

HB

4 1 4

23-LS1514W

Kurtz
4/16/04

SENATE CS FOR CS FOR HOUSE BILL NO. 414()
 IN THE LEGISLATURE OF THE STATE OF ALASKA
 TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE JUDICIARY COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to filling a vacancy in the office of United States senator, and to the
 2 definition of 'political party.'"

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 15.40.140 is amended to read:

5 Sec. 15.40.140. Condition and time of calling special election. When a
 6 vacancy occurs in the office of United States senator or United States representative,
 7 the governor shall, by proclamation, call a special election to be held on a date not less
 8 than 60, nor more than 90, days after the date the vacancy occurs. However, if the
 9 vacancy occurs on a date that is less than 60 days before or is on or after the date of
 10 the primary election in the general election year during which a candidate to fill the
 11 office is regularly elected [YEARS], the governor may not call a special election.

12 * Sec. 2. AS 15.40 is amended by adding a new section to read:

13 Sec. 15.40.165. Term of elected senator. At the special election, a United
 14 States senator shall be elected to fill the remainder of the unexpired term. The person

1 elected shall take office on the date the United States Senate meets, convenes, or
2 reconvenes following the certification of the results of the special election by the
3 director.

4 * Sec. 3. AS 15.40.200 is amended to read:

5 Sec. 15.40.200. Requirements of party petition. Petitions for the
6 nomination of candidates of political parties shall state in substance that the party
7 desires and intends to support the named candidate for the office of United States
8 senator or United States representative, as appropriate, at the special election and
9 requests that the name of the candidate nominated be placed on the ballot.

10 * Sec. 4. AS 15.40.220 is amended to read:

11 Sec. 15.40.220. General provisions for conduct of special election. Unless
12 specifically provided otherwise, all provisions regarding the conduct of the general
13 election shall govern the conduct of the special election of the United States senator
14 or United States representative, including [, BUT NOT LIMITED TO,] provisions
15 concerning voter qualifications; provisions regarding the duties, powers, rights,
16 and obligations of the director, of other election officials, and of municipalities;
17 provision for notification of the election; provision for payment of election
18 expenses; provisions regarding employees being allowed time from work to vote;
19 provisions for the counting, reviewing, and certification of returns; provisions for
20 the determination of the votes and of recounts, contests, and appeal; and
21 provision for absentee voting [SPECIFICALLY REFERRED TO IN AS 15.40.130].

22 * Sec. 5. AS 15.40.310 is amended to read:

23 Sec. 15.40.310. General provisions for conduct of special election. Unless
24 specifically provided otherwise, all provisions regarding the conduct of the general
25 election shall govern the conduct of the special election of the governor and lieutenant
26 governor, including [, BUT NOT LIMITED TO,] provisions concerning voter
27 qualifications; provisions regarding the duties, powers, rights, and obligations of
28 the director, of other election officials, and of municipalities; provision for
29 notification of the election; provision for payment of election expenses; provisions
30 regarding employees being allowed time from work to vote; provisions for the
31 counting, reviewing, and certification of returns; provisions for the

1 determination of the votes and of recounts, contests, and appeal; and provision
2 for absentee voting [SPECIFICALLY REFERRED TO IN AS 15.40.130].

3 * Sec. 6. AS 15.40.470 is amended to read:

4 Sec. 15.40.470. General provision for conduct of special election. Unless
5 specifically provided otherwise, all provisions regarding the conduct of the general
6 election shall govern the conduct of the special election of state senators, including [,
7 BUT NOT LIMITED TO, THE] provisions concerning voter qualifications;
8 provisions regarding the duties, powers, rights, and obligations of the director, of
9 other election officials, and of municipalities; provision for notification of the
10 election; provision for payment of election expenses; provisions regarding
11 employees being allowed time from work to vote; provisions for the counting,
12 reviewing, and certification of returns; provisions for the determination of the
13 votes and of recounts, contests, and appeal; and provision for absentee voting
14 [SPECIFICALLY REFERRED TO IN AS 15.40.130].

15 * Sec. 7. AS 15.60.010(21) is amended to read:

16 (21) "political party" means an organized group of voters that
17 represents a political program and

18 (A) that [EITHER] nominated a candidate for governor who
19 received at least three percent of the total votes cast for governor at the
20 preceding general election or has registered voters in the state equal in number
21 to at least three percent of the total votes cast for governor at the preceding
22 general election;

23 (B) if the office of governor was not on the ballot at the
24 preceding general election but the office of United States senator was on
25 that ballot, that nominated a candidate for United States senator who
26 received at least three percent of the total votes cast for United States
27 senator at that general election or has registered voters in the state equal
28 in number to at least three percent of the total votes cast for United States
29 senator at that general election; or

30 (C) if neither the office of governor nor the office of United
31 States senator was on the ballot at the preceding general election, that

1 nominated a candidate for United States representative who received at
2 least three percent of the total votes cast for United States representative
3 at that general election or has registered voters in the state equal in
4 number to at least three percent of the total votes cast for United States
5 representative at that general election;

6 * Sec. 8. AS 15.40.010, 15.40.050, 15.40.060, 15.40.070, 15.40.075, 15.40.130, and
7 15.40.135 are repealed.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

THE GREEN PARTY OF ALASKA,

Plaintiff,

vs.

THE STATE OF ALASKA, DIVISION OF
ELECTIONS, and LAURA GLAISER,
Director of the Division of Elections,

Defendants.

Case No. 3AN 03-9936 CI

ORDER

I. Introduction

The Green Party of Alaska ("Green Party") is seeking a preliminary injunction against the State to receive treatment as a political party defined in AS 15.60.010(21). The State opposes the motion arguing that the Green Party does not satisfy the requirements to receive the injunction. The motion should be granted.

II. Facts

In 1990, Green Party gubernatorial candidate Jim Sykes received over 3% of the votes. After that election, the Green Party was deemed a "political party" by the State pursuant AS 15.60.010 (21). Green Party candidates continued to receive at least 3% of the vote in gubernatorial races through 2002, so the organization maintained its political party status. In 2002, Diane Benson ran for governor as a Green Party candidate and received less than 3% of the vote. After the 2002 election, the Green Party was no

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ARE
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longer considered a political party by the State. In 2002, two other Green Party candidates ran for federal positions—U.S. Representative and U.S. Senator—and each candidate received over 6% of the vote.

The Green Party filed a suit against the state alleging its equal protection rights are being violated and seeking a declaratory judgment that it is unconstitutional to deny political party status to the Green Party while granting that status to other political organizations. Because the adjudication of the underlying claims may continue through the next election (or at least through the important deadlines), the Green Party currently seeks a preliminary injunction so it can plan its political campaign accordingly.

Discussion

A political party is defined as:

[A] group of organized voters that represents a political program and that either nominated a candidate for governor who received at least three percent of the total votes cast for governor at the preceding general election or has registered voters in the state equal in number to at least three percent of the total votes cast for governor at the preceding general election.

AS 15.60.010 (21). A political group is a group of organized voters with a political program that does not otherwise satisfy the requirement for political party. AS 15.60.010(20). Political groups that want to place a candidate on a ballot must first file a petition including an adequate number of signatures on the day of the primary election. AS 15.25.140-60. Political party candidates, to the contrary, do not have to gather voter signatures in order to be placed on the ballot. Instead, they must file a declaration of candidacy by June 1 of the year of the election. AS 15.25.030-04.

The plaintiff seeks a preliminary injunction to receive treatment as a political party despite its failure to satisfy AS 15.60.010 (21). The following is the applicable statutory standard for granting an injunction:

When it appears that (1) the plaintiff is entitled to the relief demanded, and the relief or any part of it includes restraining the commission or continuance of some act, the commission or continuance of which during the litigation would produce injury to the plaintiff; or (2) the defendant is doing, or threatens or is about to do, or is procuring or suffering to be done some act in violation of the plaintiff's rights concerning the subject of the action and tending to render the judgment ineffectual...

AS 09.40.230.

When ruling on whether to grant preliminary relief, the court must "avoid extensive involvement in the merits of the issues between the parties." *A.J. Industries v. Alaska Public Service Commission*, 470 P.2d 537,540 (Alaska 1970). When the party seeking relief will not be harmed by the injunction, that party must establish a clear showing of probable success before the motion is granted. *Id.* However, when the party seeking the relief would be irreparably harmed and the opposing party can be adequately protected from harm, then the court must apply a "balance of hardships" approach. *State of Alaska v. Kluti Kaah Native Village of Copper Center*, 831 P.2d 1270 (Alaska 1992). The balance of hardships approach involves a three-part test:

(1) the plaintiff must be faced with irreparable harm; (2) the opposing party must be adequately protected; and (3) the plaintiff must raise 'serious' and substantial questions going to the merits of the case; that is, the issues raised cannot be 'frivolous or obviously without merit.'

Id. at 1273 (quoting *Messerli v. Dep't of Natural Resources*, 768 P.2d 1112, 1122 (Alaska 1989)).

Here, the plaintiff argues that it will be irreparably harmed if the injunction is not granted, so the balancing test applies. The defendant, however, argues that the plaintiff will not be irreparably harmed, so it must establish probable success on the merits. The determination of which test applies turns on whether the plaintiff will be irreparably harmed if the injunction is not granted.

Irreparable harm

An irreparable injury is an injury, regardless of its size, that cannot be reasonably redressed in a court of law. *Kluti Kaah*, 831 P.2d at 1273 n.5, citing Black's Law Dictionary, 786 (6th Ed. 1990). For purposes of the balancing test here, the injury must be established with substantial certainty.

The State argues that the plaintiff will not suffer any harm because it has sufficient time to register enough Green Party voters to be recognized as a political party in time for the primary. After the 2002 elections, the Libertarian party did exactly that after it had lost its party status.

The Green Party states that it has never been able to register enough voters to be recognized as a political party. Its only option, therefore, is to gather signatures in preparation of the 2004 election. The Green Party argues that if the injunction is not granted, the organization will be harmed because it will have to "jump through additional registration and petitioning hurdles," including gathering signatures. The Green Party will also be fiscally impaired because AS 15.13.070(b) significantly limits the amount of contributions that can be made to the organization if it is a political group instead of a political party. In addition, the plaintiff will not be able to participate in the primary, an event with great political value and media coverage.

Participation in a primary has great political value. As noted in *Vogler v. Miller*, 660 P.2d 1192 (Alaska 1983) ("*Vogler II*"), candidates that participate in primaries receive intense media coverage, whereas a candidate from a small party that is simply on the ballot will likely go unnoticed. *Id.* at 1194. The primary has been described as "one of the great drive engines of American politics." *Id.* (quoting T. White, *The Making of the President 1972*, 71 (1973)). The Green Party's absence from the primary may have a harmful effect on that party's recognition and future support. The Green Party has clearly made strides over the past twelve years by maintaining its party status and having two candidates for federal office receive over 6% of the vote. Precluding the Green Party from the primary, coupled with imposing limitations on its fundraising abilities will likely harm the party in a way that could not be compensable in a court of law.

