

Yolo County Elections Office



Guide to Filling a Vacancy

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Preface

This guide is intended to answer frequently asked questions regarding filling vacancies in local elected offices. This guide contains general information and should not in any way be interpreted as having the force of law, regulation or rule. It has been provided to the public with the understanding that the Yolo County Elections Office is not giving legal advice. This guide should not be used as a substitute for legal counsel for the individual, organization, candidate, or district using it. The applicable law or regulation will apply in any instance it comes in conflict with what is written in this guide.

General Information

The following text from the Government Code of California defines a vacancy.

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

- a) The death of the incumbent.
- b) An adjudication pursuant to a quo warranto proceeding declaring that the incumbent is physically or mentally incapacitated due to disease, illness, or accident and that there is reasonable cause to believe that the incumbent will not be able to perform the duties of his or her office for the remainder of his or her term. This subdivision shall not apply to offices created by the California Constitution nor to federal or state legislators.
- c) His or her resignation.
- d) His or her removal from office.
- e) His or her ceasing to be an inhabitant of the state, or if the office be local and one for which local residence is required by law, of the district, county, or city for which the officer was chosen or appointed, or within which the duties of his or her office are required to be discharged.
- f) His or her absence from the state without the permission required by law beyond the period allowed by law.
- g) His or her ceasing to discharge the duties of his or her office for the period of three consecutive months, except when prevented by sickness, or when absent from the state with the permission required by law.
- h) His or her conviction of a felony or of any offense involving a violation of his or her official duties. An officer shall be deemed to have been convicted under this subdivision when trial court judgment is entered. For purposes of this subdivision, "trial court judgment" means a judgment by the trial court either sentencing the officer or otherwise upholding and implementing the plea, verdict, or finding.
- i) His or her refusal or neglect to file his or her required oath or bond within the time prescribed.
- j) The decision of a competent tribunal declaring void his or her election or appointment.
- k) The making of an order vacating his or her office or declaring the office vacant when the officer fails to furnish an additional or supplemental bond.
- l) His or her commitment to a hospital or sanitarium by a court of competent jurisdiction as a drug addict, dipsomaniac, inebriate, or stimulant addict; but in that event the office shall not be deemed vacant until the order of commitment has become final.

GOV § 1770

Vacancies in County Offices

Elections for County Offices occur in March (Primary) and November (General) of every even year.

Those elected to county offices serve a term of 4 years. Should a vacancy arise before the regularly scheduled elections, that vacancy should be filled according to the following Government Codes.

1. Member of the Board of Supervisors

Vacancies on the Board of Supervisors are filled by the Governor. This appointee will hold the office until the election and qualification of his or her successor. (GOV § 25060-25062).

2. Elected County Offices (Clerk/Recorder/Assessor, District Attorney, Sheriff/Coroner/Public Administrator)

The Board of Supervisors shall fill by appointment all vacancies in elected county offices. The appointee will serve the remainder of the term, or until the first Monday after January 1st following the next general election.

If on the first Monday after January 1st following a general election the person elected to a county office has resigned or died, the Board of Supervisors may allow that position to be filled at the next regularly scheduled election and appoint a person to temporarily carry out the office until such election occurs. The person elected will serve the remainder of the term. (GOV § 25304-25304.5)

Vacancies in School Districts

Cause of Vacancy

A vacancy on school district governing boards may be caused by any of the reasons listed in GOV § 1770 (see page 2) or by a failure to elect. A vacancy caused by resignation occurs when a written resignation is filed with the County Superintendent of Schools having jurisdiction over the district. A deferred effective date may be specified in the resignation later, not to exceed 60 days. Once the resignation letter is filed with the County Superintendent of Schools, it is irrevocable. EDC § 5090, 5091(a)

Action Required by School Board

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

- 1) Immediately call an election to fill the vacancy; or
- 2) Make a provisional appointment pursuant to the Education Code

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

A copy of the resignation, and copies of any notices, appointments, resolutions calling election, etc. should be sent to the Yolo County Elections Department as soon as possible.

