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PUBLIC HEARING

before

ASSEMBLY COUNTY GOVERNMENT COMMITTEE

on

ASSEMBLY CONCURRENT RESOLUTION NO. 3006

(Proposing to amend Article IV, Section IV of the Constitution)

ATTORNEY GENERAL'S LIBRARY
JUN 10 1982

Held:
December 3, 1981
Room 309
State House
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Michael F. Adubato (Chairman)
Assemblyman John A. Girgenti
Assemblyman Harry A. McEnroe
Assemblyman Thomas H. Paterniti
Assemblyman John B. Paoletta
Assemblyman Thomas J. Shusted

ALSO:

David L. Sallach, Research Associate
Office of Legislative Services
Aide, Assembly County Government Committee

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ASSEMBLY CONCURRENT RESOLUTION No. 3006

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 2, 1981

By Assemblymen ADUBATO, FORTUNATO and CODEY

Referred to Committee on State Government, Federal and
Internal Relations and Veterans Affairs

A CONCURRENT RESOLUTION proposing to amend Article IV,
Section IV of the Constitution by the addition of ***[an addi-
tional]* *a*** paragraph thereto.

1 BE IT RESOLVED *by the General Assembly of the State of New*
2 *Jersey (the Senate 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 by the addition of the following
4 paragraph thereto as follows:

5 10. Wherever in this Constitution there is a requirement that
6 concurrence of a majority or specified percentage of all the mem-
7 bers of the Senate and General Assembly is necessary, "all the
8 members" of a house means ***[a majority or specified percentage**
9 **of]*** all the actual members thereof, exclusive of a vacancy or
10 vacancies in its authorized membership.

1 2. When this proposed amendment to the Constitution is finally
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 shall
5 be published at least once in at least one newspaper of each county
6 designated by the President of the Senate and the Speaker of the
7 General Assembly and the Secretary of State, not less than 3
8 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:

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

- 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." If
 10 you are opposed thereto make a cross (X), plus (+) or check (V)
 11 in the square opposite the word "No."
 12 b. In every municipality the following question:

	Yes.	<p style="text-align: center;">MAJORITY OR SPECIFIED PERCENTAGE OF ALL THE MEMBERS OF THE LEGISLATURE DEFINED</p>
	No.	<p>Shall the amendment to Article IV, Section IV of the Constitution, agreed to by the Legislature, providing that wherever the Constitution requires the votes of a majority or specified percentage of all the members of the Senate and General Assembly is required to take action, "all the members" of a house means "[a majority or specified percentage of]" the actual members thereof, exclusive of a vacancy or vacancies, be approved?</p>

ASSEMBLY STATE GOVERNMENT, FEDERAL AND
INTERSTATE RELATIONS AND VETERANS
AFFAIRS COMMITTEE

STATEMENT TO

ASSEMBLY CONCURRENT RESOLUTION No. 3006
with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JUNE 15, 1981

The purpose of this Constitutional amendment is to specify that when the Constitution requires a vote by majority, two-thirds, three-fifths, or three-fourths of "all the members" of the Senate or General Assembly, that terminology shall mean all of the *actual* members rather than the *authorized* members. Thus, vacancies would be excluded in calculating the number of votes needed in the cases noted above.

The committee made technical amendments of the bill to correct the terminology used in order to accomplish the purpose of the bill.



ASSEMBLYMAN MICHAEL F. ADUBATO (Chairman): This will be a very short meeting. At this time I am going to call this public meeting open. Terry is here to help us. We have with us Assemblyman Paterniti, Assemblyman Shusted, and Assemblyman McEnroe.

The purpose of this meeting is to meet the rules of the Assembly in attempting to change the Constitution. The purpose of this resolution is stated in the title, and the Assembly Concurrent Resolution 3006 proposes an amendment to the New Jersey Constitution.

I would like to formally acknowledge the presence of our Vice Chairman, Mr. Girgenti, who has just joined us. We have just begun.

The specific provisions of ACR-3006, the Assembly Concurrent Resolution, proposes an amendment to the Constitution, as we stated, to specify that whenever the Constitution requires a vote by a majority, two-thirds, three-fifths, or three-quarters of "all the members" of the Senate or the General Assembly, that the phrase "all the members" shall mean all the actual members of the Body in question, not the authorized membership. A vacancy, or vacancies, in the membership of the Senate or General Assembly occasioned by death, resignation or otherwise, therefore, would not be included in the calculation of a majority, two-thirds, three-fifths, or three-quarters vote.

The record on ACR-3006 is as follows: Assembly Concurrent Resolution 3006 was introduced on February 2, 1981 and assigned to the Assembly State Government, Federal and Interstate Relations and Veterans' Affairs Committee. The Committee reported the resolution on June 15, 1981, with technical amendments. The resolution was given second reading in the General Assembly on June 15, 1981.