Because the plaintiff will be irreparably injured if the injunction is not granted, the balance of hardship approach must be applied.

Adequate protection of the defendant

The injunction may only be granted if the State is adequately protected. The court must consider the clear ramifications of an injunction, including potential for similar actions by other parties seeking injunctive relief, and whether similarly situated parties would be treated differently. See *Kluti Kaah*, 831 P.2d at 1273. In *Kluti Kaah*, the superior court improperly granted an injunction to a Native Village without considering that other similarly situated Native Villages would seek the same relief. In fact, seven other Villages sought the same relief. The court is prohibited from treating similarly situated Villages differently. The purpose of the underlying restriction was to

increase the moose population, and granting all eight injunctions would not have adequately protected the state's interest in increasing the moose population.

The State argues that it will be harmed by the injunction because it will have to spend its limited funds for printing and computer programming associated with a candidate. In addition, the State argues that it has an interest in ensuring that the candidates on each ballot have a modicum of support by voters. Without that support, the voters will be subject to overcrowding and confusion. The Green Party argues that the amount of money the State would spend on printing is minimal and not enough to constitute harm and the Green Party has received sufficient support over the years to prevent voter confusion.

No evidence was presented that any other political organization is situated similarly to the Green Party.¹ Therefore, it does not appear that a similar injunction will be sought by other parties, overburdening the defendant. Over the past decade the State has absorbed the cost of having a Green Party candidate on the gubernatorial ballot. Including the Green Party in the upcoming primary will not be any different from previous races, thus not financially harming the State.

The State does have an interest to ensure parties with at least a modicum of support are on the ballot. *Vogler v. Miller*, 651 P.2d 1, 3 (Alaska 1982) ("*Vogler P*"). However, the Green Party has established a modicum of support by maintaining its political party status from 1990 to 2002 and by obtaining over 6% of the votes in the

¹ The Republican Moderate Party also lost its party status after the 2002 election. However, no evidence has been presented that it has been recognized as a political party as long as the Green Party and that they received over 3% of the votes in the races for U.S. Representative and U.S. Senator.

most recent U.S. Senate and U.S. Representative races. The state's interest will not, therefore, be harmed by granting the preliminary injunction.

Serious and substantial question

The final question in the inquiry is whether the Green Party has raised a serious and substantial question that goes to the merits of the case. The plaintiff alleges that taken together, AS 15.60.010(21), 15.25.030, and 15.25.140 violate its equal protection rights under the state and federal constitutions. The plaintiff argues that it is situated similarly to organizations that are recognized as political parties because it has received more than 3% of the vote in a state-wide election and that depriving the plaintiff of its political party status because the requisite votes arose from candidates for federal positions instead of the candidate for governor is unconstitutional.

The Green Party did have a modicum of support during the 2002 election. Although the candidate for governor did not receive the requisite 3% vote, two other state-wide candidates did receive over 6% of the votes. Because such support for the Green Party does exist, the State may be treating the Green Party differently from other similarly situated political organizations in violation of the state and federal constitutions. This issue has yet to be litigated in Alaska courts. The Green Party, therefore, has raised a serious and substantial question that goes to the merits of the case and is not frivolous.

III. Conclusion

Because the Green Party will be irreparably harmed, the State is adequately protected, and the Green Party presents a serious and substantial question, the motion

for a preliminary injunction is GRANTED.

It is so ORDERED.

DATED at Anchorage, Alaska this 30th day of October, 2003.



JOHN REESE
Superior Court Judge

I certify that on 11/3/03 a copy
of the above was mailed to each of the
following at their address of record:

Marford / AG (Julia)

Smirnovsky
Administrative Assistant

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P. O. Box 672263
Chugiak, AK 99567
(907) 688-5888
Attorney for plaintiffs
Alaska Bar No. 8406040

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

THE GREEN PARTY OF ALASKA,)
)
 Plaintiff,)
)
 vs.)
)
 THE STATE OF ALASKA, DIVISION)
 OF ELECTIONS, and LAURA GLAISER)
 Director of the Division of Elections,)
)
 Defendants.)
)
 _____)
 STATE OF ALASKA)
) ss
 THIRD JUDICIAL DISTRICT)

Case No. 3AN-03-9936 CI

AFFIDAVIT OF JIM SYKES

Jim Sykes, being first duly sworn, upon oath, deposes and says:

1. I am presently a co-chair of the Green Party of Alaska in the above captioned action, and I make this affidavit based upon my own personal knowledge.
2. I am presently deciding whether or not to run for statewide office in the 2004 primary and general elections in Alaska. If I do run, it will be as a candidate of the Green Party of

Alaska.

3. Until the court decides whether or not to grant the Green Party of Alaska's pending motion for a preliminary injunction in this lawsuit, it remains uncertain whether or not I will be required to gather signatures on a nominating petition, pursuant to AS 15.25.140 et seq., in order to be able to appear on the primary ballot, and (if I win in the primary election) the general election ballot. Knowing whether or not I will be required to gather signatures on a nominating petition would significantly change the timing and structure of my campaign. I would be reluctant to waste limited time and resources from my campaign seeking signatures on a nominating petition which could subsequently become unnecessary if the Green Party's motion for a preliminary injunction is granted.

4. The Green Party of Alaska is also currently suffering from the uncertainty of not having a decision from the court on the motion for a preliminary injunction. It will continue to be harmed by that uncertainty until the court is able to decide that pending motion. Because existing and ongoing interests of the Green Party of Alaska are presently being harmed, and because its potential candidates like me are also being harmed while the motion for preliminary injunction remains unresolved, I request that the court agree to decide the motion for a preliminary injunction on an expedited basis.

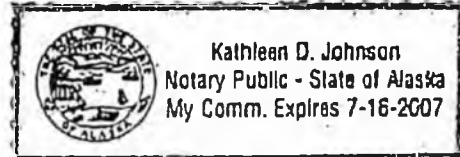

Jim Sykes

Subscribed and sworn to before me this 23 day of October, 2003.

Kathleen D. Johnson

Notary Public in and for Alaska

My Commission Expires: 7-16-2007



CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was sent by first class mail, postage paid, to Sarah J. Felix, attorney for defendants, on the 23rd day of October, 2003.

Kevin M. Morford
Kevin M. Morford

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. Jim Holm
Rep. Dan Ogg
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee

MEMORANDUM

To: Senator Ralph Seekins
Chair, Senate Judiciary Committee

From: Representative Lesil McGuire
Chair, House Judiciary Committee

Handwritten signature of Lesil McGuire, consisting of the initials "LM" in a stylized cursive font.

Date: March 22, 2004

Re: Request for Hearing, SCS CSHB 414 (JUD): U.S. Senate Vacancy/
Def. Of Political Party

I respectfully request that SCS CSHB 414 (JUD), "An Act relating to filling a vacancy in the office of United States senator, and to the definition of 'political party,'" be scheduled for a hearing at your earliest convenience. Please refer to the attached bill package for background information.

If you have any questions please feel free to contact me personally, or my staff, Vanessa Tondini, at 4990. Thank you for your time and consideration.

ALASKA STATE LEGISLATURE

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House Judiciary Committee

Sponsor Statement CSHB 414 (JUD)

**"An Act relating to filling a vacancy in the office of United States senator,
and to the definition of 'political party'"**

HB 414 seeks to redress two current shortcomings in Alaska's Elections Act. There are two primary components to HB 414, each a response to a clear call for changes to Alaska Statutes so as to provide: firstly, for the fairest method of selecting individuals for a vitally important public office; and, secondly, to respect the will of the Alaskan people regarding choices they make to associate as political parties.

HB 414 will change the way a vacancy in one of Alaska's two seats in the United States Senate is filled when such a vacancy occurs. Currently, Alaska law provides that the Governor appoints a person of his or her choice from the same political party as the person who vacated the seat, when one of Alaska's two U.S. Senate seats becomes vacant, a process governed by the 17th Amendment to the U.S. Constitution. Last year a group of Alaskans calling itself "Trust the People" began gathering signatures to place an initiative on the ballot this year that would change Alaska Statutes to allow for a special election in the case of any vacancy in one of Alaska's two U.S. Senate seats. If it is determined that this group obtained enough signatures, the initiative will be certified and placed on the November 2004 ballot.

HB 414 listens to the will of the many Alaskans who signed petitions in favor of electing someone to fill a vacancy in one of Alaska's two U.S. Senate seats. The sections of the bill that change Alaska law relating to filling such vacancies are exactly the same, word for word, as the language of the initiative. Supporting HB 414 is a clear way to implement the will of a large number of Alaskan voters.

The second part of HB 414 addresses a lawsuit brought by the Green Party of Alaska against the State Division of Elections. The case grew out of the Green Party's dissatisfaction with the interplay between the results of the 2002 gubernatorial election and the definition of "political party" in the Alaska Elections Act. In order to obtain political party status, the current definition requires a party to have nominated a candidate for Governor who received at least three percent of the popular vote in the preceding gubernatorial election. Alternatively, a party is recognized if it has registered voters under its banner equal in number to three percent of the total number of votes cast for Governor in the immediately preceding general election.

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
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House Judiciary Committee

In 2002, the Green Party candidate for Governor garnered less than the minimum three percent needed to maintain the Green's status as a political party and, thus, the party sought an injunction of the law. The court acceded to the Green Party's request and enjoined enforcement of the law so that the Greens could avoid irreparable harm by continuing to participate in politics with the benefits of being a full political party. The order accompanying the court's injunction noted that the Green Party had been successful in winning over six percent of the vote in races for federal elective positions, namely U.S. Representative and U.S. Senator, and instructed the State to continue treating the Green Party with the deference due to a statutorily-defined political party until the General Election in November 2004 or until the Legislature, "corrects the problems with party eligibility in the statutes."

HB 414 responds directly to the court's order by expanding the types of statewide races to which the Division of Elections can look in ascertaining whether a party enjoys enough popular support to merit official status. It adds two different gauges to the law, so that if there is not a gubernatorial election, then an assemblage of voters can refer to its success in the most recent U.S. Senate or U.S. House race to earn official political party status under the statutes. The changes to the Alaska Elections Act wrought by the second half of HB 414 will inject fairness to the process of obtaining political party status in Alaska. Parties will be able to refer to their good showing in the most recent statewide race, never more than two years in the past, in order to demonstrate that they are supported by the voting public and deserve the statutory benefits conferred on political parties.

