

40A:9-12.1

LEGISLATIVE HISTORY CHECKLIST

WJSA 40A:9-12.1 (Vacancies--Appointed public offices--certain)

LAWS OF 1979 CHAPTER 302

Bill No. A1410

Sponsor(s) Herman and Stewart

Date Introduced May 18, 1978

Committee: Assembly Municipal Government

Senate County and Municipal Government

Amended during passage Yes Amendments denoted by asterisks
according to Governor's recommendations

Date of Passage: Assembly Jan. 18, 1979 Re-enacted Dec. 3, 1979

Senate June 21, 1979 Re-enacted Dec. 17, 1979

Date of approval Jan. 17, 1980

Following statements are attached if available:

Sponsor statement	Yes	<input checked="" type="checkbox"/>
Committee Statement:	Assembly	<input checked="" type="checkbox"/>
	Senate	<input checked="" type="checkbox"/>
Fiscal Note	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Veto message	Yes	<input checked="" type="checkbox"/>
Message on signing	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Following were printed:

Reports	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Hearings	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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ASSEMBLY, No. 1410

STATE OF NEW JERSEY

INTRODUCED MAY 18, 1978

By Assemblymen HERMAN and STEWART

Referred to Committee on Municipal Government

AN ACT concerning vacancies in certain public offices and supplementing chapter 9 of Title 40A of the New Jersey Statutes.

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

1 1. The office of any person appointed to a **specified** term **[of*
2 *office]**, with or without compensation, by the governing body or
3 chief executive of any local unit, including persons appointed to
4 any board, committee, commission, authority or other agency of
5 one or more local units, shall be deemed vacant **[, if]**:

6 a. **[It is]* *Upon its being** so declared by judicial deter-
6A mination;

7 b. **[Such officer's written resignation is filed with and accepted*
8 *by the appointing authority;]* *Upon the **[acceptance by the*
8A *appointing authority of such officer's duly filed written resig-*
8B *nation]** *filing by such officer of his written resignation**;*

9 c. **[The]* *Upon the refusal of a** person designated for
10 appointment to such office **[fails]** to qualify or **[refuses to]**
10A serve;

11 d. **[Such]* *Upon the determination of the appointing author-*
11A *ity that such** officer **[is]* *shall have become physically or*
11B *mentally** incapable of serving;

12 e. **[Such officer dies;]* *Upon the death of such officer;**

13 f. **[When]* *Upon the determination of the appointing author-*
13A *ity that,** in violation of a lawful residency requirement, such
14 officer **[ceases to reside]* *no longer resides** within the corpo-
14A rate limits of the local unit or other designated territorial **[juris-*
15 *diction]* *area**;

16 g. In the case of a member of a board, committee, commission,
17 authority or other agency, **whenever** the member, without being
18 excused by a majority of the authorized members of such body,

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

19 fails to attend and participate at meetings of such body for a
20 period of 8 consecutive weeks, or for four consecutive regular
21 meetings, whichever shall be of longer duration*, *at the conclusion*
21A *of such period, provided that such body shall notify the appointing*
21B *authority in writing of such determination; provided, further, that*
21C *such board, committee, commission, authority or other agency may*
21D *refuse to excuse only with respect to those failures to attend and*
21E *participate which are not due to legitimate illness*;*

22 h. ***[Such officer shall have been removed]*** **Upon the removal*
22A *of such officer** for cause in accordance with law, or for any other
23 reason prescribed by law.

24 ***[Upon declaration by the appointing authority of the existence**
25 **of a vacancy in office pursuant to this act,]*** **Whenever any of the*
26 *above shall occur** the appointing authority shall forthwith fill the
27 office for the unexpired term in the manner prescribed by law;
28 provided, however, that in the case of a person failing to qualify
29 or refusing to serve pursuant to paragraph c., such office shall not
30 be deemed vacant, if the incumbent officeholder is authorized by
31 law to continue in such office until a successor is appointed and
32 qualifies therefor.

1 2. This act shall take effect immediately, but shall remain in-
2 operative for 30 days following enactment.

ASSEMBLY MUNICIPAL GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1410

STATE OF NEW JERSEY

DATED: NOVEMBER 20, 1978

This bill establishes a uniform statutory scheme for determining vacancies in certain appointed offices. The provisions of the bill apply only to:

- (1) Appointed offices that are filled for designated terms; and
- (2) Appointments made by the governing body or chief executive of any county or municipality.

This bill does not alter the right of the appointing authority to remove any such officer for cause, or as may otherwise be provided by law, or the authority of counties and municipalities to make temporary appointments in certain instances.

