

40A:16-1 to 40A:16-23

LEGISLATIVE HISTORY CHECKLIST

("Municipal Vacancy Law")

HJSA 40A:16-1 to 40A:16-23; 40:69A-143 et al.

LAWS OF 1979 CHAPTER 83

Bill No. S1217

Sponsor(s) Merlino, Parker and Musto

Date Introduced June 1, 1978

Committee: Assembly Municipal Government

Senate County and Municipal Government

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Following statements are attached if available:

Sponsor statement	Yes	<del>XX</del>
Committee Statement:	Assembly	Yes <del>XX</del>
	Senate	Yes <del>XX</del>
Fiscal Note	<del>Yes</del>	No
Veto message	<del>Yes</del>	No
Message on signing	Yes	<del>XX</del>

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Reports	<del>Yes</del>	No
Hearings	<del>Yes</del>	No

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SENATE, No. 1217

STATE OF NEW JERSEY

INTRODUCED JUNE 1, 1978

By Senators MERLINO, PARKER and MUSTO

Referred to Committee on County and Municipal Government

AN ACT concerning vacancies in certain elected municipal offices, enacting chapter 16 to Title 40A of the New Jersey Statutes, and revising sections of the statutory law.

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

TITLE 40A

CHAPTER 16

VACANCIES IN CERTAIN ELECTED MUNICIPAL  
OFFICES

*Section 1.*

- |    |           |  |
|----|-----------|--|
| 1  | 40A:16-1  | Short title.   |
| 2  | 40A:16-2  | Definitions.   |
| 3  | 40A:16-3  | When office deemed vacant.                           |
| 4  | 40A:16-4  | Filling vacancies in municipalities holding regular  |
| 5  |           | municipal elections.                                 |
| 6  | 40A:16-5  | Filling vacancies in municipalities holding general  |
| 7  |           | elections.   |
| 8  | 40A:16-6  | Vote required to fill vacancy in office of mayor.    |
| 9  | 40A:16-7  | Vote required to fill a vacancy in the membership    |
| 10 |           | of a governing body.                                 |
| 11 | 40A:16-8  | Authority of mayor to vote in filling a vacancy.     |
| 12 | 40A:16-9  | Authority of Governor to fill vacancies in governing |
| 13 |           | bodies.  |
| 14 | 40A:16-10 | Qualifications of appointee to fill vacancy.         |
| 15 | 40A:16-11 | Appointment to fill vacancy where incumbent was      |
| 16 |           | nominee of a political party; time to fill vacancy.  |
| 17 | 40A:16-12 | Appointment to fill vacancy where incumbent was not  |
| 18 |           | nominee of a political party; time to fill vacancy.  |
| 19 | 40A:16-13 | Failure of governing body to fill vacancy in member- |
| 20 |           | ship of governing 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.**

- 21 40A:16-14 Special election to fill vacancy in the office of mayor;  
 22 limitation on authority to appoint.
- 23 40A:16-15 Special election when person elected to office dies  
 24 before commencement of term.
- 25 40A:16-16 Special election when \***[election to office declared null**  
 26 **and void]**\* *\*vacancy occurs pursuant to R. S.*  
 26A *19:3-25\**.
- 27 40A:16-17 Special election when person elected to office becomes  
 28 disqualified before commencement of term.
- 29 40A:16-18 Notice of holding special election; contents.
- 30 40A:16-19 Nomination of successor to be elected *\*\*at special*  
 31 *election\*\**.
- 31A *\*\*40A:16-20. Nomination of successor to be elected at regular*  
 31B *municipal or general election.\*\**
- 32 *\*\*[40A:16-20]\*\* \*\*40A:16-21\*\** Time for taking office.
- 33 *\*\*[40A:16-21]\*\* \*\*40A:16-22\*\** Provisions in special municipal  
 34 charters superseded.
- 35 *\*\*[40A:16-22]\*\* \*\*40A:16-23\*\** Statutes repealed.
- 1 40A:16-1. Short title. This chapter shall be known and cited  
 2 as the "Municipal Vacancy Law."
- 3 Source: C. 40:45B-1 (1975, c. 213, s. 1).
- 1 40A:16-2. Definitions. As used in this chapter, unless the con-  
 2 text clearly indicates to the contrary, the following words *\*and*  
 3 *terms\** shall **[mean]** *\*have the following meanings\**:
- 4 **[a.** "Governing body" means the legislative body of the munici-  
 5 pality;]**]** *\*a. "Governing body" means the body exercising general*  
 5A *legislative power in the municipality, including any mayor selected*  
 5B *by the governing body from among its own members;\**
- 6 b. "Incumbent" means a person in present possession of the  
 7 office of mayor or member of a governing body and who is legally  
 8 authorized to discharge the duties of the office;
- 9 c. "Mayor" means the person elected to that office at large by  
 10 the voters of the municipality;
- 11 d. "Municipality" means any village, borough, town, township  
 12 or city of this State;
- 13 e. "Officer" means a mayor elected at large or the member of a  
 14 governing body;
- 15 f. "Political party" means a party which, at the election held  
 16 for all of the members of the General Assembly *\*next\** preceding  
 17 the holding of any primary election held pursuant to Title 19 of the  
 18 Revised Statutes, polled for members of the General Assembly  
 19 at least 10% of the total vote cast in the State.
- 20 Source: New.

1 40A:16-3. When office deemed vacant. The office of a mayor or  
 2 a member of the governing body of a municipality shall be deemed  
 3 vacant **\*[under any of the following circumstances]\***:

4 a. **\*[It shall be]\*** *\*Upon its being\** so declared by virtue of a  
 4A judicial determination;

5 b. **\*[The]\*** *\*Upon the death of the\** mayor or a member of a  
 5A governing body **\*[shall die]\***;

6 c. **\*[The]\*** *\*Upon a determination of the other members of the*  
 6A *governing body that the\** mayor or a member of a governing body  
 7 **\*[shall]\*** no longer **\*[reside]\*** *\*resides\** within the corporate  
 8 limits of a municipality or ward from which he was elected;

9 d. **\*[The]\*** *\*Upon the refusal of the\** mayor or member of a  
 10 governing body **\*[shall refuse]\*** to qualify or serve;

11 e. **\*[The]\*** *\*Upon a judicial determination that the\** mayor or  
 12 member of a governing body shall *\*have\** become *\*physically or*  
 12A *mentally\** incapable of serving;

13 f. Upon the filing of a written resignation with the municipal  
 14 clerk by the mayor or a member of the governing body, except a  
 15 resignation filed following the filing of a recall petition;

16 g. **\*[The]\*** *\*Whenever the\** mayor, when required by law *\*to*  
 17 *attend meetings of the governing body\**, or a member of the govern-  
 17A *ing body\**, *\* fails to attend and participate in any meetings of the*  
 18 *governing body for a period of 8 consecutive weeks without being*  
 19 *excused from attendance by a majority of the members of the*  
 20 *governing body\*, at the conclusion of such period; provided, how-*  
 20A *ever, that the governing body may refuse to excuse only with*  
 20B *respect to those failures to attend and participate which are not*  
 20C *due to legitimate illness\**; or\*,

21 h. **\*[It]\*** *\*Upon a determination that the office\** comes within  
 21A the purview of R. S. 19:3-25.

22 Source: C. 40:45B-6 (1975, c. 213, s. 6); C. 40:103-5(77) (1963,  
 23 c. 149, s. 7).

1 40A:16-4. Filling vacancies in municipalities holding regular  
 2 municipal elections. Whenever a vacancy occurs as provided in  
 3 N. J. S. 40A:16-3 in the office of mayor or in the membership of  
 4 the governing body of a municipality holding regular municipal  
 5 elections, the vacancy shall be filled in the following manner:

6 a. If the vacancy occurs **\*[any time after the sixtieth day preced-**  
 7 **ing the regular municipal election occurring in the next-to-the**  
 8 **last]\*** *\*subsequent to September 1 of the last\** year **\*[and up to the**  
 9 **expiration]\*** of the term of the officer whose office has become  
 10 vacant, the office shall be filled for its unexpired term by appoint-  
 10A ment by the governing body as hereinafter provided;

11 b. If the vacancy occurs at any other time, the vacancy shall be  
 12 filled for its unexpired term at the next general or regular municipal  
 13 election, whichever occurs first, to be held not less than 60 days  
 14 after the occurrence of the vacancy. The governing body may fill  
 15 the vacancy temporarily by appointment as hereinafter provided.  
 16 Source: C. 40:45B-2 (1975, c. 213, s. 2 amended 1978, c. 11, s. 1).

1 40A:16-5. Filling vacancies in municipalities holding general  
 2 elections. Whenever a vacancy occurs as provided in N. J. S.  
 3 40A:16-3 in the office of a mayor or in the membership of the  
 4 governing body of a municipality holding general elections, the  
 5 vacancy shall be filled in the following manner:

6 a. If the vacancy occurs any time **\*[after the sixtieth day preced-**  
 7 **ing the general election occurring in]** *\*subsequent to September 1*  
 8 *of\** the next-to-the-last year and up to the expiration of the term  
 9 of the **\*[office]** *\*officer\** whose office has become vacant, the  
 10 office shall be filled for its unexpired term by appointment by the  
 10A governing body as hereinafter provided;

11 b. If the vacancy occurs at any other time, the vacancy shall be  
 12 filled for its unexpired term at the next general election to be held  
 13 not less than 60 days after the occurrence of the vacancy. The  
 14 governing body may fill the vacancy temporarily by appointment  
 15 as hereinafter provided.