Ordering an Election

If the district chooses to order an election, it shall be held on the next regular election date not less than 130 days after the order of the election. EDC § 5091(b)

A regular election as defined by Elections Code 1000:

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

Elections to fill a vacancy will proceed according to the procedure governing regular governing board elections, as much as possible.

Provisional Appointment

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

Public Notice

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

- 1) Post a notice described below in at least three public places in the district; and
- 2) Publish the notice at least once in a newspaper of general circulation published within the district . If there is no newspaper of general circulation published in the district, notice need not be published. EDC § 5092; GOV § 36061

A copy of the notice should be sent to the Yolo County Elections Office.

Contents of Public Notice

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

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

Petition Calling for a Special Election

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

Signature Requirements

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

- a) 1½ percent of the number of registered voters of the district at the time of the last regular election for governing board members, or
- b) 25 registered voters

However, in districts with registered voters of less than 2,000 persons, a petition shall be deemed to bear a sufficient number of signatures if signed by at least 5 percent of the number of registered voters of the district at the time of the last regular election for governing board members. EDC § 5091(c)(1)

Petition Requirements

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

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

Petition Signatures

The Election Code 100, pertaining to petition signatures, is as follows:

- a) Notwithstanding any other provision of law, whenever an initiative, referendum, recall, nominating petition or paper, or any other petition or paper, is required to be signed by voters of a county, city, school district, or special district subject to petitioning, only a person who is an eligible registered voter at the time of signing the petition or paper is entitled to sign it.
- b) A signer shall at the time of signing the petition or paper personally affix his or her signature, printed name, and place of residence, including the street and number of the place of residence, and if no street or number for the place of residence exists, then a designation of the place of residence that will enable the location to be readily ascertained. An incomplete or inaccurate apartment or unit number in the signer’s residence address shall not invalidate his or her signature pursuant to Section 105. A space at least one inch wide shall be left blank after each name for the use of the elections official in verifying the petition or paper.
- c) The part of a petition for the signatures, printed names, and residence addresses of the voters and for the blank spaces for verification purposes shall be numbered consecutively commencing with the number one and continuing through the number of signature spaces allotted to each section. The petition format shall be substantially in the following form:

| | | |
|---|--|-------------------|
| 1. (print name) (signature) | (Residence Address ONLY) (City) | Official Use Only |
| 2. (print name) (signature) | (Residence Address ONLY) (City) | |

Petition Circulator

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

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

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

- 1) That the circulator circulated that section and witnessed the appended signatures being written.
- 2) That according to the best information and belief of the circulator, each signature is the genuine signature of the person whose name it purports to be.
- 3) That the circulator is 18 years of age or older.
- 4) The circulator shall certify to the content of the declaration as to its truth and correctness, under penalty of perjury under the laws of the State of California, with the signature of his or her name. The circulator shall state the date and the place of execution on the declaration immediately preceding his or her signature. EC § 104

Filing the Petition

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

The County Superintendent of Schools then has 30 days to verify the signatures, excluding Saturdays, Sundays, and holidays. As a matter of practice, the Superintendent forwards the petitions to the Yolo County Elections Department for checking signatures. The Superintendent may decide if the petition is to be checked using a random sampling in accordance with Elections Code 9115 or to check 100 percent of the signatures. A certificate of the results of the petition checking will be forwarded to the County Superintendent of Schools.

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

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

Filing the Petition (cont.)

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

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

Example of Public Notice

PUBLIC NOTICE OF VACANCY AND PROVISIONAL APPOINTMENT

(Education Code 5092)

A vacancy in the membership of the Governing Board of the **(name of district)** has occurred by reason of the **(resignation or other reason)** of **(name of officeholder)** effective **(date)**.

The resignation was filed in the office of the Yolo County Superintendent of Schools on **(date)**.

