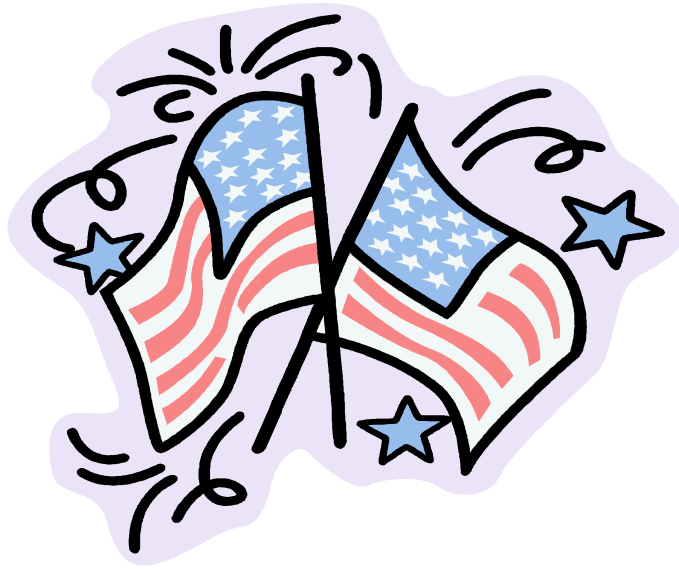


# HOW TO FILL A VACANCY COUNTY OFFICES, SPECIAL DISTRICT BOARDS & SCHOOL DISTRICT GOVERNING BOARDS



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

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## VACANCIES – DEFINITION

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

- (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 or 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. However, the office of judge of a municipal court shall not become vacant when, as a result of a change in the boundaries of a judicial district during an incumbent's term,
- (f) The incumbent ceases to be an inhabitant of the district for which he or she was elected or appointed to serve.
- (g) His or her absence from the state without the permission required by law beyond the period allowed by law.
- (h) 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.
- (i) His or her conviction of a felony or of any offense involving a violation of his or her official duties. An officer shall be deemed to have been convicted under this subdivision when trial court judgment is entered. For the purposes of this subdivision, "trial court judgment" means a judgment by the trial court either sentencing the officer or otherwise upholding and implementing the plea, verdict, or finding.
- (j) His or her refusal or neglect to file his or her required oath or bond within the time prescribed.
- (k) The decision of a competent tribunal declaring voids his or her election or appointment.
- (l) 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.
- (m) His or her commitment to a hospital or sanitarium by a court of competent jurisdiction as a drug addict, dipsomaniac, inebriate, or stimulant addict; but in that event the office shall not be deemed vacant until the order of commitment has become final.

Government Code §1770

# **VACANCIES IN COUNTY OFFICES**

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

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

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

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

## **County Offices**

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

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

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

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

## **Terms of County Offices**

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

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

## VACANCIES ON SCHOOL DISTRICT GOVERNING BOARDS

### What Causes a Vacancy?

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

Education Code §5090, 5091(a)

### Action Required by the Governing Board

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

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

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.

Education Code §5091(a)

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

### Election Ordered

When an election is ordered, it shall be held on the next regular election date not less than 130 days after the occurrence of the vacancy or after the written resignation is filed with the County Superintendent of Schools.

Education Code §5091(b)

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

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

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

### **Provisional Appointment**

If the Governing Board makes a provisional appointment, the appointee is immediately conferred with all powers and duties of a governing board member.

Education Code §5091(d)

### **Public Notice**

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

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

Education Code §5092

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

### **Contents of Public Notice**

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

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

Education Code §5092

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

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

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

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

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

Education Code §5091 (c) & (f)

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

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

Education Code §5091 (f)

**Who Can Sign Petition:** Only a person who is an eligible registered voter at the time of signing the petition or paper is entitled to sign it. Each signer shall at the time of signing the petition or paper personally affix his or her signature, printed name, and place of residence, giving street and number, and if no street or number exists, then a designation of the place of residence which will enable the location to be readily ascertained. A space at least one inch wide shall be left blank after each name for the use of the elections official in verifying the petition or paper.

The part of a petition for the voters' signatures, printed names, and residence addresses and for the blank spaces for verification purposes shall be numbered consecutively commencing with the number one and continuing through the number of signature spaces allotted to each section. See sample petition. (Elections Code §100)

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

1. The printed name of the circulator.

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

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

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

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 at length, including given name, middle name or initial, or initial and middle name. The circulator shall state the date and the place of execution on the declaration immediately preceding his or her signature. (Elections Code §104)

#### **Filing the Petition:**

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

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

As a matter of practice, the Superintendent forwards the petitions to the Sierra 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 120th day after the determination. However, if a regular election date, as defined in Section 1000 of the Elections Code, occurs between the 120th day and the 150th day following the determination, the County Superintendent of Schools may call the special election to be conducted on the regular election date.

