whole membership of the governing body.

10 b. If the vacancy occurs prior to September 1 preceding the  
11 general election in \***the next-to-the-last**\* *any year other than*  
12 *the last*\* year of the term of the member whose office has become  
13 vacant, the vacancy shall be filled for the unexpired term at the next  
14 ensuing general election. The governing body by a vote of the ma-  
15 jority of its whole membership may fill the vacancy temporarily by  
16 appointment until the election and qualification of a successor.

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

17 c. Whenever a vacancy to be filled for the unexpired term by  
18 the governing body is not filled within 30 days of the occurrence  
19 of the vacancy, the municipal clerk shall forthwith call a special  
20 election to be held as soon as practicable to fill the vacancy. No  
21 appointment shall be made by the governing body to fill the va-  
22 cancy after a special election has been called. If the vacancy occurs  
23 within 6 months prior to the end of the term of office, the pro-  
24 visions of this subsection shall not apply and the governing body  
25 shall continue to have the power to fill the vacancy.

26 d. Whenever the offices of all or a majority of the members  
27 shall become vacant for any reason, the fact of the vacancies shall  
28 be immediately certified to the Governor by any remaining member  
29 of the governing body or by the municipal clerk. The Governor  
30 upon receipt of such certifications shall forthwith fill the vacancies  
31 temporarily by appointment until their successors are elected for  
32 the unexpired terms at the next general election or next regularly  
33 scheduled municipal election occurring not less than 60 days sub-  
34 sequent to the appointment.

1 3. Every person appointed by the governing body or by the  
2 Governor to fill a vacancy, either for the unexpired term or  
3 temporarily, shall have the qualifications required by statute to  
4 permit the appointee to qualify for election to said office, and if  
5 the previous incumbent had been elected to office as the nominee  
6 of a political party, the person so appointed shall be of the same  
7 political party.

1 4. Nomination for a successor to a vacancy to be filled by elec-  
2 tion shall be made upon direct nomination by petition in the manner  
3 provided by law for the filling of vacancies in municipal offices  
4 where candidates are nominated by direct petition for a general  
5 election.

1 5. All appointees to fill a vacancy, whether appointed to fill the  
2 unexpired term or temporarily, shall take office immediately after  
3 appointment and qualification. All persons elected to serve the  
4 unexpired term of the vacant office shall take office immediately on  
5 qualifying therefor.

1 6. The office of any member of the governing body of any mu-  
2 nicipality shall be deemed vacant under any of the following con-  
3 ditions:

- 4 a. It shall be so declared by virtue of judicial determination;
- 5 b. A member's written resignation shall be filed with the mu-  
6 nicipal clerk;
- 7 c. A member shall refuse to qualify or to serve;

8 d. A member shall become incapable of serving;

9 e. A member shall have died;

10 f. A member shall no longer reside within the corporate limits  
11 of the municipality;

12 g. A member shall for a period of 8 consecutive weeks, without  
13 being excused by the majority of the members of the governing  
14 body, fail to attend and participate as a member of any of its  
15 meetings; or

16 h. It comes within the purview of R. S. 19:3-25.

1 7. N. J. S. 40A:9-11 is amended to read as follows:

2 40A:9-11. Whenever a county or municipal officer, *other than*  
3 *a member of the governing body of a municipality*, who is required  
4 to be a resident shall cease to be a bona fide resident of the county  
5 or municipality, as the case may be, or whenever the resignation  
6 of any such officer shall have been accepted by the proper authority,  
7 his office shall immediately be deemed to be vacant. The county  
8 or municipality, by the proper authority, shall thereupon proceed  
9 to fill the vacancy in the manner prescribed by law. *Vacancies in*  
10 *the membership of the governing body of a municipality shall be*  
11 *filled in the manner provided by the "Municipal Governing Body*  
12 *Vacancy Law."*

13 A nonresident of any municipality may hold office as counsel,  
14 attorney, engineer, health officer, auditor or comptroller of such  
15 municipality and no such office shall be deemed vacated by a change  
16 of residence of any such person.