ALASKA STATE LEGISLATURE

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House Judiciary Committee

Sectional Analysis CSHB 414 (JUD)

"An Act relating to filling a vacancy in the office of United States senator, and to the definition of 'political party'"

Section 1: This bill section is an intent section stating that it is the desire of this legislature that the provisions of this bill which are substantially similar to those proposed in the initiative, Sections 2-8, and 10 of this bill, not be repealed for at least two years after the Act's effective date.

Section 2: This bill section adds "United States senator" to the language that currently governs special elections held to replace vacancies in the office of U.S. representative. This bill section further clarifies the language controlling when a special election is not to be called, when a vacancy occurs 60 days or less before a primary election in a general election year.

Section 3: This bill section allows for the governor to temporarily appoint a qualified individual to fill a vacant U.S. Senate seat until the results of the special election are certified. This section will ensure that Alaska is not unrepresented in such an important seat while awaiting the special election results.

Section 4: This bill section adds a new statutory section that specifies that a U.S. senator elected in a special election will hold office for the remainder of the unexpired term of the U.S. senator who previously held the U.S. Senate seat. This section further states when a specially elected U.S. senator will take office.

Section 5: This bill section adds "United States senator" to the language that currently governs political party petitions submitted on behalf of candidates for U.S. representatives in special elections.

Section 6: This bill section adds "United States senator" to the language that currently governs the provisions for the conduct of special elections for U.S. representative, and further enumerates what these provisions are, deleting a reference to a statutory section relating to special elections for U.S. Senator that had the effect of providing a list of such provisions. This latter statutory section is deleted by Section 10 of the bill.

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
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House Judiciary Committee

Section 7: This bill section makes a conforming amendment that specifically enumerates the provisions that are to apply to special elections for governor and lieutenant governor, deleting a reference to a statutory section relating to special elections for U.S. senator that had the effect of providing a list of such provisions. This latter statutory section is deleted by Section 10 of the bill.

Section 8: This bill section makes a conforming amendment that specifically enumerates the provisions that are to apply to special elections for state senators, deleting a reference to a statutory section relating to special elections for U.S. senator that had the effect of providing a list of such provisions. This latter statutory section is deleted by Section 10 of the bill.

Section 9: This bill section expands the definition of "political party" to include results of statewide elections for U.S. senator or U.S. representative as secondary and tertiary criteria, respectively, that may enable an organized group of voters that represents a political program to qualify as a political party.

Section 10: This bill section deletes seven statutory sections from Chapter 40 of the Alaska Elections Act, in order to remove references from Alaska Statutes made unnecessary by the bill. These include: a reference to appointment of a person to fill a vacancy in the U.S. Senate; a reference to the timing of a special primary election made redundant by the bill; a reference to the proclamation calling a special election made inconsistent and unnecessary by the bill; a reference to the term to be served by the person elected in a special election made redundant by the bill; provisions pertaining to declaration of candidacy and date of nomination for a special election made redundant by the bill; provisions for the conduct of a special election made redundant by the bill; and, a definition of special primary election made unnecessary by the bill.

Alaska State Legislature

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Representative Lesil McGuire
Chair, Judiciary Committee

EXPLANATION OF CHANGES SCS CSHB 414 (STA)

"An Act relating to filling a vacancy in the office of United States senator, and to the definition of 'political party.'"

From CSHB 414 (JUD)

DELETE (Page 3 Line 31 to Page 4 Line 10)

- (A) [EITHER] nominated a candidate for governor who received at least three percent of the total votes cast for governor at the preceding general election **at which a governor was elected;**
- (B) nominated a candidate for United States senator who received at least three percent of the total votes cast for United States senator at the preceding general election or at the most recent general election at which a governor was elected;
- (C) nominated a candidate for United States representative who received at least three percent of the total votes cast for United States representative at the preceding general election or at the most recent general election at which a governor was elected; or

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 414(STA)
 (H) Publish Date: 2/12/04

Revision Date/Time (Note if correction): _____ Dept. Affected: OOG
 Title An Act relating to filling the vacancy in the office RDU Elections
of United States senator, and to the definition of 'political party'. Component Elections
 Sponsor House Judiciary
 Requester House State Affairs Component No. 21

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2005 | FY 2006 | FY 2007 | FY 2008 | FY 2009 | FY 2010 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
|-----------------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|-----------------------------|--|--|--|--|--|--|

| | | | | | | |
|-------------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|-------------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|---|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type--Do not abbreviate) | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

This bill has no fiscal impact on the division, however, if a special election were required, the division would need to seek a special appropriation for that purpose. ** During the 1999 Legislative Session HB SCS CSHB 231 a GF appropriation of 939.0 was allocated to conduct a special election.

Prepared by: Leonard G. Jones Phone 465-3051
 Division Division of Elections Date/Time 2/2/04 9:45 AM
 Approved by: Laura A. Glaiser, Director Date 2/2/2004
 Agency Office of the Lt. Governor, Division of Elections

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: SCS CSHB 414(STA)
(S) Publish Date: 3/22/04

Revision Date/Time (Note if correction): _____ Dept. Affected: OOG
Title An Act relating to filling the vacancy in the office RDU Elections
of United States senator, and to the definition of 'political party'. Component Elections
Sponsor House Judiciary
Requester House Judiciary Component No. 21

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2005 | FY 2006 | FY 2007 | FY 2008 | FY 2009 | FY 2010 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
|-----------------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|-----------------------------|--|--|--|--|--|--|

| | | | | | | |
|-------------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|-------------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|---|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type--Dc not abbreviate) | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)
This bill has no fiscal impact on the Division. However, if a special election is required in the future, the Division would need to seek a special appropriation for that purpose.

Prepared by: Leonard G. Jones Phone 465-3051
Division: Division of Elections Date/Time 2/18/04 11:41 AM
Approved by: Laura A. Caiser, Director Date 2/18/2004
Agency: Office of the Lt. Governor, Division of Elections

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Terms: 17th amendment ([Edit Search](#))

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USCS Const. Amend. 17

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CONSTITUTION OF THE UNITED STATES OF AMERICA **AMENDMENTS** **AMENDMENT 17**

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USCS Const. Amend. 17 (2003)

Election of Senators.

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

The **Seventeenth Amendment** of the Constitution of the United States was proposed to the legislatures of the several states by the Sixty-second Congress on May 13, 1912, and was declared, in a proclamation of the Secretary of State, dated May 31, 1913, to have been ratified by the legislatures of the following states: Arizona, June 3, 1912; Arkansas, February 11, 1913; California, January 28, 1913; Colorado, February 5, 1913; Connecticut, April 8, 1913; Idaho, January 31, 1913; Illinois, February 13, 1913; Indiana, February 19, 1913; Iowa, January 30, 1913; Kansas, January 17, 1913; Maine, February 11, 1913; Massachusetts, May 22, 1912; Michigan, January 28, 1913; Minnesota, June 10, 1912; Missouri, March 7, 1913; Montana, January 30, 1913; Nebraska, March 14, 1913; Nevada, February 6, 1913; New Hampshire, February 19, 1913; New Jersey, March 17, 1913; New Mexico, March 13, 1913; New York, January 15, 1913; North Carolina, January 25, 1913; North Dakota, February 14, 1913; Ohio, February 25, 1913; Oklahoma, February 24, 1913; Oregon, January 23, 1913; Pennsylvania, April 2, 1913; South Dakota, February 19, 1913; Tennessee, April 1, 1913; Texas, February 7, 1913; Vermont, February 19, 1913; Virginia, February 4, 1913; Washington, February 7, 1913; West Wisconsin, February 18, 1913; and Wyoming, February 8, 1913.

Ratification was completed on April 8, 1913.

The **amendment** was subsequently ratified by Louisiana on June 11, 1914.

The amendment was rejected, and not subsequently ratified, by Utah on February 26, 1913.

NOTES:

RESEARCH GUIDE

Am Jur:

- 16A Am Jur 2d, Constitutional Law § 402.
- 25 Am Jur 2d, Elections § 103.
- 26 Am Jur 2d, Elections § 239.
- 77 Am Jur 2d, United States § 9.

Law Review Articles:

Choper. The Scope of National Power Vis-a-Vis the States: The Dispensability of Judicial Review. 86 Yale L J 1552.

INTERPRETIVE NOTES AND DECISIONS

1. Generally
2. Primary elections
3. Special elections

1. Generally

Requirement that United States senators from each state be "elected by the people thereof" does not require that candidate receive majority of votes cast at general election in order to be elected. Phillips v Rockefeller (1970, CA2 NY) 435 F2d 976.

Despite presumption of enfranchisement, there is no per se rule against disenfranchisement; rather Supreme Court has recognized that in special interest elections government can limit franchise to those who have required special interest. Duncan v Coffee County (1995, CA6 Tenn) 69 F3d 88, 1995 FED App 321P.

Word "qualifications" in constitutional provisions concerning election of members of the House of Representatives and Senators means natural endowments or requirements which fit person for place, office, or employment, or as elector; restrictions on right of voter to vote because of his failure to register or to vote in particular manner at certain time and place are limitations on right, and not on qualification to exercise it. Commonweath ex rel. Dummit v O'Connell (1944) 298 Ky 44, 181 SW2d 691.

2. Primary elections

Political party's rule permitting registered voters not affiliated with any party to vote in that party's primary election for U.S. House of Representatives and Senate while remaining silent as to voting in that party's primary elections for state legislature, did not violate federal constitution under qualifications of federal congressional electors clause (Art I, § 2, Cl 1) and **Seventeenth Amendment**, since rule did not disenfranchise any voter in federal congressional election who was qualified to vote in primary or general election for more numerous house of that state's legislature, and **Seventeenth Amendment** and qualification of congressional electors clause do not require perfect symmetry of qualifications of voters in state and federal legislative elections. Tashjian v Republican Party (1986) 479 US 208, 93 L Ed 2d 514, 107 S Ct 544.

Seventeenth Amendment does not require state to hold primary for nominations to fill senatorial vacancy. Trinsey v Pennsylvania (1991, CA3 Pa) 941 F2d 224, cert den (1991) 502 US 1014, 116 L Ed 2d 750, 112 S Ct 658.

State executive committee of recognized political party may call special primary election for nomination of its candidate or candidates to be voted for in ensuing general election when, by reason of death, resignation, or otherwise, office of United States Senator becomes vacant at time when it is too late for candidate to qualify to be voted for in general primary elections held biennially, and when there is sufficient time intervening between happening of condition creating vacancy and date of ensuing general election in which to call and hold such special primary election; when such special primary election is called by state executive committee of recognized political party, it becomes duty of state and county officers to function in connection

with such special primary election in same manner and to same extent that they would function in connection with general primary election. State ex rel. Andrews v Gray (1936) 125 Fla 1, 169 So 501.

