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# U.S. Senate Vacancies: How Are They Filled?

## Senate Vacancies in the Constitution and State Law

Vacancies in the membership of the U.S. Senate can occur as the result of the resignation, death, or expulsion of a Member, or the refusal of the Senate to seat a Senator-elect. Article I, Section 3, clause 2 of the Constitution originally vested the power of appointment to fill Senate vacancies exclusively with the state governors when the legislatures were in recess, with the state legislatures authorized to elect replacements to serve the balance of the term at their next session. The Seventeenth Amendment, ratified in 1913, provided for direct election of Senators and directed governors to issue writs of election to fill vacancies. It also authorized state legislatures to empower governors to make temporary appointments until successors can be elected. At present, 45 states authorize their governors to appoint a Senator to fill a vacancy until a replacement is elected. Five states, however, provide that Senate vacancies may be filled only by election.

## State Methods of Filling Senate Vacancies

### Special Election Only

Five states currently require Senate vacancies to be filled *only* by special elections; their governors are not empowered to fill a vacancy by appointment. They are Kentucky, North Dakota, Oregon, Rhode Island, and Wisconsin. Typically, these states provide for an expedited election process in order to reduce the period during which the seat is vacant. If the vacancy falls late in the term, the seat is filled at the regularly scheduled general election.

### Interim Appointment Followed by Election

Forty-five states authorize their governors to fill Senate vacancies by appointment until a successor is elected. Other details for filling the vacancy vary, including when the election to fill the seat is held and whether or not the appointee must be of the same party as the previous Senator. Some of these differences across states are discussed in the sections below.

### Gubernatorial Appointment Until a General Election

Thirty-four states authorize governors to select a Senator who holds the seat until the next regularly scheduled general election, when a special election is held to fill the seat for the balance of the term (see **Table 1**). States may vary in how they characterize this election: some provide that the vacancy is filled at the next election, whereas others specify it is filled at the next federal, congressional, statewide, or municipal general election. In several states, if a Senate vacancy occurs close to a regularly scheduled

statewide primary or general election, the appointed Senator serves until the general election *following* the next.

**Table 1. Gubernatorial Appointment Through Next General Election**

Arizona <sup>a</sup>	Illinois	Nebraska <sup>a</sup>	Pennsylvania <sup>a</sup>
Arkansas <sup>a</sup>	Indiana <sup>a</sup>	Nevada	South Carolina <sup>a</sup>
California <sup>a</sup>	Iowa	New Hampshire	Tennessee
Colorado	Kansas	New Jersey <sup>a</sup>	Utah <sup>d</sup>
Delaware	Maine <sup>a</sup>	New Mexico <sup>a</sup>	Virginia <sup>a</sup>
Florida	Maryland <sup>a</sup>	New York <sup>a</sup>	West Virginia <sup>c</sup>
Georgia <sup>a</sup>	Michigan	North Carolina <sup>a</sup>	Wyoming
Hawaii <sup>a</sup>	Minnesota <sup>ab</sup>	Ohio <sup>a</sup>	
Idaho <sup>a</sup>	Missouri	Oklahoma <sup>ab</sup>	

**Source:** CRS analysis of state laws. Additional information is available from CRS upon request.

**Notes:** Some states provide that a Senate vacancy is generally filled at a separately scheduled special election, but, depending on when the vacancy occurs, have provisions under which the vacancy may be filled at a general election. These states are excluded from this table.

- In these states, a vacancy might also be filled at the second November election after it occurred, depending on when the vacancy happened. In New Jersey, the governor may opt to call a special election instead in this scenario.
- If the vacancy occurs in an odd-numbered year, a separately scheduled special election may be held—in Minnesota, on first Tuesday after the first Monday in November of the odd-numbered year; in Oklahoma sometime during the odd-numbered year.
- The election for Senator is held concurrently with the general election if the vacancy occurs ahead of the primary cutoff date; a later vacancy may be filled at a special election following 84-120 days after a special primary election held concurrently with the next general election.
- Election may be held with a municipal general, federal primary, federal general, or at another time, depending on when the vacancy occurs.

