

# How to Fill a Vacancy

County Offices  
Special District Boards  
School District Governing Boards  
City Offices  
Judicial Offices  
Federal & State Offices  
Party Central Committees/County Councils



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This guide was developed to provide answers to questions frequently asked the Santa Cruz County Elections Department concerning filling vacancies in local offices. It is for general information only and does not have the force and effect of law, regulation, or rule. In case of conflict, the law, regulation, or rule will apply. Persons using this guide must bear full responsibility to make their own determinations as to all legal standards and duties. For more information on vacancies in city offices, please contact your City Clerk.

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## Vacancies - Definition

An office becomes vacant on the happening of any of the following events before the expiration of the term:

1. The death of the incumbent.
2. An adjudication pursuant to a quo warranto proceeding declaring that the incumbent is physically or mentally incapacitated due to disease, illness, or accident and that there is reasonable cause to believe that the incumbent will not be able to perform the duties of his or her office for the remainder of his or her term. This subdivision shall not apply to offices created by the California Constitution nor to federal or state legislators.
3. His or her resignation.
4. His or her removal from office.
5. His or her ceasing to be an inhabitant of the state, or if the office be local and one for which local residence is required by law, of the district, county, or city for which the officer was chosen or appointed, or within which the duties of his or her office are required to be discharged.
6. His or her absence from the state without the permission required by law beyond the period allowed by law.
7. His or her ceasing to discharge the duties of his or her office for the period of three consecutive months, except when prevented by sickness, or when absent from the state with the permission required by law.
8. His or her conviction of a felony or of any offense involving a violation of his or her official duties. An officer shall be deemed to have been convicted under this subdivision when trial court judgment is entered. For the purposes of this subdivision, "trial court judgment" means a judgment by the trial court either sentencing the officer or otherwise upholding and implementing the plea, verdict, or finding.
9. His or her refusal or neglect to file his or her required oath or bond within the time prescribed.
10. The decision of a competent tribunal declaring void his or her election or appointment.
11. The making of an order vacating his or her office or declaring the office vacant when the officer fails to furnish an additional or supplemental bond.
12. His or her commitment to a hospital or sanitarium by a court of competent jurisdiction as a drug addict, dipsomaniac, inebriate, or stimulant addict; but in that event the office shall not be deemed vacant until the order of commitment has become final. (Government Code §1770)
13. No one files to run for office. (Elections Code 10515(b) and Education Code 5328)

## **Vacancies in County Offices**

### **Member, Board of Supervisors (General Law)**

Whenever a vacancy occurs in any board of supervisors, the Governor shall fill the vacancy. The appointee shall hold office until the election and qualification of his successor. (Government Code §25060)

The election of a supervisor to fill the vacancy for the unexpired term shall be held at the next general election, unless the term expires on the first Monday after January 1st succeeding the election. (Government Code §25061)

When a vacancy occurs from the failure of the person elected to file his oath or bond as provided by law, and the person elected is appointed to fill the vacancy, he shall hold office for the unexpired term. (Government Code §25062)

### **Elected County Offices**

- Assessor-Recorder
- Auditor-Controller & Treasurer-Tax Collector
- District Attorney-Public Administrator
- County Clerk-Registrar of Voters
- Sheriff-Coroner

The board of supervisors shall fill a vacancy in the offices listed above by appointment. The appointee shall hold office for the unexpired term or until the first Monday after January 1st succeeding the next general election. (Government Code §25304)

If on the first Monday after January 1st following a general election the person elected to an elective county office has resigned or died, the board of supervisors shall provide that the office which was made vacant shall be filled at the next regularly scheduled election. The board of supervisors may appoint a person to temporarily carry out the duties of any office to be filled by such an election and that person shall serve until the results of the election are declared.

The person elected shall serve for the remainder of the term that began on the first Monday after January 1<sup>st</sup> immediately preceding the election. (Government Code §25304.5)

### **County Superintendent of Schools**

Notwithstanding Section 25304 of the Government Code, the county Board of Education may fill by appointment any vacancy that occurs during the term of office of the county superintendent of schools. In any county in which the superintendent is elected, the appointee shall hold office until the office is filled by election at the next gubernatorial election.

The authority described in this subdivision shall be vested in a county board of education only upon its adoption by the board at a public meeting held pursuant to Article 1 (commencing with Section 1000) of Chapter 1 of Part 2.

## **Terms of County Offices**

County offices are up for election every four years at the Gubernatorial Primary and General Elections.

While the law for filling vacancies in county offices does not specifically call for a primary and run-off election should no candidate receive more than 50% of the vote, the decision in past vacancies has been to conduct the vacancy election as we would a regular election with a primary and general run-off election if needed as indicated by Elections Code §8000 and 8140.

A regularly scheduled election for the county is held in spring or summer (Primary) and November (General) of even-numbered years.