Rules of the House: Pursuant to the provisions of House Rule 17:2, printed copies of ACR-3006 were placed upon the desks of the members of the General Assembly, in open meeting on November 30, 1981.

Upon the fulfilling of the requirements set forth in Rule 17:2, a "public hearing upon the concurrent resolution shall be held before the General Assembly or a committee thereof, when and as shall be ordered by the General Assembly -- House Rule 17:3.

At the request of Assemblyman Michael F. Adubato, Chairman, Assembly County Government Committee, Speaker Christopher Jackman announced that a Public Hearing on ACR-3006 shall be held before the Assembly County Government Committee on December 3, 1981 at 10:00 A.M. in room 309, State House. Notices were immediately sent out.

We have, I submit, met the requirements of the rules of our House in conducting this public meeting, as far as we have gone. The next step in order to fulfill the rules of the House, before we can vote on this issue, is that the record of this public hearing must be placed on the desks of all of the Assembly members, and they must have that on their desk for at least 20 days before a vote can be taken in the Assembly on 3006. The record of this meeting, with the cooperation of Terry and others, working overtime, will be on the desk Monday of all Assembly people, which means that 20 days after Monday we will be allowed to vote on 3006. Once we do that, we have met all the requirements, and, if possible, on the same day that we vote on it, it can be voted on under emergency in the Senate, which we anticipate.

So, that is the track record, and to the best of our ability we have tried to explain the need for this public hearing. The need, as stated, is because of the rules. I am almost apologetic to the members of this Committee, and to the taxpayers of this State that we have to pay for a public hearing, with the typing cost, the overtime, the need for us to come back when we said we weren't going to have any

more meetings. Because of the oversight on my part -- and I take full responsibility -- of not realizing that even though State government released the bill, it still called for a public hearing. I apologize to the Committee and to the people of New Jersey for not doing my homework and see the need for that public hearing. I should have realized.

With that being said, I will now ask if there is any member of the public here that would like to be heard on this issue.

ASSEMBLYMAN SHUSTED: Mr. Chairman, may I just ask two questions?

ASSEMBLYMAN ADUBATO: Yes, sir. Assemblyman Shusted.

ASSEMBLYMAN SHUSTED: First, Mr. Chairman, I think we should have a roll call, and then I was just wondering whether or not this Committee has to vote on this Resolution?

ASSEMBLYMAN ADUBATO: First of all, as far as the public hearing goes, as long as you have one member here you have a public hearing. You don't need a quorum.

The second thing is, there is no vote necessary on any issue.

The third thing is, we can have a quorum, but we don't need one. But, I will respect your request and we will have a quorum call. That was the reason, by the way, Assemblyman, that I mentioned everyone's name, to get them on the record in lieu of an official call. But, we can have a quorum call. That's fine. Have a quorum call.

MR. SALLACH: Assemblyman Snedeker.

ASSEMBLYMAN ADUBATO: Assemblyman Snedeker did call to say that he had a problem. He told us he had a problem with being here.

MR. SALLACH: Assemblyman Shusted.

ASSEMBLYMAN SHUSTED: Here.

MR. SALLACH: Assemblyman Paolella.

ASSEMBLYMAN ADUBATO: Assemblyman Paolella also said he had a problem.

MR. SALLACH: Assemblyman Paterniti.

ASSEMBLYMAN PATERNITI: Present.

MR. SALLACH: Assemblyman McEnroe.

ASSEMBLYMAN MC ENROE: Present.

MR. SALLACH: Assemblyman Girgenti.

ASSEMBLYMAN GIRGENTI: Present.

MR. SALLACH: Chairman Adubato.

ASSEMBLYMAN ADUBATO: Present.

Again, I apologize. I will do it again. State government, unfortunately, is also culpable in this issue, because they should have realized that you had to have a public hearing on this issue. I tried that. You know, that Committee meeting should have been a hearing when we released the bill. But, while that is true, the responsibility has to be the sponsor's to make sure that the rules are followed. I don't think we can pass the buck to State government or anybody else. While I accept the fact that other people "goofed", I goofed the most. All right? To use that phraseology. I am not looking to pass the buck, or to blame anybody for anything. What we are trying to do here is, hopefully, learn that maybe we can change some of the rules of our House, I hope we can, that will not cause this kind of thing to happen again, especially since the real action on something like this is going to happen on the floor of the House, I think. And, especially since the content, I think, speaks for itself.

