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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.

### Filling Vacancies by Special Election Only: 5 States

Five states currently require Senate vacancies be filled *only* by special elections; their governors are not empowered to fill a vacancy by appointment. They are as follows:

North Dakota	Oregon	Wisconsin
Oklahoma	Rhode Island	

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.

### Filling Vacancies by Gubernatorial Appointment

Forty-five states authorize their governors to fill Senate vacancies by appointment.

### Filling Vacancies by Gubernatorial Appointment Through the Next Statewide General Election: 36 States

Thirty-six of the 45 states that provide for gubernatorial appointment authorize their governors to select a Senator who holds the seat until the next regularly scheduled statewide general election, when a special election is held to fill the seat for the balance of the term. In several of these states (Hawaii, Minnesota, New Jersey, New York, and Virginia), if a Senate vacancy occurs close to a regularly scheduled statewide primary or general election, the appointed Senator serves until the next *following* statewide election. They are as follows:

Arizona	Illinois	Montana	Pennsylvania
Arkansas	Indiana	Nebraska	So. Carolina
California	Iowa	Nevada	So. Dakota
Colorado	Kansas	New Hampshire	Tennessee
Delaware	Kentucky	New Jersey	Utah
Florida	Maine	New Mexico	Virginia
Georgia	Maryland	New York	West Virginia
Hawaii	Michigan	No. Carolina	Wyoming
Idaho	Minnesota	Ohio	
	Missouri		

### Same Party Requirements

In addition, seven of the gubernatorial appointment states listed above require that Senators appointed by the governor be a member of the same political party as the prior incumbent. They are as follows:

#### Arizona, North Carolina, Utah, and Wyoming

The governor appoints a replacement from the same party as the previous incumbent.

#### Hawaii and Kentucky

The governor selects a replacement from a list of three prospective appointees submitted by the political party of the previous incumbent.

#### Maryland

The governor appoints a replacement “from a list of names submitted by the state central committee of the political party of the vacating office holder.”

These provisions are intended to ensure that the appointing governors respect the results of the previous election by selecting a temporary replacement who will either be of the same political party as the prior incumbent, or who has been endorsed or “nominated” by the prior incumbent’s party apparatus. Some commentators have questioned these “same party” requirements, asserting that they add extra qualifications to Senate membership, beyond the constitutional requirements of age, citizenship, and residence that provide for gubernatorial appointment.

### Filling Vacancies by Gubernatorial Appointment Followed by an Expedited Special Election: 9 States

The remaining 9 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 statewide 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 if the vacancy occurs more than four months or less than 60 days before a general election.

### 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 election years.

### Connecticut

The governor appoints a replacement to fill the vacancy if the term expires within 14 months of the vacancy, with the governor's appointment subject to approval by two-thirds vote of both houses of the legislature. If time until expiration is greater, the governor orders a special election 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.

### 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.

## Congressional and State Proposals for Change

Following controversies that arose in connection with appointments to fill Senate vacancies in 2008 and 2009, proposals to eliminate or curtail gubernatorial power to fill vacancies by appointment were introduced in the 111<sup>th</sup> Congress. H.R. 899, the Ethical and Legal Elections for Congressional Transitions Act, proposed expedited special elections to fill Senate vacancies, and assistance to states in meeting the cost of special elections. Proposed constitutional amendments S.J. Res. 7 and H.J. Res. 21 would have removed the option for gubernatorial appointment, requiring that all Senate vacancies be filled by special election. None of these measures progressed beyond committee hearings, and no similar proposal has been introduced since then.

As of August 2021, the National Conference of State Legislatures reported the most recent relevant state-level activity as the enactment by the Kentucky Legislature of SB 228, which requires the governor to choose replacements for senatorial vacancies from among a list of three qualified candidates provided by the state executive committee of the previous incumbent's political party.

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