Previously, the determination as to whether a local appointive office was vacant was in certain instances so vague as to require judicial determination.

SENATE COUNTY AND MUNICIPAL GOVERNMENT
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1410

with Senate committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 13, 1979

The purposes and provisions of Assembly Bill No. 1410, as received by the Senate committee, are adequately set forth in the Assembly committee statement:

“This bill establishes a uniform statutory scheme for determining vacancies in certain appointed offices. The provisions of the bill apply only to:

- (1) Appointed offices that are filled for designated terms; and
- (2) Appointments made by the governing body or chief executive of any county or municipality.

This bill does not alter the right of the appointing authority to remove any such officer for cause, or as may otherwise be provided by law, or the authority of counties and municipalities to make temporary appointments in certain instances.

Previously, the determination as to whether a local appointive office was vacant was in certain instances so vague as to require judicial determination.”

The Legislature recently passed Senate Bill No. 1217, the “Municipal Vacancy Law” (C. 40A:16-1 et seq.), which concerns vacancies in the office of mayor and in the membership of the governing body of municipalities. This bill sets forth a method for determining when and under what circumstances a vacancy exists in appointed county and municipal offices that are filled for specified terms.

The circumstances under which a vacancy occurs under this bill parallel those under which a vacancy occurs under Senate Bill No. 1217, as modified to reflect the fact that this bill applies to appointive, rather than to elective offices.

The committee amended the bill:

1. Make more obvious that the bill applies only to offices having a specified term, and does not apply to offices where the officer serves at

the pleasure of the appointing authority, nor to offices having an indefinite term;

2. Rephrase the language of the bill to specify a time upon which the office shall become vacant in each instance, thereby making the language of this bill consistent with that of Senate Bill No. 1217;

3. Specify in each instance an authority to determine that the circumstance resulting in a vacancy exists;

4. In the case of subsection g., require written notification to the appointing authority of the determination of vacancy by the board, committee, commission, authority or other agency; and,

5. Also in subsection g., permit the board, committee, commission, authority or other agency to refuse to excuse only those failures to attend and participate which are not due to legitimate illness, as is provided with respect to a member of local governing body's inattendance and nonparticipation on Senate Bill No. 1217.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

November 19, 1979

ASSEMBLY BILL NO. 1410 (OCR)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14(b) of the Constitution, I return Assembly Bill No. 1410 (OCR), with my objections, for reconsideration.

This bill would establish a uniform statutory scheme for determining vacancies in certain appointive offices. The provisions of this legislation would apply to appointments for specified terms made by the governing body or chief executive of any county or municipality.

On April 26, 1979 I enacted S-1217, the Municipal Vacancy Law (P.L. 1979, c. 83), which concerns vacancies in the office of mayor and in the membership of the governing body of municipalities. This bill would establish similar requirements as those set forth in S-1217 for determining when and under what circumstances a vacancy exists in appointive local offices as modified to reflect the fact that the bill would apply to appointive, rather than to elective offices. However, there is one requirement which differs between these bills which should be made more consistent.

Under the Municipal Vacancy Law the office of mayor or a member of the municipal governing body is deemed vacant upon the filing of a written resignation by the office holder with the municipal clerk. This bill would establish that an appointive office for a specified term is deemed vacant upon the acceptance by the appointing authority of the appointed officer's duly filed written resignation. One purpose of this legislation is to clearly and specifically indicate under what circumstances an appointive office would be deemed vacant. In my judgment, this purpose would be better served by establishing that a vacancy in an appointive office would occur upon the filing of a written resignation rather than upon acceptance of a resignation by the appointing authority.

Accordingly, I respectfully recommend the following changes in Assembly Bill No. A-1410 (OCR):

Page 1, Section 1, lines 8-8b: Delete all language after "Upon the", and insert "filing by such officer of his written resignation."

Respectfully,
/s/ Brendan Byrne
GOVERNOR

[seal]

Attest:

28 failing to qualify or refusing to serve pursuant to paragraph c.,
29 such office shall not be deemed vacant, if the incumbent officeholder
30 is authorized by law to continue in such office until a successor is
31 appointed and qualifies therefor.

1 2. This act shall take effect immediately, but shall remain in-
2 operative for 30 days following enactment.

STATEMENT

This bill establishes a uniform statutory scheme for determining vacancies in certain appointed offices. The provisions of the bill apply only to:

- (1) Appointed offices that are filled for designated terms; and
- (2) Appointments made by the governing body or chief executive of any county or municipality.

This bill does not alter the right of the appointing authority to remove any such officer for cause, or as may otherwise be provided by law, or the authority of counties and municipalities to make temporary appointments in certain instances.

A1410 (1979)