But, I would like to hear comments from the people here, from the Committee or from people sitting here, if they have anything to say about the Resolution. No one here from the public wants to say anything? Terrific. They are all happy. Is there any member of the Committee that would like to comment on the bill?

ASSEMBLYMAN GIRGENTI: Just one point. I agree with what you are doing, and I just want clarification. How would this number be determined? At what point? Prior to that day of the vote? What happens if a vacancy occurs? Let's say, just for the sake of argument, someone passes away. That day, when they go to Trenton, this new tabulation, or new number, will be determined at that point?

ASSEMBLYMAN ADUBATO: It is automatic.

ASSEMBLYMAN GIRGENTI: What happens if it is one-half?

ASSEMBLYMAN ADUBATO: It works that way now.

ASSEMBLYMAN GIRGENTI: It always goes to the one--?

ASSEMBLYMAN ADUBATO: Yes, it works that way now. There is no change in that. You always have a split. You know, logically, if you look at it, if people are absent - if they are ill and they are coming back - that is one thing. I think they should be included. However, people die, or resign, or for whatever reason aren't there any more as a person or an entity, and I think it is very unfair to the Legislature and to the people of this State to have the Executive Branch of the government have even more of an edge than they already have. I might point out that this is not aimed at any specific person sitting in the Executive Branch of government, whether it be the present Governor or the in-coming Governor; it deals with the fact that the Legislature, supposedly -- and I think we believe it -- is an equal branch of government in our system of democracy. It is that simple. And, with the strong Constitutional Executive Office that we have in this State -- which is by the Constitution -- we are meeting those same guidelines. I think it is rational to say that if a person doesn't exist, they shouldn't be counted. It is that simple, I hope.

ASSEMBLYMAN MC ENROE: Mr. Chairman, I think the Resolution has merit. I believe I certainly can support. I just want to raise a few questions regarding it. Under our Constitution, you have just mentioned that we have a strong Executive in the Governorship and it occurs to me that he does have authority to call for a special election when a vacancy exists in either of the legislative houses. Would it be well to entertain at least the concern, or the possibility, that somewhere it be written into this Resolution that the authority of the Governor to call for a special election be shared by the Legislature, since they are a co-equal branch of government? Because I foresee the possibility -- it is remote, but there is a possibility -- of a Governor of one party and the Legislature with the majority of the other party being a fact, and the Governor calling a special election in order that an existing vacancy be filled, and this, of course, will impact on the taxpayer, and the intention of the Governor could possibly be that he would generate more political support for his position through the election of a member of the same party in a special election.

ASSEMBLYMAN ADUBATO: Assemblyman, that is a very important question. I have had the opportunity to go through that already and to study the issue in depth. Based on when that vacancy occurs is really a criteria. It is the timing of that vacancy. As imperfect as the system is, what I found to be the most important thing in triggering that replacement is when that vacancy happens, in time. The rules change, based on time, when it must be done and when it can be done. There is some flexibility in there. I think to put the Legislature in that position, the Legislature

must act, but the writ must be effected by the Governor. I think I am correct on that.

MR. SALLACH: The writ is effected by the House.

ASSEMBLYMAN ADUBATO: Both. So, the point is that the Governor -- while he calls for special sessions, it is up to the Legislature. That's what I am saying. It is up to the Legislature when that happens. We fill our own vacancies, in effect. But, we don't always fill them based on, again, the time element, as happened in District 28 when there was a vacancy and some people wanted a special election. That had nothing to do with the Governor. The Legislature had the power, without the Governor -- I think I am right -- to call for that election. I think I am right.

ASSEMBLYMAN MC ENROE: I think the Governor has to issue a writ.

MR. SALLACH: No, he doesn't. The only time the Governor issues a writ -- he can -- is when we are in recess; then he can issue the writ. But, as long as we are convened, the power is in the hands of the Legislature. And, the reason why that vacancy wasn't filled, justly or unjustly, was because of cost factors involved in holding a special election for a short period of time.

And, by the way, I concurred with that, even though it occurred in Essex County. I concurred with the Body that we shouldn't have the special election because it was for such a short period of time and the cost, I felt, was unnecessary -- even though we were without that representation for a short period of time.

What this is really aimed at is not that kind of a situation, in all due respect. What this is really aimed at is the fact that we have had three Senate seats, for instance, vacant, for whatever reason, and we could have three or four Assemblymen. You know, unfortunately, since I have been down here, for whatever reason in our House, we have had the misfortune of legislators dying in office. This is from my very first term, either from accidents or from illnesses. And, that is a fact of life. If they are called by God that way, that's one thing. If they resign for personal reasons, that's another. Or, if we have the misfortune of people being forced to leave, that's another. None of us like to see that happen, but it does happen. And, I think this safeguard says, as simply as possible, that if there are people who are no longer sitting, we shouldn't be held in to an 80 count when we have 76 in reality. And, I am not talking about people being absent or ill; I am talking about people not existing anymore. And, it wasn't too long ago that there was an experience in the Senate where they went for an override in this Session, and if this had been in existence, they would have overridden. They missed that override by one vote -- one vote. If this had passed, if we had had this, the Legislature and the voice of the people would have been heard and would have been in effect.

