

TITLE 59
PUBLIC OFFICERS IN GENERAL

CHAPTER 9
RESIGNATIONS AND VACANCIES

59-901. HOW VACANCIES OCCUR. (1) Every elective civil office shall be vacant upon the happening of any of the following events at any time before the expiration of the term of such office, as follows:

- (a) The resignation of the incumbent.
- (b) The death of the incumbent.
- (c) Removal of the incumbent from office by lawful procedure.
- (d) The decision of a competent tribunal declaring an elective office vacant due to apparent abandonment or prolonged incapacity or absence, or other basis as determined by the tribunal, provided such apparent abandonment, prolonged incapacity, absence or other basis is in excess of ninety (90) days.
- (e) The incumbent ceasing to be a resident of the state, district or county in which the duties of his office are to be exercised, or for which he may have been elected.
- (f) A failure to elect someone at the proper election, there being no incumbent to continue in office until a successor is elected and qualified, nor other lawful provisions for filling an elective office.
- (g) A forfeiture of elective office as provided by any law of the state.
- (h) Conviction of an incumbent officeholder of any felony, or of any public offense involving the violation of his oath of office.
- (i) The acceptance of a commission to any military office, either in the militia of this state, or in the service of the United States, which requires the incumbent in the civil office to exercise his military duties out of the state for a period of not less than sixty (60) days.

[(59-901) 1890-1891, p. 57, sec. 169; reen. 1899, p. 67, sec. 1; am. R.C., sec. 317; reen. C.L., sec. 317; C.S., sec. 453; I.C.A., sec. 57-901; am. 2012, ch. 209, sec. 1, p. 564.]

59-902. RESIGNATIONS. Resignations of civil offices must be in writing, and may be made as follows:

1. By the governor, or the lieutenant governor, to the legislature, if in session; if not, to the secretary of state.
2. By senators and representatives in congress, and by all other state officers elected statewide by the qualified voters of the state, and by judges of the supreme court and district courts, and regents of the university, to the governor.
3. By members of the senate and house of representatives, to the presiding officers of their respective bodies, in session, who shall immediately transmit information of the same to the governor. If such bodies are not in session, to the governor.
4. By all county officers, to the county board, and by members of the county board, to the county auditor.
5. By all officers holding appointment, to the officer or body by whom they were appointed.

Such resignation shall not take effect until accepted by the board or officer to whom the same is made.

[(59-902) 1890-1891, p. 57, sec. 170; reen. 1899, p. 67, sec. 2; compiled and reen. R.C., sec. 318; reen. C.L., sec. 318; C.S., sec. 454; I.C.A., sec. 57-902; am. 1975, ch. 21, sec. 4, p. 30; am. 1977, ch. 105, sec. 1, p. 222.]

59-903. NOTICE OF REMOVAL TO APPOINTING OFFICER. Whenever an officer is removed, convicted of any infamous crime or offense involving a violation of his oath of office, or whenever his election or appointment is declared void, the body, judge, or officer before whom the proceedings were had, must give notice thereof to the officer empowered to fill the vacancy.

[(59-903) R.S., sec. 432; compiled and reen. R.C., sec. 319; reen. C.L., sec. 319; C.S., sec. 455; I.C.A., sec. 57-903.]

59-904. STATE OFFICES -- VACANCIES, HOW FILLED AND CONFIRMED. (a) All vacancies in any state office, and in the supreme and district courts, unless otherwise provided for by law, shall be filled by appointment by the governor. Appointments to fill vacancies pursuant to this section shall be made as provided in subsections (b), (c), (d), (e), (f) and (g) of this section, subject to the limitations prescribed in those subsections.

(b) Nominations and appointments to fill vacancies occurring in the office of lieutenant governor, state controller, state treasurer, superintendent of public instruction, attorney general and secretary of state shall be made by the governor, subject to the advice and consent of the senate, for the balance of the term of office to which the predecessor of the person appointed was elected.