# Vacancies on School District Governing Boards

## What Causes a Vacancy

Vacancies on school district governing boards or community college district boards are caused by any of the events specified in Section 1770 of the Government Code (see Vacancies – Definition), or by a failure to elect. A vacancy resulting from resignation occurs when the written resignation is filed with the County Superintendent of Schools having jurisdiction over the district. A deferred effective date not to exceed 60 days may be specified by the incumbent, in which case, the resignation becomes effective on that date. Upon being filed with the County Superintendent of Schools, the written resignation is **irrevocable**. (Education Code §5090, 5091(a))

When any vacancy exists on the county board of education of any county on or after December 1, 1978, the vacancy shall be filled in the manner prescribed in Article 3 (commencing with Section 5090) of Chapter 1 of Part 4. (Education Code §1008)

## Action Required by the Governing Board

Whenever a vacancy occurs, the school district or community college district governing board has one of two options available to it. Either of these two options must be exercised within 60 days of the date a vacancy occurs or the date of a deferred resignation is **filed** with County Superintendent of Schools:

1. Immediately call an election to fill the vacancy; or
2. Make a provisional appointment pursuant to §5091 of the Education Code.

If the governing board fails to make a provisional appointment or order an election within the prescribed 60-day period as required by this section, the County Superintendent of Schools shall call an election to fill the vacancy. (Education Code §5091(a))

Although not required by law, as a matter of practice, a copy of the resignation, and copies of any notices, appointments, resolutions calling election, etc. should be sent to the Santa Cruz County Elections Department as soon as possible.

## Election Ordered

When an election is ordered, it shall be held on the next regular election date not less than 130 days after the order of the election. (Education Code §5091(b))

A regular election as defined by Elections Code §1000 is:

- (a) The first Tuesday after the first Monday in March of each year.
- (b) The second Tuesday of April in each even-numbered year.
- (c) The first Tuesday after the first Monday in November of each year.

Vacancy elections shall be conducted in as nearly the same manner as practicable as other governing board member elections.

### **Provisional Appointment**

If the Governing Board makes a provisional appointment, the appointee is immediately conferred with all powers and duties of a governing board member. (Education Code §5091(d))

### **Public Notice**

Within 10 days of making the provisional appointment to fill a vacancy the school district governing board must:

1. Post a notice described below (***See Attachment A for sample notice***) in at least three public places in the district; and
2. Publish the notice at least once in a newspaper of general circulation published within the district (Gov. Code §6061). If there is no newspaper of general circulation published in the district, notice need not be published. (Education Code §5092)

A copy of the notice should be sent to the Santa Cruz County Elections Department.

### **Contents of Public Notice**

The notice to be posted and published must state the following:

1. The fact of the vacancy or resignation and the date of the occurrence of the vacancy or the date of the filing of, and the effective date of, the resignation, and
2. The full name of the provisional appointee to the board and the date of his/her appointment, and
3. A statement that unless a petition calling for a special election, containing a sufficient number of signatures, is filed in the office of County Superintendent of Schools within 30 days of the date of the provisional appointment, it shall become an effective appointment. (Education Code §5092)

### **Petition Calling for a Special Election**

If a provisional appointment is made within the 60-day period, the registered voters of the district may, within 30 days from the date of the appointment, petition for the conduct of a special election to fill the vacancy. (***See Attachment B for sample petition***)

**Signature Requirements:** A petition shall be deemed to bear a sufficient number of signatures if signed by whichever means below results in the greater number of registered voters:

- 1 ½ percent of the number of registered voters of the district at the time of the last regular election for governing board members, or
- 25 registered voters

However, in districts with registered voters of less than 2,000 persons, a petition shall be deemed to bear a sufficient number of signatures if signed by at least 5 percent of the number of registered voters of the district at the time of the last regular election for governing board members. (Education Code §5091 (c))

**Petition Requirements:** Whenever a petition calling for a special election is circulated, the petition shall meet all of the following requirements:

- A) The petition shall contain the estimate of the elections official of the cost of conducting the special election.
- B) The name and residence address of at least one, but not more than five, of the proponents of the petition shall appear on the petition, each of which proponents shall be a registered voter of the school district or community college district, as applicable.
- C) None of the text or other language of the petition shall appear in less than six-point type.
- D) The petition shall be prepared and circulated in conformity with Sections 100 and 104 of the Elections Code. (Education Code §5091 (f))

**Who Can Sign Petition:** Only an eligible registered voter is entitled to sign a petition. Each signer shall at the time of signing the petition or paper personally affix his or her signature, printed name, and place of residence, giving street and number, and if no street or number exists, then a designation of the place of residence which will enable the location to be readily ascertained. A space at least one inch wide shall be left blank after each name for the use of the elections official in verifying the petition or paper. The part of a petition for the voters' signatures, printed names, and residence addresses and for the blank spaces for verification purposes shall be numbered consecutively commencing with the number one and continuing through the number of signature spaces allotted to each section. See sample petition. (Elections Code §100)

**Petition Circulator:** Each section of the petition or paper shall have attached to it a declaration signed by the circulator of the petition or paper, setting forth, in the circulator's own hand, the following:

- 1. The printed name of the circulator.
- 2. The residence address of the circulator, giving street and number, or if no street or number exists, adequate designation of residence so that the location may be readily ascertained.
- 3. The dates between which all the signatures to the petition or paper were obtained.