You know, I hope we always have 80 members, and I hope we always have 40 members, but this is very important to the people. I have not -- and I must share this with you -- up until this point, I have not heard one negative -- I am sure there are, I just haven't heard them -- statement about this resolution from anyone. Now, I am not saying there aren't any; I am saying I haven't heard any.

Assemblyman Paoletta.

ASSEMBLYMAN PAOLELLA: Mr. Chairman, It is important, as Assemblyman McEnroe brought out, to talk about the time frames and the rules that impact on filling vacancies and the options available. I am not totally clear on those. I am sure you must be because you have checked them. Can you explain, in terms of a normal two-year session, what would happen when a vacancy occurs, say in the first year versus the second year -- the differences and so on?

ASSEMBLYMAN ADUBATO: "In the event of a vacancy in the membership of the General Assembly, occasioned by death, resignation, or otherwise, the General Assembly shall direct a writ of election to fill such vacancy, unless such vacancy shall occur during the recess of the Legislature. In such an event, the writ may be issued in accordance with the provisions of Article 4, Section 4, paragraph 1 of the Constitution and in accordance with the law." And, what that refers to is the Governor's right. That's what that article is. That is the Governor's authority. It doesn't say that here, but that is what it is. This is Section 4, Article 4.

MR. SALLACH: Section 1.

ASSEMBLYMAN ADUBATO: Section 1, all right. That says the Governor. When you get into it, the rules really don't go into it the way they should because in the Constitution itself and in your manual it is in depth. And, I am not that good, John, I apologize, but it is complex and it changes with time. We can read that.

ASSEMBLYMAN PAOLELLA: I brought that up for the simple reason that I am trying to determine -- and I understood that there was some legal question about the interpretation of this thing -- whether or not it falls within the authority at times or all the time of the Legislature, or whether or not it is purely the authority of the Executive Branch, which gets to make the determinations and the decisions as to when or whether or not--

ASSEMBLYMAN ADUBATO: Are we talking about the vacancies?

ASSEMBLYMAN PAOLELLA: Yes.

ASSEMBLYMAN ADUBATO: No.

ASSEMBLYMAN PAOLELLA: That's my concern.

ASSEMBLYMAN ADUBATO: This bill, first of all, has no effect on changing any of the process.

ASSEMBLYMAN PAOLELLA: Well, it can become a tool of the Executive Branch of government in a purely political sense--

ASSEMBLYMAN ADUBATO: They have no control, John.

ASSEMBLYMAN PAOLELLA: (continuing) --if the interpretation of those rules is such that they are, in effect, making decisions. That is why I asked the question.

ASSEMBLYMAN ADUBATO: It is a good question; however, I submit to you that they are not in control. We are in control when the vacancies are filled.

ASSEMBLYMAN PAOLELLA: Well, from what you read, I am not totally satisfied that that is true.

ASSEMBLYMAN ADUBATO: Okay, let me try--

ASSEMBLYMAN PAOLELLA: I'm not disagreeing with you.

ASSEMBLYMAN ADUBATO: No, I will accept that.

ASSEMBLYMAN PAOLELLA: I am trying to understand the rule better.

ASSEMBLYMAN ADUBATO: Let me try and say it again. Hopefully, I can communicate it better. In simple language -- "non-legalize", if you will -- it says that the power of fulfilling a vacancy within your House is the power of the members of that House as long as that House is in session. It has nothing to do with when the vacancy takes place as far as the term is concerned, whether there is a month to go or a year to go. It is based on and predicated on us being in session. That writ can be delivered, and can only be delivered, by the Legislature, not by the Governor.

ASSEMBLYMAN SHUSTED: Is that triggered by a resolution?

ASSEMBLYMAN ADUBATO: By the speaker and the vote of the House.

ASSEMBLYMAN PAOLELLA: Is it a "shall" or a "may"?

ASSEMBLYMAN ADUBATO: They may. They don't have to. We don't have to. We do not have to. The other side of that coin is when we are not convened, the

Governor may issue the writ.

ASSEMBLYMAN PAOLELLA: That brings me to my second question, that was the discussion of the use of the word recess.

ASSEMBLYMAN ADUBATO: Right.