(c) Nominations and appointments to and vacancies in the following listed offices shall be made or filled by the governor subject to the advice and consent of the senate for the terms prescribed by law, or in case such terms are not prescribed by law, then to serve at the pleasure of the governor:

- Director of the department of administration,
- Director of the department of finance,
- Director of the department of insurance,
- Director, department of agriculture,
- Director of the department of water resources,
- Director of the Idaho state police,
- Director of the department of commerce,
- Director of the department of labor,
- Director of the department of environmental quality,
- Director of the department of juvenile corrections,
- Executive director of the commission of pardons and parole,
- The state historic preservation officer,
- The administrator of the division of human resources,
- Member of the state tax commission,
- Members of the board of regents of the university of Idaho and the state board of education,
- Members of the Idaho water resource board,
- Members of the state fish and game commission,
- Members of the Idaho transportation board,
- Voting members of the state board of health and welfare,
- Members of the board of environmental quality,
- Members of the board of directors of state parks and recreation,
- Members of the board of correction,

Members of the industrial commission,
 Members of the Idaho public utilities commission,
 Members of the Idaho personnel commission,
 Members of the board of directors of the Idaho state retirement system,
 Members of the board of directors of the state insurance fund,
 Members of the commission of pardons and parole.

(d) Appointments made by the state board of land commissioners to the office of director, department of lands, and appointments to fill vacancies occurring in those offices shall be submitted by the president of the state board of land commissioners to the senate for the advice and consent of the senate in accordance with the procedure prescribed in this section.

(e) Appointments made pursuant to this section while the senate is in session shall be submitted along with the letter of appointment to the senate forthwith for the advice and consent of that body. Appointments made pursuant to this section while the senate is not in session shall be submitted along with the letter of appointment to the senate pursuant to section [67-803](#), Idaho Code. Should the senate adjourn without granting its consent to an appointment the appointment shall thereupon become void and a vacancy in the office to which the appointment was made shall exist, and the office shall be deemed vacant upon the date of adjournment. It is the duty of the appointing authority to supply the senate with the letter of appointment. The appointee shall supply the senate with the documentation it requests.

All appointments made pursuant to subsection (c) of this section, except those appointments for which a term of office is fixed by law, shall terminate at the expiration of any gubernatorial term. Appointments to fill the vacancies thus created by the expiration of the term of office of the governor shall be forthwith submitted to the senate for the advice and consent of that body, and when so submitted shall be as expeditiously considered as possible.

Upon receipt of an appointment along with the letter of appointment in the senate for the purpose of securing the advice and consent of the senate, the appointment shall be referred by the presiding officer to the appropriate committee of the senate for consideration and report prior to action thereon by the full senate.

(f) Excepting the appointments made pursuant to subsection (c) of this section, whenever an appointee's term has expired as prescribed by law, the governor or the authorized appointing authority must fill the position within twelve (12) months of the expiration of the term. However, an office will be vacant if the governor or the authorized appointing authority: (i) fails to timely appoint a qualified person at the earlier of the time required by law or required in this subsection; or (ii) fails to provide the senate with an appropriate letter or document of appointment by the thirty-sixth legislative day of the subsequent legislative session. All letters or documents of appointment must, as reasonably possible, accompany the additional documentation required by the senate. At the request of the secretary of the senate, the governor or the authorized appointing authority must provide the additional documentation.

(g) It is the intent of the legislature that the provisions of this section as amended by this chapter shall not apply to appointments which have been made prior to the effective date of this chapter. It is the further intent of the legislature that the provisions of this section shall apply to the offices listed in this section and to any office created by law or executive order which succeeds to the powers, duties, responsibilities and au-

thorities of any of the offices listed in subsections (c) and (d) of this section.

[(59-904) 1890-1891, p. 57, sec. 12; reen. 1899, p. 67, sec. 3; compiled and reen. R.C., sec. 320; reen. C.L., sec. 320; C.S., sec. 465; I.C.A., sec. 57-904; am. 1969, ch. 413, sec. 1, p. 1145; am. 1974, ch. 22, sec. 57, p. 592; am. 1977, ch. 105, sec. 2, p. 223; am. 1985, ch. 160, sec. 1, p. 427; am. 1994, ch. 180, sec. 133, p. 507; am. 1995, ch. 44, sec. 62, p. 105; am. 1996, ch. 232, sec. 1, p. 758; am. 1996, ch. 421, sec. 3, p. 1411; am. 1998, ch. 428, sec. 9, p. 1358; am. 1999, ch. 311, sec. 2, p. 774; am. 1999, ch. 370, sec. 17, p. 996; am. 2000, ch. 132, sec. 3, p. 312; am. 2000, ch. 469, sec. 129, p. 1588; am. 2004, ch. 346, sec. 8, p. 1033; am. 2007, ch. 360, sec. 20, p. 1079; am. 2010, ch. 335, sec. 1, p. 887; am. 2015, ch. 338, sec. 1, p. 1269.]