16 Source: C. 40:45B-2 (1975, c. 213, s. 2 amended 1978, c. 11, s. 1);

17 C. 40:103-5(78) (1963, c. 149, s. 8).

1 40A:16-6. Vote required to fill vacancy in office of mayor. An  
 2 appointment to fill a vacancy in the office of mayor shall be by  
 3 a majority vote of the entire membership of the governing body.

4 Source: C. 40:45B-2 (1975, c. 213, s. 2 amended 1978, c. 11, s. 1);

5 C. 40:103-5(78) (1963, c. 149, s. 8).

1 40A:16-7. Vote required to fill a vacancy in the membership  
 2 of a governing body. An appointment to fill a vacancy in the  
 3 membership of a governing body shall be by a majority vote of the  
 4 remaining members of the governing body.

5 Source: C. 40:45B-2 (1975, c. 213, s. 2 amended 1978, c. 11, s. 1);

6 C. 40:103-5(78) (1963, c. 149, s. 8).

1 40A:16-8. Authority of mayor to vote in filling a vacancy. In  
 2 municipalities governed by the provisions of Articles 3, 4, 5, 6, 7  
 3 and 8 of the "Optional Municipal Charter Law," P. L. 1950, c. 210  
 4 (C. 40:69A-31 et seq., C. 40:69A-49 et seq., C. 40:69A-55 et seq.,  
 5 C. 40:69A-61 et seq., C. 40:69A-68 et seq., and C. 40:69A-74 et seq.)

6 **\*[and]** *\*, or by\** the provisions of laws governing boroughs, R. S.  
 7 40:86-1 to R. S. 40:94-6 inclusive, a mayor shall be permitted to

8 vote to fill a vacancy in the membership of a governing body only  
9 in the case of a tie vote.

10 Source: New.

1 40A:16-9. Authority of Governor to fill vacancies in governing  
2 bodies. Whenever the offices of all or a majority of the members  
3 of a governing body shall become vacant as provided in N. J. S.  
4 40A:16-3, the fact of the vacancies shall be immediately certified  
5 to the Governor by the municipal clerk or any remaining member  
6 of the governing body. The Governor shall fill the vacancies \***[in**  
7 the same manner as provided in this chapter for the filling of  
8 vacancies in governing bodies.]\* *\*within 30 days of the occurrence*  
9 *of the vacancies. If the incumbent whose office has become vacant*  
10 *was elected to office other than as the nominee of a political party,*  
11 *the Governor shall appoint a successor to fill the vacancy without*  
12 *regard to party. If the incumbent whose office has become vacant*  
13 *was elected to office as the nominee of a political party, the*  
14 *Governor shall fill the vacancy by the appointment of a successor*  
15 *from the same political party which had nominated such*  
16 *incumbent.\**

17 Source: C. 40:45B-2 (1975, c. 213, s. 2 amended 1978, c. 11, s. 1).

1 40A:16-10. Qualifications of appointee to fill vacancy. Every  
2 person appointed to fill a vacancy, either for the unexpired term  
3 or temporarily, shall have the qualifications required by statute  
4 to permit the appointee to qualify for election to office.

5 Source: C. 40:45B-3 (1975, c. 213, s. 3).

1 40A:16-11. Appointment to fill vacancy where incumbent was  
2 nominee of a political party; time to fill vacancy. If the incumbent  
3 whose office has become vacant was elected to office as the nominee  
4 of a political party, the municipal committee of the political party  
5 of which the incumbent was the nominee shall, no later than 15  
6 days after the \***[occurrenc]**\* *\*occurrence\** of the vacancy, present  
7 to the governing body \***[or Governor, as the case may be,]**\* the  
8 names of three nominees for the selection of a successor to fill the  
9 vacancy. The governing body \***[or the Governor, as the case may**  
10 **be,]**\* shall, within 30 days after the occurrence of the vacancy,  
11 appoint one of the nominees as the successor to fill the vacancy.  
12 If the municipal committee which nominated the incumbent fails to  
13 submit the names of the nominees within the time prescribed  
14 herein, the governing body \***[or Governor, as the case may be,]**\*  
15 shall, within the next 15 days fill the vacancy by the appointment  
16 of a successor from the same political party which had nominated  
17 the incumbent whose office has become vacant.

18 Source. C. 40:45B-3 (1975, c. 213, s. 3); C. 40:103-5(79) (1963,  
19 c. 149, s. 9).

1 40A:16-12. Appointment to fill vacancy where incumbent was  
2 not nominee of a political party; time to fill vacancy. If the  
3 incumbent whose office has become vacant was not elected to office  
4 as the nominee of a political party, the governing body \***[**or the  
5 Governor, as the case may be,**]**\* shall within 30 days of the occur-  
6 rence of the vacancy, appoint a successor to fill the vacancy without  
7 regard to party.

8 Source: C. 40:45B-3 (1975, c. 213, s. 3); C. 40:103-5(79) (1963,  
9 c. 149, s. 9).

1 40A:16-13. Failure of governing body to fill vacancy in member-  
2 ship of governing body. If a governing body shall fail to fill a  
3 vacancy in the membership of the governing body for its unexpired  
4 term as provided in N. J. S. 40A:16-4a or 40A:16-5a within the  
5 time prescribed by N. J. S. 40A:16-11 or 40A:16-12, the office shall  
6 remain vacant for the remainder of the term.

7 Source: New.

1 40A:16-14. Special election to fill vacancy in the office of mayor;  
2 limitation on authority to appoint. If a governing body shall fail to  
3 fill a vacancy in the office of mayor as provided in N. J. S. 40A:16-4a  
4 or 40A:16-5a within the \***[**time**]**\* *\*30-day period\** prescribed by  
5 N. J. S. 40A:16-11 or 40A:16-12, the municipal clerk shall forth-  
6 with fix the date for a special election to fill the vacancy to be held  
7 45 days after the expiration of the time fixed for the filling of the  
8 vacancy. If the date fixed for a special election shall fall within 20  
9 days prior to the holding of any general election, regular municipal  
10 election or any other election within the municipality, the vacancy  
11 shall be filled at that election. If the date fixed for a special election  
12 shall fall within 20 days after the holding of any general election,  
13 regular municipal election or any other election within the munic-  
14 ipality, then the special election to fill the vacancy shall be held not  
15 less than 20 days nor more than 25 days from the date of that  
16 election.

17 \***[**If**]**\* *\*Notwithstanding the foregoing, if\** a vacancy in the office  
18 of mayor occurs \***[**within 6 months prior to the end of the office**]**\*  
18A *\*in the final 6 months of the term of the mayor\**, no *\*special\**  
18B election shall be held to fill the vacancy.

19 No appointment shall be made by a governing body to fill a  
20 vacancy occurring in the office of a mayor after the fixing of a date  
21 for \***[**an**]**\* *\*a special\** election to fill the vacancy *\*pursuant to this*  
21A *section\**.

22 Source: C. 40:45B-2 (1975, c. 213, s. 2 amended 1978, c. 11, s. 1).

1 40A:16-15. Special election when person elected to office dies  
 2 before commencement of term. If at any time after an election for  
 3 the office of mayor or for a member of the governing body and  
 4 before the time fixed for the commencement of the term of the  
 5 office, the person elected to that office dies, the municipal clerk  
 6 shall forthwith fix the date for a special election to fill that office  
 7 for its term or unexpired term, as the case may be, to be held  
 8 45 days from the date of \***[death of the person so dying]**\* *\*such*  
 8A *death\**.

9 Source: New.

1 40A:16-16. Special election when \***[election to office declared null**  
 2 **and void.** If an election for the office of mayor or for a member of  
 3 the governing body shall be adjudicated to be null and void, the]**\***  
 4 *\*vacancy occurs pursuant to R. S. 19:3-25. Whenever the office of*  
 5 *mayor or of member of the governing body shall be declared or*  
 6 *deemed vacant pursuant to R. S. 19:3-25, the\** municipal clerk shall  
 7 forthwith fix the date for a special election to fill that office for its  
 8 term or unexpired term, as the case may be, to be held 45 days from  
 9 the date \***[adjudicating the election null and void]**\* *\*upon which*  
 10 *the office was so declared or deemed to be vacant\**.

11 Source: New.

1 40A:16-17. Special election when person elected to office be-  
 2 comes disqualified before commencement of term. If at any time  
 3 after an election for the office of mayor or for a member of the  
 4 governing body and before the time fixed for the commencement  
 5 of the term of the office, *\*it shall be determined that\** the person  
 6 elected to that office shall no longer have the qualifications required  
 7 for the office, the municipal clerk shall forthwith fix the date for a  
 8 special election to fill the office for its term or unexpired term, as  
 9 the case may be, to be held 45 days from the date \***[that person**  
 10 **becomes disqualified]**\* *\*of such determination\**.

11 Source: New.

1 40A:16-18. Notice of holding special election; contents. The  
 2 municipal clerk upon the fixing of a date for the holding of a  
 3 special election shall immediately cause to be published in a legal  
 4 newspaper circulating within the municipality a notice setting forth  
 5 the date of the special election, its purpose, and the date when the  
 6 nomination of candidates for election shall be filed in the clerk's  
 7 office.