3. Special elections

Election directed to be held by writ of election issued by governor of state to fill vacancy in office of United States Senator, which election was to be held on same day as primary election, was special election at which absent voters ballots could not be cast. State ex rel. Lanier v Hall (1946) 74 ND 426, 23 NW2d 44 (superseded by statute on other grounds as stated in State ex rel. Kusler v Sinner (1992, ND) 491 NW2d 382).

Under **Seventeenth Amendment**, governor of state would be authorized to issue writ of election to fill vacancy caused by death of senator; such writ may be defined as written order from governor directed to proper authority commanding it to hold state-wide election on day certain, as provided by law, for purpose of electing senator for unexpired term of deceased senator. Advisory Opinion to Governor (1946) 157 Fla 885, 27 So 2d 409.

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Terms: [17th amendment](#) ([Edit Search](#))

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Date/Time: Friday, January 30, 2004 - 12:31 PM EST

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LEGISLATIVE RESEARCH REPORT

FEBRUARY 20, 2002



REPORT NUMBER 02.133

POLITICAL PARTY AFFILIATION OF APPOINTEES TO THE U.S. SENATE—LEGISLATIVE HISTORY

BY PATRICIA YOUNG, MANAGER

You wished to know the legislative history behind the requirement that, when filling a vacancy in the office of U.S. Senator, the governor must appoint an individual from the political party of the person who vacated the office.

As originally passed in 1960, the law in Alaska specified as follows in regard to the qualifications of appointees to the office of U.S. Senator:

The appointee shall be a member of the same political party as that which nominated the predecessor in office. If the predecessor in office was not nominated by a political party, the governor may appoint any qualified person.¹

The provision remained unchanged until 1967 when lawmakers repealed the section. The act became law without Governor Hickel's signature and went into effect in April of 1967.²

In December of 1968, Senator E.L. (Bob) Bartlett, a Democrat, died in office. Because at that time the law was silent on the matter of political party affiliation of appointees, Republican Governor Hickel was able to appoint Ted Stevens, also a Republican, to fill the vacancy left by the death of Senator Bartlett. As you know, Senator Stevens still holds that seat.

In 1998, Alaska lawmakers amended AS 15.40.010, to require that the governor, within 30 days of the date of the vacancy, fill such vacancy by appointing an individual who, if the predecessor

¹ Codified at AS 15.40.020, the provision on qualification of appointee passed as Sec. 8.02, ch 83 SLA 1960.

² Ch 139 SLA 1967.

was nominated by a political party, has been for at least the previous six months a member of the same political party as the predecessor in office.³

As you may know, governors typically make temporary appointments to fill U.S. Senate vacancies. Alaska is one of a small minority of states, however, in which the governor is required to appoint an individual of the same political party as the predecessor in office.⁴

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

³ Chapter 30 SLA 1998 also specified that the governor's appointment is temporary until the vacancy is filled permanently by election, and that the vacancy must be permanently filled by special election if the predecessor's term would expire more than 30 months after the date of the vacancy. The date of the special primary election would be the date of the first primary election held more than 30 days after the vacancy; the date of the special general election would be the date of the first general election held after such primary election.

⁴ The National Conference of State Legislatures (NCSL) compiled information on filling vacancies in the U.S. Senate from the *Senate Election Law Guidebook 2000: A Compilation of Senate Campaign Information Including Federal and State Laws Governing Election to the United States Senate*, a publication of the Committee on Rules and Administration, U.S. Senate (106th Congress, Revised to January 1, 2000; November 19, 1999). According to the NCSL compilation, at that time only Oregon and Wisconsin did not permit a governor to make an appointment filling such a vacancy. Also at that time, Arizona, Hawaii, Utah, and Wyoming were the only states in which the governor was required to appoint an individual from the same political party as the predecessor. The Guidebook is available in its entirety on-line at http://nwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_documents&docid=f:sd014.106. We include as Attachment A the NCSL compilation of the laws regarding vacancies.

Attachment A

**National Conference of State Legislatures, Compilation of Information on Laws
Governing Vacancies in the U.S. Senate, from
*Senate Election Law Guidebook 2000: A Compilation of Senate Campaign
Information Including Federal and State Laws Governing Election to the United
States Senate*, a publication of the Committee on Rules and Administration, U.S.
Senate (106th Congress, Revised to January 1, 2000; November 19, 1999)**



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

State Laws Governing Vacancies in the U.S. Senate

The process of filling vacancies in the U.S. Senate is governed by both state and federal law. The U.S. Constitution stipulates that states must hold a special election to fill a senate vacancy, and permits state legislatures to determine the timing of such special elections. It also permits a state legislature to empower the governor to make a temporary appointment to fill the vacancy until a special election is held. (See Appendix A)

Most state legislatures have granted governors the power to make such interim appointments. Oregon and Wisconsin are the only two states that do not permit the governor to make an appointment, and require that the senate seat remain vacant until filled at a special election.

In most states, the governor's temporary appointee remains in office until the next regularly-scheduled general election, when a new senator is elected. Even though this election coincides with a regularly-scheduled general election, it is deemed a special election because the person elected will not serve a full term as U.S. Senator. Rather, that person serves out the unexpired term of the vacated office.

In very few states, the governor's appointee fills the unexpired term of the office vacated.

(See Appendices B and C for details of state laws)

APPENDIX A

Text of Federal Laws Governing U.S. Senate Vacancies

U.S. Constitution, Article I, Section 3

...if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

U.S. Constitution, 17th Amendment

When vacancies happen in the representation of any state in the Senate, the executive authority of such state shall issue writs of election to fill such vacancies: Provided, that the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

2 U.S.C. Sec. 8. Vacancies

The time for holding elections in any State, district, or territory for a Representative or Delegate to fill a vacancy, whether such vacancy is caused by a failure to elect at the time prescribed by law, or by the death, resignation, or incapacity of a person elected, may be prescribed by the laws of the several States and territories respectively.

APPENDIX B

Text of State Laws Governing U.S. Senate Vacancies

ALABAMA

The Governor may make temporary appointment of a Senator in the Senate of the Congress of the United States from Alabama, whenever a vacancy exists in that office, the appointee to hold office until his successor is elected and qualified (Sec. 36-9-7).

Whenever a vacancy occurs in the office of Senator of and from the State of Alabama in the Senate of the United States more than 4 months before a general election, the Governor of Alabama shall forthwith order an election to be held by the qualified electors of the State to elect a Senator of and from the State of Alabama to the United States Senate for the unexpired term. If the vacancy occurs within 4 months of but more than 60 days before a general election, the vacancy shall be filled at that election. If the vacancy occurs within 60 days before a general election, the Governor shall order a special election to be held on the first Tuesday after the lapse of 60 days from and after the day on which the vacancy is known to the Governor, and the Senator elected at such special election shall hold office for the unexpired term (Sec. 36-9-8).

The Governor must give notice of a special election to elect a Senator for an unexpired term in the same manner and for the same time as is prescribed for special elections to fill a vacancy in the office of Members of the House of Representatives (Sec. 36-9-9), i.e., by proclamation (Sec. 17-18-4). For special election procedures, see Sec. Sec. 17-18-1-17-18-7.

ALASKA

When a vacancy occurs in the office of a United States Senator, the Governor, within 30 days, shall appoint a qualified person of the same political party of the predecessor to fill the vacancy. However, if the remainder of the term of the predecessor in the office will expire more than 30 calendar months after the vacancy, the vacancy will be filled by a special primary and special general election. (Sec. 15.40.010).

The special primary election shall be held on the date of the first primary election that is held more than 30 days after the vacancy. The special election to fill the vacancy shall be held on the date of the first general election after the first primary election which is held more than 30 days after the vacancy occurs (Sec. 15.40.050).

The Governor shall issue the proclamation calling the special election at least 80 days before the election (Sec. 15.40.060).

At the special election a United States Senator shall be elected to fill the remainder of the unexpired term (Sec. 15.40.070).

ARIZONA

When a vacancy occurs in the office of United States Senator by reason of death or resignation, or from any other cause, the vacancy shall be filled at the next general election. At such election the person elected shall fill the unexpired term of the vacated office. In the interim, the governor shall appoint a person to fill the vacancy. That appointee shall be of the same political party as the person vacating the office and shall serve until the person elected at the next general election is qualified and assumes office (Sec. 16-222).

ARKANSAS

A vacancy in the United States Senate from Arkansas shall be filled by the governor by temporary appointment until the people fill the vacancy at the next ensuing general election for state and county officers to be held more than 60 days and less than 12 months after such vacancy shall occur; provided that if no general election for state and county officers shall occur within 12 months after such vacancy, the governor shall call a special election to be held not less than 60 days and not more than 120 days after the vacancy shall occur (Sec. 7-8-102).

CALIFORNIA

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 successor is elected and qualifies and is admitted to his seat by the United States Senate. However, whenever a vacancy occurs within 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 such vacancy is filled at a special election held prior to such general election, in which case the person elected at such 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

(Sec. 10720).

The special election shall be proclaimed within 14 calendar days after the occurrence of the vacancy (Sec. 10700). When the 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 (Sec. 10701).

COLORADO

(1) Whenever a vacancy happens in the office of United States Senator from this State, the Governor shall make a temporary appointment to fill such vacancy until the same is filled by election.

(2) When a vacancy happens, the Governor shall direct the Secretary of State to include in the general election notice for the next general election a notice of the filling of such vacancy. The Secretary of State shall give notice accordingly. At such election the vacancy shall be filled for the unexpired term. If for any reason, no United States Senator is elected at the next general election, the person temporarily appointed by the Governor shall hold the office until a United States Senator is elected at a succeeding general election (Sec. 1-12-201).

CONNECTICUT

In case of a vacancy in the office of Senator in Congress, the Governor is empowered to fill such vacancy by appointment. If such vacancy occurs 60 or more days prior to a state election, the appointee shall serve until the third day of January following such election, and at such election there shall be elected a Senator in Congress to serve for the remaining portion, if any, of the term vacated. If such vacancy occurs within less than 60 days of a state election and the term vacated does not expire on the third day of January following such election, the appointee shall serve until the third day of January following the next such election but one, and at such next election but one there shall be elected a Senator in Congress to serve for the remaining portion, if any, of the term vacated. If such vacancy occurs within less than 60 days of a state election and the term vacated expires on the third day of January following, the appointee shall serve until such third day of January (Sec. 9-211).

DELAWARE

When a vacancy occurs in the office of the United States Senate, it shall be filled for the unexpired term at the next general election. The Governor may make a temporary appointment from among the qualified electors of the State until the vacancy is filled by the next general election (Sec. 7321).

FLORIDA

If a vacancy happens in the representation of the State in the United States Senate, the Governor shall issue a writ of election to fill such vacancy at the next general election; and the Governor may make a temporary appointment until the vacancy is filled by election (Sec. 100.161).

