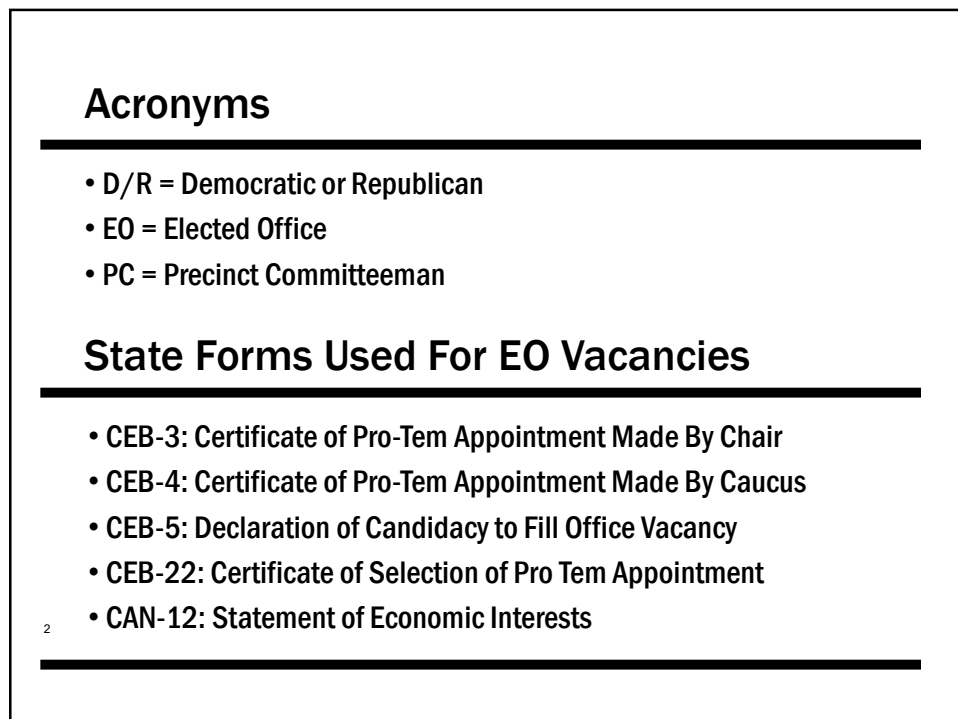




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Slide 1

NAM1 Nussmeyer, Angela M, 5/4/2018

Elected Office vs. Ballot Vacancies

- **Elected Office Vacancy**

- Elected official no longer holds their elected office due to resignation, court order, or death
- Person selected assumes the elected office as a *pro tempore* office holder
 - See IC 3-13-3 through IC 3-13-10, generally, for details

- **Ballot Vacancy**

- No Democratic or Republican candidate filed for nomination in primary? Party can fill ballot vacancy for November ballot
 - NO Ballot Vacancies in 2021!
 - See IC 3-13-1 & IC 3-13-2 for details

3



Although procedures for filling an elected office vacancy and ballot vacancy are similar, they are NOT the same!

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Clerk Responsibilities for EO Vacancies

- Provide notice to person who has power to fill vacancy
 - Notice of Resignation
 - Certification of Death
 - Vacancy Declared by Town Council
 - Court Order
- Receive documentation from person/entity person who filled local office vacancy
 - CEB-3 or CEB-4 (if D/R vacancy)
 - If constitutional officeholder, be sure to send CEB-3, CEB-4 to IED for Governor to send Commission
 - Notice from school board, other government entity
- Send CEB-22 to new office holder
 - NOTE: No state form for school board vacancies
- File paperwork from new officeholder
 - Oath of office not later than 30-days
 - CAN-12 not later than 60-days