8 Source: New.

1 40A:16-19. Nomination of successor to be elected *\*\*at special*  
 2 *election\*\**. The nomination of a successor to be elected at a special  
 3 election as provided in N. J. S. 40A:16-14, 40A:16-15, 40A:16-16  
 4 and 40A:16-17 shall be made in the following manner:



5 a. In municipalities holding elections for municipal officers at  
 6 the time of a general election, the municipal committees of the  
 7 political parties in the municipality shall, no later than 15 days  
 8 from the expiration of the time fixed in N. J. S. \***[40A:16-11 and**  
 9 **40A:16-12]**\* *\*40A:16-14\** for the filling of a vacancy by appoint-  
 10 ment or from the happening of the events set forth in N. J. S.  
 11 40A:16-15, 40A:16-16 and 40A:16-17, select their candidates for  
 12 election to the office, and file a statement of their selections with the  
 13 municipal clerk. The statements so filed shall conform to the  
 13A provisions of R. S. 19:13-20. *\*\*Other candidates for election to*  
 13B *such office shall be nominated by petition in the manner set forth*  
 13C *in subsection b. of this section.\*\**

14 b. In municipalities holding regular municipal elections *\*[in*  
 15 *May]*\*, nomination shall be by petition in writing filed with the  
 16 municipal clerk. The petition shall be signed by *\*[at least 1% of*  
 17 *the]*\* *\*a number of the registered and qualified\** voters of the  
 18 municipality if the successor is to be elected at large, or of the  
 19 ward *\*[,]*\* if the successor is to be elected from a ward, *\*[regis-*  
 20 *tered at the last general election for members of the General*  
 21 *Assembly]*\* *\*equal to at least 0.5% of the total number of votes*  
 22 *cast in the municipality, or ward, as the case may be, at the last*  
 23 *preceding general election at which members of the General*  
 24 *Assembly were elected, but in no case shall such petition be signed*  
 25 *by fewer than 25 such voters\**. The petition shall be filed with the  
 26 municipal clerk no later than 15 days from the expiration of the  
 27 time prescribed in N. J. S. *\*[40A:16-11 and 40A:16-12]*\*  
 28 *\*40A:16-14\** for the *\*[filing]*\* *\*filling\** of a vacancy by appoint-  
 29 ment or from the happening of the events set forth in N. J. S.  
 30 40A:16-15, 40A:16-16 and 40A:16-17. The municipal clerk shall  
 31 forthwith examine the petition, and, if he finds it to be defective in  
 32 any particular, he shall return the petition to the person nominated  
 33 thereby setting forth his reasons in writing. Within 3 days after its  
 34 return, the petition as corrected may be refiled with the municipal  
 35 clerk.

36 Source: C. 40:45B-4 (1975, c. 213, s. 4 amended 1976, c. 19, s. 1);  
 37 C. 40:103-5(78) (1963, c. 149, s. 8).

1 *\*\*40A:16-20. Nomination of successor to be elected at regular*  
 2 *municipal or general election. The nomination of a successor to*  
 3 *be elected at a regular municipal or general election shall be made*  
 4 *in the manner provided in Title 19 of the Revised Statutes.*

5 Source: New.\*\*

1 *\*\*[40A:16-20.]\*\* \*\*40A:16-21.\*\** Time for taking office. All  
 2 appointees to fill a vacancy, whether to fill the unexpired term or

3 temporarily, shall take office immediately after appointment and  
 4 qualification. All persons elected to serve for the unexpired term  
 5 of an office shall take office immediately \***[on qualifying therefor]**\*  
 6 *\*upon certification of the results of the election pursuant to the*  
 7 *provisions of R. S. 19:20-9\**. All persons elected to serve for a  
 8 full term of office shall take office on the date fixed for the com-  
 9 mencement of the term of the office.

10 Source: C. 40:45B-5 (1975, c. 213, s. 5).

1 **\*\*[40A:16-21.]\*\*** **\*\*40A:16-22.\*\*** Provisions in special munici-  
 2 pal charters superseded. The provisions of any special municipal  
 3 charters which are inconsistent with the provisions of this chapter  
 4 are hereby superseded.

5 Source: New.

1 **\*\*[40A:16-22.]\*\*** **\*\*40A:16-23.\*\*** Statutes repealed. The fol-  
 2 lowing sections, acts and chapters, together with all amendments  
 3 and supplements thereto are hereby repealed:

4 Revised Statutes Sections:

5 R. S. 40:72-15;

6 R. S. 40:81-18;

7 R. S. 40:87-11;

8 R. S. 40:125-7;

9 R. S. 40:131-5;

10 R. S. 40:146-20;

11 R. S. 40:171-5.

12 Pamphlet Laws:

13 P. L. 1975, c. 213 (C. 40:45B-1 to C. 40:45B-6 inclusive);

14 P. L. 1950, c. 210, s. 3-5 (C. 40:69A-35);

15 P. L. 1950, c. 210, s. 4-6 (C. 40:69A-54);

16 P. L. 1950, c. 210, s. 5-6 (C. 40:69A-60);

17 P. L. 1950, c. 210, s. 6-7 (C. 40:69A-67);

18 P. L. 1950, c. 210, s. 7-6 (C. 40:69A-73);

19 P. L. 1950, c. 210, s. 8-7 (C. 40:69A-80);

20 P. L. 1950, c. 210, s. 9-5 (C. 40:69A-85);

21 P. L. 1950, c. 210, s. 10-5 (C. 40:69A-103);

22 P. L. 1950, c. 210, s. 11-5 (C. 40:69A-108);

23 P. L. 1950, c. 210, s. 12-6 (C. 40:69A-114);

24 P. L. 1950, c. 210, s. 13-5 (C. 40:69A-119);

25 P. L. 1950, c. 210, s. 14-5 (C. 40:69A-137);

26 **\*[P. L. 1950, c. 210, s. 15-5 (C. 40:69A-143);**

27 **P. L. 1950, c. 210, s. 16-5 (C. 40:69A-148);]\***

28 P. L. 1953, c. 254, s. 13 (12A-5) (C. 40:69A-114.5);

29 P. L. 1973, c. 234, s. 5 (C. 40:69A-114.11);

30 P. L. 1963, c. 149, s. 8 (C. 40:103-5(78)).

1 2. 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] the munic-  
6 ipal elections shall be equal to the number of vacancies which are  
7 then to be filled, and the terms of office of the persons so elected  
8 shall be 3 years and until their successors are elected and qualified[,  
9 unless their places become vacant as prescribed in the "Municipal  
10 Governing Body Vacancy Law." Vacancies in the municipal coun-  
11 cil, except those created by recall, shall be filled in the manner  
12 provided by the "Municipal Governing Body Vacancy Law."].

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

2 40:158-2. Unless otherwise provided for by any law or charter  
3 incorporating any village, the officers to be elected shall be five  
4 village trustees, who shall constitute the governing board of the  
5 village. At their first meeting after the first election in any village  
6 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  
11 trustees elected after the first election shall be 3 years[, and all  
12 vacancies shall be filled in the manner provided by the "Municipal  
13 Governing Body Vacancy Law."]. The board shall organize by the  
14 election of one of its number as president, who shall be the village  
15 president for 1 year and until his successor shall be elected, but the  
16 president shall not remain in office after the expiration of his  
17 term as trustee.

1 4. 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 Unless otherwise provided for by any law or charter incorporat-  
7 ing any village, the vacancies in the board of trustees shall be filled  
8 in the manner provided by the "Municipal Governing Body Va-  
9 cancy Law."].

1 5. 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 in the manner provided by the “Municipal**  
8 **Governing Body Vacancy Law.”】**

1 6. 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 in the manner provided by the “Municipal Governing**  
8 **Body Vacancy Law.”】**

1 7. Section 7 of P. L. 1963, c. 149 (C. 40:103-5(77)) is amended to  
2 read as follows:

3 7. Eligibility for Office.

4 No person shall be eligible as a candidate for election as mayor  
5 or qualified to serve as mayor unless he shall be a citizen of the  
6 United States and shall have resided in the city continuously for a  
7 period of 2 years next preceding the date of his election to office  
8 and continuously after the date of election and during his term of  
9 office. No person shall be eligible for election or appointment to  
10 the office of councilman unless he shall be a citizen of the United  
11 States and shall have resided:

12 (a) In the city continuously for a period of 2 years next preced-  
13 ing the date of his election or appointment to office, and

14 (b) In the ward which he is to represent continuously for a period  
15 of 1 year next preceding the date of his election or appointment to  
16 office and shall maintain each such residence after his election or  
17 appointment as the case may be.

