

Legal Brief



Special districts may periodically encounter board vacancies arising from death, resignation, removal from office, or other events. These vacancies often occur unexpectedly, but nevertheless require prompt action to ensure compliance with applicable law. Under California Government Code section 1780, when a vacancy arises on the board of a special district, the district is required to notify the county elections officials within 15 days of the date the board is notified of a vacancy or the effective date of the vacancy, whichever is later. The remaining members of the board then have the option of filling the vacancy by either appointment or by election. (Cal. Gov. Code § 1780(a)-(c).)

HOW TO FILL VACANT BOARD SEATS

By Sean De Burgh, Partner, Cota Cole LLP

FILLING VACANCIES BY APPOINTMENT

When the board elects to fill the vacancy by appointment the remaining members of the board may appoint the new member within 60 days after the district was notified of the vacancy or when the vacancy is effective, whichever is later. (Cal. Gov. Code § 1780(d)(1).) Before making the appointment, the special district is required to post notice of the vacancy in three or more conspicuous places in the district at least 15 days before the board makes the appointment. The district is then required to notify the county elections official of the appointment no later than 15 days after the appointment. (Cal. Gov. Code § 1780(d)(1).)

It should be noted that the district should not conduct interviews or discussion of potential board members in closed session. The California Attorney General has advised that local office holders, whether elected or appointed, are excluded from the “personnel exception” (Government Code § 54957) to the Brown Act’s open meeting requirements. (See also 59 Ops. Cal. Atty. Gen 266 (1976).)

It is fairly standard practice to invite candidates to excuse themselves from open session while another candidate is interviewed so as to ensure that later interviewed candidates are not given undue advantage over earlier interviewed candidates. However, boards should be careful not to require that candidates leave the room as this would violate open meeting laws.

FILLING VACANCIES BY ELECTION

The board may decide to hold an election rather than appoint a replacement. To elect a new board member, the board must call an election within 60 days of the date the district board is notified of the vacancy or the effective date of the vacancy, whichever is later. Cal. (Gov. Code § 1780(e)(1).) The election must take place on the next established election date, and at least 130 days after the election is called. (Cal. Gov. Code § 1780(e)(2).)

Districts should work closely with their legal counsel when vacancies occur to ensure that appropriate statutes and applicable deadlines are adhered to.

If the vacancy occurs in the first half of a term of office and at least 130 days prior to the next general district election, the person appointed to fill the vacancy will hold office until the next general district election that is scheduled 130 or more days after the date the district board is notified of the vacancy, and thereafter until the person who is elected at that election to fill the vacancy has been qualified. The person elected to fill the vacancy will hold office for the unexpired balance of the term of office. Cal. Gov. Code § 1780(d)(2).

Conversely, if the vacancy occurs in the first half of a term of office, but less than 130 days prior to the next general district election, or if the vacancy occurs in the second half of a term of office, the person appointed to fill the vacancy must fill the balance of the unexpired term of the office. (Cal. Gov. Code § 1780(d)(3).)

BOARD INACTION

If the board does not make an appointment and does not call an election within 60 days, the city council or the board of supervisors of the county, as may be applicable, may appoint a person to fill the vacancy within 90 days of the date the district is notified of the vacancy, or the date the vacancy is effective, or call for an election to fill the vacancy. (Cal. Gov. Code § 1780(f)(1).)

If within 90 days, no governing body has taken action to fill the vacancy, the district must call an election to fill the vacancy. (Cal. Gov. Code § 1780(g)(1).) If the vacancy causes the number of remaining members of the district board to fall below a quorum, then at the request of the district secretary or a remaining member of the district board, the appropriate board of supervisors or city council must proceed promptly to fill the vacancy, by either appointment or election. (Cal. Gov. Code § 1780(h)(1).)

If the vacancy occurs in the first half of a term of office and at least 130 days prior to the next general district election, the person appointed to fill the vacancy must hold the office until the next general district election that is scheduled 130 or more days after the date the district board is notified of the vacancy, and thereafter until the person who is elected at that election to fill the vacancy has been qualified. The person elected to fill the vacancy must hold office for the unexpired balance of the term of office. (Cal. Gov. Code § 1780(h)(3).)

If the vacancy occurs in the first half of a term of office, but less than 130 days prior to the next general district election, or

if the vacancy occurs in the second half of a term of office, the person appointed to fill the vacancy must fill the balance of the unexpired term of office. Cal. Gov. Code § 1780(h)(4)

The above discussion is generally applicable to most special districts, but does not apply to all. Districts should work closely with their legal counsel when vacancies occur to ensure that appropriate statutes and applicable deadlines are adhered to. Because many districts only meet once per month, it is imperative that districts act quickly when vacancies occur. ■

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