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EO Vacancy: Resignation

- Elected officials **MUST** file their resignation, in writing, to:
 - **County Clerk**
 - Non-commissioned countywide & local offices, including school board
 - **Governor**
 - SOS, State Auditor, State Treasurer, Attorney General
 - State & Local Judicial Officers, including Prosecuting Attorney
 - Commissioned County Officeholders:
 - County Clerk, Auditor, Recorder, Treasurer, Sheriff, Coroner, Surveyor
 - **Speaker of the House or President Pro Tempore of the Senate**
 - State Legislators
- Clerk/Governor/Speaker/Pres Pro Tem are required to send notice to person who has power to fill the vacancy within 72-hours of receiving resignation notice

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IC 5-8-3.5

5

EO Vacancy: Death

- **MUST** certify the death of an officeholder, in writing, to the person with power to fill vacancy:
 - Clerk
 - All local offices except for judge, prosecuting attorney
 - SOS
 - State legislative offices
 - Governor
 - Statewide offices, judges, prosecuting attorney
- Clerk/SOS/Governor must be reasonably satisfied the info obtained about the person's death is true before sending notice
 - Information could be obituary, estate notice, death certificate, etc. though statute is not explicit beyond person is "reasonably" satisfied
- Must send notice not later than 72-hours after obtaining information

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IC 3-13 | IC 5-8-6

6

EO Vacancy: Other

- **Town Council**

- Members of town council may declare a seat vacant if it is determined by the body that the council member is no longer residing in the district he was elected to serve
- Procedures set forth in IC 5-8-5 to conduct public meeting
- If a D/R official is found to no longer reside through this process, then town council notifies the county clerk, who will give notice to the chair to fill vacancy pursuant to IC 3-13-11 (caucus procedures)

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IC 5-8-5 | IC 36-5-2-3.5(3)

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EO Vacancy: Other

- **Court Order**

- Once elected & qualified, person holds elected office
- Sometimes this is challenged through the courts by filing an “information” (i.e. civil case)
 - Example: Martin was elected county dogcatcher for Henry County but later moved to Allen County before his term was up. He refuses to resign, so a person with an interest in the office files a civil case to ask court to rule on the matter
- Judge’s order sets forth next steps should she decide official is no longer qualified to hold office

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IC 34-17-1 | IC 34-17-2 | IC 34-17-3

8

Send Notice to Person who Fills Vacancy

- **Local Elected Office Vacancies:**

- **IC 3-13-6 – Judges, Prosecuting Attorney, Clerk**
 - Procedures to fill outlined under each office type, generally
- **IC 3-13-7 – Other Countywide Offices**
- **IC 3-13-8 – City Offices**
- **IC 3-13-9 – Town Offices**
- **IC 3-13-10 – Township Offices**
 - **Section 1 (IC 3-13-7-1, IC 3-13-8-1, et al) points to procedures in IC 3-13-11 (caucus) when D/R officials leave office**
 - **Specific office types noted in statute are how to manage vacancy if official is NOT a D/R**
 - **However, still important to read those sections as some positions allow for another body to fill a D/R EO vacancy if chair/caucus fails to act in 30-days**

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IC 3-13-6-2

Office of prosecuting attorney

Sec. 2. (a) A vacancy that occurs, other than by resignation, in the office of prosecuting attorney shall be certified to the governor by the circuit court clerk of the county in which the prosecuting attorney resided.

(b) A vacancy in the office of prosecuting attorney that was last held by a person elected or selected as a candidate of a major political party of the state shall be

IC 3-13-7-1

Vacancy in office last held by person elected or selected as candidate of major political party

Sec. 1. A vacancy in a county office that was last held by a person elected or selected as a candidate of a major political party of the state shall be filled by a caucus under IC 3-13-11.