ASSEMBLYMAN PAOLELLA: They call it recess if the Assembly or the Legislature is in recess. What constitutes a recess if we are, in effect-- Well, we are part-time legislators, but in reality--

ASSEMBLYMAN ADUBATO: A recess-- Again, we are getting--

ASSEMBLYMAN PAOLELLA: We watched the Attorney General walk in here in the early part of this year, if you recall, and steal a million dollars from Bergen County on the cockamamy interpretation of the Bank Corporation tax and where it should go. I will never forget that, because that was the most -- in the legal sense -- improper misinterpretation undertaken. So, you can read anything out of those rules that you want to.

ASSEMBLYMAN ADUBATO: John, you know that I was in the forefront of that issue with you.

ASSEMBLYMAN PAOLELLA: Absolutely.

ASSEMBLYMAN ADUBATO: However, I would not submit to you that anyone stole anything. I think they were totally wrong in what they did, in spite of the court decisions and in spite of what they said. But, I think that is a little harsh in saying that they stole it. I would submit to you that I concur with your outrage, but I do not concur with your interpretation.

You know, this is the first time I ever voted against the budget. The first time. And, it wasn't an easy thing for me to do as a Democrat.

ASSEMBLYMAN PAOLELLA: But, as a rational, thinking person it was easy.

ASSEMBLYMAN ADUBATO: Well, I am going to give you that same opportunity, I think, over the next four years, as a Republican with our good Republican Governor, and I am sure he will be, Tom Kean. I am going to give the Republicans the same opportunity, and I am sure there will be Republicans taking that opportunity - I hope there will be - to show their independence when in conscience they feel the Governor is not correct on an issue. I think that is what makes us get along much better. While we try to be loyal to our specific parties, our first loyalty is to the people, as corney as that sounds -- but it is true. And, on this issue, I submit that if I have been unable at this point to explain what the rules are, I can only read it exactly as it appears here. And, my interpretation is that we have the power.

You talked about recess before. To answer you, if I can, I found out about that by reading our manual, and I said: "Gee, what is this? We weren't in session then." But, if you notice, there is always somebody down here. That's what it is, to keep it carried over. Unless you don't meet for a specific period of time-- "The General Assembly, during a session of the Legislature, shall not, without the consent of the Senate, adjourn for more than three days or to any other place other than that in which the two Houses shall be sitting; unless otherwise so decided. The General Assembly shall meet in the Assembly Chamber in the State House, Trenton," which means for three days. So, actually, we don't recess. New Jersey is not like Tennessee; Tennessee recesses. Many states recess. New Jersey has a continuity and we are an enigma, in that we are part-time and we are not part-time. I do not think there is a member sitting here who considers himself part-time, even though the interpretation of the public is that we are part-time because we are allowed, thank God, to earn a living in the private sector.

Please forgive me, but, you know, people say to you and to me, "Gee, what do you do down there?" -- or similar rhetoric. I understand the rhetoric of a political season, of the public saying: "Gee, you don't meet," and you do this and you do that -- you know, we would probably say the same thing if the shoe was on the other foot, and I accept that. But, let's not kid each other here.

When I first came down to Trenton, John -- I have to say this to you -- I was told when I got down here, "Hey, don't worry about it. They don't meet that often. There is not much going on. You will have plenty of time to conduct your business. You do what you have to do. They meet maybe twenty times a year, and that's it." I don't know what happened. When we got down here, for the first two years not only didn't we recess, we literally stayed down here for days. And, we didn't get any overtime. I am not complaining about it, because no one twisted my arm to run. I think that is a proven fact. And, I think it is going to continue that way for the next four years, regardless of who the Governor is.

So, you know, I have no apologies to make about part-time, full-time. But, on the issue, the issue is that we never recess. We can, by the way. I am not saying we can't; we can. But, we don't. Therefore, the impact of the Governor on filling that vacancy is not a reality. It is a possibility, but not a reality.

ASSEMBLYMAN PAOLELLA. Then my next question is very simply, in a practical sense, what are the rules about filling vacancies -- not to do with the Governor's office, but in terms of a special election when and if it may become necessary?

ASSEMBLYMAN ADUBATO: We talk about special elections. Again, while it is germane to a point, to the subject that we are talking about, the technicalities involved with that, I would submit to you, are complex. They, again, deal with time; they deal with appropriations; they deal with the impact. The bottom line, if I can use that overused phrase, is that we have the power to institute; we have the power as the prime mover, regardless of how, when, or what. I think that is something that we can be a little satisfied with.