GEORGIA

In the event of a vacancy, it shall be filled by special election at the next November election, occurring at least 40 days after the occurrence of such vacancy, and until such election, the Governor may make a temporary appointment to fill such vacancy (Sec. 21- 2-542).

HAWAII

When a vacancy occurs in the office of a United States Senator, the vacancy shall be filled for the unexpired term at the following state general election, provided that the vacancy occurs not later than 4:30 p.m. on the 60th day prior to the date of the primary for nominating candidates to be voted for at the election; otherwise at the state general election next following. The chief election officer shall issue a proclamation designating the election for filling the vacancy. Pending the election, the governor shall make a temporary appointment to fill the vacancy and the person so appointed shall serve until the election and qualification of the person duly elected to fill the vacancy and shall be a registered member of the same political party as the Senator causing the vacancy. All candidates for the unexpired term shall be nominated and elected in accordance with this title (Sec. 17-1).

IDAHO

Whenever any vacancy shall occur in the office of United States Senator from the State of Idaho by death, resignation or otherwise, the governor shall have the power and is hereby authorized and empowered to fill such vacancy by appointment, and the person so appointed shall hold office until such time as a United States Senator is regularly elected to fill such vacancy at the next succeeding general election, and qualifies by virtue of such election; provided, however, that in case a vacancy occurs in the position of United States Senator from the state of Idaho within 30 days of any general election, no election for United States Senator to fill said vacancy shall be held at such general election (Sec. 59-910).

ILLINOIS

When a vacancy shall occur in the office of United States Senator from Illinois, the Governor shall make temporary appointment to fill such vacancy until the next election of representatives in Congress, at which time such vacancy shall be filled by election, and the senator so elected shall take office as soon thereafter as he shall receive his certificate of election (Sec. 5/25-8).

INDIANA

- (a) A vacancy that occurs, other than by resignation, in the United States Senate shall be certified to the governor by the secretary of state.
- (b) The governor shall immediately fill a vacancy in the United States Senate by appointing a person possessing the qualifications required under Article 1, Section 3, Clause 3 of the Constitution of the United States. The person appointed holds office until the next general election, when the vacancy shall be filled by the election of a Senator in a special election to hold office for the unexpired term.
- (c) If a vacancy in the United States Senate occurs after the last day on which notice of the special election can be published under IC 3-10-8-4, the person appointed under subsection (b) holds office until the vacancy is filled in a special election held at the time of the next general election for which notice can be published under IC 3-10-8-4 (Sec. 3-13-3-1).

IOWA

In the office of United States Senator, when the vacancy occurs when the Senate of the United States is in session or when such Senate will convene prior to the next general election, it shall be filled by the Governor. Such appointment shall be for the period until the vacancy is filled by election pursuant to law (Sec. 69.13, Supp.). If a vacancy occurs in the office of Senator in the Congress of the United States 89 or more days prior to a general election, and the unexpired term in which the vacancy exists has more than 70 days to run after the date of that general election, the vacancy shall be filled for the balance of the unexpired term at that general election and the person elected to fill the vacancy shall assume office as soon as a certificate of election has been issued and the person qualified (Sec. 69.13).

KANSAS

When a vacancy shall occur in the office of United States Senator from this state, the governor shall make a temporary appointment to fill such vacancy until the next election of representatives in Congress, at which time such vacancy shall be filled by election, and the senator so elected shall take office as soon thereafter as he shall receive his certificate of election (Sec. 25-318).

KENTUCKY

The Governor shall fill vacancies in the office of United States Senator by appointment until the next regular election at which members of the lower branch of Congress are elected, and shall, under the Seal of the Commonwealth, certify the appointment to the President of the Senate of the United States. The certificate of appointment shall be countersigned by the Secretary of State (Sec. 63.200).

LOUISIANA

The Governor may fill any vacancy in the office of United States Senator by appointment; however, if the United States Senate is in session when the vacancy occurs, the Governor, within ten days after receiving official notice of the vacancy, shall appoint a Senator to fill the vacancy. If a vacancy occurs in the office of United States Senator and the unexpired term is more than one year, any appointment to fill the vacancy shall be temporary, and any Senator so appointed shall serve until his successor is elected at a special election and takes office, and the Governor, within ten days after receiving official notice of the vacancy, shall issue his proclamation for a special election to fill the vacancy for the unexpired term. The date of the special election shall be established by the

Governor in accordance with the provisions of R.S. 18:402(E). The election shall be conducted and the returns shall be certified as in regular elections for United States Senator. (Sec. 1278(A), (B)).

MAINE

Within a reasonable time after a vacancy occurs, the Governor shall appoint a qualified person to fill the vacancy until his successor is elected and qualified. If the vacancy occurs 60 days or more before a regular primary election, nominees must be chosen at the primary and a successor elected for the remainder of the term at the general election. If the vacancy occurs less than 60 days before a regular primary election, nominees must be chosen at the next regular primary following the one in question, and a successor elected for the remainder of the term at the general election (Sec. 391).

MARYLAND

In the event of a vacancy in said office of Senator, however said vacancy may arise, the Governor of the State shall make a temporary appointment of a Senator who shall serve until the people shall fill such vacancy by nomination and election (Sec. 21-1(c)).

Special election.—It shall be the duty of the Governor of the State, within 10 days after such vacancy shall have been made or becomes known to him, to issue a proclamation accompanied by a writ of election declaring and providing that at the next ensuing primary election held for the nomination of candidates for the House of Representatives, candidates for said unexpired portion of the term of said office of Senator in which such vacancy has occurred shall be nominated in the manner aforesaid. The election of a Senator to fill such unexpired portion of said term shall take place at the next ensuing general congressional election (Sec. 21-1(d)).

MASSACHUSETTS

The vacancy shall be filled for the unexpired term at the following biennial state election provided said vacancy occurs not less than seventy days prior to the date of the primaries for nominating candidates to be voted for at such election, otherwise at the biennial state election next following. Pending such election the governor shall make a temporary appointment to fill the vacancy, and the person so appointed shall serve until the election and qualification of the person duly elected to fill such vacancy (ch. 54, Sec. 139).

MICHIGAN

Whenever a vacancy shall occur in the office of United States Senator, the Governor shall appoint, to fill the vacancy, some suitable person having the necessary qualifications for Senator. The person so appointed shall hold office from the time of his appointment and qualification until the first day of December following the next general November election which occurs more than one hundred twenty days after such vacancy happens. At such general November election, a United States Senator to fill such vacancy shall be elected and the person so elected shall hold office from the first day of December following such election for the balance of the unexpired term of the Senator whose vacancy is filled (Sec. 168.105).

MINNESOTA

Every vacancy shall be filled for the remainder of the term by a special election, except that no special election shall be held in the year before the term expires. The special election shall be held at the next November election if the vacancy occurs at least 6 weeks before the regular primary preceding that election. If the vacancy occurs less than 6 weeks before the regular primary preceding the next November election, the special election shall be held at the second November election after the vacancy occurs. The Governor may make a temporary appointment to fill any vacancy until the next special or regular election (Sec. 204D.28).

MISSISSIPPI

If a vacancy shall occur in the office of United States Senator from Mississippi by death, resignation, or otherwise, the Governor shall, within ten days receiving official notice of such vacancy, issue his proclamation for an election to be held in the State to elect a Senator to fill such unexpired term as may remain, provided the unexpired term is more than 12 months, and election shall be held within 90 days from the time the proclamation is issued and the returns of such election shall be certified to the Governor in the manner set out for regular elections unless the vacancy occurs in a year in which there shall be held a general state or congressional election, in which event the Governor's proclamation shall designate the general election day as the time for electing a Senator, and the vacancy shall be filled by appointment as hereinafter provided (Ser. 23-15-855).

In case of a vacancy, the Governor may appoint a Senator to fill such vacancy temporarily, and if the United States Senate is in session at the time the vacancy occurs, the Governor shall appoint a Senator within 10 days after receiving official notice thereof, and the Senator so appointed shall serve until his successor is elected and

commissioned; provided, that such unexpired term as he may be appointed to fill shall be for a longer time than 1 year, but if for a shorter time than one year, he shall serve for the full time of the unexpired term and no special election shall be called by the Governor, but his successor shall be elected at the regular election (Sec. 23-15-855).

MISSOURI

Whenever a vacancy in the office of Senator of the United States occurs, the Governor shall appoint a person to fill such vacancy who shall continue in office until a successor shall have been duly elected and qualified according to law (Sec. 105.040).

MONTANA

If a vacancy occurs, an election to fill the vacancy shall be held at the next general election. If the election is invalid or not held at that time, the election to fill the vacancy shall be held at the next succeeding general election. The Governor may make a temporary appointment to fill the vacancy until an election is held (Sec. 13-25-202).

NEBRASKA

When a vacancy occurs in the representation of the State of Nebraska in the Senate of the United States, the office shall be filled by the Governor. The Governor shall appoint a suitable person possessing the qualifications necessary for senator to fill such vacancy. If the vacancy occurs within 60 days of a statewide general election and if the term vacated expires on the following January 3, the appointee shall serve until the following January 3, and if the term extends beyond the following January 3, the appointee shall serve until January 3 following the second statewide general election next succeeding his or her appointment. If the vacancy occurs more than 60 days before a statewide general election, the appointee shall serve until January 3 following the statewide general election and at the statewide general election a senator shall be elected to serve the unexpired term if any (Sec. 32-565).

NEVADA

If a vacancy occurs due to death, resignation or otherwise, the Governor may appoint some qualified person to fill the vacancy, who shall hold office until the next general election and until his successor shall be elected and seated (Sec. 304.030).

NEW HAMPSHIRE

If a vacancy occurs, the Governor shall fill the vacancy by temporary appointment until it is filled at the next general election (Sec. 661:5).

NEW JERSEY

If a vacancy occurs, the Governor shall issue a writ of election to fill the same unless the term of service of the person whose office shall become vacant will expire within 6 months next after the happening of the vacancy (Sec. 19:27-4). If the vacancy shall happen within 64 days next preceding the primary prior to the general election, it shall be filled by election at the second succeeding election unless the Governor shall deem it advisable to call a special election therefor (Sec. 19:27-6).

The Governor may make a temporary appointment of a Senator whenever a vacancy shall occur by reason of any cause other than the expiration of the term; and such appointee shall serve as such Senator until a special election or general election shall have been held pursuant to law and the board of state canvassers can deliver to his successor a certificate of election (Sec. 19:3-26).

NEW MEXICO

If a vacancy occurs, the Governor shall make a temporary appointment to fill the vacancy until such time as an election is held to fill the vacancy for the unexpired term. The election to fill the vacancy for the unexpired term shall be held at the next general election occurring not less than thirty (30) days subsequent to the happening of such vacancy. If the vacancy occurs within thirty (30) days next preceding a general election, the person appointed by the Governor to fill the vacancy shall hold office until the next general election occurring more than thirty (30) days subsequent to the happening of the vacancy unless the term of office for such Senator shall sooner expire. Candidates to fill a vacancy in the office of United States Senator for an unexpired term shall be nominated and elected in the same manner as candidates are nominated and elected for the full term (Sec. 1-15-14).

