

P U B L I C H E A R I N G

before

SENATE JUDICIARY COMMITTEE

on

SENATE CONCURRENT RESOLUTION NO. 2005
(Amends Article IV, Section IV, paragraph 1 of the
Constitution of the State of New Jersey, with regard
to filling vacancies in the Legislature)

Held:
April 4, 1973
Assembly Chamber
State House
Trenton, New Jersey

MEMBER OF COMMITTEE PRESENT:

Senator Raymond H. Bateman (Acting Chairman)

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SENATE CONCURRENT RESOLUTION No. 2005

STATE OF NEW JERSEY

INTRODUCED JANUARY 22, 1973

By Senators BATEMAN, THOMAS, McDERMOTT, EPSTEIN,
CRABIEL and BEADLESTON

Referred to Committee on Judiciary

A CONCURRENT RESOLUTION proposing to amend Article IV, Section
IV, paragraph 1 of the Constitution of the State of New Jersey.

1 BE IT RESOLVED *by the Senate of the State of New Jersey (the*
2 *General Assembly concurring):*

1 1. The following proposed amendment to the Constitution of the
2 State of New Jersey is hereby agreed to:

PROPOSED AMENDMENT

3 Amend Article IV, Section IV, paragraph 1 of the Constitution
4 to read as follows:

5 1. Any vacancy in the Legislature occasioned **[**by death, resigna-
6 tion or**]** otherwise *than by expiration of term* shall be filled by
7 election for the unexpired term only**[**, as may be provided by law**]**
8 *at the next general election occurring not less than 40 days after*
9 *the occurrence of the vacancy, except that no vacancy shall be*
10 *filled at the general election which immediately precedes the ex-*
11 *piration of the term in which the vacancy occurs. For the interim*
12 *period pending the election and qualification of a successor to fill*
13 *the vacancy, or for the remainder of the term in the case of a*
14 *vacancy occurring which cannot be filled pursuant to the terms of*
15 *this paragraph at a general election, the vacancy ***[shall]*** *may**
16 *be filled by the majority vote of those members of the county com-*
17 *mittee or committees residing in the legislative district in which*
18 *the vacancy occurs who are members of the same political party*
19 *as that of the member whose office has become vacant *or in such*
19A *other manner as shall be provided by law*. **[**Each house shall direct*
20 *a writ of election to fill any vacancy in its membership; but if the*
21 *vacancy shall occur during a recess of the Legislature, the writ*
22 *may be issued by the Governor, as may be provided by law.**]***

1 2. When this proposed amendment to the Constitution is finally

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

2 agreed to, pursuant to Article IX, paragraph 1 of the Constitution,
 3 it shall be submitted to the people at the next general election
 4 occurring more than 3 months after such final agreement and
 5 shall be published at least once in at least one newspaper of each
 6 county designated by the President of the Senate and the Speaker
 7 of the General Assembly and the Secretary of State, not less than
 8 3 months prior to said general election.

1 3. This proposed amendment to the Constitution shall be sub-
 2 mitted to the people at said election in the following manner and
 3 form:

4 There shall be printed on each official ballot to be used at such
 5 general election, the following:

6 a. In every municipality in which voting machines are not used,
 7 a legend which shall immediately precede the question, as follows:

8 If you favor the proposition printed below make a cross (X),
 9 plus (+) or check (V) in the square opposite the word "Yes."
 10 If you are opposed thereto make a cross (X), plus (+) or check
 11 (V) in the square opposite the word "No."

12 b. In every municipality the following question:

		FILLING VACANCIES IN THE LEGISLATURE
	Yes.	Shall the amendment of Article IV, Section IV, paragraph 1 of the Constitution of the State of New Jersey, as agreed to by the Legislature, be approved to require the filling of every vacancy occurring in the membership of the Legislature at a general election, except the general election which immediately precedes the expiration of the term in which the vacancy occurs; and
	No.	*[providing for]* <i>*authorizing*</i> the immediate filling of the vacancy pending the general election, or the expiration of term, as the case may be, by appointment by those members of the county committee or committees residing in the district in which the vacancy occurs who are members of the same political party as that of the member whose office has become vacant <i>*or in such other manner as shall be provided by law*?</i>

I N D E X

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Mrs. Ann E. Levine
League of Women Voters

1 & 7

SENATOR RAYOND H. BATEMAN (Acting Chairman):

This public hearing on Senate Concurrent Resolution 2005 with Committee amendments, proposing an amendment to the State Constitution, is being held by the Senate Judiciary Committee by direction of the Senate and in accordance with the procedure for consideration of proposed amendments to the Constitution, directed by the Constitution and the rules of the Senate.