59-904A. LEGISLATURE -- VACANCIES, HOW FILLED. In the event of a vacancy in the house of representatives or senate of the state of Idaho, such vacancy shall be filled as herein provided. The legislative district committee of the same political party, if any, of the former member whose seat is vacant shall submit, within fifteen (15) days, a list of three (3) nominations to the governor. The governor shall fill the vacancy by appointment from the list of three (3) nominations within fifteen (15) days. If no appointment has been made within fifteen (15) days, the legislative district committee shall designate one (1) of the three (3) nominees to fill the vacancy. The vacancy shall be so filled until the next general election after such vacancy occurs, when such vacancy shall be filled by election.

The legislative district committee of the same political party, if any, of the former member, shall select a person who possesses the constitutional qualifications to fill the vacant office to which he is nominated, and who is affiliated with the same political party, if any, as the former member whose seat is vacant. Upon the failure of the committee to make such selection before the expiration of the fifteen (15) day period the governor shall within five (5) days, fill said vacancy by appointing a person having the qualifications above set forth.

[59-904A, added 1971, ch. 128, sec. 1, p. 509.]

59-905. OTHER STATE OFFICES -- COUNTY AND CITY OFFICES -- VACANCIES, HOW FILLED. Vacancies shall be filled in the following manner: In the office of the clerk of the Supreme Court, by the Supreme Court. In all other state offices, and in the membership of any board or commission created by the state, where no other method is specifically provided, by the governor. In county offices, by the procedure prescribed in section [59-906](#), Idaho Code, and in the membership of such board, by the governor. In city offices, by the mayor and council.

[(59-905) 1890-1891, p. 57, sec. 171; reen. 1899, p. 67, sec. 4; compiled and reen. R.C., sec. 321; reen. C.L., sec. 321; C.S., sec. 457; I.C.A., sec. 57-905; am. 1975, ch. 21, sec. 5, p. 30; am. 1982, ch. 4, sec. 1, p. 7.]

59-906. COUNTY OFFICES -- VACANCIES. (1) Except as provided in subsection (2) of this section, all vacancies in any county office of any of the several counties of the state, except that of the county commissioners (who

shall be appointed by the governor), shall be filled by appointment by the county commissioners of the county in which the vacancy occurs in accordance with the procedure prescribed below until the next general election, when such vacancy shall be filled by election.

The vacancy shall be filled as follows: the county central committee of the same political party, if any, of the former officer, whose office is vacant, shall submit a list of three (3) nominations to the board of county commissioners within fifteen (15) days from the day the office is vacated. The board of county commissioners shall fill the vacancy by appointment from the submitted list within fifteen (15) days. Should no appointment be made within fifteen (15) days, the county central committee of the political party submitting the nominations shall designate one (1) of the three (3) nominees to fill the vacancy. The person selected shall be a person who possesses the same qualifications at the time of his appointment as those provided by law for election to the office. Upon failure of the committee to make a selection before the expiration of the additional fifteen (15) day period, the board of county commissioners shall, within five (5) days, fill the vacancy by appointing a person having the same qualifications at the time of his appointment as those provided by law for election to the office. If the person who has vacated the office has not been affiliated with a political party, the vacancy shall be filled by the board of county commissioners by appointment of a person having the same qualifications at the time of his appointment as those provided by law for election to the office.

(2) When a county elected officer, except a county commissioner, gives a written notice of intent to resign to the board of commissioners of the county of which he is an elected officer, and when the notice of intent to resign specifies the effective date of the resignation, the county central committee of the same political party of the officer whose office is being vacated, may submit a list of three (3) nominations to the board of county commissioners prior to the effective date of the resignation. The board of county commissioners shall fill the vacancy by appointment from the submitted list to be effective on the day following the date the office is vacated by the former officer. The person selected shall be a person who possesses the same qualifications at the time of his appointment as those provided by law for election to the office. In the event the county elected officer rescinds his notice of intent to resign by notifying the board of county commissioners in writing prior to the effective date of his resignation, all actions taken by either the county central committee or the board of county commissioners to fill the anticipated vacancy, shall be null and void. If no appointment is made prior to the day the office is vacated, the provisions of subsection (1) of this section shall apply.