18 **【If any such person shall terminate the residency hereinbefore**  
19 **required while a candidate, then the said position shall thereupon**  
20 **become vacant and be filled as provided by law; if the termination**  
21 **shall occur after election to office but before commencement of the**  
22 **term thereof, then the said office shall be deemed vacant as of the**  
23 **date of commencement of the term; if the required residency shall**  
24 **cease during service in office, then the office shall be deemed im-**  
25 **mediately vacant.】**

1 8. Section 9 of P. L. 1963, c. 149 (C. 40:103-5(79)) is amended  
2 to read as follows:

3 9. **【Interim Filling of Vacancies Until Election】** *Acting Mayor.*

4 **【(a)】** The mayor shall in case of his absence from the city or his  
5 disability, such that he is unable to attend to the usual and routine

6 functions of his office, designate a city officer as acting mayor for  
 7 a period not exceeding 60 consecutive days. In the event of the  
 8 absence from the city or disability of the mayor exceeding 60  
 9 consecutive days [or vacancy in the office of the mayor], the chair-  
 10 man of the city council shall serve as acting mayor until such  
 11 absence shall terminate[,] or disability be removed[, or the  
 12 vacancy be filled by the election and qualification of a successor  
 13 as provided by this article.]. Any person serving as acting mayor  
 14 shall be vested with all the rights, powers and duties of mayor,  
 15 provided, however, that during the first 60 consecutive days of  
 16 such absence or disability, no appointments shall be made by the  
 17 acting mayor except temporary appointments necessary for the  
 18 continuing function of government.

19 [(b) Vacancies in the office of councilman shall be filled by an  
 20 interim appointment of the city council of a qualified person from  
 21 the same political party as the most recent incumbent thereof if  
 22 elected as a nominee of a political party until the election and  
 23 qualification of a successor as provided by this article.]

1 9. Section 8 of P. L. 1897, c. 30 (R. S. 40:108-1(8)) is amended  
 2 to read as follows:

3 8. If at any annual city election in any such city there shall be  
 4 one or more vacancies to be supplied in any office, *except in the*  
 5 *office of mayor or councilman*, at the same time any person is to be  
 6 elected for the full term of said office, or if two or more are elected  
 7 at the same time to serve for different terms, the term for which  
 8 each person is voted for, for said office, shall be designated on the  
 9 ballot; and if any person who shall be elected to any office, *except*  
 10 *the office of mayor or councilman*, at the annual city election shall  
 11 not qualify according to law for the space of 20 days after such  
 12 election, or if any person who shall be elected or appointed to fill  
 13 any vacancy in any of said offices shall not qualify according to  
 14 law for the space of 20 days after such election or appointment,  
 15 his office shall be deemed vacant.

1 10. Section 9 of P. L. 1897, c. 30 (R. S. 40:108-1(9)) is amended  
 2 to read as follows:

3 9. In case of death, resignation, disability, disqualification,  
 4 removal from office, neglect or refusal to act, or removal out of  
 5 the city or ward of any of the officers, or any vacancy in any office  
 6 except mayor *or councilman*, [or justice of the peace,] it shall be  
 7 lawful for the common council to appoint others in their stead until  
 8 the next city election, or in case of appointed officers until the  
 9 regular period for appointment, who shall, during the said term,

10 perform like services, be entitled to the same fees and be subject  
11 to the same responsibilities as though elected at the annual election  
12 or appointed at the regular time; provided, that all resignations  
13 shall be sent to the mayor, and he shall report the same to the  
14 common council at its next meeting thereafter.

1 11. Section 11 of P. L. 1897, c. 30 (R. S. 40:108-1(11)) is amended  
2 to read as follows:

3 11. Any city or ward officer, except members of the board of  
4 city assessors, *mayor or councilmen*, may be removed from office  
5 by resolution, for disability, or other good cause shown, upon  
6 complaint in writing to the common council, setting forth such  
7 cause, supported by one or more affidavits of the truth of the facts  
8 therein alleged; provided, however, that no such removal shall  
9 take place until the person sought to be removed has had an oppor-  
10 tunity to be heard in his defense, nor unless two-thirds of all the  
11 members of the common council shall vote for such removal;  
12 vacancies occurring in such office shall be filled for the unexpired  
13 term by the common council.

1 12. Section 8 of P. L. 1899, c. 52 (R. S. 40:109-3(8)) is amended  
2 to read as follows:

3 8. If at any annual city election in any such city there shall be  
4 one or more vacancies, *except in the office of mayor or councilman*,  
5 to be supplied in any office at the same time any person is to be  
6 elected for the full term of said office, or if two or more are elected  
7 at the same time to serve for different terms, the term for which  
8 each person is voted for, for said office, shall be designated on the  
9 ballot; and if any person who shall be elected to any office, *except*  
10 *the office of mayor or councilman*, at the annual city election shall  
11 not qualify according to law for the space of 20 days after such  
12 election, or if any person who shall be elected or appointed to fill,  
13 any vacancy in any of said offices shall not qualify according to  
14 law for the space of 20 days after such election or appointment,  
15 his office shall be deemed vacant.

1 13. Section 9 of P. L. 1899, c. 52 (R. S. 40:109-3(9)) is amended  
2 to read as follows:

3 9. That in case of a vacancy by death, resignation, disability,  
4 disqualification, removal from office, neglect or refusal to act,  
5 removal out of the city or ward, or from any other cause, in any  
6 appointive city or ward office, such vacancy shall be filled by the  
7 common council by appointment for the unexpired term, and until  
8 the appointment and qualification of a successor, and if such

9 vacancy shall occur in any elective city or ward office, except mayor  
 10 or [justice of the peace] *councilman*, the said common council shall  
 11 fill the same by appointment until the next city election, and until  
 12 the election and qualification of a successor; such appointees shall  
 13 during the said term perform like services, be entitled to the same  
 14 fees, and be subject to the same responsibilities as through elected  
 15 at the annual election or appointed at the regular time; provided,  
 16 that all resignations shall be sent to the mayor, and he shall report  
 17 the same to the common council at its next meeting thereafter.

1 14. Section 11 of P. L. 1899, c. 52 (R. S. 40:109-3(11)) is amended  
 2 to read as follows:

3 11. Any city or ward officer, except members of the board of city  
 4 assessors, *mayor or councilmen*, may be removed from office by  
 5 resolution, for disability, or other good cause shown, upon com-  
 6 plaint in writing to the common council, setting forth such cause,  
 7 supported by one or more affidavits of the truth of the facts therein  
 8 alleged; provided, however, that no such removal shall take place  
 9 until the person sought to be removed has had an opportunity to  
 10 be heard in his defense, nor unless two-thirds of all of the members  
 11 of the common council shall vote for such removal; vacancies  
 12 occurring in such office shall be filled for the unexpired term by  
 13 the common council.

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

2 40A:9-11. Whenever a county [or municipal] *\*or municipal\**  
 3 officer, [other than a member of the governing body of a munici-  
 4 pality,] who is required to be a resident shall cease to be a bona fide  
 4A resident of the county [or municipality, as the case may be,] *\*or*  
 5 *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] *\*or municipality\**, by the proper authority, shall  
 9 thereupon proceed to fill the vacancy in the manner prescribed by  
 10 law. [Vacancies in the membership of the governing body of a  
 11 municipality shall be filled in the manner provided by the "Muni-  
 12 pal Governing Body 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 16. N. J. S. 40A:9-12 is amended to read as follows:

2 40A:9-12. In any county [or municipality] *\*or municipality\**,  
 3 whenever a vacancy in office occurs from any cause other than

4 expiration of the term of office or the filing of petition for recall,  
5 such vacancy shall be filled [for the unexpired term only] in the  
6 manner prescribed by law.

1     \*\*17. The provisions of this act shall be applicable to all vacan-  
2 cies existing as of the effective date hereof, provided, however,  
3 that for the purpose of filling such vacancies by appointment the  
4 time limits set forth in sections 40A:16-9, 40A:16-11 and 40A:16-12  
5 shall be reckoned from the effective date of this act.\*\*

1     \*\*[17.]\*\* \*\*18.\*\* Effective Date. This act shall take effect im-  
2 mediately.

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*SPONSORS'* STATEMENT

This bill has been prepared by the Division of Law Revision of the Legislative Services Agency in furtherance of its duty to carry on a continuous revision of the general and permanent statutory law of the State and is one of a series of proposed revision statutes to form a part of Title 40A of the New Jersey Statutes, enacting Chapter 16 relating to the filling of vacancies in the offices of mayors elected at large and members of municipal governing bodies.

This bill will embody within one chapter the existing statutes relating to the filling of vacancies of mayor and governing bodies of municipalities.

Under certain forms of municipal government, a mayor elected at large is not a member of the governing body. Existing law does not specifically provide for the filling of a vacancy in that office, and this bill will remedy that situation.

This bill also provides that a vacancy shall exist in the office of a member of a governing body when he no longer resides within the ward from which he was elected.

A procedure is established by this bill for the selection of a successor to fill a vacancy by appointment.

If a governing body fails to appoint a successor to fill a vacancy in the governing body for an unexpired term within the time prescribed therefor, the office shall remain vacant. This provision will avoid the cost of a special election if the governing body fails to act in such cases.

Special elections will be permitted only under the following circumstances:

- a. To fill a vacancy in the office of a mayor elected at large when the governing body fails to appoint a successor within the time prescribed;
- b. If the person elected to office dies before the commencement of the term of office;
- c. If an election to office is declared null and void; and
- d. If prior to the time fixed for commencement of the term of office, a person elected to the office no longer has the qualifications required by law to qualify for the office.

The existing law is silent as to the times for the holding of special elections to elect a successor. This bill corrects the situation by setting forth the periods of time within which such elections shall be held.

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The existing law does not provide for notification to the electorate of the time fixed for a special election. Under this bill the municipal clerk is required to publish a notice of the date fixed for holding the election, its purpose, and the time within which nominations shall be filed with the clerk.

