



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Memorandum

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TO: Interested Persons

FROM: Amanda King, Senior Research Analyst, 303-866-4332

SUBJECT: Vacancies in Elected Offices

Summary

This memorandum provides an overview of the process to fill vacancies in various elected offices at the federal, state, and local levels. A vacancy in an elected office occurs when an office holder resigns or dies during his or her elected term. A vacancy may also occur when an elected official moves outside of the district he or she represents. Vacancies in federal, state, and local elected offices in Colorado are filled in a variety of ways, including appointments, vacancy elections, and political party vacancy committees. Table 1 shows the various methods for filling a vacancy, which are discussed in more detail below.

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Table 1
How Various Elected Office Vacancies are Filled

Elected Office	Method to Fill a Vacancy
U.S. Senator	Governor appointment
U.S. Representative	Special vacancy election
Colorado Governor	Line of succession
Colorado Lieutenant Governor	Governor appointment with General Assembly approval
Statewide Offices	Governor appointment with state Senate approval
District Attorneys	Governor appointment
Colorado General Assembly	Vacancy committee
State Board of Education	Vacancy committee
CU Board of Regents	Governor appointment
County Offices	Board of County Commissioners appointment
Board of County Commissioners	Vacancy committee
Municipal Offices	Council appointment or election
School Board	Remaining board members appointment
Special District	Remaining special district directors appointment
RTD Board	Board of County Commissioners or Denver Mayor Appointment
Nonpartisan Board	Remaining board members appointment

Political Party Vacancy Committees

The appropriate central committee of a political party selects the vacancy committees. Central committees are divided into the following jurisdictions: state, county, congressional, judicial district, state senatorial, and state representative. If a central committee of a jurisdiction fails to select a vacancy committee, the central committee of the jurisdiction serves as the vacancy committee.

In selecting the members of a vacancy committee authorized to fill vacancies in office, the central committee of a jurisdiction must select, at a minimum, the members of the jurisdiction's central committee. The rules or bylaws of each central committee determine the size and composition of vacancy committees, which can vary significantly.¹ State law does not include requirements regarding the composition of the various vacancy committees.

U.S. Senator Vacancy

When there is a vacancy in the office of U.S. Senator, the Governor is required to make an appointment to fill the position temporarily until the next regularly scheduled general election. The winner of the election replaces the temporary appointee and serves for the remainder of the unexpired term of office for that Senate seat, if any. If the next regularly scheduled general election is when the Senate seat would have been up for election prior to becoming vacant, then the winner of that election serves a full six-year term.²

¹Section 1-3-103, C.R.S.

²Section 1-12-201, C.R.S.

U.S. Representative Vacancy

When there is a vacancy in the U.S. House of Representatives, federal law requires that the office be filled by a special vacancy election. Accordingly, Colorado law specifies that in the event of a vacancy, the Governor must set a date to hold a vacancy election, except that no vacancy election may be held within the 90 days preceding a general election.³

Governor or Lieutenant Governor Vacancy

When there is a vacancy in the Office of Governor, the Lieutenant Governor assumes the Office of Governor for the remainder of the term. When there is a vacancy in the Office of Lieutenant Governor, the Governor may appoint a successor, who must be confirmed by both chambers of the General Assembly. In the event of simultaneous vacancies in both offices, the order of succession for Governor then proceeds to the first officer in the following list who is a member of the same political party as the Governor:

1. President of the Colorado Senate;
2. Speaker of the Colorado House of Representatives;
3. Minority Leader of the Colorado Senate; or
4. Minority Leader of the Colorado House of Representatives.