(Name of appointee) was appointed by the Governing Board on **(date)** to fill the above named vacancy.

To challenge the appointment and order a special election, the following must be filed in the office of the Yolo County Superintendent of Schools within 30 days from the date of the provisional appointment:

A) File a petition calling for a special election containing the valid signatures of at least 1 ½ percent of the number of registered voters of the district at the time of the last regular election for governing board members held within the **(name of district)**, or 25 registered voters of the district, whichever is greater, or

B) In districts with less than 2,000 registered voters, a petition shall be deemed to bear a sufficient number of signatures if signed by at least 5 percent of the number of registered voters of the district at the time of the last regular election for governing board members.

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

Governing Board Secretary/Clerk

Date: _____

Vacancies in Special Districts

Action Required by the Governing Board

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

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

- 1) By appointment, or
- 2) By calling a special election GOV § 1780

Appointments to Fill Vacancies

If the Board decides to appoint someone to fill the vacancy, the board first must post a notice of the vacancy in three or more conspicuous places in the district at least 15 days before the appointment is made.

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

The person appointed shall hold office until the next general district election that is scheduled 130 or more days after the date the district board is notified of the vacancy, and thereafter until the person elected at that election to fill the vacancy has been qualified. The person elected to fill the vacancy shall fill the balance of the unexpired term. If the term of office is due to expire following the next general district election and that election is scheduled 130 or more days after the date the county elections official is notified of the vacancy, the person appointed to the vacancy shall fill the balance of the unexpired term of his or her predecessor. GOV § 1780(d)

Elections to Fill Vacancies

In lieu of making an appointment the remaining members of the board may within 60 days of the date the district board is notified of the vacancy or the effective date of the vacancy, whichever is later, call an election to fill the vacancy. GOV § 1780(e)(1)

The election shall be held on the next established election date that is 130 or more days after the date the district board calls the election. GOV § 1780(e)(2)

A regular election as defined by Elections Code 1000:

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

If the District Board Fails to Act

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

Within the next 90 days, the City Council of the city in which the district is wholly located, or if the district is not wholly located within a city, the Board of Supervisors of the county representing the larger portion of the district area in which the election to fill the vacancy will be held, may fill the vacancy by appointment or may order the district to call an election to fill the vacancy.

The election shall be held on the next established election date (see page 9) that is 130 or more days after the date the city council or board of supervisors calls the election. GOV § 1780 (f)

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

If the number of remaining members of the district board falls below a quorum, at the request of the district secretary, or a remaining member of the district board, the appropriate board of supervisors or the city council shall promptly appoint a person to fill the vacancy, or may call an election to fill the vacancy.

Again, the council or board may either appoint immediately to fill the vacancy, or may call an election to fill the vacancy.

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

The board of supervisors or the city council shall only fill enough vacancies to provide the board with a quorum. GOV § 1780 (h)

If the City Council or Board of Supervisors Fails to Act

If within 90 days of the date the district board is notified of the vacancy or the effective date of the vacancy, whichever is later, no action has been taken by any governing body to fill the vacancy by appointment or by calling for a special election, the district must call an election to fill the vacancy. GOV § 1780

The election shall be held on the next established election (see page 9) that is 130 or more days after the date the district board calls the election. GOV § 1780 (g)

Vacancies in Judicial Offices

If a Superior Court judicial vacancy is filled by appointment, the person shall hold office until the person elected at the next general election after the second January 1 following the vacancy takes office. CA Const., Article VI, Section 16(c)

If a Superior Court judicial vacancy is filled by election at the next general election after the second January 1 following the vacancy, the person elected shall hold office for a full, six-year term. CA Const., Article VI, Section 16(c)

If a Superior Court Judge is elected at a regularly scheduled election, the person shall hold office for six years beginning the Monday after January 1 following his or her election. CA Const., Article VI, Section 16(c)

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

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