1 8. Section 3-5 of P. L. 1950, c. 210 (C. 40:69A-35) is amended  
2 to read as follows:

3 3-5. Vacancies in any elective office shall be filled [by election  
4 for the remainder of the unexpired term at the next general election  
5 occurring not less than 60 days after the occurrence of the vacancy.  
6 Such election to fill a vacancy shall be upon direct nomination by  
7 petition in the manner provided by law for the filling of vacancies  
8 in municipal offices where candidates are nominated by direct  
9 petition for a general election. Council shall fill such vacancies  
10 temporarily by appointment to serve until the qualification of a  
11 person so elected] *in the manner provided by the "Municipal*  
12 *Governing Body Vacancy Law."*

1 9. Section 4-6 of P. L. 1950, c. 210 (C. 40:69A-54) is amended  
2 to read as follows:

3 4-6. Vacancies in any elective office shall be filled [by election  
4 for the remainder of the unexpired term at the next general or  
5 regular municipal election occurring not less than 60 days after

6 the occurrence of the vacancy. Whenever such election to fill a  
 7 vacancy shall be at the general election, the nomination of candi-  
 8 dates shall be by petition in the manner provided by law for the  
 9 filling of vacancies in municipal offices where candidates are  
 10 nominated by direct petition for a general election. Council shall  
 11 fill vacancies temporarily by appointment to serve until the qualifi-  
 12 cation of a person so elected] *in the manner provided by the "Mu-*  
 13 *nicipal Governing Body Vacancy Law."*

1 10. Section 5-6 of P. L. 1950, c. 210 (C. 40:69A-60) is amended  
 2 to read as follows:

3 5-6. Vacancies in any elective office [occurring prior to the ninth  
 4 Friday before general election day of any year shall be filled by  
 5 election for the unexpired term at the next general election except  
 6 as hereinafter otherwise provided. Such election to fill a vacancy  
 7 shall be upon direct nomination by petition in the manner provided  
 8 by law for the filling of vacancies in municipal offices where candi-  
 9 dates are nominated by direct petition for a general election.  
 10 Council shall fill such vacancies temporarily by appointment to  
 11 serve until the qualification of a person so elected.

12 When any such vacancy occurs on or after the ninth Friday  
 13 before general election day, it shall be filled by election for the  
 14 unexpired term at the general election to be held in the following  
 15 year, but if it occurs on or after such Friday in the third year of  
 16 the term of such office, the council shall fill such vacancy by ap-  
 17 pointment to serve for the remainder of the term] *shall be filled*  
 18 *in the manner provided by the "Municipal Governing Body*  
 19 *Vacancy Law."*

1 11. Section 6-7 of P. L. 1950, c. 210 (C. 40:69A-67) is amended  
 2 to read as follows:

3 6-7. Vacancies in any effective office shall be filled [by election  
 4 for the remainder of the unexpired term at the next general or  
 5 regular municipal election occurring not less than 60 days after the  
 6 occurrence of the vacancy. Whenever such election to fill a vacancy  
 7 shall be at the general election, the nomination of candidates shall  
 8 be by petition in the manner provided by law for the filling of  
 9 vacancies in municipal offices where candidates are nominated by  
 10 direct petition for a general election. Council shall fill vacancies  
 11 temporarily by appointment to serve until the qualification of a  
 12 person so elected] *in the manner provided by the "Municipal*  
 13 *Governing Body Vacancy Law."*

1 12. Section 7-6 of P. L. 1950, c. 210 (C. 40:69A-73) is amended  
 2 to read as follows:

3 7-6. Vacancies in any elective office shall be filled [for the  
 4 remainder of the unexpired term at the next general election to  
 5 be held not less than 60 days after the occurrence of the vacancy.  
 6 The council shall fill the vacancy temporarily by appointment to  
 7 serve until the qualification of the person so elected. Any person  
 8 appointed to fill a vacancy shall be a member of the same political  
 9 party as the prior incumbent] *in the manner provided by the*  
 10 *“Municipal Governing Body Vacancy Law.”*

