

### What if the person who held the office was not elected or appointed by a major political party?

When offices held by independent or third party candidates become vacant, state law does not provide for a political party caucus. Instead, state law provides for another governing body or elected official to appoint a person to fill the vacancy.

This “back-up” procedure provides that county commissioners, the county council, city-county council, city council, township board, or town council may act to fill vacancies if a caucus may not be held. (IC 3-13-7-2; IC 3-13-7-3; IC 3-13-8; IC 3-13-9 & IC 3-13-10)

### Are there other cases in which these “back-up” procedures are used?

**Yes.** If a caucus or county chair is responsible for filling a vacancy in a town office or in a township office, but does not hold the caucus within 30 days after the vacancy occurs, or is certified to the circuit court clerk when an incumbent dies, then the town council (or county commissioners, for a township office) may fill the vacancy instead. (IC 3-13-9; IC 3-13-10; IC 5-8-6)

If a vacancy occurs on a school board (or other office elected on a non-partisan basis), the remaining board members usually fill the vacancy. However, check to see if any other laws apply.

### What if a caucus is not held by the 30 day deadline?

Except for town offices or township offices, a political party caucus can still fill the vacancy, even if the caucus is not held within the required 30 days. (IC 3-13-11-20)

### What procedure should an elected official who wishes to resign follow?

The elected official must submit a resignation in writing and may specify the date when the resignation takes effect. (IC 5-8-4-4) Locally elected officials who receive a commission from the governor file their resignation with the governor. (IC 5-8-3.5-1(a)(3)(H)) All other locally elected officials file their resignation with the circuit court clerk. (IC 5-8-3.5-1(a)(4)) If the officeholder was elected or appointed as a candidate of the Democratic or Republican Party, the officeholder should also send a copy of the resignation to the appropriate county chair. (IC 5-8-3.5-1) Statewide and state legislative office holders follow a different procedure, see IC 5-8-3.5-1(a)(1) and IC 5-8-3.5-1(a)(2) for details.

### What must a newly selected individual do before beginning service in office?

All officials must take an oath of office and an oath to support the Constitution of the United States and the State of Indiana. A copy of the oath must be filed with the appropriate official. (IC 5-4-1) The official may also be required to post a bond, or may be covered by a “blanket bond” for all public officials. Check with the appropriate local fiscal officer for information. An incumbent that holds over in an office under the Indiana Constitution is not required to take an oath at the beginning of a subsequent term. (IC 5-4-1-2)

## Filling a Vacancy

**United States Senator:** The governor appoints someone to fill the vacancy until the next general election, which is held in an even-numbered year. At that time, an election will be held to fill the office for the remainder of the term. If the vacancy occurs after noon, 74 days before the general election, the appointed person serves until after the following general election two years later. (IC 3-13-3-1)

**United States Representative:** The governor calls a special election to fill the vacancy for the remainder of the term. (IC 3-10-8 and IC 3-13-2)

**Governor:** The lieutenant governor becomes governor and serves for the remainder of the term. (Article 5, Section 10, Constitution of the State of Indiana)

**Lieutenant Governor:** The governor nominates a lieutenant governor who takes office upon confirmation by a majority vote in each house of the general assembly. The appointee then serves for the remainder of the term. (Article 5, Section 10, Constitution of the State of Indiana)

**All other statewide elective offices:** The governor appoints someone of the same political party to serve the remainder of the term. (IC 3-13-4-3)

**State Senator, State Representative, Prosecuting Attorney, Circuit Court Clerk, County, City, Town and Township Elective Offices, Town Judges and Township Small Claims Court Judges: All Democratic or Republican Vacancies:** These vacancies in elective office are filled by a caucus of the precinct committeemen affiliated with the political party that elected the candidate who vacated the office. (IC 3-13-5 and IC 3-13-11) **EXCEPTION:** If fewer than two persons are eligible to be members of a caucus, the county chair of the party will fill the vacancy. (IC 3-13-11-5(b))

**Judges:** Except for circuit, town and small claims court judges, the governor appoints someone to serve the remainder of the term. (IC 3-13-6-1)