## Gubernatorial Appointment Until an Expedited Special Election

The remaining 11 states that provide for gubernatorial appointment also generally require a stand-alone special election to fill the seat on an accelerated schedule, rather than waiting for the next regular general election. If the vacancy does occur close to a regularly scheduled general election, the special election may be held concurrently, but if not, the special election may be scheduled within a few months of the vacancy. This provision is intended to reduce the length of time an appointed Senator holds office before being replaced by an elected successor. In these states, the appointed Senator generally serves only until the election results for a successor are certified. They are as follows:

**Alabama:** The governor appoints a replacement, and is required to order a special election “forthwith” if the vacancy occurs more than four months before a general election. A vacancy occurring within four months of but more than 60 days before a general election is filled at that election. A vacancy within 60 days before a general election is filled at a special election held “the first Tuesday after the lapse of 60 days from and after the day on which the vacancy is known to the Governor.”

**Alaska:** The governor appoints a replacement, and a special election is held, generally beginning with a primary election to be held 60-90 days after the vacancy occurs and then followed by a special general election about 60 days later. The schedule is somewhat modified in certain years. Depending on when the vacancy occurs, the elections to fill the vacancy may run concurrently on existing primary and general election dates.

**Connecticut:** The governor appoints a replacement to fill the vacancy if the vacancy occurs after the municipal elections of the year before the final full year of the Senator’s term, with the governor’s appointment subject to approval by two-thirds vote of both houses of the legislature. If the time until expiration is greater, the governor schedules a special election within 10 days of the vacancy, to be held 150 days later, unless regular statewide elections are scheduled sooner. The special election is then held concurrently with the regular election. If the vacancy occurs shortly before the term expires, the vacancy is not filled.

**Louisiana:** The governor appoints a replacement to fill the vacancy for the rest of the term if the term expires within one year. If more than a year remains in the term, a successor is elected for the balance of the term at a special election held in conformity with dates set by state law.

**Massachusetts:** The governor appoints a replacement to serve until a special election. The special election is held 145-160 days after the vacancy occurs, unless it occurs after April 10 of an even-numbered year; if so, the special election is held concurrently with the regularly scheduled statewide election.

**Mississippi:** The governor appoints a replacement until a special election is held. If less than one year remains on the incumbent’s term, the appointee serves the balance of the term. If more than one year remains, the special election is held within 90 days of the governor’s order for a special

election, unless the vacancy occurs during a year when a statewide election is held, in which case the vacancy is filled at the regular election.

**Montana:** The governor appoints a replacement, and a special election must generally be held 85 to 100 days after the vacancy occurs. Depending on when the vacancy occurs, an election to fill it may also be held at the same time as a municipal general election, federal primary election, or federal general election, or within a specified time frame following those election dates.

**South Dakota:** The governor appoints a replacement, and a special election must be held 80 to 90 days after the vacancy occurs, unless the vacancy falls within six months of a primary or general election.

**Texas:** The governor appoints a replacement if a vacancy exists or will exist when the U.S. Senate is in session. If the vacancy occurs in an even-numbered year and 62 or more days before the primary, the vacancy is filled at that year’s general election. If the vacancy occurs in an odd-numbered year, or fewer than 62 days before the primary, the governor calls a special election, which is scheduled for the first uniform election date falling 36 or more days after it has been ordered.

**Vermont:** The governor appoints a replacement and orders a special election, which is held within six months of the vacancy, unless it occurs within six months of a general election, in which case the special election is held concurrently with the regular general election.

**Washington:** The governor appoints a replacement. Not more than 10 days after the vacancy, the governor orders a special election to be held not more than 140 days later. If the vacancy occurs less than eight months before a general election, a special election is held at the same time. If the vacancy occurs after the close of the filing period for the vacant Senate seat, a special election is held not more than 90 days after the regular general election.

## Same Party Requirements

In addition, several states require that Senators appointed by the governor be a member of the same political party as the prior incumbent.

- **Arizona, Montana, and North Carolina:** The governor appoints a replacement from the same party as the previous incumbent.
- **Hawaii, Maryland, Utah, West Virginia, and Wyoming:** The governor selects a replacement from a list of three prospective appointees submitted by the political party of the previous incumbent.
- **Oklahoma:** The governor appoints a person eligible to hold such office, who has been a registered voter of the party of the predecessor in Oklahoma for at least five years.

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