IC 3-13-9-3

Office of town clerk-treasurer

Sec. 3. (a) This section applies to a vacancy in the office of town clerk-treasurer:

- (1) not covered by section 1 of this chapter; or
 - (2) covered by section 1 of this chapter, but not filled by a major political party by the applicable deadline set forth in IC 3-13-11-3.
- (b) A vacancy shall be filled by the town council at a regular or special meeting.
- (c) The president of the town council shall give notice of the meeting. Except as provided in subsections (e) and (f), the meeting shall be held not later than thirty (30) days after:
- (1) the vacancy occurs if the vacancy is not covered by section 1 of this chapter; or
 - (2) the applicable deadline for a major political party to fill the vacancy as set forth in IC 3-13-11-3.
- (d) The notice must:
- (1) be in writing;
 - (2) state the purpose of the meeting; and
 - (3) state the date, time, and place of the meeting; and
 - (4) be sent by first class mail to each council member at least ten (10) days before the meeting.
- (e) If a vacancy:
- (1) is not covered by section 1 of this chapter; and
 - (2) exists because of the death of the town clerk-treasurer;
- the council shall meet and select an individual to fill the vacancy not later than thirty (30) days after the president of the town council receives notice of the death under IC 5-8-6. The president of the town council may not give the notice required by subsection (c) until the president of the town council receives notice of the death under IC 5-8-6.
- (f) If a vacancy:
- (1) is covered by section 1 of this chapter;
 - (2) exists because of the death of the town clerk-treasurer; and
 - (3) exists for more than thirty (30) days;
- the council shall meet and select an individual to fill the vacancy not later than sixty (60) days after the president of the town council receives notice of the death under IC 5-8-6. The president of the town council may not give the notice required by subsection (c) until the president of the town council receives notice of the death under IC 5-8-6.
- (g) If a town council is unable to select an individual to fill a vacancy in the office by complying with this section, a member of the town council may assume the duties of the town clerk-treasurer under IC 36-5-6-9.

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30-Day Clock to Hold Caucus Begins...

• Resignation

- Assuming chair receives notice within 72-hours...
 - Future date if specified in the resignation letter
 - For example, "I resign as dogcatcher on July 1, 2021" but it's only May 1, 2021
 - Date of resignation letter, if resignation is specified as "effective immediately"
- Assuming chair does NOT receive notice within 72-hours
 - 30-days starts according to the date on the resignation letter BUT
 - Pauses & Restarts the 30-day clock if notice is received after 72-hours

• Death

- Date when the person who has power to fill vacancy receives notice from appropriate entity
 - May NOT hold a caucus until notice under IC 5-8-6 is received!!

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IC 5-8-4 | IC 3-13-11-3

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Caucus for Local D/R EO Vacancies

- Chair (or designee) of the caucus must:
 - Fill EO vacancy not later than 30-days after the vacancy occurs
 - Send notice of caucus by first class mail to eligible PCs not later than 10-days after vacancy occurs but at least 10-days before caucus is held
 - NOTE: No state form; no requirement to file with clerk
 - Receive CEB-5 candidate filings not later than 72-hours before caucus occurs
 - NOTE: no requirement to file with clerk
 - Conduct caucus according to state law & rules established by the caucus
 - Complete caucus paperwork (CEB-3, CEB-4) & file not later than noon, five days after holding caucus
 - NOTE: Anyone can file the caucus paperwork, as long as it's notarized

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IC 3-13-11-4 | IC 3-13-11-6 | IC 3-13-11-7 | IC 3-13-11-8 | IC 3-13-11-10

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Direct Appointment for D/R EO Vacancies

• **Direct Appointment for EO Vacancies ONLY in these scenarios:**

1. Only ONE eligible PC can participate in the caucus
2. At caucus, vote ends in a tie & caucus chair may cast deciding vote
3. At caucus, quorum is not met

Do NOT confuse the approval a chair or county committee may receive from the party organization to make a direct appointment to fill ballot vacancies. The ability to make a direct appointment is one of several procedural differences between filling a ballot vacancy and elected office vacancy.

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IC 3-13-11-5 | IC 3-13-11-8

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QUESTIONS?

RESOURCES:

CURRENT FORMS & 2020 IED GUIDES, MANUALS, BROCHURES:

www.in.gov/sos/elections

- Go to "Election Administrator" Portal

INDIANA CODE: www.iga.in.gov

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