Each declaration submitted pursuant to this section shall also set forth the following:

- 1. That the circulator circulated that section and witnessed the appended signatures being written.
- 2. That according to the best information and belief of the circulator, each signature is the genuine signature of the person whose name it purports to be.
- 3. That the circulator is 18 years of age or older.

The circulator shall certify to the content of the declaration as to its truth and correctness, under penalty of perjury under the laws of the State of California, with the signature of his or her name. The circulator shall state the date and the place of execution on the declaration immediately preceding his or her signature. (Elections Code §104)

### **Filing the Petition:**

The petition must be filed with the County Superintendent of Schools within the 30-day period following the making of the provisional appointment.

The County Superintendent of Schools then has 30 days to verify the signatures. (Since there is no mention of excluding weekend days and holidays, the 30-day reference is 30 calendar days)

As a matter of practice, the Superintendent forwards the petitions to the Santa Cruz County Elections Department for checking signatures. The Superintendent may decide if the petition is to be checked using a random sampling in accordance with Elections Code §9115 or to check 100 percent of the signatures. A certificate of the results of the petition checking will be forwarded to the County Superintendent of Schools.

If the petition is determined to be legally sufficient by the County Superintendent of Schools, the provisional appointment is terminated, and the County Superintendent of Schools shall call a special election to be conducted no later than the 130th day after the determination. However, if a regular election date, as defined in Section 1000 of the Elections Code, occurs between the 130th day and the 150th day following the determination, the County Superintendent of Schools may call the special election to be conducted on the regular election date.

If any of the legal requirements are not met as to any petition calling for a special election, the County Superintendent of Schools shall not verify the signatures, nor shall any further action be taken with respect to the petition.

No person shall permit the list of names on petitions prescribed by this section to be used for any purpose other than qualification of the petition for the purpose of holding an election pursuant to this section.

The petition filed with the County Superintendent of Schools is not a public record and may not be open to public inspection. The proponents, however, may have access to the petition if it is found to be insufficient. (Gov. Code §6253.5) (Education Code §5091 (c) & (f))

### **Vacancy occurring because no one filed for office**

Pursuant to Education Code 5090, a vacancy is declared when there has been a "failure to elect," meaning that the County Registrar of Voters has determined that an election will not be held because either no candidate or an insufficient number of candidates have filed to run for a Board seat(s). Education Code 5328 authorizes the Board to make an appointment in such circumstances.

When a vacancy occurs because no candidate or an insufficient number of candidates have been nominated (i.e., a failure to elect) and a district election will not be held, the Board shall appoint a qualified person to the office. This appointment shall be made at a meeting prior to the day fixed for the election and the appointee shall be seated at the organizational meeting as if elected at the district election. (Education Code 5328)

When an appointment is being made because of a failure to elect, the district shall publish a notice once in a newspaper of general circulation published in the district, or if no such newspaper exists, in a newspaper having general circulation within the district. This notice shall state that the Board intends to make an appointment and shall inform persons of the procedure available for applying for the appointment. (Education Code 5328.5)

### **Term of Office**

**A person appointed to fill a vacancy** shall hold office only until the next regularly scheduled election for district governing board members, whereupon an election shall be held to fill the vacancy for the remainder of the unexpired term.

**A person elected at an election to fill the vacancy** shall hold office for the remainder of the term.  
(Education Code §5091(e))

**A person who is appointed to fill a vacancy due to no one filing for election to the office** shall hold office for full term as if elected to the office. (Education Code §5328)

**A person elected at a regular biennial governing board member election** shall hold office for a term of four years commencing on the first Friday in December following his or her election in November.  
(Education Code §5017)

### **Conditions for No Election or Appointment**

- a) There shall be no special election or appointment to fill a vacancy on a governing board if the vacancy occurs within four months of the end of the term of that position.
- b) Section 5091 shall not apply to a vacancy on a governing board if the vacancy occurs, or a resignation specifying a deferred effective date is filed with the county superintendent of schools, during the period between six months and 130 days prior to a regularly scheduled governing board election and the position is not scheduled to be filled at such election. In such a case, the position shall be filled at a special election for that position to be consolidated with the regular election. A person elected to fill a position under this subdivision shall take office at the next regularly scheduled meeting of the governing board following the certification of the election and shall serve only until the end of the term of the position which he or she was elected to fill.
- c) If a special election pursuant to Section 5091 could be consolidated with the next regular election for governing board members, and the vacant position is scheduled to be filled at such regular election, there shall be no special election.