In the event that none of the listed members of legislative leadership is affiliated with the same party as the Governor, the order of succession returns to the start of the list without regard to political party.⁴

Other Statewide Offices or District Attorneys Vacancy

When there is a vacancy in the office of the Attorney General, State Treasurer, Secretary of State, or a district attorney, the Governor must fill the vacancy by appointment until the next regularly scheduled general election. The State Senate must approve appointments to the office of Attorney General, State Treasurer, or Secretary of State.⁵

Colorado General Assembly Vacancy

When there is a vacancy in the office of State Senator or State Representative, state law requires that a vacancy committee be formed in that district by the political party to which the elected member belonged prior to vacating the office. The central committee chairperson must provide notice of the time and location of the vacancy committee meeting to the vacancy committee members at least ten days prior to the meeting. The vacancy committee members present appoint a new legislator by a majority vote; however, a vacancy committee meeting requires a quorum consisting of not less than

³Section 1-12-202, C.R.S.

⁴Colo. Const. art. IV, § 13.

⁵Colo. Const. art. IV, § 6; Colo. Const. art. VI, § 20 (4); and Section 1-12-204, C.R.S.

one-half of the voting membership of the vacancy committee to be present. Voting by proxy is not allowed in vacancy committee elections; however, a vacancy committee member can participate in the meeting remotely, including voting by email, mail, telephone, or through internet applications, if allowed by party rules. The newly appointed legislator serves until the next general election.

A vacancy committee must certify the appointment with the Secretary of State within 30 days of when the vacancy occurred, or 30 days from the general election if the vacancy occurred between the time mail ballots are sent to voters and the general election. If the vacancy committee fails to appoint a new legislator to the vacant seat, the Governor must appoint someone within five days. The appointee must be certified by the Secretary of State no sooner than two days after the appointment and sworn into office within 30 days of receiving the certification or on the first day of the legislative session, whichever is first. In the event that the appointee does not take the oath of office within this required timeframe, the office is deemed vacant and filled again through the same process.

For vacancies caused by the resignation of the member of the General Assembly, the effective date for the vacancy is the date the resignation letter is submitted. If the resignation letter identifies a resignation date that occurs after the letter is submitted, the vacancy committee may not meet more than 20 days prior to the resignation date, and the certification of an appointee may not occur before the resignation date. For vacancies caused by the death of a member-elect of the General Assembly, the vacancy committee must meet within 30 days after the death of the member-elect to fill the vacancy. The certification of the appointee can occur before the next legislative session, but does not take effect until the first day of the legislative session.⁶

State Board of Education Vacancy

District vacancies. For any vacancy occurring on the State Board of Education, other than a vacancy in a seat filled by an at-large member, state law requires the congressional vacancy committee for the congressional district represented by the vacating board member to fill the vacancy. In selecting the members of a vacancy committee, the central committee of a jurisdiction must select, at a minimum, the members of the jurisdiction's central committee. If no congressional vacancy committee exists, the party's congressional central committee acts as the vacancy committee. If the vacating board member was affiliated with a minor political party, then the vacancy is filled by the vacancy committee designated in the constitution or bylaws of the minor political party. If the vacating member was unaffiliated with a political party, then the vacancy is filled by the vacancy committee designated on the vacating board member's nomination petition.

The congressional central committee chairperson must provide notice of the time and location of the vacancy committee meeting to the vacancy committee members at least six days prior to the meeting. The vacancy committee members present and voting appoint a new state board member by a majority vote; however, a vacancy committee meeting requires a quorum consisting of not less than one-half of the voting membership of the vacancy committee to be present. Voting by proxy is not allowed in vacancy committee elections.

⁶Section 1-12-203, C.R.S.

A vacancy committee must certify the appointment with the Secretary of State within 30 days of when the vacancy occurred. If the vacancy committee fails to appoint a new state board member to the vacant seat within 30 days, the Governor must appoint someone within 35 days after the vacancy occurs. The appointee must be certified by the Secretary of State.

