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CARYN TYSON

12TH DISTRICT

TO: Senate Committee on Federal and State Affairs
FROM: Senator Caryn Tyson, 12th District
Re: SENATE BILL NO. 254 – TESTIMONY IN SUPPORT
Date: January 18, 2024

Chairman Thompson, Vice-Chairman Kloos, Ranking Faust-Goudeau, and Committee members:

Thank you for the opportunity to testify in support of Senate Bill (SB) 254.

“The current system for filling vacant Senate seats dates to the ratification of the 17th Amendment in 1913. Along with letting people elect their senators directly – state legislatures had chosen them up to that point – the amendment gave states the option of letting their governors appoint temporary replacements. The only states not to do so are North Dakota, Oregon, Rhode Island and Wisconsin; in those states, vacancies can only be filled by special election.” Drew DeSliver, Pew Research, May 3, 2022

Kansas is one of a majority of states in which the governor appoints a replacement for a vacant seat with no restrictions. One person decides and appoints one of the most important representative positions in our nation. It is too important to leave to one person. You can address this by supporting SB 254, filling a vacancy as we do with most vacated seats in Kansas.

U.S. House vacancies are required by law to be filled by elections. While the U.S. Constitution allows each state to decide how U.S. Senate vacancies are filled. Thirty-seven states leave it to the governor to appoint. Some states provide restrictions on the appointment, but most do not including Kansas. Let’s improve the process in Kansas.

“Among the 46 states that do give their governors authority to name replacement senators, 11 limit their field of choice in some way. Seven states – Hawaii, Kentucky, Maryland, Montana, North Carolina, West Virginia and Wyoming [Kentucky recently joined that list]– make the governor choose from a list of nominees submitted by the previous senator’s party. Utah requires the governor to choose from a list of candidates compiled by the legislature...

The 17th Amendment also gives states considerable leeway in deciding how long temporary senators can serve until a special election... Five states have specific timetables for holding special Senate elections, usually a certain number of days following the occurrence of the vacancy.

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We hold replacement conventions for U.S. House seats and our state legislature seats. Is a governor, one person, better suited to name our U.S. Senator than the people of Kansas?

Thank you for your consideration. I ask for your support on this important legislation.

Vacancies in the United States Senate

Updated September 25, 2023

Overview

Unlike vacancies in the U.S. House of Representatives, which are required by law to be filled by elections, the U.S. Constitution allows states to choose how to fill vacancies in the U.S. Senate, and all states do so through elections. They vary in two ways, however: whether the vacancy is filled at a regularly scheduled election or at a special election; and whether the governor can make an appointment to fill the vacancy during the period before the election occurs.

Thirty-seven states fill Senate vacancies at their next regularly scheduled general election. The remaining 13 require that a special election be called. Only four states prohibit the governor from making an interim appointment, requiring instead that the seat remain vacant until the next election (whether regular or special) is held. In another three states, the governor may make an appointment to fill the vacancy temporarily, but only under strict conditions.

Federal Laws

Article I of the U.S. Constitution, amended by the 17th Amendment, and one section of the U.S. Code relate directly to how states may fill vacancies in the U.S. Senate.

U.S. Constitution, Article I, Section 3:

“[I]f 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. Section 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.”

Vacancies Filled at the Next General Election

In 37 states, the governor makes an appointment to fill a U.S. Senate vacancy, and the appointee serves until the next regularly scheduled statewide general election. The person elected in that election serves for the remainder of the unexpired term. If the term was set to expire at that

general election, the person elected serves a full six-year term. Nine states require the appointee to be of the same party as the vacating senator. Six states have different requirements if the vacancy occurs within a specified number of days, and Utah requires its governor to make an appointment based on a list of three recommended prospects from the party.

State	Appointee Must Be of Same Party as Vacating Senator	Additional Requirements
Alabama	No	n/a
Arizona	Yes	n/a
Arkansas	No	n/a
California	No	If the vacancy occurs more than 148 days before the regular primary, the election is held the following November. If the vacancy occurs within 148 days before the primary, the vacancy election is held at the second November election after the vacancy occurs.
Colorado	No	n/a
Delaware	No	n/a
Florida	No	n/a
Georgia	No	n/a
Hawaii	Yes	If the vacancy occurs more than 21 days before the regular primary, the election is held the following November. If the vacancy occurs within 21 days before the primary, the vacancy election is held at the second November election after the vacancy occurs.
Idaho	No	n/a
Illinois	No	n/a
Indiana	No	n/a
Iowa	No	n/a
Kansas	No	n/a
Kentucky	Yes	n/a
Maine	No	n/a
Maryland	Yes	n/a
Michigan	No	n/a
Minnesota	No	If the vacancy occurs more than 11 weeks before the regular primary, the election is held the following November. If the vacancy occurs within 11 weeks before the primary, the vacancy election is held at the second November election after the vacancy occurs.
Missouri	No	n/a
Montana	Yes	n/a
Nebraska	No	n/a
Nevada	No	n/a