1 13. Section 8-7 of P. L. 1950, c. 210 (C. 40:69A-80) is amended  
 2 to read as follows:

3 8-7. Vacancies in any elective office shall be filled [for the  
 4 remainder of the unexpired term at the next general election to be  
 5 held not less than 60 days after the occurrence of the vacancy.  
 6 The council shall fill the vacancy temporarily by appointment to  
 7 serve until the qualification of the person so elected. Any person  
 8 appointed to fill a vacancy shall be a member of the same political  
 9 party as the prior incumbent] *in the manner provided by the*  
 10 *“Municipal Governing Body Vacancy Law.”*

1 14. Section 9-5 of P. L. 1950, c. 210 (C. 40:69A-85) is amended  
 2 to read as follows:

3 9-5. Vacancies in the council shall be filled [by election for the  
 4 remainder of the unexpired term at the next general election  
 5 occurring not less than 60 days after the occurrence of the vacancy.  
 6 Such election to fill a vacancy shall be upon direct nomination by  
 7 petition in the manner provided by law for the filling of vacancies  
 8 in municipal offices where candidates are nominated by direct  
 9 petition for a general election. Council shall fill the vacancy  
 10 temporarily by appointment to serve until the qualification of a  
 11 person so elected] *in the manner provided by the “Municipal*  
 12 *Governing Body Vacancy Law.”*

1 15. Section 10-5 of P. L. 1950, c. 210 (C. 40:69A-103) is amended  
 2 to read as follows:

3 10-5. Vacancies in the council shall be filled [by election for the  
 4 remainder of the unexpired term at the next general or municipal  
 5 election occurring not less than 60 days after the occurrence of the  
 6 vacancy. Whenever such election to fill a vacancy shall be at the  
 7 general election, the nomination of candidates shall be by petition  
 8 in the manner provided by law for the filling of vacancies in mu-  
 9 nicipal offices where candidates are nominated by direct petition  
 10 for a general election. Council shall fill the vacancy temporarily  
 11 by appointment to serve until the qualification of a person so

12 elected] in the manner provided by the "Municipal Governing  
13 Body Vacancy Law."

1 16. Section 11-5 of P. L. 1950, c. 210 (C. 40:69A-108) is amended  
2 to read as follows:

3 11-5. Vacancies in the council shall be filled [by election for the  
4 remainder of the unexpired term at the next general election  
5 occurring not less than 60 days after the occurrence of the vacancy.  
6 Such election to fill a vacancy shall be upon direct nomination by  
7 petition in the manner provided by law for the filling of vacancies  
8 in municipal offices where candidates are nominated by direct  
9 petition for a general election. Council shall fill the vacancy tem-  
10 porarily by appointment to serve until the qualification of a person  
11 so elected] in the manner provided by the "Municipal Governing  
12 Body Vacancy Law."

1 17. Section 12-6 of P. L. 1950, c. 210 (C. 40:69A-114) is amended  
2 to read as follows:

3 12-6. Vacancies in the council shall be filled [by election for the  
4 remainder of the unexpired term at the next general or municipal  
5 election occurring not less than 60 days after the occurrence of the  
6 vacancy, except that no election to fill vacancies in the council shall  
7 be held at the general election or municipal election, as the case  
8 may be, to be held in the last year of the term of the vacant office.  
9 Whenever such election to fill a vacancy shall be at the general  
10 election, the nomination of candidates shall be by petition in the  
11 manner provided by law for the filling of vacancies in municipal  
12 offices where candidates are nominated by direct petition for a  
12A general election. Council shall fill the vacancy temporarily by  
13 appointment to serve until the qualification of a person so elected]  
14 in the manner provided by the "Municipal Governing Body  
15 Vacancy Law."

