

40A:16-4 et al

LEGISLATIVE HISTORY CHECKLIST

NJSA 40A:16-4 et al. (Municipal Vacancy Law--appointments to be optional)

LAWS 1980 CHAPTER 101

Bill No. S869

Sponsor(s) Merlino and Perskie

Date Introduced January 14, 1980

Committee: Assembly Municipal Government

Senate County and Municipal Government

Amended during passage ~~Yes~~ No

Date of Passage: Assembly June 23, 1980

Senate Jan. 29, 1980

Date of approval Sept. 11, 1980

Following statements are attached if available:

Sponsor statement Yes ~~No~~

Committee Statement: Assembly ~~Yes~~ No

Senate Yes ~~No~~

Fiscal Note ~~Yes~~ No

Veto Message ~~Yes~~ No

Message on signing Yes ~~No~~

Following were printed:

Reports ~~Yes~~ No

Hearings ~~Yes~~ No

S.1217 (mentioned in Senate Committee statement) was enacted as L.1979, c.83.

Case referred to in press release:

Galloway Township Republican League v. David F. White, 171 N.J. Super 576 (January 2, 1980); 82 NJ 301 (Feb. 11, 1980)

6/22/81

SENATE, No. 869

STATE OF NEW JERSEY

INTRODUCED JANUARY 14, 1980

By Senators MERLINO and PERSKIE

Referred to Committee on County and Municipal Government

AN ACT concerning the "Municipal Vacancy Law" and amending sections 40A:16-4, 40A:16-5, 40A:16-12 and 40A:16-13 of the New Jersey Statutes.

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

1 1. N. J. S. 40A:16-4 is amended to read as follows:

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

7 a. If the vacancy occurs subsequent to September 1 of the last
8 year of the term of the officer whose office has become vacant, the
9 office **[shall]** *may* be filled for its unexpired term by appointment
10 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.

1 2. N. J. S. 40A:16-5 is amended to read as follows:

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

7 a. If the vacancy occurs any time subsequent to September 1 of
8 the next-to-the last year and up to the expiration of the term of the
9 officer whose office has become vacant, the office **[shall]** *may* be

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

10 filled for its unexpired term by appointment by the governing body
11 as hereinafter provided;

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

1 3. N. J. S. 40A:16-11 is amended to read as follows:

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

1 4. N. J. S. 40A:16-12 is amended to read as follows:

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

1 5. N. J. S. 40A:16-13 is amended to read as follows:

2 40A:16-13. Failure of governing body to fill vacancy in member-
3 ship of governing body. If a governing body shall fail *or decline* to
4 fill a vacancy in the membership of the governing body **[for its un-**
5 **expired term]** *by appointment* as provided in N. J. S. **[40A:16-4a or**
6 **40A:16-5a]** *40A:16-4 or 40A:16-5* within the time prescribed by
7 N. J. S. 40A:16-11 or 40A:16-12, the office shall remain vacant for
8 the remainder of the term *or until the election and qualification*
9 *of a successor, as the case may be.*

1 6. This act shall take effect immediately.

Sponsor's STATEMENT

This bill clarifies the intent of the "Municipal Vacancy Law" that the appointment of a successor shall be in all cases optional to the municipal governing body. This is consistent with the design of that act and with both the Senate committee statement and the Assembly committee statement issued at the time Senate Bill 1217 was considered and passed by the Legislature.

The bill also brings the language of the "Municipal Vacancy Law" into conformity with the language of recent legislation concerning the filling of vacancies in boards of freeholders in counties under the "Optional County Charter Law" (P. L. 1978, c. 141; C. 40:41A-32 et seq.) and in other counties (Senate Bill 3224; awaiting Governor's action).

5869(1980)

SENATE COUNTY AND MUNICIPAL
GOVERNMENT COMMITTEE

STATEMENT TO
SENATE, No. 869

STATE OF NEW JERSEY

DATED: JANUARY 17, 1980

As the sponsor indicates, Senate Bill 869 clarifies the intent of the "Municipal Vacancy Law" that the appointment of a successor shall be in all cases optional to the municipal governing body. This is consistent with the design of that act and with both the Senate committee statement and the Assembly committee statement issued at the time Senate Bill 1217 was considered and passed by the Legislature.

The bill also brings the language of the "Municipal Vacancy Law" into conformity with the language of recent legislation concerning the filling of vacancies in boards of freeholders in counties under the "Optional County Charter Law" (P. L. 1978, c. 141; C. 40:41A-32 et seq.) and in other counties (Senate Bill 3224; awaiting Governor's action).

It should be noted that the option extended to the governing body relates only to whether or not it will appoint a successor to a vacancy. Any appointment so made shall be made in the manner prescribed in the "Municipal Vacancy Law." The purpose of the bill is not to extend an option to the governing body with respect to the mechanics of the appointment.

FROM THE OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE

SEPTEMBER 15, 1980

FOR FURTHER INFORMATION

JOE SANTANGELO

Governor Brendan Byrne has signed Senate Bill No. 869, sponsored by Senator Joseph P. Merlino (D-Mercer), which amends the Municipal Vacancy Law to clarify that appointments to fill vacancies in a municipal governing body are to be permissive, rather than mandatory.

The bill conforms the statute with a court decision holding that such appointments are permissive and is a correction of a technical defect in the statute.

The Governor also signed Senate Bill No. 1322, with a line-item veto. The measure, sponsored by Senator Charles Yates (D-Burlington), provided a \$1.9 million Fiscal Year 1981 supplemental appropriation to the Division of Youth and Family Services (DYFS) within the Department of Human Services to provide inflationary increases for DYFS Title XX purchase of service programs, 70 percent of which are day care services.

The Governor reduced the amount of the appropriation to \$1.0 million, recognizing the need for contract adjustments, state budget cap constraints, and the likelihood of generating some additional revenues from fees for day care services anticipated to begin January 1, 1981, which can be utilized to provide some increases in service contracts.

A copy of the line-item veto statement is attached.

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attachment