

ASSEMBLY, No. 1677

STATE OF NEW JERSEY 213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

Sponsored by:

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District 24 (Sussex, Hunterdon and Morris)

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District 24 (Sussex, Hunterdon and Morris)

SYNOPSIS

Prohibits filling of vacancy among candidates nominated at primaries after 48th and before 14th day before general election, except due to death; prohibits filling subsequent vacancies before elections.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT prohibiting the filling of vacancies among certain
2 candidates and supplementing chapter 13 of Title 19 of the
3 Revised Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. The Legislature finds and declares:

9 a. In New Jersey Democratic Party v. Samson (2002), the
10 Supreme Court of this State permitted the Democratic Party to
11 ignore the provisions of N.J.S.A.19:13-20 and substitute Frank
12 Lautenberg as the candidate for the office of United States Senator
13 after Robert Torricelli withdrew in disgrace as his party's candidate
14 for that office 35 days before the general election.

15 b. In condoning this substitution, the court chose to ignore its
16 earlier holding in Kilmurray v. Gilfert (1952) where it concluded
17 that a State committee of a political party had an absolute right to
18 replace a candidate, but only up to and including the 34th day
19 before a general election, which under current law is the 48th day
20 before the election.

21 c. Instead, the Samson court acted without due deference to
22 current statutory law and suspended the sections of N.J.S.A.19:13-
23 20 that authorized a political party to substitute one candidate for
24 another only if the change is made prior to the 48th day before the
25 day of the general election.

26 d. The court held that such an interpretation was justified
27 because current law "simply does not contain a legislative
28 declaration that the filling of a vacancy within forty-eight days of
29 the election is prohibited" and it stated that if the Legislature
30 disagreed it should "amend the statute expressly to preclude or
31 otherwise condition ballot substitutions after the forty-eighth day."

32 e. The court also held that the fact situation in the Torricelli case
33 was so extraordinary that it was unlikely that such a substitution
34 would occur again.

35 f. The purpose of this act is to affirm the basic validity of
36 current law, end the senseless misinterpretation of N.J.S.A.19:13-20
37 by the court as expressed in Samson, and make clear the
38 Legislature's intent regarding the filling of a vacancy occurring after
39 the 48th day before a general election.

40 g. Such a clarification is imperative because, the court's beliefs
41 notwithstanding, within a year after Samson there has been at least
42 one other instance where one candidate was substituted for another
43 within 30 days before a general election.

44 h. This act provides that if a vacancy occurs due to the death of
45 a candidate after the 48th day but not later than the 14th day before
46 a general election, it will be filled pursuant to N.J.S.A.19:13-20 and
47 the political party of the selected candidate shall pay all of the costs
48 incurred; if any vacancy occurs after the 14th day before an

1 election, it shall not be filled before the election, the name of the
2 candidate who created the vacancy will not be altered or removed
3 from the ballot, and if the name of the candidate who created the
4 vacancy receives the greatest number of votes the vacancy will be
5 filled after the election as provided for in N.J.S.A.19:13-20.
6

7 2. a. (1) In the event of a vacancy among candidates for any
8 public office who have been nominated at a primary election and
9 are seeking election at a general election when the vacancy occurs
10 after the 48th day but not later than the 14th day before the date of
11 the election because of the death of the candidate, a replacement
12 candidate shall be selected in the manner provided by R.S.19:13-20
13 to fill the vacancy.

14 (2) The political party of the selected candidate shall be
15 responsible for reimbursing all effected counties and municipalities
16 in a timely manner for all expenses associated with changing the
17 name of the candidate on all ballots and other election materials
18 associated with the general election on an expedited basis and for
19 the express mailing of new absentee ballots to registered voters who
20 already requested and received such ballots and the return by
21 express mail of the changed voted ballots to the county boards of
22 elections.