NEW YORK

At the general election next preceding the expiration of the term of office of a United States Senator from this state, a United States Senator shall be elected by the people for a full term of 6 years. Elections to fill a vacancy for an unexpired term shall be held as provided in the public officers law (Sec. 12-200).

If a vacancy occurs in any even-numbered calendar year on or after the 59th day prior to an annual primary election, the Governor shall make a temporary appointment to fill such vacancy until the third day of January in the year following the next even-numbered calendar year. If such vacancy occurs in any even-numbered calendar year on or before the 60th day prior to an annual primary election, the Governor shall make a temporary appointment to fill such vacancy until the third day of January in the next calendar year. If a vacancy occurs in any odd-numbered year, the Governor shall make a temporary appointment to fill such vacancy until the third day of January in the next odd-numbered calendar year. Such an appointment shall be evidenced by a certificate of the Governor which shall be filed in the Office of the State Board of Elections along with a writ of election (McKinney's Public Officers Law, Sec. 42(4-a)).

NORTH CAROLINA

Whenever there shall be a vacancy in the office of United States Senator from this State, whether caused by death, resignation, or otherwise than by expiration of term, the Governor shall appoint to fill the vacancy until an election shall be held to fill the office. The Governor shall issue his writ for the election of a Senator to be held at the time of the first election for members of the General Assembly that is held more than 60 days after the vacancy occurs. The person elected shall hold office for the remainder of the unexpired term. The election shall take effect from the date of the canvassing of the returns (Sec. 163-12).

NORTH DAKOTA

When a vacancy occurs in the office of United States senator from this state, the governor shall issue a writ of election to fill the vacancy at the next statewide primary or general election, whichever occurs first, and that occurs at least ninety days after the vacancy. However, if the next primary or general election at which the vacancy could be filled, occurs in the year immediately preceding the expiration of the term, then no election may be held. The governor, by appointment, may fill the vacancy temporarily, but any person so appointed shall serve only until the vacancy is filled by election or until the term expires if no election can be held (Sec. 16.1-13-08).

OHIO

If a vacancy occurs, the Governor shall make a temporary appointment of some suitable person having the necessary qualifications for Senator. The appointee shall hold office until the 15th of December succeeding the next regular state election which occurs more than 180 days after such vacancy happens. At that next regular state election, a special election to fill the vacancy shall be held, provided, that when the unexpired term ends within 1 year immediately following the date of such regular state election the appointment shall be for the unexpired term (Sec. 3521.02).

OKLAHOMA

Whenever a vacancy shall occur in the office of a member of the United States Senate from Oklahoma, such vacancy shall be filled at a special election to be called by the Governor within 30 days after occurrence of the vacancy. No special election shall be called if the vacancy occurs after March 1 of any even-numbered year if the term of the office expires the following year. In this case the candidate elected to the office at the regular General Election shall be appointed by the Governor to fill the unexpired term (Sec. 12-101).

OREGON

Under Article V, Section 16 of the Constitution of Oregon, if a vacancy occurs in the office of United States Senator, the vacancy shall be filled at the next general election provided such vacancy occur more than 20 days prior to such general election.

(1) If a vacancy in election or office of Representative in Congress or United States Senator occurs before the 61st day before the general election, the Governor shall call a special election to fill that vacancy. If a vacancy in election or office of United States Senator occurs after the 62nd day before the general election but on or before the general election, and if the term of that office is not regularly filled at that election, the Governor shall call a special election to fill the vacancy as soon as practicable after the general election.

(2) If a special election to fill the vacancy in election or office of Representative in Congress or United States Senator is called before the 80th day after the vacancy occurs, each major political party shall select its nominee for the office and certify the name of the nominee to the Secretary of State. The Secretary of State shall place the name of the nominee on the ballot.

(3) If a special election to fill the vacancy in election or office of Representative in Congress or United States Senator is called after the 79th day after the vacancy occurs, a special primary election shall be conducted by the Secretary of State for the purpose of nominating a candidate of each major political party. A declaration of candidacy or nominating petition may be filed not later than the 10th day following the issuance of the writ of

election (Sec. 188.120).

PENNSYLVANIA

If a vacancy occurs, it shall be filled for the unexpired term by the vote of the electors of the State at a special election held at the next general or municipal election, occurring at least 90 days after the happening of such vacancy. Candidates shall be nominated by political parties in accordance with party rules and by means of nomination certificates. Until such time as the vacancy shall be filled by an election, the Governor may make a temporary appointment to fill the vacancy (Sec. 2776).

RHODE ISLAND

If a vacancy occurs, it shall be filled at the next general election after the expiration of 70 days from the date of such vacancy. In case of such vacancy, the Governor shall make a temporary appointment of a person, pending the results of such an election (Sec. 17-4-9).

SOUTH CAROLINA

If a vacancy occurs, the Governor may fill such vacancy by appointment for the period of time intervening between the date of such appointment and January 3 following the next succeeding general election. But, if such vacancy occurs less than 100 days prior to any general election, the appointment shall be for the period of time intervening between the date of such appointment and January 3 following the second general election next succeeding. The Governor shall within 5 days after any such appointment order an election to occur at the time of the general election immediately preceding the expiration date of the appointment if at the expiration of such appointment an unexpired term shall remain. (Sec. 7-19-20).

SOUTH DAKOTA

If a vacancy occurs, it is the duty of the Governor within 10 days of the occurrence to issue a proclamation setting the date of and calling for a special election to fill the vacancy. If either a primary or general election is to be held within 6 months, an election to fill a vacancy in the office of representative in the United States Congress shall be held in conjunction with that election; otherwise, the election shall be held not less than 80 nor more than 90 days after the vacancy occurs (Sec. 12-11-1). The Governor may fill by temporary appointment, until a special election is held, vacancies in the office of U.S. Senator (Sec. 12-11-4).

TENNESSEE

If a vacancy occurs in the office of United States Senator, a successor shall be elected at the next regular November election and shall hold office until the term for which his predecessor was elected expires. If the vacancy will deprive the State of its full representation at any time Congress may be in session, the governor shall fill the vacancy by appointment until a successor is elected at the next regular November election and is qualified (Sec. 2-16-101).

TEXAS

The governor shall appoint a person to fill a vacancy in office if the vacancy exists or will exist when congress is in session. The appointee serves until a successor has been elected and has qualified (Sec. 204.002). If a vacancy occurs during an odd-numbered year or after the 62nd day before general primary election day in an even-numbered year, the remainder of the unexpired term shall be filled by a special election except that the minimum number of signatures that must appear on a petition accompanying a candidate's application for a place on the ballot is 5,000 (Sec. 204.005, Supp.).

UTAH

When a vacancy occurs in the office of U.S. senator, it shall be filled for the unexpired term at the next regular general election. The governor shall appoint a person to serve as U.S. senator until the vacancy is filled by election from one of three persons nominated by the state central committee of the same political party as the prior office-holder (Sec. 20A-1-502(2)).

VERMONT

If a vacancy occurs in the office of United States Senator, the governor shall call a special election to fill the vacancy. His proclamation shall specify a day for the special election and a day for a special primary. The special election shall be held not more than 3 months from the date that the vacancy occurs, except that, if vacancy occurs within 6 months of a general election, the special election may be held the same day as the general election (Sec. 2621). The governor may make an interim appointment to fill a vacancy in the office of United States Senator, pending the filling of the vacancy by special election (Sec. 2622).

VIRGINIA

When any vacancy occurs in the representation of the Commonwealth of Virginia in the United States Senate, the Governor shall issue a writ of election to fill the vacancy for the remainder of the unexpired term. The election shall be held on the next succeeding November general election date or, if the vacancy occurs within 120 days prior to that date, on the second succeeding November general election date. The Governor may make a temporary appointment to fill the vacancy until the qualified voters fill the same by election. (Sec. 24.2-207).

WASHINGTON

When a vacancy happens in the representation of the State in the Senate of the United States, the Governor shall make a temporary appointment until the people fill the vacancy by election (Sec. 29.68.070).

Whenever a vacancy occurs in the office of United States representative or United States senator from this state or any congressional district of this state, the governor shall order a special election to fill the vacancy. Within 10 days of such vacancy occurring, he or she shall issue a writ of election fixing a date for the special vacancy election not less than 90 days after the issuance of the writ, fixing a date for the primary for nominating candidates for the special vacancy election not less than 30 days before the day fixed for holding the special vacancy election, fixing the dates for the special filing period, and designating the term or part of the term for which the vacancy exists. If the vacancy occurs less than 6 months before a state general election and before the second Friday following the close of the filing period for that general election, the special primary and special vacancy elections shall be held in concert with the state primary and state general election in that year. If the vacancy occurs on or after the first day for filing under RCW 29.18.030 and on or before the second Friday following the close of the filing period, a special filing period of 3 normal business days shall be fixed by the governor and notice thereof given to all media, including press, radio, and television within the area in which the vacancy election is to be held, to the end that, insofar as possible, all interested persons will be aware of such filing period. The last day of the filing period shall not be later than the third Tuesday before the primary at which candidates are to be nominated. The names of candidates who have filed valid declarations of candidacy during this 3-day period shall appear on the approaching primary ballot. If the vacancy occurs later than the second Friday following the close of the filing period, a special primary and special vacancy election to fill the position shall be held after the next state general election but, in any event, no later than the 90th day following the November election. As used in this chapter, "county" means in the case of a vacancy in the office of United States senator, any or all of the counties in the state and, in the case of a vacancy in the office of United States representative, only those counties wholly or partly within the congressional district in which the vacancy has occurred (Sec. 29.68.080).

WEST VIRGINIA

Any vacancy occurring in the office of secretary of state, auditor, treasurer, attorney general, commissioner of agriculture, United States Senator, judge of the supreme court of appeals, or in any office created or made elective, to be filled by the voters of the entire state, or judge of a circuit court, shall be filled by the governor of the state by appointment. If the unexpired term of a judge of the supreme court of appeals, or a judge of the circuit court, be for less than 2 years, or if the unexpired term of any other office named in this section be for a period of less than 2 years and 6 months, the appointment to fill the vacancy shall be for the unexpired term. If the unexpired term of any office be for a longer period than above specified, the appointment shall be until a successor to the office has timely filed a certificate of candidacy, has been nominated at the primary election next following such timely filing and has thereafter been elected and qualified to fill the unexpired term. Proclamation of any election to fill an unexpired term shall be made by the governor of the state, and, in the case of an office to be filled by the voters of the entire state, shall be published prior to such election as a Class II-0 legal advertisement in compliance with the provisions of article 3 [Sec. 59-3-1 et seq.], chapter 59 of this code, and the publication area for such publication shall be each county of the state. If the election is to fill a vacancy in the office of judge of a circuit court, the proclamation shall be published prior to such election as a Class II-0 legal advertisement in compliance with the provisions of article 3, chapter 59 of this code, and the publication area for such publication shall be each county in the judicial circuit (Sec. 3-10-3).