1 18. Section 12A-5 of P. L. 1953, c. 254 (C. 40:69A-114.5) is  
2 amended to read as follows:

3 12A-5. Vacancies in any elective office shall be filled [for the  
4 remainder of the unexpired term at the next general election to  
5 be held not less than 60 days after the occurrence of the vacancy.  
6 The council shall fill the vacancy temporarily by appointment to  
7 serve until the qualification of the person so elected. Any person  
8 appointed to fill a vacancy shall be a member of the same political  
9 party as the prior incumbent] in the manner provided by the  
10 "Municipal Governing Body Vacancy Law."

1 \*19. Section 12B-6 of P. L. 1973, c. 234 (C. 40:69-114.11) is  
2 amended to read as follows:

3 12B-6. Vacancies in the council shall be filled **[for the remain-**  
 4 *der of the unexpired term at the next general election to be held*  
 5 *not less than 60 days after the occurrence of the vacancy. The*  
 6 *council shall fill the vacancy temporarily by appointment to serve*  
 7 *until the qualification of the person so elected. Any person ap-*  
 8 *pointed to fill a vacancy shall be a member of the same political*  
 9 *party as the prior incumbent.]* in the manner provided by the  
 10 *“Municipal Governing Body Vacancy Law.”\**

1 \***[19.]**\* \*20.\* Section 13-5 of P. L. 1950, c. 210 (C. 40:69A-119)  
 2 is amended to read as follows:

3 13-5. Vacancies **[shall be filled by election for the remainder of**  
 4 *the unexpired term at the next general election occurring not less*  
 5 *than 60 days after the occurrence of the vacancy. Such election to*  
 6 *fill a vacancy shall be upon direct nomination by petition in the*  
 7 *manner provided by law for the filling of vacancies in municipal*  
 8 *offices where candidates are nominated by direct petition for a*  
 9 *general election. Council shall fill the vacancy temporarily by*  
 10 *appointment to serve until the qualification of a person so elected]*  
 11 *in any elective office shall be filled in the manner provided by the*  
 12 *“Municipal Governing Body Vacancy Law.”*

1 \***[20.]**\* \*21.\* Section 14-5 of P. L. 1950, c. 210 (C. 40:69A-137)  
 2 is amended to read as follows:

3 14-5. Vacancies **[shall be filled by election for the remainder of**  
 4 *the unexpired term at the next general election occurring not less*  
 5 *than 60 days after the occurrence of the vacancy. Such election*  
 6 *to fill a vacancy shall be upon direct nomination by petition in the*  
 7 *manner provided by law for the filling of vacancies in municipal*  
 8 *offices where candidates are nominated by direct petition for a*  
 9 *general election. Council shall fill the vacancy temporarily by*  
 10 *appointment to serve until the qualification of a person so elected]*  
 11 *in any elective office shall be filled in the manner provided by the*  
 12 *“Municipal Governing Body Vacancy Law.”*

1 \***[21.]**\* \*22.\* Section 15-5 of P. L. 1950, c. 210 (C. 40:69A-143)  
 2 is amended to read as follows:

3 15-5. The mayor and councilmen shall be elected at the general  
 4 election to be held on the first Tuesday after the first Monday in  
 5 November or at such other time as may be provided by law for  
 6 holding general elections. Vacancies in the *office of mayor and*  
 7 *council shall be filled [by election for the remainder of the un-*  
 8 *expired term at the next general election to be held not less than 60*  
 9 *days after the occurrence of the vacancy. Council shall fill the*  
 10 *vacancy temporarily by appointment to serve until the qualification*



11 of a person so elected. Any person appointed to fill a vacancy shall  
 12 be a member of the same political party as the prior incumbent] **]**  
 13 *in the manner provided by the "Municipal Governing Body Va-*  
 14 *cancy Law."*

1 . \***[22.]**\* \*23.\* Section 16-5 of P. L. 1950, c. 210 (C. 40:69A-148)  
 2 is amended to read as follows:

3 16-5. Members of the council shall be elected at the general  
 4 election to be held on the first Tuesday after the first Monday in  
 5 November or at such other time as may be provided by law for hold-  
 6 ing general elections. Vacancies in the *office of mayor and council*  
 7 shall be filled **[**by election for the remainder of the unexpired term  
 8 at the next general election to be held not less than 60 days after the  
 9 occurrence of the vacancy. Council shall fill the vacancy tempo-  
 10 rarily by appointment to serve until the qualification of a person  
 11 so elected. Any person appointed to fill a vacancy shall be a mem-  
 12 ber of the same political party as the prior incumbent] **]** *in the man-*  
 13 *ner provided by the "Municipal Governing Body Vacancy Law."*

1 \***[23.]**\* \*24.\* R. S. 40:72-15 is amended to read as follows:

2 40:72-15. When a vacancy occurs in the office of commissioner,  
 3 **[**the remaining commissioners shall, within 30 days thereafter,  
 4 elect a properly qualified person to fill such vacancy for the un-  
 5 expired term] **]** *the vacancy shall be filled in the manner provided*  
 6 *by the "Municipal Governing Body Vacancy Law."*

1 \***[24.]**\* \*25.\* R. S. 40:81-18 is amended to read as follows:

2 40:81-18. Vacancies in the municipal council, except those cre-  
 3 ated by recall, shall be filled **[**temporarily by the municipal council  
 4 by appointing a properly qualified citizen thereto, who shall serve  
 5 until a successor can be elected at the next general election, at  
 6 which time such successor shall be elected to serve for the unex-  
 7 pired term] **]** *in the manner as provided by the "Municipal Govern-*  
 8 *ing Body Vacancy Law."* **[**The petition for nomination, the form  
 9 of ballot, excepting the stub and the numbering which shall be  
 10 omitted, shall be the same as provided for the election of council-  
 11 men, and such form shall be made a part of the ballot used in such  
 12 general election. The method of canvassing and computing the vote  
 13 shall be the same as provided for the canvassing and computing  
 14 the vote for the election of councilmen. If the regular municipal  
 15 election for the election of councilmen shall occur within 12 months  
 16 from the date of such appointment, the appointment shall be for  
 17 the unexpired term of the office of councilman wherein a vacancy  
 18 exists.]

1 \***[25.]**\* \*26.\* R. S. 40:84-11 is amended to read as follows:

2 40:84-11. In cases provided for in this article the municipal  
3 elections to be held in accordance with sections 40:81-5 and 40:84-2  
4 of this Title shall be held on the second Tuesday in May in each  
5 year, and the number of persons to be elected at such municipal  
6 elections shall be equal to the number of vacancies which are then  
7 to be filled, and the terms of office of the persons so elected shall  
8 be 3 years and until their successors are elected and qualified,  
9 unless their places become vacant as prescribed in **[this subtitle]**  
10 *the "Municipal Governing Body Vacancy Law."* **[In cases pro-**  
11 **vided for in this article, vacancies]** *Vacancies* in the municipal  
12 council, except those created by recall, shall be filled **[temporarily**  
13 **by the municipal council by the appointment of a properly qualified**  
14 **citizen thereto who shall serve until a successor can be elected at**  
15 **the next municipal election at which members of the municipal**  
16 **council are elected, at which time the successor shall be elected to**  
17 **serve for the unexpired term. The provisions of article 2 of this**  
18 **chapter (§ 40:84-2 et seq.) relative to municipal elections shall**  
19 **apply to the election of such successor]** *in the manner provided*  
20 *by the "Municipal Governing Body Vacancy Law."*

1 \***[26.]**\* \*27.\* R. S. 40:87-11 is amended to read as follows:

