

## **CHAPTER 44-02 VACANCIES IN OFFICE**

### **44-02-01. Vacancies - Causes thereof.**

An office becomes vacant if the incumbent shall:

1. Die in office;
2. Be adjudged mentally ill;
3. Resign from office;
4. Be removed from office;
5. Fail to discharge the duties of office, when the failure has continued for sixty consecutive days, except when prevented from discharging the duties by reason of the person's service in the armed forces of the United States, by sickness, or by other unavoidable cause. However, as to any office which under the law the vacancy must be filled by the governor, the governor for good cause shown may extend the period, which the incumbent may be absent, for an additional period of sixty days. No remuneration on account of such office may be paid to an absentee officeholder during that person's absence, and the office in all cases becomes vacant upon the termination of the term for which the person was elected or appointed;
6. Fail to qualify as provided by law, which includes taking the designated oath of office prescribed by law;
7. Cease to be a resident of the state, district, county, or other political subdivision in which the duties of the office are to be discharged, or for which the person may have been elected;
8. Be convicted of a felony or any offense involving moral turpitude or a violation of the person's official oath;
9. Cease to possess any of the qualifications of office prescribed by law; or
10. Have the person's election or appointment declared void by a competent tribunal.

### **44-02-02. Resignations of officers - To whom made.**

The resignation of an officer must be in writing and must be made as follows:

1. The governor and lieutenant governor, to the legislative assembly, if it is in session, and if not, to the secretary of state.
2. Any other state or district officer, to the governor.
3. A member of the legislative assembly, to the presiding officer of the branch of which the individual is a member, when in session, and when not in session, to the chairman of the legislative management. When made to the presiding officer, the presiding officer at once shall notify the chairman of the legislative management of the resignation.
4. An officer of the legislative assembly, to the branch of which the individual is an officer.
5. An elective county officer, by filing or depositing the resignation in the office of the county auditor, except that the resignation of the county auditor must be filed or deposited with the board of county commissioners. Any resignation under this subsection, unless a different time is fixed therein, takes effect upon the filing or deposit.
6. An officer of a civil township, to the board of supervisors of the township, except that a member of the board shall submit the member's resignation to the township clerk, and the township clerk forthwith shall give to the county auditor notice of the resignation of all officers whose bonds are filed with that officer.
7. A member of a school board, to the business manager of the district.
8. Any officer holding office by appointment, to the body, board, court, or officer which appointed the officer.

### **44-02-03. Vacancy in state or district office - How filled.**

Any vacancy in a state or district office, except in the office of a member of the legislative assembly, must be filled by appointment by the governor. The governor may not fill a vacancy in

the office of a member of the legislative assembly. A vacancy in the office of a supreme court justice or district court judge must be filled as provided in chapter 27-25. If during a vacancy in the office of governor, the lieutenant governor and the secretary of state are impeached, displaced, resign, or die, or from mental or physical disease or otherwise become incapable of performing the duties of the office of governor as provided by sections 2 and 7 of article V of the Constitution of North Dakota, then the succession to the office of governor is the speaker of the house, president pro tempore of the senate, attorney general, in the order named. Each succeeding person named shall hold the office of governor until the vacancy is filled by election or until any disability of the preceding person in the line of succession is removed.

**44-02-03.1. Vacancy in legislative assembly.**

1. If a vacancy in the office of a member of the legislative assembly occurs, the secretary of state shall notify the chairman of the legislative management of the vacancy. The secretary of state need not notify the chairman of the legislative management of the resignation of a member of the legislative assembly when the resignation was made under section 44-02-02.
2. Upon receiving notification of a vacancy, the chairman of the legislative management shall notify the district committee of the political party the former member represented, or the member-elect or deceased or disqualified candidate would have represented, in the district in which the vacancy exists. The district committee shall hold a meeting within twenty-one days after receiving the notification and select an individual to fill the vacancy. If the former member, member-elect, or deceased or disqualified candidate was elected as an independent candidate or if the district committee does not make an appointment within twenty-one days after receiving the notice from the chairman of the legislative management, the chairman of the legislative management shall appoint a resident of the district to fill the vacancy.
3. If a vacancy occurs because a member-elect died or became disqualified, or a candidate who died or became disqualified received a sufficient number of votes to be elected except for the death or disqualification, the term of an individual appointed to fill the vacancy begins on the first day of December of the year in which the vacancy occurs.
4. Except as provided in subsection 6:
  - a. If the office with the vacancy would not have been placed on the next general election ballot after the vacancy occurs had the member, member-elect, or candidate whose death, disqualification, or resignation created the vacancy been able and qualified to fulfill the term, the individual appointed to fill the vacancy shall serve until a successor is elected at and qualified following the next general election that is at least ninety-four days after the vacancy occurs.
  - b. If the office with the vacancy would have been placed on the next general election ballot after the vacancy occurs had the member, member-elect, or candidate whose death, disqualification, or resignation created the vacancy been able and qualified to fulfill the term and:
    - (1) The next general election is scheduled to take place less than ninety-four days after the vacancy occurs:
      - (a) The individual appointed to fill the vacancy shall serve until a successor is elected at and qualified following the next general election that is at least ninety-four days after the vacancy occurs; and
      - (b) The elected successor shall serve through November thirtieth of the following even-numbered year.
    - (2) The next general election is scheduled to take place at least ninety-four days after the vacancy occurs, the individual appointed shall serve until a successor is elected at and qualified following the next general election.
5. If a special election to fill the vacancy is called by the governor according to subsection 6, the individual elected at the special election shall serve for the remainder of the term of office which would have been served by the individual whose death, disqualification, or resignation created the vacancy.