At-large vacancies. In the event of a vacancy in the seat held by an at-large member of the State Board of Education, within five days after the state board receives notice of the vacancy, or within five days after the effective date of the resignation, whichever is later, the secretary of the state board must refer the vacancy to the state central committee of the same political party as the vacating state board member. The state central committee must refer the matter to the state central committee executive committee. If the vacating board member was affiliated with a minor political party, then the vacancy is filled by the vacancy committee designated in the constitution or bylaws of the minor political party. If the vacating member was unaffiliated with a political party, then the vacancy is filled by the vacancy committee designated on the vacating board member's nomination petition.

Within 30 days after being notified by the secretary of the state board of a vacancy, the appropriate vacancy or executive committee must meet and, by a majority vote of its members present and voting, nominate no fewer than three and no more than five candidates for the state board. The names of the candidates nominated must be forwarded to the secretary of the state board. Within 20 calendar days after receiving the names from the vacancy or executive committee, the remaining members of the state board must interview all of the nominated candidates. After completing the interviews, and at a date and time established by the state board, the state board must select a nominee to fill the vacancy by a majority vote at an open meeting. The vacating board member cannot participate in the open meeting to vote on the selection of a nominee to fill the vacancy. No member of the state board may vote by proxy. The state board must certify the selection to the Secretary of State within ten days after the meeting called to make the selection. If the state board does not elect a nominee by a majority vote, the selection of one of the persons nominated must be made by the highest elected state official of the same political party as the vacating board member, in the following order: Governor; President of the Senate; Speaker of the House of Representatives; Minority Leader of the Senate; Minority Leader of the House of Representatives. The name of the nominee selected by the highest elected state official must be certified to the Secretary of State.

Delayed resignations. For State Board of Education vacancies caused by the resignation of a state board member and where the letter of resignation gives an effective date of resignation that is later than the date the letter of resignation is submitted, the vacancy or executive committee must meet no more than 20 days prior to the effective date of the resignation to nominate a person to fill the vacancy. The certification of the nominee of the vacancy or executive committee to the Secretary of State cannot be made prior to the effective date of the resignation and, if the member of the state board withdraws the letter of resignation prior to the effective date of the resignation, the person nominated by the vacancy or executive committee may not be certified to the Secretary of State.

Member-elect vacancies due to death. For vacancies caused by the death of a member-elect of the state board, the appropriate vacancy or executive committee must meet within 30 days after the death of the state board member-elect to fill the vacancy. The certification of the nomination of the vacancy or executive committee to the Secretary of State may be made prior to the convening of the state board,

but does not take effect until the effective date of the vacancy, which is the first day the state board convenes after the election.⁷

University of Colorado Board of Regents Vacancy

When there is a vacancy on the University of Colorado Board of Regents, the Governor is required to make an appointment to fill the position temporarily until the next regularly scheduled general election.⁸

County Office Vacancy

The board of county commissioners makes appointments to fill vacancies in all county offices, other than members of the board of county commissioners. This includes the offices of County Sheriff, Coroner, Treasurer, Clerk and Recorder, Assessor, and Surveyor. The appropriate political party vacancy committees appoint the replacement when there is a vacancy on the board of county commissioners. The vacancy committee must fill the vacancy within ten days of when it occurred; however, written notice of the time and location of the vacancy committee meeting must be sent to each vacancy committee member at least six days prior to the meeting. If a vacancy committee fails to fill the vacancy within ten days, the Governor must appoint someone within 15 days. A minor political party must appoint a successor in accordance with its party bylaws in a vacancy for a county commissioner affiliated with a minor political party. The Governor appoints a replacement to fill a vacancy if the outgoing county commissioner was unaffiliated.⁹

Municipal Office Vacancy

Municipal elected offices include a City or Town Mayor, Clerk, Treasurer, and the council. Municipal elected office vacancies may be filled either by appointment, with a majority vote of the council required, or by special election. If the council fails to make an appointment or order an election within 60 days after the vacancy occurs, an election must be ordered as soon as practicable. The appointee or candidate elected to the vacant municipal office serves until a successor is elected at the next regularly scheduled election.¹⁰

School District Board of Directors Vacancy

When a vacancy occurs on a school district board of directors, at the next board meeting immediately following the vacancy, the board must adopt a resolution declaring a vacancy in the school district director office. The board must appoint a person to fill the vacancy within 60 days after the vacancy has occurred. If the appointment is not made by the board within the 60-day period, the president of

⁷Section 22-2-105.5, C.R.S.