New Hampshire	No	n/a	
New Jersey	No		If the vacancy occurs more than 70 days before the next general election, the election to fill the vacancy is held at the next general November election. If the vacancy occurs within 70 days before the next general, the vacancy election is held at the second November election after the vacancy occurs.
New Mexico	No	n/a	
New York	No		If the vacancy occurs more than 59 days before the regular primary, the election is held the following November. If the vacancy occurs within 59 days before the primary, the vacancy election is held at the second November election after the vacancy occurs.
North Carolina	Yes	n/a	
Ohio	No	n/a	
Pennsylvania	No	n/a	
South Carolina	No	n/a	
South Dakota	No	n/a	
Tennessee	No	n/a	
Utah	Yes		The governor makes an appointment by selecting from a list of three prospective appointees submitted by the party. If the vacancy occurs more than 120 days before the regular primary, the election is held the following November. If the vacancy occurs within 120 days before the primary, the vacancy election is held at the second November election after the vacancy occurs.
Virginia	No		
West Virginia	Yes	n/a	
Wyoming	Yes	n/a	

In contrast to the states above, the 13 states listed below require that a special election be held to fill a U.S. Senate vacancy.

Vacancies Filled by Special Election

State	Interim Gubernatorial Appointment?	When Must the Special Election Be Held?	Statute(s)
Alaska	Yes	A special election must be held 60-90 days after vacancy occurs. If the vacancy occurs 60-90 days before the primary election, the special election shall be held on the date of the primary election.	AK ST § 15.40.140 AK ST § 15.40.145
Connecticut	Yes	150th day after vacancy occurs (excluding weekends), unless vacancy occurs between the	CT ST § 9-211

		125th and 63rd days preceding a regularly scheduled November general election, in which case vacancy is filled at that election. The governor may make a temporary appointment only in cases where a vacancy occurs after the municipal election in the year preceding the last year of the term or in the last year of the term of a senator. Approval of such nomination requires an affirmative vote of two-thirds of the membership of each chamber of the General Assembly.	
Louisiana	Yes	On specific dates provided by law. If the unexpired term is more than one year, an appointment to fill the vacancy shall be temporary. Any appointed senator shall serve until their successor is elected at a special election and takes office. If the unexpired term is one year or less, no special election is called but the successor is chosen at the next regular election.	LA R.S. 18:402 LA R.S. 18:1278
Massachusetts	Yes	145-160 days after vacancy occurs. If a vacancy occurs after April 10 but on or before the 70th day before the regular state primary, the office shall appear on the regular state primary ballot. If a vacancy occurs after that time, the office shall appear on the state election ballot that November.	MA ST 54 § 140
Mississippi	Yes	Within 100 days of when the governor receives official notice of a vacancy, unless the vacancy occurs in the year of a general state or congressional election, in which case the vacancy is filled in that election	MS ST § 23-15-855
North Dakota	No	When a vacancy occurs in the office of a U.S. senator, the governor shall call a special election to be held within 95 days to fill the vacancy. If the vacancy occurs within 95 days of the expiration of the term of office for that office, no election may be held to fill the vacancy.	ND ST 16.1-13-08
Oklahoma	Yes	A special election will be called to coincide with the next available regularly scheduled primary, runoff primary, and general election.	OK ST T. 26 § 12-101
Oregon	No	A special election is called by the governor if the vacancy occurs before the 61st day before a general election.	OR ST § 188.120
Rhode Island	No	At as early a date as is in compliance with the provisions of law. If a vacancy occurs between July 1 and Oct. 1 in an even-numbered year, the special election to fill the vacancy is held concurrently with the regularly scheduled general election.	RI ST § 17-4-9

Texas	Yes	If vacancy occurs in an even-numbered year on or before the 62nd day before the primary, remainder of term is filled at next regular general election. If vacancy occurs after 62nd day before the primary in an even year, or in an odd year, special election is held on the first uniform election date occurring on or after the 36th day the election is ordered.	TX ELECTION § 204.002 TX ELECTION § 204.005
Vermont	Yes	A date is set by the governor within six months following vacancy, unless vacancy occurs within six months of the general election, in which case the vacancy is filled at the general election.	VT ST T. 17 § 2621
Washington	Yes	Not less than 80 days following vacancy, unless vacancy occurs within eight months of the general election, in which case the vacancy is filled at the general election.	WA ST 29A.28.030 WA ST 29A.28.041
Wisconsin	No	Between 62 and 77 days after date of order of special election, unless vacancy occurs between the second Tuesday in May and the second Tuesday in July in an even year, in which case the vacancy is filled at the regular primary and general elections.	WI ST 17.18 WI ST 8.50

Related Resources