2 40:87-11. **[Whenever the mayor shall present to the council his**  
3 **resignation from office such resignation may be accepted by a vote**  
4 **of the council and the office of mayor shall thereupon be deemed**  
5 **vacant.]** A vacancy occurring in the office of mayor *or any member*  
6 *of the council,* **[whether by resignation or otherwise,]** shall be filled  
7 *in the manner provided by the "Municipal Governing Body Va-*  
8 *cancy Law"* **[by the council until the next annual election and**  
9 **until the election and qualification of a successor. At such next**  
10 **annual election the person elected to fill such vacancy shall be**  
11 **elected for the unexpired term only].**

1 \***[27.]**\* \*28.\* R. S. 40:87-12 is amended to read as follows:

2 40:87-12. All vacancies in **[other]** elective offices *other than*  
3 *mayor or members of the council* shall be filled by nomination by  
4 the mayor and appointment by him by and with the advice and  
5 consent of the council, expressed by the vote of a majority of the  
6 members of the council present at the meeting; provided that at  
7 least three affirmative votes shall be required for such purpose,  
8 the mayor to have no vote thereon except in the case of a tie.

1 \***[28.]**\* \*29.\* R. S. 40:125-7 is amended to read as follows:

2 40:125-7. **[Whenever a vacancy occurs by reason of the death,**  
3 **resignation, inability, disqualification, removal or refusal to serve**

4 of or by any town or ward officer, elected as aforesaid, the council  
 5 shall fill the vacancy by the appointment of a suitable and quali-  
 6 fied elector to hold until his successor shall have been duly elected  
 7 and qualified, and the unexpired portion of the term, if any remains,  
 8 shall be filled at the next succeeding general election. If at any  
 9 town election there shall be a vacancy in any office to be filled and  
 10 at the same time an election for a full term of such office, the term  
 11 for which each person shall be voted for shall be designated on the  
 12 ballots.】 *Whenever a vacancy occurs in the membership of the town*  
 13 *council, the vacancy shall be filled in the manner provided by the*  
 14 *“Municipal Governing Body Vacancy Law.”*

1 \***[29.]**\* \*30.\* R. S. 40:145-1 is amended to read as follows:  
 2 40:145-1. If two or more persons at any township election for  
 3 public offices other than for members of the township committee  
 4 have an equal number of votes for the same office, or there be a  
 5 failure to elect **[any]** such officer, or a refusal by any person elected  
 6 or appointed to **[any]** such office to accept the same, or if any  
 7 person shall die or resign from office, or shall remove out of the  
 8 township except in the case of the township attorney, engineer or  
 9 building inspector, or become incapable of serving, or fail to take  
 10 or subscribe the oath prescribed by law for his office, or shall fail  
 11 to file such oath with the township clerk within the time prescribed  
 12 by law, or shall not give such security as may be by law required  
 13 within the time prescribed by law, then such office shall be deemed  
 14 to be vacant and the township committee shall forthwith, by reso-  
 15 lution, fill such vacancy.

16 **[If the township committee shall be unable to agree, by resolu-**  
 17 **tion, who shall fill such vacancy then any member of the township**  
 18 **committee or any taxpayer of the township may apply to a judge**  
 19 **of the superior court, who is hereby empowered to appoint any**  
 20 **person over the age of 21 years, who shall be a taxpayer and**  
 21 **resident in said township, to fill such vacancy.】**

1 \***[30.]**\* \*31.\* R. S. 40:146-20 is amended to read as follows:  
 2 40:146-20. **[Whenever all or a majority of the members of the**  
 3 **township committee of any township have or shall resign or refuse**  
 4 **to act, or shall have died, or become incapable of serving, shall**  
 5 **have moved out of the township, or where that portion of any**  
 6 **township in which such members of the township committee reside**  
 7 **has been set off from and annexed to or become incorporated in the**  
 8 **corporate limits of any other municipality, then such offices shall**  
 9 **be deemed to be vacant, and the fact of such vacancy shall be**  
 10 **immediately certified by the remaining member or members of any**