WISCONSIN

Vacancies in the office of U.S. Senator shall be filled by election, as provided in Sec. 8.50(4)(b), for the residue of the unexpired term (Sec. 17.18). A vacancy in the office of U.S. Senator occurring prior to the 2nd Tuesday in May in the year of the general election shall be filled at a special primary and election. A vacancy in that office occurring between the 2nd Tuesday in May and the 2nd Tuesday in July in the year of the general election shall be filled at the September primary and general election (Sec. 8.50(4)(b)).

WYOMING

If a vacancy occurs in the office of United States Senator, the governor shall fill the vacancy by temporary appointment according to specified rules (Sec. 22-18-111(a)(i)).

APPENDIX C

Summary of State Laws Governing U.S. Senate Vacancies

| | Date of Special Election | Interim Appointment | Term of Appointee | Restrictions on Appointment |
|-------------|--|---------------------|--|---|
| Alabama | Such as the governor directs, if vacancy occurs more than 4 months before next general election | Yes - governor | Until successor is elected and qualified | None |
| Alaska | On date of the first primary & general that is held more than 30 days after the vacancy | Yes - governor | If predecessor's term has 30 months or more remaining, until special election is held. | Within 30 days Qualified person of same political party of predecessor |
| Arizona | Next general election | Yes - governor | Unexpired term of vacated office | Same political party as person vacating office |
| Arkansas | Next state/county general election more than 60 days and less than 12 months after vacancy occurs; if no general election falls during that time, governor must call a special to be held no less than 60 and no more than 120 days after the vacancy occurs | Yes - governor | Until next general election | None |
| California | Next general election succeeding vacancy; must be proclaimed within 14 days of vacancy; governor may decline to issue election proclamation if vacancy occurs after close of nomination period in final year of the term of office | Yes - governor | Until successor is elected, qualifies and is admitted to his seat by the Senate | An elector of the state who possesses the qualifications for the office |
| Colorado | Next general election | Yes - governor | Until office is filled by election | None |
| Connecticut | Next general state election | Yes - governor | If vacancy occurs 60 or more days before an election, until Jan. 3 following election. | None |
| Delaware | Next general election | Yes - governor | Until vacancy is filled at next general election | Qualified elector of the state |

| | Date of Special Election | Interim Appointment | Term of Appointee | Restrictions on Appointment |
|------------------|--|----------------------------|--|--|
| Florida | Next general election | Yes – governor | Until vacancy is filled at next general election | None |
| Georgia | Next November election occurring at least 40 days after vacancy | Yes – governor | Until vacancy is filled at next general election | None |
| Hawaii | Following state general election, provided vacancy occurs no later than 4:30pm on 60 th day prior to primary; otherwise at state general election next following | Yes – governor | Until vacancy is filled at next general election | Registered member of same political party as Senator causing the vacancy |
| Idaho | Next regularly scheduled election for senator | Yes – governor | Until a Senator is regularly elected to fill such vacancy | None |
| Illinois | Next election of representatives in Congress | Yes – governor | Until vacancy filled at next general election | None |
| Indiana | Next general election | Yes – governor | Until the next general election | None |
| Iowa | If vacancy occurs 89 days or more prior to a general election; and unexpired term has more than 70 days to run after that election, vacancy is filled for balance of unexpired term at that general election | Yes – governor | Until vacancy is filled | None |
| Kansas | Next congressional election | Yes – governor | Until vacancy is filled at next election of representatives in Congress | None |
| Kentucky | Next congressional election | Yes – governor | Until vacancy is filled at next election of representatives in Congress | None |
| Louisiana | See RS 18:402(B) | Yes – governor | If unexpired term is more than one year, appointee serves until successor is elected at a special election | Within 10 days of receiving official notice of vacancy |

| | Date of Special Election | Interim Appointment | Term of Appointee | Restrictions on Appointment |
|----------------------|---|---|---|---|
| Maine | Next general election | Yes – governor | Until the next regular election, if the vacancy occurs 60 days or more before a regular primary; until the next election following the one in question, if vacancy occurs less than 60 days before primary | None |
| Maryland | Next congressional election | Yes – governor | Until the people fill vacancy by nomination and election | None |
| Massachusetts | Next biennial state election | Yes – governor | Until next election | None |
| Michigan | Next general election | Yes – governor | Until first day of December following the next general November election which occurs more than 120 days after vacancy happens | None |
| Minnesota | Next November election | Yes – governor | Until next election | None |
| Mississippi | Within 90 days of appointment, unless vacancy occurs in the year of a regular general election, in which event the special election coincides with the general election | Yes, if unexpired term is more than 12 months -- governor | Until successor is elected and commissioned | Appointment must be made within 10 days of receiving official notice of vacancy |
| Missouri | Next regularly scheduled election for senator | Yes – governor | Until successor is elected | None |
| Montana | Next general election | Yes – governor | Until election is held | None |
| Nebraska | Next general election | Yes – governor | Until following Jan. 3, if vacancy occurs within 60 days of a statewide general election and the term vacated expires on the following Jan. 3. If the term extends beyond the following Jan. 3, until Jan. 3 following the second statewide general election next succeeding his/her appointment. | None |
| Nevada | Next general election | Yes – governor | Until successor is elected | None |
| New Hampshire | Next general election | Yes – governor | Until next general election | None |

| | Date of Special Election | Interim Appointment | Term of Appointee | Restrictions on Appointment |
|-----------------------|--|----------------------------|--|------------------------------------|
| New Jersey | If vacancy happens within 64 days of next primary, then it is filled at the second succeeding election unless the governor calls a special election | Yes – governor | Until a special election or general election is held | None |
| New Mexico | Next general election occurring not less than 30 days subsequent to the vacancy | Yes – governor | Until election is held to fill the vacancy for the unexpired term | None |
| New York | Next even-year general election | Yes – governor | If vacancy occurs in even-numbered year on or after the 59 th day prior to an annual primary, until the 3 rd day of January in the year following the next even-numbered calendar year. If vacancy occurs in an even year on or before the 60 th day prior to an annual primary, until the 3 rd of January in the next calendar year. If vacancy occurs in an odd year, until the 3 rd day of January in the next odd year. | None |
| North Carolina | Next election for members of the General Assembly | Yes – governor | Until election is held to fill the office | None |
| North Dakota | Next statewide primary or general election, whichever occurs first, and that occurs at least 90 days after the vacancy. If the next election at which the vacancy could be filled occurs in the year immediately preceding the expiration of the term, then no election may be held. | Yes – governor | Until election is held to fill the vacancy, or until the term expires if no election can be held | None |

| | Date of Special Election | Interim Appointment | Term of Appointee | Restrictions on Appointment |
|---------------------|---|--|---|---|
| Ohio | Next regular state election | Yes – governor | Until Dec. 15 th succeeding the next regular state election which occurs more than 180 days after such vacancy happens; or if the unexpired term ends within 1 year immediately following the date of the next regular state election, the appointment is for the unexpired term | None |
| Oklahoma | Called by the governor within 30 days after occurrence of the vacancy. No special election if vacancy occurs after March 1 of an even year and the term of office expires the following year | If vacancy occurs after March 1 in an even year and the term of office expires the following year, the governor shall appoint the candidate elected to the office at the regular election to fill the unexpired term | Election Day – Jan. 3 | Only the candidate elected at the regular election may be appointed |
| Oregon | Next general election, provided vacancy occurs more than 20 days prior to such general election. If vacancy occurs before 61 st day before the general election, the governor must call a special election. If a vacancy occurs after the 62 nd day before the general election and the term of that office is not regularly filled at that election, the governor must call a special election as soon as practicable after the general election | No | N/A | N/A |
| Pennsylvania | Next general or municipal election occurring at least 90 days after vacancy occurs | Yes – governor | Until vacancy is filled in an election | None |
| Rhode Island | Next general election after the expiration of 70 days from the date of the vacancy | Yes – governor | Until election | None |

| | Date of Special Election | Interim Appointment | Term of Appointee | Restrictions on Appointment |
|-----------------------|--|----------------------------|---|------------------------------------|
| South Carolina | Next general election immediately preceding the expiration date of the appointment | Yes – governor | From date of appointment until January 3 of next succeeding general election. If vacancy occurs less than 100 days prior to general election, until January 3 following second general election next succeeding | None |
| South Dakota | If a primary or general election is to be held within 6 months, special election is held in conjunction with that election; other wise, special election is held not less than 80 nor more than 90 days after the vacancy occurs | Yes – governor | Until special election is held | None |
| Tennessee | Next regular November election | Yes – governor | Until successor is elected at next regular November election | None |
| Texas | If vacancy occurs during an odd year or after the 62 nd day prior to the next regular primary election, the remainder of the unexpired term is filled by a special election | Yes – governor | Until a successor is elected | None |
| Utah | Next regular general election | Yes – governor | Until vacancy is filled by election from one of three persons nominated by the state central committee of the same political party as the prior officeholder | None |
| Vermont | Special election held not more than 3 months from the date of the vacancy. If the vacancy occurs within 6 months of a general election, the special election may be held the same day as the general election | Yes – governor | Until vacancy is filled by special election | None |

| | Date of Special Election | Interim Appointment | Term of Appointee | Restrictions on Appointment |
|---------------|--|---------------------|--|---|
| Virginia | Next succeeding November election, or if the vacancy occurs within 120 days prior to that date, on the second succeeding November general election date | Yes – governor | Until vacancy is filled by election | None |
| Washington | Special election not less than 90 days after issuance of writ (which must occur within 10 days of vacancy occurring). If vacancy occurs less than 6 months before a state general election, the special primary and vacancy election shall be held in concert with the state primary and general elections | Yes – governor | Until vacancy filled by election | None |
| West Virginia | Upon proclamation of the governor | Yes – governor | If unexpired term is less than 2 years and 6 months, appointment is for the unexpired term. If unexpired term is longer, appointment is until a successor is elected | None |
| Wisconsin | If vacancy occurs prior to the 2 nd Tuesday in May in the year of the general election, it is filled in a special election. A vacancy occurring between the 2 nd Tuesday in May and the 2 nd Tuesday in July in the year of the general election is filled at the September primary and general election. | No | N/A | N/A |
| Wyoming | ?? | Yes – governor | ?? | ?? Gov. must select from a list of 3 nominated by the central comm. of same political party as predecessor. Sec. 22-18-41(a)(1). |

CRS Report for Congress

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House and Senate Vacancies: How Are They Filled?