Education Code §5093

## Vacancies on Special District Boards

### Action Required by the Governing Board

The district shall notify the county elections official of the vacancy no later than 15 days following either the date on which the district board is notified of the vacancy or the effective date of the vacancy, whichever is later.

The remaining district board members have 60 days immediately subsequent to either the date on which the district board is notified of the vacancy or the effective date of the vacancy, whichever is later, to either fill the vacancy

1. By appointment, or
2. By calling a special election

Government Code §1780 (a)

### Appointments to Fill Vacancies

If the Board decides to appoint someone to fill the vacancy, the board first must post a notice of the vacancy in three or more conspicuous places in the district at least 15 days before the appointment is made. *(See Attachments C & D for sample notice and application to serve on a board)*

The Board must notify the county elections of the appointment no later than 15 days after the appointment is made.

The person appointed shall hold office until the next general district election that is scheduled 130 or more days after the date the district board is notified of the vacancy, and thereafter until the person elected at that election to fill the vacancy has been qualified. The person elected to fill the vacancy shall fill the balance of the unexpired term. If the term of office is due to expire following the next general district election and that election is scheduled 130 or more days after the date the county elections official is notified of the vacancy, the person appointed to the vacancy shall fill the balance of the unexpired term of his or her predecessor.

Government Code §1780 (a)

### Elections to Fill Vacancies

In lieu of making an appointment the remaining members of the board may within 60 days of the date the district board is notified of the vacancy or the effective date of the vacancy, whichever is later, call an election to fill the vacancy.

The election shall be held on the next established election date that is 130 or more days after the date the district board calls the election.

Government Code §1780 (a)

A regular election as defined by Elections Code §1000 is:

- (d) The first Tuesday after the first Monday in March of each year.
- (e) The second Tuesday of April in each even-numbered year.
- (f) The first Tuesday after the first Monday in November of each year.

**If the District Board Fails to Act**

If the vacancy is not filled by the district board by either making an appointment or calling a special election within 60 days of the date the district board is notified of the vacancy or the effective date of the vacancy, whichever is later, the following shall occur.

Within the next 30 days, the City Council of the city in which the district is wholly located, or if the district is not wholly located within a city, the Board of Supervisors of the county representing the larger portion of the district area in which the election to fill the vacancy will be held, may fill the vacancy by appointment or may order the district to call an election to fill the vacancy.

The election shall be held on the next established election date (see previous list) that is 130 or more days after the date the city council or board of supervisors calls the election.

Government Code §1780 (f)(1)

**If the District Board Lacks a Quorum to Act Within 60 Days**

Notwithstanding any other provision of this section, if the number of remaining members of the district board falls below a quorum, then at the request of the district secretary or a remaining member of the district board, the appropriate board of supervisors or the city council shall promptly appoint a person to fill the vacancy, or may call an election to fill the vacancy.

The board of supervisors or the city council shall only fill enough vacancies by appointment or by election to provide the district board with a quorum.

If the vacancy occurs in the first half of a term of office and at least 130 days prior to the next general district election, the person appointed to fill the vacancy shall hold the office until the next general district election that is scheduled 130 or more days after the date the district board is notified of the vacancy, and thereafter until the person who is elected at that election to fill the vacancy has been qualified. The person elected to fill the vacancy shall hold office for the unexpired balance of the term of office.

Government Code §1780 (h)(1)

**If the City Council or Board of Supervisors Fails to Act**

If within 90 days of the date the district board is notified of the vacancy or the effective date of the vacancy, whichever is later, no action has been taken by any governing body to fill the vacancy by appointment or by calling for a special election, the district board shall call an election to fill the vacancy.

The election shall be held on the next established election (see previous list) that is 130 or more days after the date the district board calls the election.

Government Code §1780(g)(1)

**Vacancy occurring because no one filed for office**

Pursuant to Elections Code Section 10515 (b) if no person has filed a declaration of candidacy for any office, the supervising authority shall appoint any person to the office who is qualified on the date when the election would have been held. The person appointed shall qualify and take office and serve exactly as if elected at a general district election for the office.

## **Term of Office**

**A person appointed to fill a vacancy** shall hold office only until the next general district election that is scheduled 130 or more days after the date the county elections official is notified of the vacancy and thereafter until the person elected at that election to fill the vacancy has been qualified to fill the vacancy for the remainder of the unexpired term.

**A person elected at an election to fill the vacancy** shall hold office for the remainder of the unexpired term. (Government Code §1780 (d))

**A person elected at a regular board member election or appointed in-lieu of election** takes office on the first Friday in December following his or her election in November and shall serve for four years. (Elections Code §10554, 10507)

**A person who is appointed to fill a vacancy due to no one filing for election to the office** shall hold office for full term as if elected to the office. (Elections Code §10515 (b))

## **Other Districts not covered by Government Code §1780**

Government Code §1781 specifically exempts certain districts from its provisions to fill vacancies in §1780. The Education Code governs school districts and the other districts not covered by Government Code §1780 are detailed below.