This bill will also clarify the existing law as to the manner in which candidates for election to choose a successor shall be chosen. As provided in the bill, in municipalities electing municipal officers at the time of the general election held in November, the municipal committees of the political parties within the municipality shall choose their candidates for the election and file a statement of election with the municipal clerk within the time prescribed. In municipalities holding regular municipal elections in May, candidates for election shall be nominated by direct petition in writing signed by at least 1% of the voters within the municipality if the successor is to be elected at large, and, of a ward, if the successor is to be elected from a ward. The bill prescribes the time within which the petition shall be filed.

TITLE 40A. MUNICIPALITIES AND COUNTIES

VACANCIES IN CERTAIN ELECTED MUNICIPAL OFFICES

SCHEDULE OF ALLOCATIONS OF SOURCE MATERIAL

<i>Source Sections</i>	<i>Revised Sections</i>						
C. 40:45B-1 . . . . . L. 1975, c. 213, s. 1 . . . . .	40A:16-1						
C. 40:45B-2 . . . . . L. 1975, c. 213, s. 2; As am. L. 1978, c. 11, s. 1 . . . . .	<table border="0" style="margin-left: auto; margin-right: 0;"> <tr><td style="border-left: 1px solid black; padding-left: 5px;">40A:16-4</td></tr> <tr><td style="border-left: 1px solid black; padding-left: 5px;">40A:16-5</td></tr> <tr><td style="border-left: 1px solid black; padding-left: 5px;">40A:16-6</td></tr> <tr><td style="border-left: 1px solid black; padding-left: 5px;">40A:16-7</td></tr> <tr><td style="border-left: 1px solid black; padding-left: 5px;">40A:16-9</td></tr> <tr><td style="border-left: 1px solid black; padding-left: 5px;">40A:16-14</td></tr> </table>	40A:16-4	40A:16-5	40A:16-6	40A:16-7	40A:16-9	40A:16-14
40A:16-4							
40A:16-5							
40A:16-6							
40A:16-7							
40A:16-9							
40A:16-14							
C. 40:45B-3 . . . . . L. 1975, c. 213, s. 3 . . . . .	<table border="0" style="margin-left: auto; margin-right: 0;"> <tr><td style="border-left: 1px solid black; padding-left: 5px;">40A:16-10</td></tr> <tr><td style="border-left: 1px solid black; padding-left: 5px;">40A:16-11</td></tr> <tr><td style="border-left: 1px solid black; padding-left: 5px;">40A:16-12</td></tr> </table>	40A:16-10	40A:16-11	40A:16-12			
40A:16-10							
40A:16-11							
40A:16-12							
C. 40:45B-4 . . . . . L. 1975, c. 213, s. 4; As am. L. 1976, c. 19, s. 1 . . . . .	<table border="0" style="margin-left: auto; margin-right: 0;"> <tr><td style="border-left: 1px solid black; padding-left: 5px;">40A:16-19</td></tr> </table>	40A:16-19					
40A:16-19							
C. 40:45B-5 . . . . . L. 1975, c. 213, s. 5 . . . . .	40A:16-20						
C. 40:45B-6 . . . . . L. 1975, c. 213, s. 6 . . . . .	40A:16-3						
C. 40:69A-35 . . . . . L. 1950, c. 210, s. 3-6; As am. L. 1975, c. 213, s. 8 . . . . .	<table border="0" style="margin-left: auto; margin-right: 0;"> <tr><td style="border-left: 1px solid black; padding-left: 5px;">Not Enacted</td></tr> </table>	Not Enacted					
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C. 40:69A-54 . . . . . L. 1975, c. 213, s. 4-6; As am. L. 1975, c. 213, s. 9 . . . . .	<table border="0" style="margin-left: auto; margin-right: 0;"> <tr><td style="border-left: 1px solid black; padding-left: 5px;">Not Enacted</td></tr> </table>	Not Enacted					
Not Enacted							
C. 40:69A-60 . . . . . L. 1950, c. 210, s. 5-6; As am. L. 1960, c. 89; . . . . . L. 1975, c. 213, s. 10 . . . . .	<table border="0" style="margin-left: auto; margin-right: 0;"> <tr><td style="border-left: 1px solid black; padding-left: 5px;">Not Enacted</td></tr> </table>	Not Enacted					
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C. 40:69A-67 . . . . . L. 1950, c. 210, s. 6-7; As am. L. 1975, c. 213, s. 11 . . . . .	<table border="0" style="margin-left: auto; margin-right: 0;"> <tr><td style="border-left: 1px solid black; padding-left: 5px;">Not Enacted</td></tr> </table>	Not Enacted					
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C. 40:69A-73 . . . . . L. 1950, c. 210, s. 7-6; As am. L. 1975, c. 213, s. 12 . . . . .	<table border="0" style="margin-left: auto; margin-right: 0;"> <tr><td style="border-left: 1px solid black; padding-left: 5px;">Not Enacted</td></tr> </table>	Not Enacted					
Not Enacted							

<i>Source Sections</i>	<i>Revised Sections</i>
C. 40:69A-80 . . . L. 1950, c. 210, s. 8-7; . . . } As am. L. 1975, c. 213, s. 13 . . . . . }	}Not Enacted
C. 40:69A-85 . . . L. 1950, c. 210, s. 9-5; . . . } As am. L. 1975, c. 213, s. 14 . . . . . }	}Not Enacted
C. 40:69A-103 . . . L. 1950, c. 210, s. 10-5; . . . } As am. L. 1975, c. 213, s. 15 . . . . . }	}Not Enacted
C. 40:69A-108 . . . L. 1950, c. 210, s. 11-5; . . . } As am. L. 1975, c. 213, s. 16 . . . . . }	}Not Enacted
C. 40:69A-114 . . . L. 1950, c. 210, s. 12-6; . . . } As am. L. 1962, c. 117, s. 1; . . . . . } L. 1965, c. 45; . . . . . } L. 1975, c. 213, s. 17 . . . . . }	}Not Enacted
C. 40:69A-114.5 . . L. 1953, c. 254, s. 13 (12A-5) } As am. L. 1975, c. 213, s. 18 . . . . . }	}Not Enacted
C. 40:69A-114.11 . L. 1973, c. 234, s. 5; . . . . . } As am. L. 1975, c. 213, s. 19 . . . . . }	}Not Enacted
C. 40:69A-119 . . . L. 1950, c. 210, s. 13-5; . . . } As am. L. 1975, c. 213, s. 20 . . . . . }	}Not Enacted
C. 40:69A-137 . . . L. 1950, c. 210, s. 14-6; . . . } As am. L. 1975, c. 213, s. 21 . . . . . }	}Not Enacted
C. 40:69A-143 . . . L. 1950, c. 210, s. 15-5; . . . } As am. L. 1975, c. 213, s. 22 . . . . . }	}Not Enacted
R. S. 40:72-15 As am. L. 1975, c. 213, s. 24 . . . . .	Not Enacted
R. S. 40:81-18 As am. L. 1975, c. 213, s. 25 . . . . .	Not Enacted
R. S. 40:87-11 As am. L. 1975, c. 213, s. 27 . . . . .	Not Enacted
C. 40:103-5(77) . . L. 1963, c. 149, s. 7 . . . . .	40A:16-3
C. 40:103-5(78) . . L. 1963, c. 149, s. 8 . . . . .	{40A:16-5 40A:16-6 40A:16-7 40A:16-19
C. 40:103-5(79) . . L. 1963, c. 149, s. 9 . . . . .	}40A:16-11 40A:16-12
R. S. 40:125-7 As am. L. 1975, c. 213, s. 29 . . . . .	Not Enacted
R. S. 40:131-5 . . . . .	Not Enacted
R. S. 40:146-20 . . As am. L. 1975, c. 213, s. 31 . . . . .	Not Enacted
R. S. 40:171-5 . . . As am. L. 1975, c. 213, s. 34 . . . . .	Not Enacted
New . . . . .	40A:16-15
New . . . . .	40A:16-16
New . . . . .	40A:16-17
New . . . . .	40A:16-18
New . . . . .	40A:16-21

## TITLE 40A. MUNICIPALITIES AND COUNTIES

## VACANCIES IN CERTAIN ELECTED MUNICIPAL OFFICES

## TREATMENT OF SOURCE MATERIAL

<i>Revised Section</i>	<i>Source</i>	<i>Treatment of Source</i>
40A:16-1	C. 40:45B-1	Short title changed
40A:16-2	New	Definitions as used in chapter
40A:16-3	C. 40:45B-6 C. 40:103-5(77)	{ Revised section derived from { sources
40A:16-4	C. 40:45B-2	{ Revised section derived from { sources
40A:16-5	C. 40:45B-2 C. 40:103-5(78)	{ Revised section derived from { sources
40A:16-6	C. 40:45B-2 C. 40:103-5(78)	{ Revised section derived from sources; majority vote of entire governing body re- quired to fill vacancy in office of mayor
40A:16-7	C. 40:45B-2 C. 40:103-5(78)	{ Revised section derived from sources; majority vote of re- maining members required to fill vacancy in governing body
40A:16-8	New	{ When mayor authorized to vote { in filling vacancy
40A:16-9	C. 40:45B-2	{ Revised section derived from { sources
40A:16-10	C. 40:45B-3	{ Revised section derived from { sources
40A:16-11	C. 40:45B-3 C. 40:103-5(79)	{ Revised section derived from sources; procedure to choose successor if incumbent was nominee of political party
40A:16-12	C. 40:45B-3 C. 40:103-5(79)	{ Revised section derived from sources; procedure to choose successor if incumbent not nominee of political party
40A:16-13	New	{ Office to remain vacant if governing body fails to fill vacancy
40A:16-14	C. 40:45B-2	{ Revised section derived from sources; municipal clerk to fix date of special election if vacancy in office of mayor not filled; prescribes times for and limitation on holding election
40A:16-15	New	{ Municipal clerk to fix date for and time for special election if person elected to office dies before commencement of term
40A:16-16	New	{ Municipal clerk to fix date for and time for special election when election to office de- clared null and void