Let me read this. We have read it; we will read it again: "Any vacancy in the Legislature occasioned by death, resignation, or otherwise, shall be filled by election for the unexpired term only, as may be provided by the law." Now, this doesn't tell you the law. That's the problem. That's the rules. The law, which I have studied in depth because of the situation in the 28th legislative district that I was very much concerned about--

ASSEMBLYMAN MC ENROE: Mr. Chairman, which one are you talking about? Are you talking about the resignation of Senator Greenberg or do you mean the death of Mr. Scanlon back four years ago?

ASSEMBLYMAN ADUBATO: Yes, Patti.

ASSEMBLYMAN MC ENROE. Okay, that's the one you are referring to. Because we have had all kinds of things.

ASSEMBLYMAN ADUBATO: Yes, I am talking about Patti.

You know, there are other things also. The facts are that the law is the law, is the law; and we made the law. If there is a problem with the law, it stands we can change it. While it is germane, I don't think it is really relevant. This issue before us today is simply one that says: If you lose four members, or three members, or one member from either House, when you move for a majority -- not only for three-fifths or forty-one votes -- the most important impact, as far as I am concerned as the sponsor, is when you deal with the possibility of overriding a veto. I admit that. I am guilty of that. That's my motivation. I submit that

we have already experienced this in this term because of one vote. I think this was on an issue that was somewhat crucial. In fact, as I understand it, there may be other issues that may be up for override in this term. And, if that happens -- and it may or it may not, I don't know -- as we all know, it has to originate in the House that the bill originated in. If that happens in the Senate, when you have less members than 40, and they are still going to have to have that majority based on 40, I don't think that is fair to the Legislature. I don't think it is right.

ASSEMBLYMAN PAOLELLA: Mr. Chairman, this is what we call a representative form of government, and there are 40 districts in the State of New Jersey, and every district representative, in reality, represents all those people and all those votes in his legislative district. When the representative ceases to represent those people, the votes that he represents still exist out there. And, when the Constitution says you need two-thirds vote to override the veto of the Governor, what they are saying is that the people of the State of New Jersey, by two-thirds, based on their representative's votes, must speak out against the wishes of the Governor. When you reduce the number of representatives in determining what that two-thirds is, it is as if you ignore those votes out there from whence the representative's power comes. I think philosophically you could find a problem with that.

I think that those seats should always be filled, and they should be filled as quickly as possible. Putting this into effect frightens me only from the standpoint of, not knowing the political makeup of the Houses might very well create a situation wherein, by trying to remove, perhaps, a roadblock to speedy and quick action on legislative bills, you might open up the possibility of creating a political climate that is going to, in effect, deny representation to the State of New Jersey's voters. I would be fearful of making changes that could potentially do that. That is why I am asking my questions. I am not suggesting this would do that. But, I am asking the questions to try and determine what potential there is for possible abuse if you are going to make a change in the State Constitution. I think any inquiry along those lines is valid, simply for that reason. We are changing something that was obviously written with a master plan purpose in mind, and to make that change I think we ought to be very careful not to open up to further abuse, and potentially political abuse, the document upon which this government is based. That is why I am concerned, and I am not overly anxious to do this -- only from the standpoint of wanting to move cautiously. I am still not clear in my mind as to the potential problems.

ASSEMBLYMAN ADUBATO: I would just respond with one statement saying that I would also hope you would look at the possibility that this, first of all, is something that must go on the ballot. The people of this State will determine whether or not this Constitution is changed, not a political entity. The people, Democrats and Republicans, will vote on this issue, not us. We are only going to give them the right to vote. I agree with you totally, that is pure democracy. We should, in my opinion, never stand in the way. Because I believe in initiative and referendum, like our new Governor says he believes in it. I hope that we can follow that example of our new Governor-to-be, Governor-elect Tom Kean, when we address these issues of initiative and referendum, such as this. There is another thing called Rutgers going on the ballot in order to change the name to the University of New Jersey, and it is going to give the people the right to determine that. I agree with you totally in your statement, Assemblyman Paolella. I want to thank you for that insight because I think you are right on the mark. I appreciate your encouragement. Yes, sir?

ASSEMBLYMAN PATERNITI: That is exactly what I was going to say, that the people would have the right; they are going to determine whether they want it that way or not. That is what I was going to point out.

ASSEMBLYMAN ADUBATO: I'm sorry I said it then, Dr. Paterniti. I should have kept my mouth shut.

Assemblyman Girgenti.

ASSEMBLYMAN GIRGENTI: Just taking what you said, John, one step further, you are right now stifling because of that vacancy a possibility of an override, the will of the people, because of the fact that nobody is present, and on that hand you are actually hurting the democratic process. Instead of having your two-thirds vote, the will of the people, you are one vote short because of the vacancy and you are stymieing it. You know, it can be looked at both ways.