Senate Concurrent Resolution 2005 is a proposed amendment to the Constitution which sets up a procedure for filling vacancies - Legislative vacancies - which occur in the last year of a Legislative term.

We have Mrs. Ann Levine of the League of Women Voters who has requested to testify this morning. Thank you for coming and making our public hearing meaningful.

A N N E. L E V I N E: Thank you, Senator Bateman. I am not going to read all of this but basically the League does agree that a temporary appointment process should be provided until a special election could be held at the time of a regular election. But we do have some objection to the proposed amendment. We were glad to see that it was amended to provide a means to deal with the situation when an independent or third party legislator might vacate office, but we are reluctant to recommend approval of specific inclusion in the State Constitution of the method of appointment by county political party committee members of the legislative district. Political parties, their structure, or their officials are not constitutional creations and indeed are never mentioned except in the case of the Apportionment Commission. It might prove extremely awkward, should there be changes in the laws regulating party structure, to have to re-amend this proposed section to deal with such eventualities.

We would suggest what the newly adopted Illinois

constitution provides - - "Within 30 days after a vacancy occurs, it shall be filled by appointment as provided by law . ." - - and then adding a phrase to take care of it, "only serving until the next general election."

It is worth noting that until the adoption of their new constitution, Illinois had the same constitutional provision as New Jersey. The change was made because they were having the same problem we have had in New Jersey; many vacant seats were left unfilled.

The League members, in considering this question, were most concerned with filling vacancies promptly. They felt that the more democratic process of special elections was outweighed by the disadvantages - the likelihood of poor voter turnout, the time involved and the costs - and that the results of the appointive process would tend to be about the same in most cases as if a special election were held.

I have attached some figures on comparing voter turnout at elections at the end of the statement that you might be interested in. (see page 7)

Our members had many suggestions as to the best way to make appointments to fill vacancies. The only point all agreed upon was that the appointee be of the same party as the previous holder of the seat. Those suggesting appointment by the Governor often specified that he should choose among several nominated by the county committee in the district involved. Several suggested that the freeholders should have the appointive power.

In practical political fact, it seemed to us unlikely that a New Jersey Governor would make an appointment that would run counter to the wishes of the political party leaders in the legislative district involved. We were also concerned about preserving the independence of the legislature from the executive

branch. Therefore we suggest that at the present time, provision by law - once a constitutional amendment permitting this is passed - that the elected county committee members of the party which held the seat from those election districts falling within the legislative district where the vacancy occurs, have the power to appoint a new legislator to serve until the next general election. And we thought a time limit of 30-45 days to do this seems reasonable. But we don't recommend building this procedure into the Constitution.

Provision should be made for breaking a tie vote of the county committee people, and what to do in case of independent or third party legislators.

We looked at the laws of some other states to see whether they might have any suggestions, particularly about coping with the problem of independent or third party legislators, and the Illinois proposed election law revision - this may have been enacted by this time but I have only seen a draft copy - was that in a case of such a vacancy ". . . the vacancy shall be filled by a successor not affiliated with a political party as follows: (a) if in a Senatorial office, by the President of the Senate with the advice and consent of the Senate, or (b) if in a House office, by the Speaker of the House with the advice and consent of the House."

Alaska provides for gubernatorial appointment to be confirmed by the legislators of the same party in the appropriate house. If the previous holder of the office was of no particular party, the Governor appoints "any qualified person" and no confirmation is necessary.

We have not seen any legislation accompanying this proposed amendment that would implement it. It does not have a time limit within which an appointment must be made, nor, as I mentioned before, is there provision for what happens in the case of a tie vote.