<i>Revised Section</i>	<i>Source</i>	<i>Treatment of Source</i>
40A:16-17 . . . .	New	{ Municipal clerk to fix date for and time for special election where person elected is dis- qualified before commence- ment of term
40A:16-18 . . . .	New	{ Provides for publishing of notice fixing date of election and contents of notice
40A:16-19 . . . .	C. 40:45B-4 } C. 40:103-5(78)}	{ Revised section derived from sources; provides procedures to select candidates for elec- tion
40A:16-20 . . . .	C. 40:45B-5	{ Revised section derived from source; fixes times when suc- cessors to fill a vacancy shall take office
40A:16-21 . . . .	New	{ Provisions in special charters suspended
40A:16-22 . . . . .		Repealer

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ASSEMBLY MUNICIPAL GOVERNMENT COMMITTEE

STATEMENT TO

**SENATE, No. 1217**

[OFFICIAL COPY REPRINT]

With Assembly committee amendments

**STATE OF NEW JERSEY**

DATED: JANUARY 22, 1979

Senate Bill No. 1217, the "Municipal Vacancy Law," was prepared by the Division of Law Revision of the Legislative Services Agency as a revision of the "Municipal Governing Body Vacancy Law" (P. L. 1975, c. 213; C. 40:45B-1 et seq.). The major departures from the current law embodied in the bill are designed to: (1) extend the provisions of the law to vacancies in offices of mayors elected at large; (2) address certain ambiguities and difficulties in the current legislation which have become apparent as result of court decisions; and, (3) provide a more comprehensive approach to the filling of municipal vacancies by addressing certain procedural and other aspects of the process not addressed by the current law. The provisions of the bill would relate only to vacancies in the office of mayor or member of the governing body, and vacancies occurring in other municipal offices would continue to be filled by the proper authority in the manner elsewhere prescribed by law.

The guiding principles of the proposed revision may be summarized as follows:

1. Vacancies are to be filled as quickly as possible;
2. Vacancies are to be filled at a regular municipal election or general election where possible and practical;
3. Special elections are to be avoided unless specifically appropriate to the circumstances;
4. Special elections where the whole electorate votes, but only the candidates of one party run, are to be avoided; and,
5. Appointments to fill vacancies should be conducted, except in special emergency circumstances, in the local context, should be expeditiously made, and should not be used to thwart minority representation.

The following summarizes the major provisions of the bill by describing the major changes in the current law and presenting the apparent reasons thereof, and describing the substantive Senate and Assembly committee amendments thereto.

*40A:16-3 (Definitions)*. The current law contains no definitions section. The most important definitions set forth in the section are:

1. *a. "Governing Body" and c. "Mayor"*. The intent of the bill would appear to be to include within the term "governing body" mayors selected by the governing body from among its own members, since the definition of "mayor" includes only mayors elected at large. The Senate committee amendments clarify this intent by explicitly including in "governing body" mayors selected by the governing body from among its own members.

2. *b. "Incumbent"*. The bill adopts the definition utilized by the court in the *Garwood* decision (140 N. J. Super 593, App. Div. 1976).

3. *F. "Political Party"*. The bill utilizes the definition contained in R. S. 19:1-1 (Elections). The effect of the utilization of such definition is to limit to major political parties the bill's recognition of the party affiliation of an incumbent whose office has become vacant, in those sections of the bill requiring that an appointment be from the same political party as nominated the incumbent. In an instance where the incumbent officer was not the nominee of a major political party, the vacancy would be filled without regard to party.

*40A:16-3 (When office deemed vacant)*. The section revises the provisions of N. J. S. A. 40:45B-6 to:

1. After the language to include circumstances under which the office of mayor becomes vacant;

2. Add nonresidency in ward from which elected, to nonresidency in municipality, as a condition of vacancy; and,

3. Provide that a resignation tendered after the filing of a recall petition shall not result in a vacancy to be filled under the act (positions resigned after recall petition are to be filled at a recall election; see "Optional Municipal Charter Law" 40:69A-168 through 40:69A-178). The Senate committee amendments would (1) clarify that the determination that an officer shall have become incapable of serving shall be a judicial determination, and shall be based upon physical or mental incapacity, (2) rephrase the language of the section to specify a time upon which the office shall become vacant in each instance, and (3) provide direction that absence for 8 consecutive weeks by a governing body member, or mayor, which results from a legitimate illness shall be excused by the governing body.

*40A:16-4 (Filling vacancies in municipalities holding regular municipal elections)*, and *40A:16-5 (Filling vacancies in municipalities holding general elections)*. These sections revise subsections a. and b. of N. J. S. A. 40:45B-2, as amended by P. L. 1978, c. 11, to help clarify the somewhat tortuous language of the existing law by separating the

provisions applicable to municipalities holding regular municipal elections from those provisions applicable to municipalities holding general elections. Currently in New Jersey, 479 municipalities hold general elections, and 88 municipalities hold regular municipal elections. The sections adopt the provisions of 40:45B-2 as amended by P. L. 1978, c. 11, which provided that:

1. In municipalities holding regular municipal elections, vacancies occurring after the sixtieth day preceding the regular municipal election in the next-to-the-last year are to be filled by appointment of the governing body; vacancies occurring at any other time are to be filled at the next regular municipal or general election, whichever occurs sooner; and,

2. In municipalities holding general elections, vacancies occurring after the sixtieth day preceding the general election in the next-to-the-last year are to be filled by appointment of the governing body; vacancies occurring at any other time are to be filled at the next general election. The Senate committee amendments to this section are designed to address a serious problem which has come to light since P. L. 1978, c. 11 was enacted. Ostensibly, the provisions of that law would mean that in municipalities holding regular municipal elections vacancies occurring in the last 15 months of the term would be filled by appointment, which would be about the same as in municipalities holding general elections. However, regular municipal elections are held every 2 years in Faulkner Act municipalities, or every 4 years in municipalities having commission forms of government. The implication of the law appears to be that in Faulkner Act municipalities vacancies occurring in the last 27 months of the term are to be filled by appointment, and in commission forms of government vacancies occurring at any time during the 48-month term are to be filled by appointment. Yet, this is obviously contrary to the legislative intent that vacancies are to be filled by election where possible. The Senate committee amendments would return to the provisions of 40:45B-2 as they were before P. L. 1978, c. 11, except with respect to the provision of P. L. 1978, c. 11 permitting municipalities holding regular municipal elections to fill vacancies at the regular municipal election, when appropriate. The effect of the committee amendments would be that in municipalities holding regular municipal elections, vacancies occurring in the final 9 month of the term shall be filled by appointment; otherwise vacancies are to be filled at the next regular municipal or general election, whichever occurs sooner. In municipalities holding general elections, the period for filling by appointment would remain at the final 16 months of the term.



*40A:16-9 (Authority of Governor to fill vacancies in governing bodies).* The section revises subsection d. of 40:45B-2. The authority of the Governor to fill vacancies in governing bodies, whenever all or a majority of the positions become vacant, remains unchanged. The Senate committee amendments, recognizing that the Governor in such case would be most likely acting in an emergency situation, would exempt the Governor from the nominating procedure set forth in 40A:6-11, and would merely require that where the incumbent was elected as the nominee of a political party, the Governor shall appoint a successor from the same political party.

*40A:16-11 (Appointment to fill vacancy where incumbent was nominee of a political party; time to fill vacancy).* This section would establish a new procedure to be followed which would further limit the discretion of the governing body in making appointments to fill vacancies where the incumbent was the nominee of a party. Current law in this respect (40:45B-3) provides only that the person appointed shall be of the same party as the incumbent. The new section would provide the party with the opportunity to submit three names from which the appointment would be made. The names must be submitted within 15 days after the occurrence of the vacancy, or else the governing body is free to choose within the next 15 days any qualified person of such party. The 30-day deadline for the appointment is the same as in current law (40:45B-2c). The apparent intent is to limit the ability of the majority party to weaken minority representation on the body by choosing individuals with limited abilities or with political principles compatible with those of the majority party.

*40A:16-12 (Appointment to fill vacancy where incumbent was not nominee of a political party; time to fill vacancy).* Where the incumbent was elected in a manner other than as a party nominee (nonpartisan election, independent candidate, or candidate of a minority party not qualifying by definition (40A:16-2F)), the governing body shall fill the position within 30 days of occurrence of the vacancy "without regard to party." Same as current law (40:45B-2c).