**Municipal Utility Districts** organized pursuant to Division 6 (commencing with Section 11501) of the Public Utilities Code follow §11865 in the Public Utility Code to fill vacancies on their board.

The remaining board members may fill the vacancy by appointment until the next district general election that is scheduled 90 or more days after the effective date of the vacancy.

The appointment shall be made within a period of 60 days immediately subsequent to the effective date of such vacancy. A notice of such vacancy shall be posted in three or more conspicuous places in the district at least 15 days before the appointment is made.

In lieu of making an appointment, the remaining members of the board may within 60 days of the vacancy call a special election to fill the vacancy. The person elected at such special election shall hold office for the remainder of the term in which the vacancy occurred.

If the vacancy is not filled by appointment as provided in subdivision (a), or if the board has not called for an election within 60 days of the vacancy, the board of supervisors of the county representing the larger portion of the district area in which the election to fill the vacancy will be held may fill the vacancy by appointment within 90 days of the effective date of the vacancy or may order the district to call a special election to fill the vacancy.

If within 90 days of the effective date of the vacancy, the remaining members of the board or the appropriate board of supervisors have not filled the vacancy by appointment and no election has been called for, the district shall call a special election to fill the vacancy.

A person elected at an election to fill a position to which an appointment was made pursuant to this section shall take office immediately upon issuance of the certificate of election by the secretary of the district, after qualifying according to law, and shall hold office for the remainder of the term in which the vacancy occurs.

**Irrigation Districts with 500,000 or more acres** subject to the provisions of Chapter 5 (commencing with Section 22825) of Part 5 of Division 11 of the Water Code follow §22849 of the Water Code to fill vacancies on their board.

The Board of Supervisors of the office county shall fill by appointment vacancies in the offices of directors, provided that any such appointed directors shall be required to run for election in the next succeeding general district election.

If within 60 days after a vacancy on the board of directors occurs the board of supervisors has failed to fill such vacancy, a special election may be called by the board of directors and held in the division affected, for the purpose of filling such vacancy. In the event there are more than two candidates at such special election, only a plurality will be required for election. The candidate elected at such special election shall fill the unexpired term of the vacating director.

## **City Offices**

### **Appointments to Fill Vacancies**

If a vacancy occurs in an elective city office, the council shall, within 60 days from the commencement of the vacancy, either fill the vacancy by appointment or call a special election to fill the vacancy. The special election shall be held on the next regularly established election date not less than 114 days from the call of the special election. A person appointed or elected to fill a vacancy holds office for the unexpired term of the former incumbent. (Government Code §36512(b) and 34902)

### **Cities May Require an Election**

A city may enact an ordinance that does any of the following:

1. Requires that a special election be called immediately to fill every city council vacancy and the office of mayor designated pursuant to Section 34902. The ordinance shall provide that the special election shall be held on the next regularly established election date not less than 114 days from the call of the special election.
2. Requires that a special election be held to fill a city council vacancy and the office of mayor designated pursuant to Section 34902 when petitions bearing a specified number of verified signatures are filed. The ordinance shall provide that the special election shall be held on the next regularly established election date not less than 114 days from the filing of the petition. A governing body that has enacted such an ordinance may also call a special election pursuant to subdivision (b) without waiting for the filing of a petition.
3. Provides that a person appointed to fill a vacancy on the city council holds office only until the date of a special election which shall immediately be called to fill the remainder of the term. The special election may be held on the date of the next regularly established election or regularly scheduled municipal election to be held throughout the city not less than 114 days from the call of the special election.

Government Code §36512(c)

### **Restriction to Appointing**

An appointment shall not be made to fill a vacancy on a city council if the appointment would result in a majority of the members serving on the council having been appointed. The vacancy shall be filled in the manner provided by this subdivision.

The city council may call an election to fill the vacancy, to be held on the next regularly established election date not less than 114 days after the call.

If the city council does not call an election, the vacancy shall be filled at the next regularly established election date.

Government Code §36512(d)

## **Federal, State & Judicial Offices**

### **President of the United States**

In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

See the U.S. Constitution, Amendment XXV for more provisions.