[(59-906) 1899, p. 67, sec. 9; reen. R.C. & C.L., sec. 322; C.S., sec. 458; I.C.A., sec. 57-906; am. 1975, ch. 21, sec. 6, p. 30; am. 1982, ch. 4, sec. 2, p. 7; am. 1984, ch. 192, sec. 1, p. 441; am. 1991, ch. 81, sec. 1, p. 182.]

59-906A. BOARD OF COUNTY COMMISSIONERS -- VACANCIES -- HOW FILLED. In the event of a vacancy on a board of county commissioners, such vacancy shall be filled as herein provided. The county central committee of the same political party, if any, of the former member whose seat is vacant shall submit, within fifteen (15) days, a list of three (3) nominations to the governor. The governor shall fill the vacancy by appointment from the list of three (3) nominations within fifteen (15) days. If no appointment has been

made within fifteen (15) days, the county central committee shall designate one (1) of the three (3) nominees to fill the vacancy. The vacancy shall be so filled until the expiration of the term in which the vacancy occurs. The county central committee of the same political party, if any, of the former member, shall select a person who possesses the constitutional qualifications to fill the vacant office to which he is nominated, and who is affiliated with the same political party, if any, as the former member whose seat is vacant. Upon failure of the committee to make such selection before the expiration of the fifteen (15) day period, the governor shall within five (5) days, fill said vacancy by appointing a person having the qualifications above set forth.

[59-906A, added 1974, ch. 78, sec. 1, p. 1165.]

59-907. PROSECUTING ATTORNEY -- VACANCY -- RESIDENCY -- CONTRACTING WITH ANOTHER PROSECUTING ATTORNEY. (1) In the event a vacancy exists and there are three (3) or fewer resident attorneys in the county who are willing and qualified to perform the functions of prosecuting attorney as set forth in [chapter 26, title 31](#), Idaho Code, the board of county commissioners may appoint and/or contract with an attorney from outside the county to perform the duties of prosecuting attorney for the balance of the unexpired term or such shorter period as the board of county commissioners shall determine.

(2) A county may contract for prosecutorial services with another prosecuting attorney provided that:

(a) The circumstances of subsection (1) of this section have occurred;

(b) The boards of county commissioners of both affected counties adopt resolutions so authorizing the prosecutor to fill the vacancy or appointment and/or contract; and

(c) The length of the term of appointment or contract complies with subsection (1) of this section.

(3) Subsection (2) of this section shall operate as a limited exception to that portion of section [31-2601](#), Idaho Code, that prohibits a prosecuting attorney from holding any other county office.

[59-907, added 1988, ch. 295, sec. 2, p. 936; am. 1996, ch. 158, sec. 1, p. 501; am. 2006, ch. 115, sec. 1, p. 314.]

59-908. RESIDENCE OF APPOINTED COMMISSIONER. Whenever the governor appoints a county commissioner to fill a vacancy in any county, he shall appoint a person who is a resident of the commissioner district of the county in which the vacancy exists.

[(59-908) 1899, p. 67, sec. 10; reen. R.C. & C.L., sec. 323; C.S., sec. 460; I.C.A., sec. 57-908.]

59-910. UNITED STATES SENATOR -- VACANCIES, HOW FILLED. Whenever any vacancy shall occur in the office of United States senator from the state of Idaho by death, resignation or otherwise, the governor shall have the power and is hereby authorized and empowered to fill such vacancy by appointment, and the person so appointed shall hold such office until such time as a United States senator is regularly elected to fill such vacancy, at the next succeeding general election, and qualifies by virtue of such election: provided, however, that in case a vacancy occurs in the position of United States senator from the state of Idaho within thirty (30) days of any general

election, no election for United States senator to fill said vacancy shall be held at such general election.

[(59-910) 1917, ch. 27, sec. 1, p. 68; reen. C.L., sec. 325a; C.S., sec. 463; I.C.A., sec. 57-910.]

59-911. REPRESENTATIVE IN CONGRESS -- VACANCIES, HOW FILLED. Whenever any vacancy shall occur in the office of representative in congress from the state, it shall be the duty of the governor to appoint a day to hold an election, subject to the provisions of section [34-106](#), Idaho Code, to fill such vacancy, and cause notice of such election to be given as required in section [34-1406](#), Idaho Code.

