

**CHAPTER 17 [OLD]
VACANCIES**

REPEALED. L 1970, c 26, §3.

**CHAPTER 17
VACANCIES**

Section

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" **§17-1 United States senator.** When a vacancy occurs in the office of United States senator, the vacancy shall be filled for the unexpired term at the following state general election; provided that the vacancy occurs not later than 4:30 p.m. on the twenty-first day prior to the date specified in section 12-6 for the close of filing nomination papers for regularly scheduled elections; otherwise at the state general election next following. The chief election officer shall issue a proclamation designating the election for filling the vacancy. All candidates for the unexpired term shall file nomination papers not later than the date and time specified in section 12-6 and shall be nominated and elected in accordance with this title. Pending the election, the governor shall make a temporary appointment to fill the vacancy by selecting a person from a list of three prospective appointees submitted by the same political party as the prior incumbent. The appointee shall serve until the election and qualification of the person duly elected to fill the vacancy and shall be, at the time of appointment, and shall have been, for at least six months immediately prior to the appointment, a member of the same political party as the prior incumbent. The appointee shall be a resident of the State. If the prior incumbent was not a member of any political party, the governor shall appoint a person who is not and has not been, for at least six months immediately prior to the appointment, a member of any political party. [L 1970, c 26, pt of §2; am L 1973, c 217, §7(a); am L 2007, c 57, §2; am L 2015, c 179, §1]

" **§17-2 United States representative.** When a vacancy occurs in the representation of this State in the United States House of Representatives, the chief election officer shall issue a proclamation for an election to fill the vacancy. The proclamation shall be issued not later than on the sixtieth day prior to the election to fill the vacancy and shall contain the date, time, and places where the special election is to be held, the time within which nomination papers shall be filed, the time for transmitting to county clerks the notice designating the offices for which candidates are to be elected, the time for transmitting to county clerks lists of candidates to be voted for at the special election and such other matter as provided for in section 11-91 and which are not inconsistent with this section. The special election shall be conducted and the results ascertained so far as practicable, in accordance with this title. [L 1970, c 26, pt of §2; am L 1973, c 217, §7(b); am L 1974, c 34, §4(a); gen ch 1985; am L 1986, c 305, §6]

Conflicts with Article I, §2, of U.S. Constitution with regard to unexpired terms for U.S. House of Representatives. Att. Gen. Op. 83-5.

" **§17-3 State senator.** (a) Whenever any vacancy in the membership of the state senate occurs, the term of which ends at the next succeeding general election:

(1) The governor shall make an appointment within sixty calendar days following the first day of vacancy to fill the vacancy for the unexpired term by selecting a person from a list of three prospective appointees submitted by the same political party as the prior incumbent. The appointee shall be at the time of appointment, and for at least six months immediately prior to the appointment, a member of the political party. The appointee shall, at the time of appointment, be a resident of the same senate district as the prior incumbent. The political party shall submit the list of prospective appointees to the governor within thirty calendar days following the first day of vacancy; and

(2) If the prior incumbent was not a member of any political party, the governor shall, within sixty calendar days following the first day of vacancy, appoint a person who is at the time of appointment a resident of the same senate district as the prior incumbent and who is not, and has not been for at least six months prior to the appointment, a member of any political party.

(b) In the case of a vacancy, the term of which does not end at the next succeeding general election:

(1) If it occurs not later than on the tenth day prior to the close of filing for the next succeeding primary election, the vacancy shall be filled for the unexpired term at the next succeeding general election. The chief election officer shall issue a proclamation designating the election for filling the vacancy. All candidates for the unexpired term shall be nominated and elected in accordance with this title. Pending the election, the governor shall make a temporary appointment to fill the vacancy, and the person so appointed shall serve until the election of the person duly elected to fill the vacancy. The governor shall make the appointment from a list of three prospective appointees submitted by the same political party as the prior incumbent. The appointee

shall be, at the time of the appointment, and shall have been, for at least six months immediately prior to the appointment, a member of the political party. The appointee shall, at the time of appointment, be a resident of the same senate district as the prior incumbent. If the prior incumbent was not a member of any political party, the governor shall appoint a person who is at the time of appointment a resident of the same senate district as the prior incumbent and is not and has not been, for at least six months immediately prior to the appointment, a member of any political party;

- (2) If it occurs later than on the tenth day prior to the close of filing for the next succeeding primary election but not later than on the sixtieth day prior to the next succeeding primary election, or if there are no qualified candidates for any party or nonpartisan candidates qualified for the primary election ballot, nominations for the unexpired term may be filed not later than 4:30 p.m. on the fiftieth day prior to the next succeeding primary election. The chief election officer shall issue a proclamation designating the election for filling the vacancy. Pending the election the governor shall make a temporary appointment to fill the vacancy and the person appointed shall serve until the election of the person duly elected to fill the vacancy. The governor shall make the appointment from a list of three prospective appointees submitted by the same political party as the prior incumbent. The appointee shall be, at the time of the appointment, and shall have been, for at least six months immediately prior to the appointment, a member of the political party. The appointee shall, at the time of appointment, be a resident of the same senate district as the prior incumbent. If the prior incumbent was not a member of any political party, the governor shall appoint a person who is at the time of appointment a resident of the same senate district as the prior incumbent and is not and has not been, for at least six months immediately prior to the appointment, a member of any political party;
- (3) If it occurs after the sixtieth day prior to the next succeeding primary but not later than on the fiftieth day prior to the next succeeding general election, or if there are no qualified candidates for any party or nonpartisan candidates in the primary, the vacancy