23 (3) Whenever the provisions of paragraph (1) of this subsection
24 are operative:

25 (a) the county boards of election shall deem valid any absentee
26 ballot received on the seventh day following the day of the general
27 election, notwithstanding the provisions of section 23 of P.L.1953,
28 c.211 (C.19:57-23); and

29 (b) the Board of State Canvassers shall meet on the 35th day
30 after the day of the general election, notwithstanding the provisions
31 of R.S.19:21-1 and the Board or Boards of County Canvassers, as
32 may be appropriate, shall meet on the second Monday after the day
33 of the general election, not withstanding the provisions of
34 R.S.19:19-1, if the Attorney General deems such a delay is
35 necessary to provide the extra time for the canvassing of absentee
36 ballots.

37 (4) If after the 48th day but not later than the 14th day before the
38 date of the general election a vacancy occurs among candidates
39 nominated at a primary election for any reason other than the death
40 of a candidate, that vacancy shall be filled pursuant to the
41 provisions of subsection b. of this section.

42 b. In the event of any vacancy after the 14th day prior to the day
43 of a general election among candidates for any public office who
44 have been nominated at a primary election:

45 (1) the date and time of the election shall continue as provided
46 for by this Title and the name of the candidate who created the
47 vacancy that appears on all ballots and other election materials shall
48 not be altered or removed;

1 (2) all votes cast for the candidate who created the vacancy shall
2 be counted and canvassed as provided for by this Title; and

3 (3) if the name of the candidate who created the vacancy
4 receives the greatest number of the votes in the general election, the
5 vacancy in that position shall be filled pursuant to R.S.19:13-20 for
6 such offices as are under the jurisdiction of that statute and the
7 other relevant provisions of this Title for all other offices.
8

9 3. This act shall take effect immediately.
10

11
12 STATEMENT
13

14 The purpose of this bill is to clarify the Legislature's intention
15 with respect to filling vacancies after the time prescribed by current
16 law.

17 In New Jersey Democratic Party v. Samson, 175 N.J. 178 (2002)
18 the New Jersey Supreme Court permitted the Democratic Party to
19 ignore the provisions of N.J.S.A.19:13-20 and substitute Frank
20 Lautenberg as the candidate for the office of United States Senator
21 after Robert Torricelli withdrew in disgrace as his party's candidate
22 for that office 30 days before the general election. In condoning
23 this substitution, the court chose to ignore its earlier holding in
24 Kilmurray v. Gilfert, 10 N.J. 435 (1952) when it concluded that a
25 State committee of a political party had an absolute right to replace
26 a candidate, but only up to the 48th day before the election. The
27 court, acting without due deference to current statutory law,
28 suspended the sections of N.J.S.A.19:13-20 that authorized a
29 political party to substitute one candidate for another only if the
30 change is made prior to the 48th day before the day of the general
31 election. The court held that such an interpretation was justified
32 because current law "simply does not contain a legislative
33 declaration that the filling of a vacancy within forty-eight days of
34 an election is prohibited" and it stated that if the Legislature
35 disagreed it should "amend the statute expressly to preclude or
36 otherwise condition ballot substitutions after the forty-eighth day."
37 The court also held that the fact situation in the Torricelli case was
38 so extraordinary that it was unlikely that such a substitution would
39 occur again.

40 The purpose of this bill is to affirm the basic validity of current
41 law, end the senseless misinterpretation of N.J.S.A.19:13-20 by the
42 court as expressed in Samson, and make clear the Legislature's
43 intent with regard to the filling of a vacancy occurring after the 48th
44 day before a general election.

45 Specifically, the bill provides that if a vacancy occurs due to the
46 death of a candidate after the 48th day but not later than the 14th
47 day before a general election, it will be filled pursuant to R.S.19:13-
48 20 and the political party of the selected candidate shall pay all of

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1 the costs incurred. But if in the event of any vacancy after the 14th
2 day before an election, the vacancy will not be filled before the
3 election, the name of the candidate who created the vacancy will
4 not be altered or removed from the ballot, and if the name of the
5 candidate who created the vacancy receives the greatest number of
6 votes the vacancy will be filled after the election as provided for in
7 N.J.S.A.19:13-20. If after the 48th day but not later than the 14th
8 day before the date of the election a vacancy occurs for any reason
9 other than death, that vacancy would be filled under the bill in the
10 same manner as any vacancy occurring after the 14th day before a
11 general election.