

CHAPTER 7.

ELECTIONS TO FILL VACANCIES.

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7.01 Elections to fill vacancies. (1) In addition to the provisions of law for the filling of vacancies in public offices by appointment such vacancies may be filled by election as provided by this chapter.

(2) A vacancy in the office of senator or representative in the congress of the United States, occurring not more than four months nor less than forty days before a general election, shall be filled at such election. Any such vacancy occurring more than four months, or less than forty days, before a general election may be filled at a special election and if not so filled shall be filled at the next subsequent general election.

(3) Any vacancy in the office of state senator may be filled by election as a vacancy in the office of senator of the United States may be filled, except as otherwise provided by this subsection. Any vacancy in the office of state senator or assemblyman occurring before the first day of February of the first year of his term shall be filled as promptly as may be by special election. But any vacancy in the office of state senator or assemblyman occurring after the close of the last regular session of the legislature held during his term shall not be filled unless a special session of the legislature be thereafter called during such term, in which case a special election to fill such vacancy shall be so ordered, if possible, that the new member may participate in such special session.

(4) A vacancy in any other elective state office (except that of governor or lieutenant governor), if it occurs more than six months before the expiration of the current term, may be filled at a special election held not later than sixty days before the next general election.

(5) If, during a vacancy in the office of governor, a vacancy shall occur in the office of lieutenant governor not more than 4 months nor less than 70 days before a general election, such vacancy in the office of governor and lieutenant governor shall be filled at such election. If, during a vacancy in the office of governor, a vacancy shall occur in the office of lieutenant governor less than 70 days before a general election, such vacancy in the office of governor and lieutenant governor may be filled at a special election. If, during a vacancy in the office of governor, a vacancy shall occur in the office of lieutenant governor more than 4 months before a general election, such vacancy in the office of governor and lieutenant governor shall be filled at a special election to be held within 65 days after such vacancy occurs in the office of lieutenant governor. [1943 c. 486]

Note: Subsection (5), created by ch. 486, office of lieutenant governor during permanent laws of 1943, providing for election of governor during permanent vacancy in office of governor, is constitutional. 32 Atty. Gen. 206.

7.02 Special elections in particular cases. Special elections in addition to those authorized by section 7.01 may be held in the following cases:

(1) When there shall have been neglect or failure to choose, (a), at a general election a member of the congress or legislature aforesaid or any county officer, who by law should have been chosen at such election, or, (b), at the proper April election a superintendent of schools in any district in the state, who by law should have been chosen at such election.

(2) When the right of office of a person elected to either of the offices mentioned in paragraph (1) shall cease before the commencement of the term of office for which he shall have been elected.

(3) When the governor in his discretion, directs such an election to fill any vacancy not provided for by this section and section 7.01.

7.03 Notice of elections to fill vacancies. Whenever a vacancy exists in any office specified in section 7.01 which by law should be filled at the ensuing general election, the secretary of state shall, twenty days at least before such election, give notice in writing to the clerk of each county when the vacancy is to be filled by the voters of the whole state, and when the vacancy is to be filled by the voters of a district less than the whole state, then to the clerk of each county located in whole or in part in such district, specifying the cause of such vacancy, the name of the officer in whose office it occurred, and the time when his term of office will expire. The secretary of state shall also give notice of the primary required by law to precede such election. Upon receipt of such notices the county clerk shall forthwith cause notices containing the substance of the notices so received by him to be printed and transmitted by mail to each town, city and village clerk as provided

by law. Said clerks shall cause such notices to be posted at least ten days before said primary and election in the manner prescribed in chapters 5 and 6.

7.04 Orders for special elections. (1) All special elections for county officers shall be ordered by the county clerk, except that a special election for county clerk shall be ordered and noticed by the sheriff in the manner required of such clerk in other cases. The officer who orders such an election shall give notice in the manner hereinafter provided. All other special elections shall be ordered by the governor except that a special election for governor shall be ordered by the attorney-general in the manner required of the governor in other cases, so far as applicable.

(2) Every such order shall specify the office to be filled, how the vacancy occurred, the name of the officer, the time when his term of office will expire, the county or district in which and the day on which such election shall be held, which day shall not be less than 45 nor more than 60 days from the date of such order.

(3) When made by the governor, such order shall be filed and recorded in the office of the secretary of state; when made by the county clerk or sheriff, it shall be filed and recorded in the office of the county clerk. [1939 c. 3; 1943 c. 486]

7.05 Notice of special elections. The secretary of state shall cause a copy of each notice of election issued by him, and of each order made by the governor or attorney-general for a special election, to be published in the official state paper once in each week from the date of such notice or order until the election to which it shall refer; and on receipt of such order shall cause a copy thereof forthwith to be transmitted to the county clerk of the county, or in case of a vacancy in a district embracing more than one county, then to the county clerk of each county any part of which is in such district. The county clerk, on receiving or on countersigning any order for a special election, shall forthwith give notice of such election in the manner provided for giving notices of general elections. Every town, village and ward officer or inspector of election, who shall receive any such notice, shall forthwith give notice thereof in the manner required of him in case of a general election. At the time of making the certificate required by section 6.19, or at the time of the publication of the notice required by this section, the secretary of state shall transmit to each county clerk a form of notice to be used by him under section 6.22, and also a form of the ballot to be used by him. [1943 c. 486]

7.06 Conduct of special elections. Special elections shall be held at the place, and conducted by the officers, and the result canvassed in the same manner, and within the same time thereafter certified, in all respects as near as practicable as provided for general elections. When a special election as to any officer, whose election is required by law to be at a general election, is held on the same day as an annual town meeting or municipal election, the ballots cast at such special election shall be deposited in a separate box provided for that purpose. No special election shall be held within sixty days next preceding a general election. No special election for any school officer or for any county officer shall be held after the time when his term would have commenced if he had been elected at the proper April or November election. This chapter does not relate to the filling of vacancies in judicial offices.