[(59-911) 1890-1891, p. 57, sec. 176; reen. 1899, p. 67, sec. 11; reen. R.C. & C.L., sec. 326; C.S., sec. 464; I.C.A., sec. 57-911; am. 1995, ch. 118, sec. 88, p. 501.]

59-912. VACANCIES NOT OTHERWISE PROVIDED FOR -- HOW FILLED. When any office becomes vacant, and no mode is provided by law for filling such vacancy, the governor must fill such vacancy by appointment.

[(59-912) R.S., sec. 434; am. R.C., sec. 327; reen. C.L., sec. 327; C.S., sec. 465; I.C.A., sec. 57-912; am. 1977, ch. 105, sec. 4, p. 225.]

59-913. APPOINTMENTS TO BE IN WRITING. Appointments under the provisions of this chapter shall be in writing, and continue until a successor is selected and qualified, and be filed with the secretary of state, or proper county auditor, respectively.

[(59-913) 1890-1891, p. 57, sec. 173; reen. 1899, p. 67, sec. 6; reen. R.C. & C.L., sec. 328; C.S., sec. 466; I.C.A., sec. 57-913; am. 1977, ch. 105, sec. 5, p. 225.]

59-914. ASSUMPTION OF OFFICE -- TENURE IN OFFICE. Any of the said officers that may be elected to fill vacancies may qualify and enter upon the discharge of the duties of their offices immediately thereafter; and, they may hold the same during the unexpired term for which they were elected.

Any of the said officers that may be appointed to fill vacancies may qualify and enter upon the discharge of the duties of their offices subject to the provisions of section [59-904](#), Idaho Code, for the term designated in the order of appointment.

[(59-914) 1899, p. 67, sec. 13; compiled and reen. R.C., sec. 329; reen. C.L., sec. 329; C.S., sec. 467; I.C.A., sec. 57-914; am. 1977, ch. 105, sec. 6, p. 226.]

59-915. VACANCY IN OFFICE -- POSSESSION PENDING QUALIFICATION OF SUCCESSOR. When a vacancy occurs in a public office, the office and duties shall be assumed until the election or appointment and qualification of a successor as follows:

(1) Of the office of the county clerk, auditor and recorder or treasurer, by the senior deputy as designated in section [31-2006](#), Idaho Code. If no deputy is available, then the board of county commissioners shall assume the office until the election or appointment of a successor.

(2) Of any state executive officer, by the chief deputy, under the supervision of the governor.

[59-915, added 1991, ch. 68, sec. 2, p. 164.]

59-916. POWERS AND DUTIES OF APPOINTEE. Any person elected or appointed to fill a vacancy, after filing his official oath and qualifying for the state official bond, as prescribed by [chapter 8, title 59](#), Idaho Code, possesses all the rights and powers, and is subject to all the liabilities, duties and obligations, of the officer whose vacancy he fills.

[(59-916) R.S., sec. 436; reen. R.C. & C.L., sec. 331; C.S., sec. 469; I.C.A., sec. 57-916; am. 1971, ch. 136, sec. 37, p. 522.]

59-917. TEMPORARY INABILITY OF OFFICERS. Whenever for any reason any elective official of the state, is temporarily unable to perform the duties of his office, the governor may appoint a suitable person to perform such duties temporarily as an acting officer, until the incumbent of the office shall be able to resume the performance of his duties, or a vacancy occurs in such office. The governor shall require such bonds for persons so appointed as may appear to him necessary for the protection of the state, not exceeding the bonds given by the officer in whose stead he acts. Such acting officer shall be nominated by the incumbent of the office: provided, that when the incumbent is unable or fails to so nominate, the governor may appoint without such nomination: provided further, that nothing in this section contained shall be construed to amend or repeal existing laws relating to filling vacancies in state offices. In any case involving an office, the appointment to which, at the time involved would, in case of vacancy, require the consent of the senate, the consent of the senate shall be requisite to the temporary service of the acting officer.

[(59-917) 1890-1891, p. 39, sec.sec. 1, 2; reen. 1899, p. 21, sec.sec. 1, 2; am. R.C., sec. 332; reen. C.L., sec. 332; C.S., sec. 470; I.C.A., sec. 57-917; am. 1945, ch. 164, sec. 4, p. 245.]