**Circuit Court Judges:** The governor appoints someone to serve until the next general election held in an even-numbered year or for the remainder of the term, whichever occurs first. The person elected at the next general election will serve a six year term. If the vacancy occurs after noon, 74 days before the general election, the appointed person serves until after the following general election two years later (IC 3-13-6-1(b))

**School Board Member:** Usually, the remaining members of the school board appoint someone to fill the vacancy for the remainder of the term. Different procedures may be used in some school corporations under applicable state laws. (IC 20)

## Vacancies in Elected Offices In Indiana



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This brochure provides basic information concerning the filling of vacancies in elected offices. It does NOT discuss the procedure for filling a ballot vacancy when a candidate withdraws, dies or is not nominated at a primary election.

The information in this brochure reflects current Indiana law as of October 2018. For further information or clarifications, contact your circuit court clerk or the Indiana Election Division.

**What is the usual procedure for filling a vacancy in a local office?**

If a county, city, town, or township official was elected to the office as the candidate of a major political party, then in most cases, a political party caucus is called to fill the vacancy. (IC 3-13-11) However, the governor replaces all county level judges and city court judges if a vacancy occurs. (IC 3-13-6-1 & IC 3-13-6-2)

**When must the political party hold the caucus?**

The caucus must be held within 30 days after the vacancy occurs or the death of an incumbent officeholder is certified. However, in some cases the caucus can be held at a later date or in advance of the vacancy. (IC 3-13-11-3; IC 5-8-6)

**If an officeholder has been elected to another office or plans to resign, can the caucus be held BEFORE the office is vacated?**

**Yes.** If the officeholder has filed a written resignation with a delayed effective date or the officeholder has been elected to another office, the political party may hold the caucus before the resignation takes effect or the official assumes the other office. The caucus notice requirements still apply, and the person selected by the caucus to fill the vacancy will not take office until the resignation takes effect or the person assumes the other office. (IC 3-13-11-3)

**Can a political party schedule a caucus to fill more than one office vacancy occurring at the same time, or to fill both an office vacancy and a vacancy on the ballot?**

**Yes.** Often an individual resigns from an office and withdraws as a candidate at the same time, or more than one individual resigns from an office. The political party may schedule two caucuses at the same location and at slightly different times. This requires careful planning by the party chair to ensure that only eligible members vote in each caucus.

**Which precinct committeemen are eligible to participate in the political party caucus to fill the vacancy?**

A precinct committeeman must: (1) be of the same political party that elected or selected the person who vacated the office; (2) represent a precinct in which voters were eligible to vote for the vacated office; and (3) **if appointed**, have been serving as precinct committeeman on the 30<sup>th</sup> day before the vacancy occurred. An **elected** precinct committeeman is eligible to participate in a caucus regardless of when the vacancy in the office occurred. (IC 3-13-11-5) Vice committeemen are not permitted to participate in a caucus unless as a proxy for their committeeman.

**Are proxy votes permitted in a political party caucus?**

Only vice committeemen may serve as proxies for precinct committeemen in a caucus. A vice committeeman may vote as a **proxy** for a precinct committeeman if: (1) the precinct committeeman meets the requirements listed in (1) and (2) above and is not present at the caucus; (2) the vice committeeman meets the requirements listed in (1) and (2) above; (3) the vice committeeman serves under an **elected** precinct committeeman and the vice committeeman is appointed at least **5 days** before the caucus, **OR** the vice committeeman was **appointed** at least **30 days** before the vacancy occurred. (IC 3-13-11-9)

**What if no precinct committeeman or vice committeeman (or only one individual) would be eligible to participate in the caucus or no quorum is present under caucus rules?**

In these cases, a caucus does not occur. Instead, the county chair fills the vacancy by direct appointment. (IC 3-13-11-5; 3-13-11-8)

**What if the person who vacated the office represents a district and the district lines have been changed since the official was elected?**

Since the precinct committeemen must represent precincts in which voters were eligible to vote for the official, the precinct committeemen from the former district (not the current district) would participate in that case. (IC 36-1-6-10)

**Who chairs the precinct committeeman caucus?**

The county chair of the political party of the person who vacated the office chairs the caucus (or the county chair's designee). If a city or town is located in multiple counties, the county chair of the county where most of the city or town's population is located serves. The chair, or designee, may break any tie and may fill the vacancy directly if a required quorum is not present at the caucus. (IC 3-13-11-6; 3-13-11-8) Note: the state party chair calls a caucus for a state legislative vacancy.