ASSEMBLYMAN PAOLELLA: Mr. Vice Chairman, as always, I agree with you, but that makes my point precisely. Shouldn't we be addressing the issue of forcing, in the most expedient manner, a replacement for a lost representative, as opposed to tinkering with the number of-- You don't like my word?

ASSEMBLYMAN GIRGENTI: John, forgive me for being rude and interrupting you, I totally concur with your first statement, but I find a difficulty.

ASSEMBLYMAN PAOLELLA: It seems like we are going around the Horn.

ASSEMBLYMAN ADUBATO: I look at this as an incentive to not allow three Senate seats to be vacant that long.

ASSEMBLYMAN PAOLELLA: Mr. Chairman, if you can show me the practicality of the situation, based on the law -- how the voting would go and so on -- that this is an incentive, which I suspect it is, but I am not sure in my mind, I would be happy to support it. That's why I started with the questions I started with way back when.

ASSEMBLYMAN ADUBATO: In all due respect--

ASSEMBLYMAN PAOLELLA: I want you to show me how this will work. I want to support it.

ASSEMBLYMAN ADUBATO: I do want your support on the floor; however, that is not necessary today.

ASSEMBLYMAN PAOLELLA: You counted.

ASSEMBLYMAN ADUBATO: No, sir. It is not required. I apologize for not explaining that this is not a vote. This was already released through State Government and through oversight, and there was not a public hearing. Again, I apologized before you came in. The sponsor was negligent, and I am the sponsor, in not realizing that there should have been a public hearing -- not just a committee meeting. State Government released this and put it on the floor for a vote, and I am glad they did, but I should have been aware of the fact that this called for a public hearing by the rules of our House. That is why I asked the speaker to have the public hearing, and he granted it. We are going to type this up -- Terry is -- and we are going to have the record of this public hearing on the desks by Monday. And, 20 days after it is laid on our desks, we are allowed to vote on it.

ASSEMBLYMAN PAOLELLA: Mr. Chairman, what I would encourage then, for the purpose of educating some of us legislators who are a little bit hazy on the some of the point that I brought up, is, perhaps, a simple two-paragraph, or three-paragraph, memo explaining the potential, practical effects of how this would change the operation of the Legislature, should they concur -- something as simple as, let's suppose that there are now only 79 Assemblyman instead of 80, and let's suppose it is thirteen

months into the term, and let's suppose--

ASSEMBLYMAN ADUBATO: That's all written into the law, by the way, John.

ASSEMBLYMAN PAOLELLA: I know, but to distill that down to a practical example would solidify that in my mind, that there would be no political abuses, and I would then be definitely in favor of the bill then.

ASSEMBLYMAN ADUBATO: Absolutely. I think that is a good point.

ASSEMBLYMAN MC ENROE: Mr. Chairman, I would like to endorse your recommendation that we have, as a part of the record, a review, or a clarification, of the law as it exists at the present time regarding the authority to call a special election.

ASSEMBLYMAN ADUBATO: That's a very good idea.

ASSEMBLYMAN MC ENROE: Because, again from a practical viewpoint, if there are -- let's be dramatic for the moment -- three Republican vacancies in the Senate sometime in February, it would seem reasonable that the incumbent Governor at that time would be inclined to call for a special election. That seems reasonable.

ASSEMBLYMAN ADUBATO: He can't.

ASSEMBLYMAN MC ENROE: Well, I don't know that. You are telling me that, but I would like to see it, if I may, reviewed by the proper--

ASSEMBLYMAN ADUBATO: The law says he can't. I am making that as a public statement to you. But, I would be happy to do that. I think you are right. I don't want you to take my word for it.

ASSEMBLYMAN MC ENROE: No. I don't think you should ask me to do that.

ASSEMBLYMAN ADUBATO: Even though I am right.

ASSEMBLYMAN MC ENROE: That's quite all right. I would like to see it prepared and provided as a part of this document.

ASSEMBLYMAN PAOLELLA: That is precisely what I am asking. I think that would be a good idea. I think everybody would be that much more supportive of you.

ASSEMBLYMAN ADUBATO: I appreciate that recommendation, by the way, because I think it would clear up a lot of the foggyness and grey matter. I don't want to tamper with it; I am trying to improve it.

ASSEMBLYMAN GIRGENTI: You can even add to that that it is the hope that this is an incentive to fill these vacancies as quickly as possible. You can just add the statement that this is hoped to be an incentive to fill these vacancies as quickly as possible.

ASSEMBLYMAN ADUBATO: I think we can make that in the form of a statement right now, if this body agrees with that statement, that this is to be used as an incentive; and, hopefully, that is the motivation. These vacancies under the law, as they are now-- And, if there is any improvement necessary, and there may be -- there probably is, in fact -- we will address those matters to encourage these vacancies to be filled as expeditiously as possible. I think it is in everyone's best interest that we do that.

