



Written by [Jack Kenny](#) on September 24, 2009

## Mass Gov. Calls Senate Appointment an “Emergency”

From somewhere beyond the grave, the late Sen. Edward M. Kennedy still maintains a tight grip on Massachusetts politics. The state’s Legislature has granted the Senator’s dying wish, acting on the request he made in his final days to change state law to authorize the Governor to name an interim U.S. Senator when a vacancy occurs.



Both houses yesterday approved a bill to do just that and Gov. Deval Patrick this morning responded by naming former Democratic National Committee Chairman Paul G. Kirk, Jr., a longtime Kennedy friend and former member of the late Senator’s staff, to fill the seat until a special election on January 29.

But in a move even some Democratic lawmakers have called a power grab, Patrick declared an emergency in his letter to the Massachusetts Secretary of State that accompanied his signature on the new law. Under Massachusetts law, a 90-day waiting period is required before the Governor may sign a bill, though that requirement can be overridden by a two-thirds vote in each house declaring it emergency legislation. But the House yesterday voted down the emergency provision in the bill’s preamble, leaving the legality of today’s appointment in some doubt. Four House Republicans, all attorneys, wrote Patrick a letter urging him to seek a ruling from the state’s Supreme Judicial Court before signing the bill.

"This is not an emergency," said Rep. Paul Frost, R-Auburn. "However the Governor is going to write a letter to the Secretary of State, saying the Legislature didn’t agree it was an emergency, but I do. I can’t wait to see it."

The Bay State legislators voted to revoke a change made in state law just five years ago when Sen. John Kerry was the Democratic candidate for President. Democrats at that time feared that if Kerry won the election, Republican Gov. Mitt Romney would appoint a Republican to take his place in the Senate. They amended the law to remove the Governor’s power to appoint and voted instead to require a special election whenever a vacancy occurs. Republican efforts to allow for an interim appointment until an election could be held were defeated, both in 2004 and 2006.

Kirk, 71, said he would not be a candidate in the January special election, an agreement Patrick had said he would require of whomever he would appoint. But the "caretaker" appointment is seen as potentially critical to efforts this fall to pass a national healthcare bill, which Kennedy had called "the cause of my life." Filling the vacancy could give the Democrats the 60th vote they need to overcome a possible Republican filibuster if the voting follows party lines. But some moderate to conservative Democrats have expressed their own reservations about the healthcare legislation sought by President Obama. And 91-year-old Sen. Robert Byrd, a West Virginia Democrat, is in failing health and often missing in Senate votes. Republican Lindsey Graham, a staunch opponent of the President’s plan, does not believe all the Democrats will fall in line behind it.



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"There are too many 'red-state' Democrats," he said, referring to Democrats elected from traditionally Republican states. "They're not going to sign on for what they perceive as a government power grab."

Kirk, a Cape Cod resident, is an attorney with the Sullivan and Worcester law firm of Boston and is also chairman and CEO Kirk & Associates, Inc., a business advisory and consulting firm. He is a founding member of the John F. Kennedy Library Foundation and is chairman of the Foundation's board of directors. He was a special assistant on Ted Kennedy's Senate staff from 1969-1977 and is said to have been one of a small number of regular visitors at the Kennedy compound in Hyannis Port during the Senator's 15-month battle with brain cancer.

The appointment may serve both President Obama and the legacy of Ted Kennedy, but it could be a stumbling block for Patrick's reelection next year. Many of the state's politically active Democrats had other candidates for the Senate appointment in mind, most notably, former three-term Governor Michael Dukakis, the party presidential nominee in 1988. The Governor "needs to have those people feel enthusiastic about his reelection," Democratic strategist and longtime Dukakis supporter Dan Payne told the *Boston Globe*. "If he doesn't choose Dukakis, they will sit on their hands, and he can't afford that."

But Patrick was under heavy pressure from the Kennedy family to choose Kirk. The Senator's widow, Victoria Reggie Kennedy, is believed to be among those urging the appointment and a Patrick aide confirmed that there were calls about the appointment yesterday from the late Senator's sons, Edward M. Kennedy, Jr. and U.S. Rep. Patrick Kennedy of Rhode Island.

"Pushing Kirk as the temporary bearer of the Kennedy torch is typical backroom politics," wrote Boston Globe columnist Joan Vennoch. "And, it's being done with typically sharp Kennedy elbows." Filling the seat was obviously not among the most enjoyable tasks Patrick has undertaken as Governor.

"You want me to be honest?" the governor said to reporters three weeks ago. "I don't need this headache."

— Photo of Paul Kirk: AP Images



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