### **United States Senator**

If a vacancy occurs in the representation of this state in the Senate of the United States, the Governor may appoint and commission an elector of this state who possesses the qualifications for the office to fill the vacancy until his or her successor is elected and qualifies and is admitted to his or her seat by the United States Senate. However, whenever a vacancy occurs within a term fixed by law to expire on the third day of January following the next general election, the person so appointed shall hold office for the remainder of the unexpired term unless the vacancy is filled at a special election held prior to the general election, in which case the person elected at the special election shall hold office for the remainder of the unexpired term. An election to fill a vacancy in the term of a United States Senator shall be held at the general election next succeeding the occurrence of the vacancy or at any special election. (Elections Code §10720)

### **Congressional and Legislative Offices**

**Governor's Proclamation:** The Governor shall call all statewide special elections by issuing a proclamation pursuant to Elections Code §12000. In the case of a vacancy in a congressional or legislative office the Governor shall issue a proclamation, within 14 calendar days of the occurrence of the vacancy, calling a special election to fill the vacancy. A copy of the proclamation shall be sent to the board of supervisors of every affected county. (Elections Code §10700)

**Vacancies Occurring After the Close of Nomination:** When a vacancy occurs in a congressional office after the close of the nomination period in the final year of the term of office, the Governor may decline to issue an election proclamation at his discretion.

When a vacancy occurs in a legislative office after the close of the nomination period in the final year of the term of office, no special election shall be held. (Elections Code §10701)

**Time to Call Election:**

A special election to fill a vacancy in the office of Representative in Congress, State Senator, or Member of the Assembly shall be conducted on a Tuesday at least 126 days, but not more than 140 days, following the issuance of an election proclamation by the Governor pursuant to Section 1773 of the Government Code, except that the special election may be conducted within 180 days following the proclamation in order that the election or the primary election may be consolidated with the next regularly scheduled statewide election or local election occurring wholly or partially within the same territory in which the vacancy exists, provided that the voters eligible to vote in the local election comprise at least 50 percent of all the voters eligible to vote on the vacancy.

Except as provided in Chapter 3 (commencing with Section 10730), a special election or a primary election may not be conducted on the day after a state holiday.

A special primary election shall be held in the district in which the vacancy occurred on the 10th Tuesday preceding the day of the special general election at which the vacancy is to be filled if both of the following conditions apply:

(1) The 10th Tuesday preceding the day of the special general election is an established election date pursuant to Section 1000.

(2) A statewide or local election occurring wholly or partially within the same territory in which the vacancy exists is scheduled for the 10th Tuesday preceding the day of the special general election. (Elections Code §§10703, 10704)

**Nominations:** Candidates at the primary election shall be nominated in the same manner as a regular election (Elections Code §8000, et. al.), except that nomination papers shall not be circulated more than 73 days before the primary election, shall be left with the county elections official for examination not less than 53 days before the primary election, and shall be filed with the Secretary of State not less than 53 days before the primary election.

**Absentee Ballot Requests:**

An application for a vote by mail ballot for a special election shall be made and processed in the manner required by Section 3001. (Elections Code §10703, 10704)

**Ballot Layout:** All candidates shall be listed on one ballot. If any candidate receives a majority of all votes cast, he or she shall be declared elected, and no special general election shall be held. Or, if only one candidate qualifies to have his or her name printed on the special general election ballot, that candidate shall be declared elected, and no special general election shall be held, even if that candidate received less than a majority of the votes cast. (Elections Code §10705)

### **General, Run-Off Ballot:**

If no candidate receives a majority of votes cast, the names of the candidates who receive the highest or second highest number of votes cast at the special primary election shall be placed on the special general election ballot. In the case of a tie vote, subdivision (b) of Section 8142 shall apply. (Elections Code §10706)

**Order of Contest on Ballot:** Whenever a special general election, or a special primary election, to fill a vacancy in Congress or the State Legislature is consolidated with a statewide election, the candidates to fill the vacancy shall appear on the consolidated ballot immediately preceding the candidates for that same seat in Congress or the seat in the Legislature that most nearly encompasses the same geographical area at the statewide election, or the elections official at his or her option may print a separate and distinct ballot. (Elections Code §10707)

### **Governor**

The Lieutenant Governor shall become Governor when a vacancy occurs in the office of Governor.

The Lieutenant Governor shall act as Governor during the impeachment, absence from the State, or other temporary disability of the Governor or of a Governor-elect who fails to take office. (CA. Const., Article V, Section 10)

### **Other State Constitutional Offices**

Whenever there is a vacancy in the office of the Superintendent of Public Instruction, the Lieutenant Governor, Secretary of State, Controller, Treasurer, or Attorney General, or on the State Board of Equalization, the Governor shall nominate a person to fill the vacancy who shall take office upon confirmation by a majority of the membership of the Senate and a majority of the membership of the Assembly and who shall hold office for the balance of the unexpired term.

In the event the nominee is neither confirmed nor refused confirmation by both the Senate and the Assembly within 90 days of the submission of the nomination, the nominee shall take office as if he or she had been confirmed by a majority of the Senate and Assembly; provided, that if such 90-day period ends during a recess of the Legislature, the period shall be extended until the sixth day following the day on which the Legislature reconvenes. (CA. Const., Article V, Section 10)

Proposition 103, an initiative statute passed by voters in November 1988, established the office of the State Insurance Commissioner. While the Insurance Code §12900 provides how the person is elected, there are no provisions for filling a vacancy in this office.