11 such township committee or by the township clerk to the Governor,  
 12 who shall forthwith, on receipt of such certificate, fill such vacancies  
 13 by appointment. The commissions of the persons so appointed  
 14 shall expire when their successors are elected and qualified, which  
 15 successors shall be elected at the next ensuing general election for  
 16 township officers, for the full term of 3 years.】

17 *Whenever a vacancy occurs in the membership of the township*  
 18 *committee of any township, the vacancy shall be filled in the manner*  
 19 *provided by the "Municipal Governing Body Vacancy Law."*

1 \*【31.】\* \*32.\* R. S. 40:158-2 is amended to read as follows:  
 2 40:158-2. \*【The】\* *\*Unless otherwise provided for by any law*  
 3 *or charter incorporating any village, the\* officers to be elected shall*  
 4 *be five village trustees, who shall constitute the governing board*  
 5 *of the village. At their first meeting after the first election in any*  
 6 *village incorporated under or adopting this part of this subtitle the*  
 7 *trustees shall decide their term of office by lot. The term of one*  
 8 *trustee shall expire at noon on January 1 next ensuing; the terms*  
 9 *of two trustees shall expire 1 year thereafter, and the terms of the*  
 10 *remaining two trustees 2 years thereafter. The terms of the trus-*  
 11 *tees elected after the first election shall be 3 years, and all vacan-*  
 12 *cies shall be filled 【for the unexpired term only】 in the manner*  
 13 *provided by the "Municipal Governing Body Vacancy Law."* The  
 14 board shall organize by the election of one of its number as presi-  
 15 dent, who shall be the village president for 1 year and until his  
 16 successor shall be elected, but the president shall not remain in  
 17 office after the expiration of his term as trustee.

1 \*【32.】\* \*33.\* R. S. 40:159-1 is amended to read as follows:  
 2 40:159-1. No person shall be eligible to the office of trustee unless  
 3 he shall be at the time a resident and voter of the village. When-  
 4 ever a trustee shall cease to be a resident thereof, his office shall  
 5 become vacant.

6 \*【Vacancies】\* *\*Unless otherwise provided for by any law or*  
 7 *charter incorporating any village, the vacancies\* in the board of*  
 8 *trustees 【from any cause】 shall be filled 【by the remaining mem-*  
 9 *bers of the board until the next annual election】 in the manner*  
 10 *provided by the "Municipal Governing Body Vacancy Law."*

1 \*【33.】\* \*34.\* R. S. 40:171-5 is amended to read as follows:  
 2 40:171-5. 1. In every city in the State which has a board of  
 3 aldermen *or common council*, in case of a vacancy in the board  
 4 *or common council 【by death, resignation or otherwise】, the 【said】*  
 5 *vacancy shall be filled 【by an appointment to be made by the presi-*  
 6 *dent of the board of aldermen for the balance of the year or until*

7 his successor shall be elected and qualified; provided, however,  
8 that the president of said board of aldermen shall appoint a citizen  
9 who is a resident of the ward from which the vacancy occurs; and  
10 provided, further, that the appointment made by the president of  
11 the board shall be for the remainder of the year in which such  
12 vacancy occurred until the first Monday of January succeeding, or  
13 until his successor shall be elected and qualified, and at the first  
14 annual election held after such vacancy occurred some fit person  
15 shall be elected to fill such vacancy for the unexpired time only]  
16 *in the manner provided by the Municipal Governing Body Vacancy*  
17 *Law.*''

1 \***[34.]**\* \*35.\* Sections 40A:9-162 of the New Jersey Statutes;  
2 40:87-13, 40:125-6, 40:125-8, 40:171-3, and 40:171-4 of the Revised  
3 Statutes; P. L. 1962, c. 13 (C. 40:72-15.1 to C. 40:72-15.3); and  
4 P. L. 1949, c. 1 (C. 40:75-24.1 to C. 40:75-24.10) are repealed.

1 \***[35.]**\* \*36.\* This act shall take effect immediately.