*40A:16-13 (Failure of governing body to fill vacancy in membership of governing body).* The current law in 40:45B-2c provides that if the governing body shall fail to fill a vacancy in the body within 30 days, a special election shall be held. In the *Rutherford* decision (140 N. J. Super 328, Law Div. 1976), the court held that this meant that a special election would be held at which all qualified voters could vote, but in which only persons qualified to run in the primary of the party of the incumbent could run. Otherwise, the majority party on the governing body would have an interest in not appointing a person to a minority

party seat. The revised section would provide that if the governing body fails to appoint within 30 days, the position shall remain vacant for the remainder of the term. The new provision has two objects: (1) to avoid the type of one-party election resulting from *Rutherford*; and, (2) to generally avoid the expense of special elections.

*40A:16-14 (Special election to fill vacancy in the office of mayor; limitation on authority to appoint).* The section provides that if the governing body fails to fill a vacancy in the office of mayor, as provided in 40A:16-11 or 40A:16-12, within the 30 day period allowed, then a special election shall be held. No appointment could be made by the governing body after the fixing of the date for the election. The section incorporates standard restrictions on when a special election can be held relative to a general or regular municipal election. If the vacancy occurs within 6 months prior to the end of the term, no special election shall be held, and the office would remain vacant.

*40A:16-15, 40A:16-16 and 40A:16-17.* These sections provide for special elections when persons elected to office die or are disqualified prior to the commencement of the term, or the office becomes vacant pursuant to R. S. 19:3-25. The tendency of the courts has been to treat factors interposing prior to an elected officer taking office as resulting in a vacancy to be filled pursuant to the current "Municipal Governing Body Vacancy Law;" that is, to be filled by appointment temporarily until the next regular municipal or general election, whichever occurs first. Also, the appointment is to be of the same party as the incumbent. The principle followed in these sections appears to be to have a new election as soon as possible to allow the voters to choose again, with no temporary appointment intervening. Also, each of these sections sets forth a time 45 days from which the special election is to be held. The current law does not specify the time upon which special elections are to be held.

The committee noted that section 40A:16-16 as received by the committee related to only one of the events set forth in R. S. 19:3-25 (election to office declared null and void). Although two important court decisions, *Garwood* (140 N. J. Super 593, App. Div. 1976) and *Mulcahy* (156 N. J. Super 429, Law Div. 1978), have resulted from another event set forth in R. S. 19:3-25 (two candidates tied in vote), that event is not addressed here. In *Mulcahy* the court stated that a new election immediately held would accord "most nearly to notions of public participation and self-determination." The committee amendments would extend the provisions of the section to apply to all the events pursuant to which a vacancy may occur under R. S. 19:3-25.

*40A:16-19 (Nomination of successor to be elected).* The current statute (40:45B-4) provides only that nominations "for a successor to

a vacancy to be filled by election'' (special, regular, municipal and general) shall be made in accordance with Title 19 (Elections), except that where regular municipal elections are held in May, nomination must be by petition. Under the revision, Title 19 (Elections) would apply whenever the vacancy is to be filled at a regular municipal or general election (not explicitly stated in the bill, but would be the case). For special elections, the revision sets up a separate nominating procedure differing from Title 19. The substantive difference from Title 19 is that nomination by primary election for candidates for the special election is eliminated for municipalities holding general elections, since it would be impossible to hold a primary election within the 45 day time constraint. Instead, the revision provides that each political party shall select its candidate within the first 15 days.

As in the current law, in municipalities holding regular municipal elections in May, nomination of candidates would be only by petition. Petitions must be filed within the first 15 days.

The committee amendments reduce the required number of signatures on a nominating petition from 1% of the registered and qualified voters, to 0.5%, but not less than 25, of the registered and qualified voters. This reduction reflects the fact that the time for securing such signatures would be limited to 15 days under the legislation.

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SENATE COUNTY AND MUNICIPAL GOVERNMENT  
COMMITTEE

STATEMENT TO  
**SENATE, No. 1217**  
with Senate committee amendments

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**STATE OF NEW JERSEY**

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DATED: DECEMBER 4, 1978

Senate Bill No. 1217, the "Municipal Vacancy Law," was prepared by the Division of Law Revision of the Legislative Services Agency as a revision of the "Municipal Governing Body Vacancy Law" (P. L. 1975, c. 213; C. 40:45B-1 et seq.). The major departures from the current law embodied in the bill are designed to: (1) extend the provisions of the law to vacancies in offices of mayors elected at large; (2) address certain ambiguities and difficulties in the current legislation which have become apparent as result of court decisions; and, (3) provide a more comprehensive approach to the filling of municipal vacancies by addressing certain procedural and other aspects of the process not addressed by the current law. The provisions of the bill would relate only to vacancies in the office of mayor or member of the governing body, and vacancies occurring in other municipal offices would continue to be filled by the proper authority in the manner elsewhere prescribed by law.

The guiding principles of the proposed revision may be summarized as follows:

1. Vacancies are to be filled as quickly as possible;
2. Vacancies are to be filled at a regular municipal election or general election where possible and practical;
3. Special elections are to be avoided unless specifically appropriate to the circumstances;
4. Special elections where the whole electorate votes, but only the candidates of one party run, are to be avoided; and,
5. Appointments to fill vacancies should be conducted, except in special emergency circumstances, in the local context, should be expeditiously made, and should not be used to thwart minority representation.

The following summarizes the major provisions of the bill by describing the major changes in the current law and presenting the apparent reasons thereof, and describing the substantive committee amendments made thereto.

*40A:16-3 (Definitions)*. The current law contains no definitions section. The most important definitions set forth in the section are:

1. *a. "Governing Body" and c. "Mayor"*. The intent of the bill would appear to be to include within the term "governing body" mayors selected by the governing body from among its own members, since the definition of "mayor" includes only mayors elected at large. The committee amendments clarify this intent by explicitly including in "governing body" mayors selected by the governing body from among its own members.

2. *b. "Incumbent"*. The bill adopts the definition utilized by the court in the *Garwood* decision (140 N. J. Super 593, App. Div. 1976).

3. *F. "Political Party"*. The bill utilizes the definition contained in R. S. 19:1-1 (Elections). The effect of the utilization of such definition is to limit to major political parties the bill's recognition of the party affiliation of an incumbent whose office has become vacant, in those sections of the bill requiring that an appointment be from the same political party as nominated the incumbent. In an instance where the incumbent officer was the nominee of a minority party, the vacancy would be filled without regard to party.

*40A:16-3 (When office deemed vacant)*. The section revises the provisions of N. J. S. A. 40:45B-6 to:

1. After the language to include circumstances under which the office of mayor becomes vacant;

2. Add non-residency in ward from which elected, to nonresidency in municipality, as a condition of vacancy; and,

3. Provide that a resignation tendered after the filing of a recall petition shall not result in a vacancy to be filled under the act (positions resigned after recall petition are to be filled at a recall election; see "Optional Municipal Charter Law" 40:69A-168 through 40:69A-178).

The committee amendments would (1) clarify that the determination that an officer shall have become incapable of serving shall be a judicial determination, and shall be based upon physical or mental incapacity, (2) rephrase the language of the section to specify a time upon which the office shall become vacant in each instance, and (3) provide direction that absence for 8 consecutive weeks by a governing body member, or mayor, which results from a legitimate illness shall be excused by the governing body.

The committee amendments would (1) clarify that the determination that an officer shall have become incapable of serving shall be a judicial determination, and (2) rephrase the language of the section to specify a time upon which the office shall become vacant in each instance.

*40A:16-4 (Filling vacancies in municipalities holding regular municipal elections)*, and *40A:16-5 (Filling vacancies in municipalities hold-*

*ing general elections*). These sections revise subsections a. and b. of N. J. S. A. 40:45B-2, as amended by P. L. 1978, c. 11, to help clarify the somewhat tortuous language of the existing law by separating the provisions applicable to municipalities holding regular municipal elections from those provisions applicable to municipalities holding general elections. Currently in New Jersey, 479 municipalities hold general elections, and 88 municipalities hold regular municipal elections. The sections adopt the provisions of 40:45B-2 as amended by P. L. 1978, c. 11, which provided that:

1. In municipalities holding regular municipal elections, vacancies occurring after the 60th day preceding the regular municipal election in the next-to-the-last year are to be filled by appointment of the governing body; vacancies occurring at any other time are to be filled at the next regular municipal or general election, whichever occurs sooner; and,

2. In municipalities holding general elections, vacancies occurring after the 60th day preceding the general election in the next-to-the-last year are to be filled by appointment of the governing body; vacancies occurring at any other time are to be filled at the next general election.

The committee amendments to this section are designed to address a serious problem which has come to light since P. L. 1978, c. 11 was enacted. Ostensibly, the provisions of that law would mean that in municipalities holding regular municipal elections vacancies occurring in the last 15 months of the term would be filled by appointment, which would be about the same as in municipalities holding general elections. However, regular municipal elections are held either every 2 years in Faulkner Act municipalities, or every 4 years in municipalities having commission forms of government. The implication of the law appears to be that in Faulkner Act municipalities vacancies occurring in the last 27 months of the term are to be filled by appointment, and in commission forms of government vacancies occurring at any time during the 48 month term are to be filled by appointment. Yet, this is obviously contrary to the legislative intent that vacancies are to be filled by election where possible. The committee amendments would return to the provisions of 40:45B-2 as they were before P. L. 1978, c. 11, except with respect to the provision of P. L. 1978, c. 11 permitting municipalities holding regular municipal elections to fill vacancies at the regular municipal election, when appropriate. The effect of the committee amendments would be that in municipalities holding regular municipal elections, vacancies occurring in the final 9 months of the term shall be filled by appointment; otherwise vacancies are to be filled at the next regular municipal or general election, whichever occurs sooner. In municipalities holding general elections, the period for filling by appointment would remain at the final 16 months of the term.