shall be filled for the unexpired term at the next succeeding general election. The chief election officer shall issue a proclamation designating the election for filling the vacancy. Party candidates for the unexpired senate term shall be nominated by the county committees of the parties not later than 4:30 p.m. on the fortieth day prior to the general election; nonpartisan candidates may file nomination papers for the unexpired term not later than 4:30 p.m. on the fortieth day prior to the general election with the nonpartisan candidate who is to be nominated to be decided by lot, under the supervision of the chief election officer. The candidates for the unexpired term shall be elected in accordance with this title. Pending the election, the governor shall make a temporary appointment to fill the vacancy, and the person appointed shall serve until the election of the person duly elected to fill the vacancy. The governor shall make the appointment from a list of three prospective appointees submitted by the same political party as the prior incumbent. The appointee shall be, at the time of the appointment, and shall have been, for at least six months immediately prior to the appointment, a member of the political party. The appointee shall, at the time of appointment, be a resident of the same senate district as the prior incumbent. If the prior incumbent was not a member of any political party, the governor shall appoint a person who is at the time of appointment a resident of the same senate district as the prior incumbent and is not and has not been, for at least six months immediately prior to the appointment, a member of any political party;

- (4) If it occurs after the fiftieth day prior to the next succeeding general election or if no candidates are nominated, the governor shall make an appointment to fill the vacancy for the unexpired term by selecting a person from a list of three prospective appointees submitted by the same political party as the prior incumbent. The appointee shall be, at the time of the appointment, and shall have been, for at least six months immediately prior to the appointment, a member of the political party. The appointee shall, at the time of appointment, be a resident of the same senate district as the prior incumbent. If the prior incumbent was not a member of any political party, the governor shall appoint a person who is at the time of

appointment a resident of the same senate district as the prior incumbent and is not and has not been, for at least six months immediately prior to the appointment, a member of any political party. [L 1970, c 26, pt of §2; am L 1973, c 217, §7(c); am L 1980, c 247, §2; gen ch 1985; am L 1990, c 35, §2; am L 1992, c 276, §1; am L 2007, c 57, §3]

Case Notes

Does not apply to vacancy in senate resulting from death of candidate. 52 H. 410, 477 P.2d 625.

" **§17-4 State representatives.** (a) Whenever any vacancy in the membership of the state house of representatives occurs, the governor shall make an appointment within sixty calendar days following the first day of vacancy to fill the vacancy for the unexpired term by selecting a person from a list of three prospective appointees submitted by the same political party as the prior incumbent. The appointee shall be, at the time of appointment, and shall have been, for at least six months immediately prior to the appointment, a member of the political party. The appointee shall, at the time of appointment, be a resident of the same state representative district as the prior incumbent. The political party shall submit the list of prospective appointees to the governor within thirty calendar days following the first day of vacancy.

(b) If the prior incumbent was not a member of any political party, the governor, within sixty calendar days following the first day of vacancy, shall appoint a person who is at the time of appointment a resident of the same state representative district as the prior incumbent and is not and has not been, for at least six months immediately prior to the appointment, a member of any political party. [L 1970, c 26, pt of §2; gen ch 1985; am L 1992, c 276, §2; am L 2007, c 57, §4]

" **§17-5 REPEALED.** L 1990, c 35, §5.

" **§17-6 REPEALED.** L 2011, c 5, §17.

Cross References

Board of education, see §§302A-121 to 302A-127.

" **§17-7 Board of trustees, office of Hawaiian affairs.** (a) Whenever any vacancy in the membership of the board of trustees occurs, the term of which ends at the next succeeding general

election, the vacancy shall be filled by a two-thirds vote of the remaining members of the board. If the board fails to fill the vacancy within sixty days after it occurs, the governor shall fill the vacancy within ninety days after the vacancy occurs. When island residency is required under section 13D-1, the person so appointed shall reside on the island from which the vacancy occurred, and shall serve for the duration of the unexpired term.

(b) In the case of a vacancy, the term of which does not end at the next succeeding general election:

(1) If it occurs not later than on the ninetieth day prior to the next succeeding primary election, the vacancy shall be filled for the unexpired term at the next succeeding general election. The chief election officer shall issue a proclamation designating the election for filling the vacancy. All candidates for the unexpired term shall file nomination papers not later than the date and time specified in section 12-6 and shall be nominated and elected in accordance with this title. Pending the election, the board or the governor shall make a temporary appointment to fill the vacancy in the manner prescribed under subsection (a). When island residency is required under section 13D-1, the person so appointed shall reside on the island from which the vacancy occurred, and shall serve for the duration of the unexpired term and shall serve until the election of the person duly elected to fill such vacancy.

(2) If it occurs after the ninetieth day prior to the next succeeding primary election, the board or the governor shall make an appointment to fill the vacancy in the manner prescribed under subsection (a). When island residency is required under section 13D-1, the person so appointed shall reside on the island from which the vacancy occurred, and shall serve for the duration of the unexpired term.

(c) All appointments made by the board or the governor under this section shall be made without consideration of the appointee's party preference or nonpartisanship. [L 1979, c 196, §9; am L 1980, c 247, §4; am L 1990, c 35, §4; am L 2012, c 26, §1; am L 2013, c 287, §4]

Attorney General Opinions

Board required to fill vacant trustee's position created by forfeiture of office. Att. Gen. Op. 84-3.