ASSEMBLYMAN PAOLELLA: If this does precisely that, I am sure it will have unanimous support. That's what we want to give it, we want to give it wholehearted, unanimous support because it is a change in the Constitution. I think when you do that kind of a thing, you really should be looking for strong support.

ASSEMBLYMAN ADUBATO: I agree. I appreciate all the help. I think it is necessary. Again, we are not going to decide it, up or down. What we are going to say to the people of New Jersey, hopefully, is, by allowing this to go on the ballot, that it got there with bipartisan support, and that it is not a Democrat a Republican issue.

ASSEMBLYMAN PAOLELLA: Right.

ASSEMBLYMAN ADUBATO: I can't think of a better way to put out an issue on referendum than to say we have no personal ax to grind. I appreciate that. I think I am safe in saying that I have always tried to conduct myself that way since I have been in the Legislature.

Is there anyone else who would like to comment before we close this public hearing? (no response)

I want to thank you, gentlemen, very much for your patience, and for your cooperation, as well as for your help.

This public hearing is now closed.

(hearing concluded)





State of New Jersey

MICHAEL F. ADUBATO
Chairman

JOHN A. GIRGENTI
Vice-Chairman

HARRY MCENROE
THOMAS H. PATERNITI
JOHN B. PAOLELLA
THOMAS J. SHUSTED
CLIFFORD W. SNEDEKER

ASSEMBLY COUNTY GOVERNMENT COMMITTEE

STATE HOUSE, TRENTON, N.J. 08625

M E M O R A N D U M

TO: Members of the County Government Committee

FROM: Assemblyman Michael F. Adubato, Chairman
Assembly County Government Committee

DATE: December 2, 1981

SUBJECT: Sections of the New Jersey Constitution which would be affected should ACR-3006 be placed on the ballot and be adopted by the voters -- A Preliminary Survey.

ARTICLE III, Section IV, Paragraph 2

topic: house quorum

"majority of all its members shall constitute a quorum to do business;...."

ARTICLE III, Section IV, Paragraph 3

topic: expelling a member of the house

"may expel a member with the concurrence of two-thirds of all its members...."

ARTICLE III, Section IV, Paragraph 6

topic: emergency resolution

"if either house shall resolve by a vote of three-fourths of all its members,...that a bill or joint resolution is an emergency measure, it may proceed forthwith from second to third reading. No bill or joint resolution shall pass, unless there shall be a majority of all the members of each body personally present and agreeing thereto...."

ARTICLE III, Section VII, Paragraph 10

topic: special legislation

"Upon petition by the governing body of any municipal corporation formed for local government, or of any county, and by a vote of two-thirds of all the members of each house, the Legislature may pass private, special or local laws...."

ARTICLE V, Section I, Paragraph 14(a)

topic: Governor's veto - Legislative Override

"If upon reconsideration, on or after the third day following the return of the bill, two-thirds of all the members of the house of origin shall agree to pass the bill, it shall be sent, together with the objections of the Governor, to the other house, by which it shall be reconsidered and if approved by two-thirds of all the members of that house, it shall become a law;...."

ARTICLE V, Section I, Paragraph 14(b) (1)

topic: Special Legislative Sessions - reconsideration of bills returned by Governor

"At such special sessions a bill may be reconsidered on or after the first day following return of the bill, in the manner provided in this paragraph for the reconsideration of bill, and if approved upon reconsideration by two-thirds of all the members of each house, it shall become a law."

ARTICLE V, Section I, Paragraph 15

topic: Appropriations Bill - Governor's Line Item Veto - Legislative Override

"If upon reconsideration, on or after the third day following said transmittal, one or more of such items or parts thereof be approved by two-thirds of all the members of each house, the same shall become a part of the law, notwithstanding the objections of the Governor."

ARTICLE VII, Section III, Paragraph 2

topic: Impeachment

"The General Assembly shall have the sole power of impeachment by vote of a majority of all the members.... No person shall be convicted without the concurrence of two-thirds of all the members of the Senate...."

ARTICLE IX, Paragraph 1

topic: Constitutional Amendments

"If the proposed amendment or amendments or any of them shall be agreed to by three-fifths of all the members of each of the respective houses, the same shall be submitted to the people. If the same or any of them shall be agreed to by less than three-fifths but nevertheless by a majority of all the members of each of the respective houses, such proposed amendment or amendments shall be referred to the Legislature in the next legislative year; and if in that year the same or any of them shall be agreed to by a majority of all the members of each of the respective house, then such amendment or amendments shall be submitted to the people."