**What notice must be given for the caucus?**

The county chair must send a written notice by first class mail to each caucus member at least 10 days before the date of the caucus. The notice must state the chair's name and the date, time, place, and purpose of the caucus. There is no requirement to publish a legal notice of the caucus in any newspaper, although the chair may wish to notify the media that the caucus will occur. (IC 3-13-11-4)

**What if the political party must postpone the caucus or continue it to another date for some reason?**

State law does not specify whether a political party may postpone or recess a caucus. Instead, this matter may be covered by party rules. If an emergency requires that the political party reschedule or recess the caucus, the party should give the best possible notice to all participants and to the public, either by giving the same written notice by mail, if time permits, or by a public announcement at the scheduled time and place of the caucus, if possible.

**Who can be a candidate for selection by the caucus?**

Generally, the same eligibility requirements that apply to a candidate in a primary election or a convention apply to a candidate who seeks to be selected by a caucus. (IC 3-8-1-5.7) However, the person who vacated the office is not eligible to be chosen by the caucus to fill the vacancy. (IC 3-13-11-19) County Assessors have a certification requirement before assuming office, See IC 36-2-15-2 for details.

An otherwise qualified candidate who has voted in one party's primary may file as a candidate for selection to the office by the precinct committeemen of the other major political party. Although caucus members might prefer to select an individual of their own party to serve, state law does not require the caucus to do so.

A candidate must file a declaration of candidacy with the county chair at least 72 hours before the time of the scheduled caucus. (IC 3-13-11-7) The declaration of candidacy form, CEB-5 form, is available from the Election Division or the office of the circuit court clerk of the county. If a candidate seeks a statewide, state legislative, or judicial office, or the office of prosecuting attorney, the candidate is required to attach a statement of economic interest to their declaration. If a candidate seeks a local office, the candidate is only required to file a statement of economic interest after selection. (IC 3-8-9-5)

**What are the rules for conducting the caucus?**

State law requires each caucus to begin its work by adopting caucus rules of procedure. You may wish to contact the state committee of the appropriate political party to obtain suggested caucus rules or guidance on procedural points. State law specifies that the chair breaks any tie vote that occurs in the caucus. (IC 3-13-11-8)

State law also specifies that a majority vote of those casting a vote for a candidate is required for the caucus to fill the vacancy. A secret ballot is required by state law if there is more than one candidate. (IC 3-13-11-10)

**What if no candidate receives a majority of the votes?**

State law makes no specific provision that covers this situation. However, many caucus rules provide that the candidate receiving the fewest number of votes drops out of the running after each round of balloting.

**Who must be notified when the caucus fills the vacant office?**

The chairman must notify the circuit court clerk of the chair's county within five days after the caucus chooses a successor by filing CEB-3 or CEB-4 form. Except for certain county offices commissioned by the state, the clerk will then issue a certificate of appointment pro tempore (CEB-22 form) to the person filling the vacancy. (IC 3-13-11-11).

**Who serves in the vacant office before the caucus chooses a successor?**

If the vacant office has a chief deputy, this employee performs the duties of the office until a successor is chosen. If there is no chief deputy employee or this employee is unable or unwilling to serve, the county commissioners, mayor or another local elected official may name a person to serve until the political party holds a caucus. (IC 3-13-11-12 through 17)

**Who serves in the place of a town clerk-treasurer when a party caucus is not held within 30 days after a vacancy occurs or the death of the incumbent is certified?**

The town council then fills the vacancy. However, if a council is unable to do so, a council member may be selected by the council to serve *ex officio* as the town clerk-treasurer. The town council may enter into an interlocal agreement with another town clerk-treasurer to assist the town council member perform the duties. The council may also contract with a certified public accountant to assist in the duties. (IC 3-13-9-3, IC 5-9-4-8, IC 36-5-6-9)