6. The qualified electors of a legislative district in which a vacancy in the office of a member of the legislative assembly occurs due to the death, disqualification, or resignation of a member of the legislative assembly during the member's term of office may petition for a special election to be called by the governor to fill the vacancy. The petition must include the signatures of qualified electors equal in number to at least four percent of the resident population of the legislative district as determined by the last federal decennial census and must be presented to the secretary of state within thirty days following an appointment being made according to subsection 2. If the secretary of state determines the petition contains the required number of signatures of qualified electors of the affected legislative district, the secretary of state shall notify the governor that a special election is required to be called to fill the vacancy. Upon receiving the notice, the governor shall issue a writ of election directed to the secretary of state commanding the secretary of state to hold a special election to fill the vacancy at a time designated by the governor. A special election under this section must conform to the applicable election deadlines found in title 16.1 and may be called to coincide with a regularly scheduled primary or general election provided the special election is called by the fifteenth day before the deadline for candidates to file for office before a regularly scheduled primary or general election. A special election under this section may not be scheduled to occur during the time from a general election through eighty days following the adjournment of the next ensuing regular session of the legislative assembly.
7. The secretary of state must be notified of an appointment made by a district committee or the chairman of the legislative management according to this section. Upon notification, the secretary of state shall issue the appointee a certificate of appointment and an oath of office for the appointee to complete and file with the secretary of state.
8. For purposes of addressing vacancies in offices of members of the legislative assembly, an individual is disqualified for an office if the individual fails to meet the qualifications under law for the office.

#### **44-02-04. Vacancy in county office - Appointment.**

A vacancy in any county office, other than that of county commissioner, must be filled by the board of county commissioners, with the exception that if a vacancy has occurred in the office of state's attorney by reason of removal under section 44-11-01, the appointment must be made by the board of county commissioners by and with the advice and consent of the governor. The board of county commissioners may declare a county office to be vacant whenever the officeholder is unable to perform the duties of the office for six months or more. However, if within one year the officeholder should become able to perform the officeholder's duties, the county commissioners may, for good cause shown, reinstate the officeholder.

#### **44-02-05. Vacancy in board of county commissioners - How filled.**

When a vacancy occurs in the board of county commissioners, the remaining members of the board immediately shall appoint some suitable person to fill the vacancy from the district in which the vacancy occurred. If a majority of the officers fails to agree upon a person to fill the vacancy, the county treasurer or, if the county does not have an elected treasurer, another elective county officer must be called in and shall act as an additional member of the board to fill the vacancy. The appointee holds office until the appointee's successor is elected at the next general election that occurs at least ninety-five days after the vacancy and the successor has qualified.

#### **44-02-06. Vacancy in township office - How filled.**

Repealed by S.L. 1955, ch. 342, § 2.

#### **44-02-07. Brief vacancy not to be filled - Exception.**

If a vacancy occurs within ninety-five days previous to an election at which it may be filled, no appointment may be made unless it is necessary to carry out such election and the canvass

of the same according to law. In such case an appointment may be made at any time previous to such election to hold until after such election or until the appointee's successor is elected and qualified.

**44-02-08. Appointment to be made in writing - Term.**

Any appointment to fill a vacancy under this chapter must be made in writing, and, except as otherwise expressly provided by law, continues in force until the first general election that occurs at least ninety-five days after the vacancy, when the vacancy will be filled by election, and thereafter until the appointee's successor by election is qualified.

**44-02-09. Appointment - How qualified.**

A person appointed to office as provided in this chapter shall qualify within the time and in the manner required of a person elected or appointed to such office for a full term.

**44-02-10. Vacancy due to military service - How office is filled.**

When the incumbent of any elective office in this state is unable to discharge the duties of the incumbent's office by reason of service in the armed forces of the United States, an acting official who shall have the powers of the incumbent must be appointed in the same manner that an appointment would be made in case of a vacancy in office, the appointment being made from a list of three names which must be submitted by the incumbent to the appointing body or officer within thirty days after leaving for the service. Provided, however, in the office of state's attorney the names of practicing attorneys residing in adjoining counties may be included if there are less than three practicing attorneys residing in such county in which the appointment is to be made. If the incumbent has already entered the military service the incumbent shall, within ten days after the passage and approval of this section, file a list of three names with the appointing body or officer. If the incumbent fails to submit a list of names, the appointing body or officer shall make the appointment of the acting official without regard to the incumbent's wishes; provided, however, that in the filling of such vacancy in the office of state's attorney, a practicing attorney from an adjoining county may be named to fill such vacancy if there are less than three practicing attorneys residing in the county where such vacancy is to be filled. Provided, further, the acting official shall serve, and the acting official's tenure of office must be terminated immediately upon the incumbent filing a "notice of return" with the secretary of state in instances in which it is a state official, or with the county auditor when the incumbent is an official of the county or any of its subdivisions. This section is hereby declared to be retroactive and all appointments to vacancies heretofore made in the manner herein provided are hereby validated.