We would suggest that appropriate implementing legislation, contingent upon passage of the amendment, be drafted and accompany the concurrent resolution in its move towards adoption so that people will know exactly what is intended.

SENATOR BATEMAN: You are not really opposed to the county committee procedure, you are opposed to putting the county committee procedure in the Constitution?

MRS. LEVINE: That's right. Right now it seems to us most practical and since the county committee people are elected, it has some of the democratic aspects that one would look for.

SENATOR BATEMAN: We, as you know, in drafting this, were frustrated by our inability to relate the county committee selection to possible vacancy of an independent. In researching New Jersey's history we may be making too much of this because we have never had, in the history of the State, an independent vacancy but it doesn't fit into this process.

Your suggestions are interesting in that respect. Would you consider the possible appointment by using the gubernatorial method for an independent vacancy, for example?

MRS. LEVINE: That would be a possibility. I think the problem there is whether you would want the Governor to simply appoint. It would be very tempting for the Governor to appoint a person of his own party. The intent here is to provide representation reflecting what was created at the time of the regular election. So that if you could limit it by specifying that the Governor should try to appoint an "independent", or, if it is a third party or a minor party, try as best he could to provide the same kind of representation.

SENATOR BATEMAN: You are not suggesting a time limit and I agree that a time limit should be a part

of legislation - you don't suggest a time limit be put in the Constitution, do you?

MRS. LEVINE: In view of what has happened in the past, I think it would be a very good idea. Also, if you are less definite in the Constitution in making it not necessarily required that it be an appointment process, it seems to me you could provide for a special election in the case where it was an independent or a third party legislator. Whereas, if the seat had been held by a member of one of the recognized political parties, as the state election laws set them, you would use the appointment process until the next general election.

It may be that the best way to deal with this independent or third party thing would be to say, "well, this time, in order to be fair to everybody let's have a special election."

SENATOR BATEMAN: Is there anything else you want to say?

MRS. LEVINE: That's it.

SENATOR BATEMAN: Thank you very much for testifying.

Is there anyone else in the Chamber that would like to say something?

(no response)

I guess the appearance of Mrs. Levine, on behalf of the League of Women Voters, and the principal sponsor of the legislation, on behalf of the Judiciary Committee, is somewhat indicative of the limited public interest in, what we consider, a serious problem of filling vacancies when they occur in the last year of a legislative term and that is part of the problem we have, I think.

We appreciate your thoughts. Because it has been a short public hearing I expect we can get your thoughts transmitted to the members of the Senate

quickly. I would hope, as a member of the Judiciary Committee and as the principal sponsor of this Concurrent Resolution, that action can be taken on some proposal this year in time for putting it on the ballot and ending the dilemma that has arisen.

There is no question in my mind - having gone through a special election in Somerset County just a couple of months ago - that the public doesn't participate and takes very little interest in these important side elections, or special elections. It would seem to me that because of what has happened just in January in Somerset County and late last year in Hudson County that we take action this year to get it on the ballot and get it resolved once and for all.

I appreciate your coming, once again. If there are no more people who want to testify, I declare the hearing on SCR2005 closed.

(Hearing Concluded)

Comparison of Voter Turnout at Regular Legislative Elections (1971)

With Turnout at Special Elections to fill Vacancies (1972 & 1973)

County	# Registered Voters	# Ballots Cast	%
HUDSON: 1971 Primary (total county)	257,510	52,966	20.5%
1971 General (total county)	231,519	185,431	65.8
1973 Special Primary (district 12C)	87,146	15,510	17.8
1973 Special Election (district 12C)	86,911	17,745	20.1

PASSAIC: 1971 Primary (total county)	195,309	16,411	8.4
1971 General (total county)	196,336	108,455	55.2
1972 Special Election **	81,294	63,622	78.3

SOMERSET: 1971 Primary	84,459	8,965	10.6
1971 General	89,389	54,808	61.3
1973 Special Primary	102,611	8,913	8.7
1973 Special Election	100,501	12,003	12.0

**This special election was held at the same time as the 1972 presidential election. candidates were nominated directly by the county committees because of the short time before the election.

Above figures are from the Div. of Elections, Dept. of State, New Jersey.

JUN 27 1985