In June 2000, the elected incumbent resigned from the office, and Harry Low filled the vacancy in the same manner as outlined above for the other state constitutional offices.

## **Supreme and Appellate Court Justices**

Within 30 days before August 16 preceding the expiration of the judge's term, a judge of the Supreme Court or a court of appeal may file a declaration of candidacy to succeed to the office presently held by the judge. If the declaration is not filed, the Governor before September 16 shall nominate a candidate. At the next general election, only the candidate so declared or nominated may appear on the ballot, which shall present the question whether the candidate shall be elected. The candidate shall be elected upon receiving a majority of the votes on the question. A candidate not elected may not be appointed to that court but later may be nominated and elected.

The Governor shall fill vacancies in the Supreme and Appellate courts by appointment. An appointee holds office until the Monday after January 1 following the first general election at which the appointee had the right to become a candidate or until an elected judge qualifies. A nomination or appointment by the Governor is effective when confirmed by the Commission on Judicial Appointments.

Electors of a county, by majority of those voting and in a manner the Legislature shall provide, may make this system of selection applicable to judges of superior courts. (CA. Const., Article VI, Section 16(d))

## **Superior Court Judge**

Terms of judges of superior courts are 6 years beginning the Monday after January 1 following their election. A vacancy shall be filled by election to a full term at the next general election after the second January 1 following the vacancy, but the Governor shall appoint a person to fill the vacancy temporarily until the elected judge's term begins. (CA. Const., Article VI, Section 16(c))

The following opinions provide additional information on filling Superior Court vacancies.

- Department of Justice informal opinion re: Judicial Vacancies (Sept. 23, 1999)
- Legislative Counsel opinion Superior Court Vacancies (July 26, 1999)
- Judicial Council opinion Effect of Court Unification on Judicial Elections (June 28, 1999)

## **Member, Party Central Committee/County Council**

### **Democratic Party / Republican Party / American Independent Party**

In the event of the appointment or election to a committee of an ineligible person, or whenever any member of the committee dies, resigns or becomes incapacitated to act, or removes from the jurisdiction of the committee, or ceases to be a member of this party, a vacancy exists which shall be filled by appointment by the committee in which the ineligibility or vacancy occurs.

A committee may remove any member, other than an ex officio member if:

- The member misses more than three consecutive regularly called meetings, unless his or her absence is caused by illness or temporary absence from the county on the date of the meeting; or
- The member, during his or her term of membership affiliates with, or registers as a member of another party, who publicly advocates that the voters should not vote for the nominee of this party for any office, or who gives support or avows a preference for a candidate of another party or candidate who is opposed to a candidate nominated by this party.

The removal of residence by an elected or appointed member of a committee from the Assembly district or supervisor district from which he or she has been elected or appointed a member of that committee shall constitute his or her automatic resignation from the committee. (Elections Code §7212-7215, 7410-7413, 7657-7658)

### **Peace and Freedom / Libertarian**

At its first meeting on the second Tuesday in July following the presidential primary election and at subsequent meetings, a county central committee, in its sole discretion, may appoint any additional members to the county central committee as it may desire.

Any member of a committee who misses more than three consecutive regularly scheduled meetings may be removed by a vote of the committee concerned, unless the absence of the member is caused by illness or temporary absence from the county on the date of the meeting.

The removal of residence by an elected or appointed member of a county central committee from the county from which the member was elected shall constitute the member's automatic resignation from the committee.

A committee may remove any elected or appointed member, who during the term of membership, affiliates with or registers as a member of another political party, publicly advocates that the voters should not vote for the nominee of the party for any office, publicly gives support to or avows a preference for a candidate of another party or candidate who is opposed to a candidate nominated by this party, or has violated the bylaws or constitution of the committee. (Elections Code §7850, 7853-7855)

### **Green Party**

In 1992, the Green Party became a qualified political party in California and was authorized to participate in the primary elections. The party, at that time, agreed to adopt the Peace and Freedom Party Code Sections 7700 – 7999 pending drafting of new code sections governing the Green Party. Therefore, vacancies would be filled by appointment by the remaining members.

# Public Notice of Vacancy and Provisional Appointment

(Education Code §5092)

1. A vacancy in the membership of the Governing Board of the **(name of district)** School District has occurred by reason of the **(resignation or other reason)** of **(name of trustee)** effective **(date)**.
2. The resignation was filed in the office of the Santa Cruz County Superintendent of Schools on **(date)**.
3. **(Name of appointee)** was appointed by the Governing Board on **(date)** to fill the above-named vacancy.
4. To challenge the appointment and order a special election, the following must be filed in the office of the Santa Cruz County Superintendent of Schools within 30 days from the date of the provisional appointment:
  - File a petition calling for a special election containing the valid signatures of at least 1 ½ percent of the number of registered voters of the district at the time of the last regular election for governing board members held within the (name of district), or 25 registered voters of the district, whichever is greater, or
  - In districts with less than 2,000 registered voters, a petition shall be deemed to bear a sufficient number of signatures if signed by at least 5 percent of the number of registered voters of the district at the time of the last regular election for governing board members.