*40A:16-9 (Authority of Governor to fill vacancies in governing bodies).* The section revises subsection d. of 40:45B-2. The authority of the Governor to fill vacancies in governing bodies, whenever all or a majority of the positions become vacant, remains unchanged. The committee amendments, recognizing that the Governor in such case would be most likely acting in an emergency situation, would exempt the Governor from the nominating procedure set forth in 40A:6-11, and would merely require that where the incumbent was elected as the nominee of a political party, the Governor shall appoint a successor from the same political party.

*40A:16-11 (Appointment to fill vacancy where incumbent was nominee of a political party; time to fill vacancy).* This section would establish a new procedure to be followed which would further limit the discretion of the governing body in making appointments to fill vacancies where the incumbent was the nominee of a party. Current law in this respect (40:45B-3) provides only that the person appointed shall be of the same party as the incumbent. The new section would provide the party with the opportunity to submit 3 names from which the appointment would be made. The names must be submitted within 15 days after the occurrence of the vacancy, or else the governing body is free to choose within the next 15 days any qualified person of such party. The 30 day deadline for the appointment is the same as in current law (40:45B-2c). The apparent intent is to limit the ability of the majority party to weaken minority representation on the body by choosing individuals with limited abilities or with political principles compatible with those of the majority party.

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*40A:16-13 (Failure of governing body to fill vacancy in membership of governing body).* The current law in 40:45B-2c provides that if the governing body shall fail to fill a vacancy in the body within 30 days, a special election shall be held. In the *Rutherford* decision (140 N. J. Super 328, Law Div. 1976), the court held that this meant that a special election would be held at which all qualified voters could vote, but in which only persons qualified to run in the primary of the party of the incumbent could run. Otherwise, the majority party on the governing body would have an interest in not appointing a person to a minority

party seat. The revised section would provide that if the governing body fails to appoint within 30 days, the position shall remain vacant for the remainder of the term. The new provision has two objects: (1) to avoid the type of one-party election resulting from *Rutherford*; and, (2) to generally avoid the expense of special elections.

*40A:16-14* (Special election to fill vacancy in the office of mayor; limitation on authority to appoint). The section provides that if the governing body fails to fill a vacancy in the office of mayor, as provided in *40A:16-11* or *40A:16-12*, within the 30-day period allowed, then a special election shall be held. No appointment could be made by the governing body after the fixing of the date for the election. The section incorporates standard restrictions on when a special election can be held relative to a general or regular municipal election. If the vacancy occurs within 6 months prior to the end of the term, no special election shall be held, and the office would remain vacant.

*40A:16-15*, *40A:16-16* and *40A:16-17*. These sections provide for special elections when persons elected to office die or are disqualified prior to the commencement of the term, or the office becomes vacant pursuant to R. S. 19:3-25. The tendency of the courts has been to treat factors interposing prior to an elected officer taking office as resulting in a vacancy to be filled pursuant to the current "Municipal Governing Body Vacancy Law;" that is, to be filled by appointment temporarily until the next regular municipal or general election, whichever occurs first. Also, the appointment is to be of the same party as the incumbent. The principle followed in these sections appears to be to have a new election as soon as possible to allow the voters to choose again, with no temporary appointment intervening. Also, each of these sections sets forth a time 45 days from which the special election is to be held. The current law does not specify the time upon which special elections are to be held.

The Senate committee noted that section *40A:16-16* as received by the committee related to only one of the events set forth in R. S. 19:3-25 (election to office declared null and void). Although two important court decisions, *Garwood* (140 N. J. Super 593, App. Div. 1976) and *Mulcahy* (156 N. J. Super 429, Law Div. 1978), have resulted from another event set forth in R. S. 19:3-25 (two candidates tied in vote), that event is not addressed here. In *Mulcahy* the court stated that a new election immediately held would accord "most nearly to notions of public participation and self-determination." The Senate committee amendments would extend the provisions of the section to apply to all the events pursuant to which a vacancy may occur under R. S. 19:3-25.



*40A:16-19 (Nomination of successor to be elected).* The current statute (40:45B-4) provides only that nominations "for a successor to a vacancy to be filled by election" (special, regular, municipal and general) shall be made in accordance with Title 19 (Elections), except that where regular municipal elections are held in May, nomination must be by petition. Under the revision, Title 19 (Elections) would apply whenever the vacancy is to be filled at a regular municipal or general election (not explicitly stated in the bill, but would be the case). For special elections, the revision sets up a separate nominating procedure differing from Title 19. The substantive difference from Title 19 is that nomination by primary election for candidates for the special election is eliminated for municipalities holding general elections, since it would be impossible to hold a primary election within the 45-day time constraint. Instead, the revision provides that each political party shall select its candidate within the first 15 days.

As in the current law, in municipalities holding regular municipal elections in May, nomination of candidates would be only by petition. Petitions must be filed within the first 15 days.

The Senate committee amendments reduce the required number of signatures on a nominating petition from 1% of the registered and qualified votes, to 0.5%, but not less than 25, of the registered and qualified voters. This reduction reflects the fact that the time for securing such signatures would be limited to 15 days under the legislation.

The Assembly committee amendments makes provision for nomination of independent candidates to fill a vacancy at a special election in those municipalities where elections are partisan.

*40A:16-20 (Nomination of successors to be elected at regular municipal or general election).* The Assembly committee amendments provide that nomination of a successor to be elected at a regular municipal or general election shall be made in the manner provided in Title 19 of the Revised Statutes.

The Assembly committee in section 17 has provided that "The provisions of this bill shall be applicable to all vacancies existing as of the effective date hereof, provided, however, that for the purpose of filling such vacancies by appointment the time limits set forth in sections 40A:16-9, 40A:16-11 and 40A:16-12 shall be reckoned from the effective date of this act."

The bill repeals the "Municipal Governing Body Vacancy Law" which would be superfluous upon passage of this bill and those sections of law dealing with the filling of vacancies in various forms of municipal government.

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APRIL 26, 1979

FOR FURTHER INFORMATION

FOR IMMEDIATE RELEASE

KATHRYN FORSYTH

Acting Governor Joseph P. Merlino today signed a bill revising the procedures for filling vacancies in the municipal offices of mayors or members of the local governing bodies.

The bill, S-1217, is entitled the "Municipal Vacancy Law" and is a revision of the "Municipal Governing Body Vacancy Law", originally enacted in 1975. Merlino is also the bill's sponsor.

According to the Senate County and Municipal Government Committee's statement on the bill, its main objectives are to fill vacancies as soon as possible and at regular municipal or general elections, to avoid special elections (especially in cases in which the whole electorate votes but candidates from only one party run) and conduct the appointment process used to fill vacancies in some cases as expeditiously as possible, avoiding the use of that process to thwart minority representation.

The bill extends the provisions of the law to include vacancies in the offices of mayors elected at large, addresses difficulties in the current legislation which became apparent as a result of recent court decisions and provides a more comprehensive approach to filling vacancies.

Major changes made by the bill include the following:

-- The section dealing with the conditions leading to a vacancy is revised to add non-residency in a ward from which the candidate was elected as a condition of vacancy and to provide that a resignation tendered after the filing of a recall petition shall still be filed at a recall election and not under this act.

-- The language of the existing law is clarified by separating the provisions applicable to municipalities holding regular municipal elections from those applicable to municipalities holding general elections.

In the 88 municipalities holding regular municipal elections, vacancies occurring after the sixtieth day preceeding the regular municipal election in the next-to-the-last year are to be filled by appointment of the governing body. Vacancies occurring at any other time are to be filled by the next regular municipal or general election, whichever occurs sooner.

In the 479 municipalities holding general elections, vacancies occurring at any other time are to be filled at the next general election.

-- A new procedure is established to limit the discretion of the governing body in filling vacancies.

The original law provides only that the person appointed be of the same political party as the incumbent. Under this law, the party with the opportunity must submit three nominations to fill the vacancy to the governing body within 15 days after the occurrence of the vacancy or else the governing body is free to choose any "qualified person" within the following 15 days.

If the incumbent was not elected as a party nominee (either in a non-partisan election or as an independent or minority party candidate) the governing body must fill the vacancy "without regard to party" within 30 days.

If the governing body fails to fill the vacancy, except that of the office of mayor, within 30 days, the position will remain vacant until the end of the term. Under the original law, this kind of situation would call for a special election to be held.

However, if the vacancy not filled within the specified time period is that of the office of mayor, a special election will be held unless the vacancy occurs within six months prior to the end of the term, in which case the office will remain vacant.

-- The procedure for nominations for a successor for a vacancy to be filled by elections is also changed.

Nomination by primary election for the candidates for the special election is eliminated for municipalities holding general elections, since it would be impossible to hold a primary election within the time constraints set down in the bill. Instead, the bill provides that each political party shall select its candidates within the first 15 days.

As in the original law, municipalities holding regular municipal elections in May would nominate candidates only by petitions which have to be filed within the first 15 days.

-- The mayor of a borough is only permitted to vote in filling a vacancy in the governing body in the event of a tie vote.

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