⁸Section 23-20-105, C.R.S.

⁹Sections 1-12-205 and 1-12-206, C.R.S.

¹⁰Sections 31-4-106 and 31-4-108, C.R.S.

the board must appoint a person to fill the vacancy. The appointment must be entered into the meeting minutes and the board must issue a certificate of appointment to be delivered to the appointee. A duplicate of each certificate of appointment must be forwarded to the Department of Education.

If the vacancy occurs more than 90 days prior to the next regular biennial school election and the unexpired term is for more than two years, an appointee to the office of school district director serves until the next regular biennial school election when the successor for the remainder of the term is elected and has qualified. If the vacancy occurs within the 90-day period prior to a regular biennial school election and the unexpired term is for more than two years, an appointee to the office of school director serves until the next succeeding regular biennial school election when a successor for the remainder of the term is elected and has qualified.¹¹

Special District Board of Directors Vacancy

For any vacancy on a special district board of directors, the remaining directors make the appointment to fill the vacancy. The appointee serves until the next regular election, at which time the vacancy is filled by election for any remaining unexpired portion of the term. If, within 60 days of the occurrence of a vacancy, the board fails, neglects, or refuses to appoint a director, the board of county commissioners of the county that approved the organizational petition of the special district can appoint a director to fill the vacancy. The remaining directors do not lose their authority to make an appointment to fill any vacancy unless and until the board of county commissioners that approved the organizational petition has actually made an appointment to fill the vacancy. However, a board of county commissioners cannot make an appointment unless it provides 30 days' notice of its intention to make an appointment to the remaining members of the board and the vacancy remains open at the time the board of county commissioners makes its appointment. If more than one board of county commissioners approved the organizational petition, then the boards of county commissioners that approved the petition, sitting jointly, make the appointment.

If there are no duly elected directors and if the failure to appoint a new board will result in the interruption of services that are being provided by the district, the board of county commissioners of the county or counties that approved the organizational petition may appoint all directors, and then a special election must be called for within six months after the board's appointment. If the district is wholly within the boundaries of a municipality, the governing body of the municipality may appoint directors. All appointments must be entered in the meeting minutes, and the board must issue a notice of appointment to be delivered to the appointed person. A duplicate of each notice of appointment, together with the mailing address of the person so appointed, shall be forwarded to the Division of Local Government in the Department of Local Affairs.¹²

Regional Transportation District Board of Directors Vacancy

Upon a vacancy occurring on the Regional Transportation District Board of Directors, the vacancy must be filled by appointment by the board of county commissioners of the county where the director

¹¹Section 22-31-129, C.R.S.

¹²Section 32-1-905, C.R.S.

district is located or, in the case of a member elected in Denver, by the mayor of the city and county of Denver, with the approval of the city council. In the case of a director district that contains territory in two or more counties, or in the city and county of Denver and in one or more counties, the vacancy is filled by appointment by the board of county commissioners of the county wherein the largest number of eligible electors of the director district reside; except that, if the largest number of eligible electors of the director district reside in the city and county of Denver, the vacancy shall be filled by appointment by the mayor of the city and county of Denver, with the approval of the city council. Any director appointed serves until the next regular election, at which time the vacancy is filled by election for any remaining unexpired portion of the term.¹³

Other Nonpartisan Boards of Directors Vacancy

Generally, vacancies on nonpartisan boards of directors are appointed by the remaining board members, unless otherwise specified in state law. In the event there are no board members remaining or no person is appointed, the board of county commissioners in which the district is organized appoints a new board.¹⁴

¹³Section 32-9-112, C.R.S.

¹⁴Section 1-12-207, C.R.S.