Governing Board of the **(name of district)**

\_\_\_\_\_  
Governing Board Secretary/Clerk

Date: \_\_\_\_\_

**\*\*Sample\*\***  
**Petition for a Special Election**  
**To fill the vacancy on the Governing Board of the**  
 \_\_\_\_\_ **School District**  
**in Santa Cruz County**

The proponents of this petition as named herewith are registered voters of the aforementioned school district.

s/ Voter 1, 3030 Sugar St., Santa Cruz, CA 95060  
 s/ Voter 2, 4010 Sugar Dr., Scotts Valley, CA 95066  
 s/ Voter 3, 501 Coco Rd., Capitola, CA 95050  
 s/ Voter 4, 32 Sugar Ave., Watsonville, CA 95076  
 s/ Voter 5, 189 Coco Blvd., Aptos, CA 95003

← Name and residence of at least one and not more than five proponents. Ed. Code §5091(f)

Pursuant to Education Code §5091, we the undersigned, who are registered votes of the \_\_\_\_\_ School District of Santa Cruz County, California, hereby petition the County Superintendent of Schools to call a special election for the purpose of filling the vacancy on the governing board of said school district.

If an election is called pursuant to this petition, the provisional appointment heretofore made by the governing board of said school district to fill the vacancy shall be terminated.

The County Clerk in and for the County of Santa Cruz has estimated the cost of conducting the special election called pursuant to this petition to be approximately \$ \_\_\_\_\_ (insert estimated cost here) \_\_\_\_\_.

Official  
Use Only

1	Print Your Name	Residence Address ONLY	
	Your Signature as Registered to Vote	City	Zip
2	Print Your Name	Residence Address ONLY	
	Your Signature as Registered to Vote	City	Zip
3	Print Your Name	Residence Address ONLY	
	Your Signature as Registered to Vote	City	Zip

← 1" §100 →

**Declaration of Person Circulating Section of Initiative Petition (To be completed in circulator's own hand)**

I, \_\_\_\_\_ am 18 years of age or older.  
Print name

Each petition section shall have attached to it an affidavit to be completed by the circulator. §104, 9109

My residence address is \_\_\_\_\_  
address city state zip

I circulated this section of the petition and witnessed each of the appended signatures being written. Each signature on this petition is, to the best of my information and belief, the genuine signature of the person whose name it purports to be. All signatures on this document were obtained between the dates of \_\_\_\_\_ and \_\_\_\_\_.  
Starting Date Ending Date

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on \_\_\_\_\_ at \_\_\_\_\_, California.  
Month and day Place of signing

\_\_\_\_\_  
 Circulator's Signature

↓ It is recommended that you leave a 1" margin at the top, and a ½" margin on the left, right and bottom.

# Application for Appointment to Fill a Vacancy on a Special District Board

## Instructions

If you are interested in serving on a special district Board of Directors, please complete this application and return it to: \_\_\_\_\_

Date Due: \_\_\_\_\_

You will be advised by the district board if your appointment is confirmed. Thank you for your interest.

.....

District: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Age(optional): \_\_\_\_\_

Address where you live: \_\_\_\_\_

Business or Mailing address: \_\_\_\_\_

Phone (daytime): \_\_\_\_\_ Phone (evening): \_\_\_\_\_

Email: \_\_\_\_\_

Education			
Institution	Major	Degree	Year

Work/Volunteer Experience				
Organization	City	Position	From	To

**Statement of Qualifications:**

Please briefly describe your qualifications and why you are interested in serving on the Board of Directors.

**Certification:**

I certify that the information contained in this application is true and correct. I authorize the verification of the information in this application.

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Signature

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Date

# Notice of Vacancy

Interested persons are hereby notified that pursuant to Government Code §1780 there is a vacancy on the

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Board of Directors

The position to be filled is for a term ending December 20\_\_\_\_.

The seat will go to election in November 20\_\_\_\_ for  
 the final two years of the term or  
 for a new 4-year term.

Applications are available at the

\_\_\_\_\_ District Office located at:

\_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Website: \_\_\_\_\_

Applications are due by: \_\_\_\_\_

This district board has 60 days from the date the board is notified of the vacancy or the effective date of the vacancy, whichever is later, to fill the vacancy by appointment or call a special election. Gov. Code §1780

Pursuant to Government Code §1780, this notice will be posted for 15 days in 3 or more conspicuous locations in the districts from \_\_\_\_\_ to \_\_\_\_\_.