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Summary

Vacancies in Congress occur due to the death, resignation, or declination (refusal to serve) of a Senator or Representative, or as the result of expulsion or exclusion by either house. The Constitution requires that vacancies in both houses be filled by special election, but in the case of the Senate, it empowers state legislatures to provide for temporary appointments by the state governor until special elections can be scheduled.

In practice, most Senate vacancies are filled by such appointments in the interim, while all House vacancies are filled by special elections. If, however, a House vacancy occurs late in the life of a Congress, many states will leave the seat empty until general election day, when a special election for the balance of the term and a regular election for the forthcoming Congress are held simultaneously.

Nominations for Senate special elections are usually by primary, while those for House special elections can be by primary, nominating petition, or party action, as specified by state law.

A plurality is necessary to win in most special elections, although there are significant variations in certain states.

Procedures Governing Vacancies

Vacancies in Congress occur when a Senator or Representative dies, resigns, declines to serve, or is expelled or excluded from either house.

Senate

Procedures governing vacancies in the Senate were initially established by Article I, Section 3 of the Constitution, as later amended by paragraph 2 of the 17th Amendment. The latter states:

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided* that the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

Appointment of Interim Senators. Prevailing practice is for state governors to fill Senate vacancies by appointment, with the appointee serving until a special election has been held, at which time the appointment expires immediately. In the event a seat becomes vacant between the time of a general election and the expiration of the term, however, the appointee usually serves the balance of the term, until the next regularly scheduled general election. This practice originated with the constitutional provision that applied prior to the popular election of senators, under which governors were directed to make temporary appointments when state legislatures were in recess. It was intended to ensure continuity in a state's Senate representation during the lengthy intervals between state legislative sessions.

The governor's direct authority to make interim appointments is specified in the various state laws. Oregon¹ and Wisconsin² do not allow the governor to make interim appointments, requiring, instead, a special election to fill any Senate vacancy. The State of Oklahoma also requires that Senate vacancies be filled by special elections, with an exception. If the vacancy occurs after March 1 of any even-numbered year and the term expires the following year, no special election is held; rather, the governor is required to appoint the candidate elected in the regular general election to fill the unexpired term.³ At least five states restrict the governor's power to appoint interim Senators. Alaska, Arizona, and Hawaii require the governor to fill Senate vacancies with a person affiliated with the same political party as the previous incumbent.⁴ Utah and Wyoming require the governor to select an interim senator from a list of three candidates proposed by the state central committee of the political party with which the previous incumbent was affiliated.⁵

Many states limit the term of office for interim senators to the date set for the special election. In these cases, the term of the interim senator expires immediately upon the election of the popularly chosen successor, who serves the balance of the Senate term, whether it is a few weeks or several years. Moreover, when an interim appointment is made late in the term, it is often customary for the interim senator to resign his or her seat immediately after the election, and for the governor to appoint the special election winner to serve the balance of the term. It is also customary, for the purposes of determining seniority, for the newly elected replacement senator to be sworn in as soon as possible.

Nominations. Nomination procedures for Senate special elections vary widely among the states. The majority require a special primary election to determine the major

¹ Or. Rev. Stat. §188.120 (2001).

² Wis. Stat. § 17.18 (1999-2000).

³ Okla. Stat. tit. 26, §12-101.

⁴ Alaska Stat. §15.40.010 (2001); Ariz. Rev. Stat. §16.222 (2001); and Haw. Rev. Stat. § 17-1 (2001).

⁵ Utah Code Ann. § 20A-1-502(2) (2001) and Wyo. Stat. § 22-18-111 (i) (2002).

party nominees, while minor party and independent candidates generally qualify by filing a requisite number of petitions for general election ballot placement. Finally, some states provide for nomination by party-determined procedures, such as by the party's state committee, or at a state party convention. Louisiana and Texas, which provide the major exceptions to these rules, are treated in the next section of this report.

General Elections. Generally, the governor has the authority to set the dates for both primary and general special elections within either a window of time or a specific number of days after the vacancy occurs, according to state requirements. In the interests of convenience, enhanced voter interest and participation, and economy, special elections are often scheduled to coincide with regular elections. A plurality of votes in the primary and general elections is sufficient to nominate or elect in most cases, although a number of southern states require a majority to nominate, providing for a runoff election if no candidate attains a majority.

Special election procedures in Georgia, Louisiana, and Texas constitute significant variations from the norm. Georgia requires a majority to elect in all congressional and statewide special elections. Louisiana and Texas provide for an all-parties special primary election. All candidates qualifying for placement on the ballot participate in the election, in which a majority is necessary to elect. Any candidate receiving more than 50% of the vote is declared elected. If no candidate receives a majority, the two receiving the most votes, regardless of party affiliation, compete in a second election, termed a general election in Louisiana and a runoff in Texas. Louisiana mandates the all-parties primary for regular as well as special elections, while the Texas practice is unique to that state's special elections.

One of the more interesting developments in Senate special elections in recent years was Oregon's 1996 decision to conduct both the primary and general elections to fill a Senate vacancy by mail-in ballot only, with no in-person voting at polling places.⁶

Staff Disposition. In the event of a Senator's death, his or her staff continue to be compensated for a period not exceeding 60 days (unless the Senate Committee on Rules and Administration determines that more time is needed to complete the closing of the office), performing duties under the direction of the Secretary of the Senate.⁷

House of Representatives

The Constitution provides for cases in which House seats become vacant in Article I, Section 2, clause 4:

⁶ In 1998, voters in Oregon passed a ballot initiative that requires Oregon's biennial primary and general elections to be conducted by mail. This "vote-by-mail" system replaces traditional polling place elections, but voters can still hand-deliver their ballots to designated drop sites.

⁷ S. Res. 458, 98th Cong., 2nd Sess., Oct. 4, 1984; as amended by S. Res. 173, 100th Cong., 1st Sess., Mar. 4, 1987, "Closing The Office of a Senator or Senate Leader Who Dies or Resigns," in U.S. Congress, Senate Committee on Rules and Administration, *Senate Manual, 106th Congress*, "Standing Orders of the Senate," Sec. 72, p. 108 (Washington: GPO, 2000).

When Vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The Constitution thus requires that all House vacancies be filled by special election. There is no constitutional provision for the appointment of interim Representatives.

Scheduling. The responsibility for scheduling special elections is vested in the state legislatures (2 U.S.C. 8):

The time for holding elections in any State, District, or Territory for a Representative to fill a vacancy, whether such vacancy is caused by the death, resignation, or incapacity of a person elected, may be prescribed by the laws of the several States and Territories respectively.

House vacancies that occur in the first session of a Congress are invariably filled by special elections. The responsibility for ordering a special election is vested in the governors of the states. Most states also either set a window of time, or prescribe an exact number of days after the vacancy occurs, in which nomination procedures and the special election must be held. Within these constraints, state governors and election authorities generally attempt to schedule special elections for a regular election day, in the interests of economy, convenience, and increased voter participation.

Procedures governing vacancies occurring during the second session of a Congress differ from state to state, and are largely dependent on the amount of time intervening between the vacancy and the next general election. For instance, if a House seat becomes vacant within six months of the expiration of the previous incumbent's term, many states allow the seat to remain vacant for a time, providing for a special election to be held on the regularly scheduled election day, at the same time that a regular election for that seat for the ensuing Congress is held. Other states, under these circumstances, do not provide for a special election, and the affected seat remains vacant until the ensuing Congress convenes the following January.

Nominations. Nomination procedures for House of Representatives special elections vary as widely among the states as do those for the Senate. Some states require a special primary election to determine the major party nominees, while minor party and independent candidates generally qualify by filing a requisite number of petitions for general election ballot placement. A plurality is sufficient to elect in most primary states, but some southern states require a majority to nominate in the primary. If no candidate attains a majority, then a runoff, or second, primary is held at a later date, in which the two candidates winning the most primary votes compete for the nomination. Others provide for nomination by such party-established procedures as party congressional district caucuses and conventions, or meetings of party committees or interested party members in jurisdictions comprising the affected congressional district.

General Elections. Special general election procedures for the House of Representatives generally mirror those for the Senate, with some variations. Once again, in most states a plurality is sufficient to elect in the general election. Several states, however, have adopted procedures for House special elections that effectively conjoin the nomination and election process, sometimes in combination with other variations. These include California, Georgia, Louisiana, and Texas.

All qualified candidates for House special elections in California compete in a special primary, regardless of party affiliation. Nomination is by petition. Any candidate receiving more than 50% of the vote in the primary is elected, and the general election is canceled. If no candidate receives the required majority, the single candidate of each party receiving the most votes competes in a special general election, wherein a plurality of votes is sufficient to elect. In the event that candidates of only one party compete in the primary, a plurality is sufficient to elect, and there is no general election.⁸

As noted previously, Georgia requires a majority to elect in all congressional and statewide special elections. If no candidate receives 50% of the vote, then a runoff, or second, election is held between the two candidates gaining the most votes.⁹

Louisiana procedures for House special elections are the same as those applying to its Senate elections. All candidates who qualify for ballot access compete in the primary election, in which a majority of votes is necessary to elect. A candidate receiving 50% of the vote is declared elected. If no candidate receives a majority, the two candidates receiving the most votes, regardless of party affiliation, compete in a second election, termed a general election. Louisiana mandates the all-parties primary for regular as well as special elections.¹⁰

Texas provides for an all-parties special primary election to fill House vacancies. All candidates qualifying for placement on the ballot participate in the election, in which a majority is necessary to elect. A candidate receiving 50% of the vote is declared elected. If no candidate receives a majority, the two candidates receiving the most votes, regardless of party affiliation, compete in a second election, termed a runoff in Texas. Unlike in Louisiana, in Texas the all-parties primary is unique to special elections.¹¹

Winners of House special elections held concurrently with those for the ensuing Congress are often not sworn in as Members of the House of Representatives, since Congress has usually adjourned *sine die* before election day. They are, however, accorded the status of incumbent Representatives for the purposes of seniority, office selection, and staffing.

Staff Disposition. Staff of a deceased or resigned Representative are compensated until a successor is elected to fill the vacancy, performing duties under the direction of the Clerk of the House (2 U.S.C. 92 b,c).

⁸ *California Election Code*, § 10700-10707 (2001).

⁹ *Georgia Election Code*, § 21-2-501 (2001).

¹⁰ *Louisiana Election Code*, tit. 18, § 511, §512, and §1279. The Supreme Court's 1997 decision in *Foster v. Love* (522 U.S. 67 (1997)) affected only the timing of regular general elections in Louisiana; the all-parties nature of the procedure was not in question, and remains intact for both special and regularly scheduled elections.

¹¹ *Texas Election Law*, § 203.001-012, 0A; and 204.021.