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

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



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

Education Code §5091 (c) & (f)

### **Term of Office**

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

**A person elected at an election to fill the vacancy** shall hold office for the remainder of the term.

Education Code §5091(e)

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

Education Code §5017

# **VACANCIES ON SPECIAL DISTRICT BOARDS**

## **Action Required by the Governing Board**

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

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

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

Government Code §1780 (a)

## **Appointments to Fill Vacancies**

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

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

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

Government Code §1780 (a)

## **Elections to Fill Vacancies**

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

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

Government Code §1780 (a)

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

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

**If the District Board Fails to Act**

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

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

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

Government Code §1780 (b)

**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 board member, the Board of Supervisors or the City Council may waive the 60-day period during which time the district board is allowed to take action, but can't because there is no quorum, and move directly to the 30-day period where the City Council or Board of Supervisors may take action.

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.

Government Code §1780 (c)(2)

### **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.

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

Government Code §1780 (c)

### **Term of Office**

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

**A person elected at an election to fill the vacancy** shall hold office for the remainder of the unexpired term.

Government Code §1780 (d)

**A person elected at a regular board member election or appointed in-lieu of election** takes office at noon on the first Friday in December following his or her election in November and shall serve for four years.

Elections Code §10554, 10507

## PUBLIC NOTICE OF VACANCY AND PROVISIONAL APPOINTMENT

(Education Code §5092)

1. A vacancy in the membership of the Governing Board of the (name of district) School District has occurred by reason of the (resignation or other reason) of (name of trustee) effective (date).
2. The resignation was filed in the office of the Sierra County Superintendent of Schools on (date).
3. **(Name of appointee)** was appointed by the Governing Board on **(date)** to fill the above named vacancy.
4. To challenge the appointment and order a special election, the following must be filed in the office of the Sierra 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: \_\_\_\_\_

**ATTACHMENT B**  
**\*\*SAMPLE\*\***  
**PETITION FOR SPECIAL ELECTION**  
**TO FILL THE VACANCY ON THE GOVERNING BOARD**  
**OF THE WE LEARN REAL GOOD SCHOOL DISTRICT**  
**IN SIERRA COUNTY**

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

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

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

Pursuant to Education Code §5091, we the undersigned, who are registered voters of the We Learn Real Good School District of Sierra County, California, hereby petition the County Superintendent of Schools to call a special election for the purpose of filling the vacancy on the governing board of said school district.

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

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

Official  
Use Only

1	Print Your Name	Residence Address Only	
	Your Signature as Registered to Vote	City, State Zip	
2	Print Your Name	Residence Address Only	
	Your Signature as Registered to Vote	City, State Zip	
3	Print Your Name	Residence Address Only	
	Your Signature as Registered to Vote	City, State Zip	

1" §100

**DECLARATION OF PERSON CIRCULATING SECTION OF PETITION FOR A SPECIAL ELECTION**

I, \_\_\_\_\_ declare:

(Print Name)

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

1. My residence address is \_\_\_\_\_, in Sierra County, California, and I am a registered voter in Sierra County;
2. I personally circulated the attached petition for signing;
3. I witnessed each of the appended signatures being written on the petition and to my best information and belief, each signature is the genuine signature or the person whose name it purports to be; and
4. The appended signatures were obtained between the dates of \_\_\_\_\_ and \_\_\_\_\_, inclusive.

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

Executed on \_\_\_\_\_ at \_\_\_\_\_

(date)

(Place of signing)

(Complete Signature of Petition Circulator)

It is recommended that you leave a 1" margin at the top, and a 1/2" margin on the left, right and bottom.

## APPLICATION FOR APPOINTMENT TO A SPECIAL DISTRICT VACANCY

### Instructions

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

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

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

DISTRICT: \_\_\_\_\_ DATE: \_\_\_\_\_

NAME: \_\_\_\_\_ AGE (optional): \_\_\_\_\_

RESIDENCE ADDRESS: \_\_\_\_\_

BUSINESS OR MAILING ADDRESS: \_\_\_\_\_

PHONE (DAYTIME): \_\_\_\_\_ PHONE (EVENING): \_\_\_\_\_

E-MAIL: \_\_\_\_\_

<b>EDUCATION</b>			
<b>Institution</b>	<b>Major</b>	<b>Degree</b>	<b>Year</b>

<b>WORK / VOLUNTEER EXPERIENCE</b>				
<b>Organization</b>	<b>City</b>	<b>Position</b>	<b>From</b>	<b>To</b>

**STATEMENT OF QUALIFICATIONS:**

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

**CERTIFICATION:**

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

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Signature

---

Date



## NOTICE OF VACANCY

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

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Board of Directors.

The position to be filled is a 4-year term  
ending December 20\_\_\_\_.

Eliminate this  
sentence if  
the seat is up  
for a full term  
in the next  
election.

{ The seat will go to election in  
November 20\_\_\_\_ for the final  
two years of the term.

Applications are available at the  
\_\_\_\_\_ District Office  
located at:

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

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

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

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

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

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