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# SENATE BILL No. 109

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 3-13; IC 5-8; IC 20-3-11-3.1; IC 20-5-3-3.5.

**Synopsis:** Vacancies caused by death. Establishes a procedure to give notice of the death of an officeholder to begin the process of filling the vacancy in office. Changes the time limit for holding a meeting or caucus to fill a vacancy.

**Effective:** July 1, 2004.

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### Dillon

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January 6, 2004, read first time and referred to Committee on Elections and Civic Affairs.

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Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

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# SENATE BILL No. 109



A BILL FOR AN ACT to amend the Indiana Code concerning elections.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 3-13-4-3 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) **This section applies to a**  
3 **vacancy that occurs ~~other than by resignation,~~ in a state office other**  
4 **than governor, lieutenant governor, or a judicial office.**

5 **(b) If a state officer wants to resign from office, the state officer**  
6 **must resign as provided in IC 5-8-3.5.**

7 **(c) A vacancy that occurs in a state office because of the death**  
8 **of the state officer may be certified to the governor under IC 5-8-6.**

9 **(d) A vacancy that occurs in a state office other than by**  
10 **resignation or death shall be certified to the governor by the circuit**  
11 **court clerk of the county in which the officer resided.**

12 ~~(b)~~ **(e) The governor shall fill a vacancy in a state office other than**  
13 **governor, lieutenant governor, or a judicial office shall be filled by**  
14 **appointment. by The governor may not fill a vacancy as provided by**  
15 **law until the governor receives notice of the death under IC 5-8-6.**

16 **(f) The person who is appointed by the governor holds office for**  
17 **the remainder of the unexpired term and until a successor is elected and**



1 qualified.

2 SECTION 2. IC 3-13-5-1, AS AMENDED BY P.L.26-2000,  
3 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4 JULY 1, 2004]: Sec. 1. (a) A vacancy in a legislative office shall be  
5 filled by a caucus comprised of the precinct committeemen from the  
6 senate or house district where the vacancy exists who represent the  
7 same political party that elected or selected the person who held the  
8 vacated seat.

9 (b) Not later than thirty (30) days after the vacancy occurs (or as  
10 provided in ~~subsection (c)~~; **subsections (c) and (d)**), the caucus shall  
11 meet and select a person to fill the vacancy by a majority vote of those  
12 casting a vote for a candidate, including vice committeemen eligible to  
13 vote as a proxy under section 5 of this chapter.

14 (c) A state chairman may give notice of a caucus before the time  
15 specified under subsection (b) if a vacancy will exist because the  
16 official has:

- 17 (1) submitted a written resignation under IC 5-8-3.5 that has not  
18 yet taken effect; or  
19 (2) been elected to another office.

20 **(d) If a vacancy in a legislative office exists because of the death**  
21 **of the legislator, the caucus shall meet and select a person to fill the**  
22 **vacancy not later than thirty (30) days after the state chairman**  
23 **receives notice of the death of the legislator from the secretary of**  
24 **state under IC 5-8-6.**

25 (e) Notwithstanding IC 5-8-4, a person may not withdraw the  
26 person's resignation after the resignation has been accepted by the  
27 person authorized to accept the resignation less than seventy-two (72)  
28 hours before the announced starting time of the caucus under this  
29 chapter.

30 ~~(e)~~ **(f)** The person selected must reside in the district where the  
31 vacancy occurred.

32 SECTION 3. IC 3-13-5-2 IS AMENDED TO READ AS FOLLOWS  
33 [EFFECTIVE JULY 1, 2004]: Sec. 2. **(a)** The state chairman of the  
34 political party that elected or selected the person who held the vacated  
35 seat shall set the place, date, and time of a caucus meeting. The  
36 chairman shall send a notice, by first class mail, of the purpose, place,  
37 date, and time of the meeting to all precinct committeemen in the  
38 caucus at least ten (10) days before the meeting.

39 **(b) If a vacancy in a legislative office exists because of the death**  
40 **of the legislator, the state chairman may not send the notice**  
41 **required by subsection (a) until the state chairman receives notice**  
42 **of the death from the secretary of state under IC 5-8-6.**

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1 SECTION 4. IC 3-13-6-1 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2004]: Sec. 1. (a) **As used in this section,**  
3 **"judge" refers to a judge of a circuit, superior, probate, or county**  
4 **court.**

5 **(b) If a judge wants to resign from office, the judge must resign**  
6 **as provided in IC 5-8-3.5.**

7 **(c) A vacancy that occurs because of the death of a judge may**  
8 **be certified to the governor under IC 5-8-6.**

9 ~~(d)~~ **(e)** A vacancy that occurs other than by resignation ~~in the office or~~  
10 ~~death of a judge of a circuit, superior, probate, or county court~~ shall be  
11 certified to the governor by the circuit court clerk of the county in  
12 which the judge resided.

13 ~~(b)~~ **(e)** A vacancy in the office of judge of a circuit court shall be  
14 filled by the governor as provided by Article 5, Section 18 of the  
15 Constitution of the State of Indiana. **However, the governor may not**  
16 **fill a vacancy that occurs because of the death of a judge until the**  
17 **governor is notified of the death under IC 5-8-6.** The person who is  
18 appointed holds the office until:

- 19 (1) the end of the unexpired term; or
- 20 (2) a successor is elected at the next general election and  
21 qualified;

22 whichever occurs first. The person elected at the general election  
23 following an appointment to fill the vacancy, upon being qualified,  
24 holds office for the six (6) year term prescribed by Article 7, Section 7  
25 of the Constitution of the State of Indiana and until a successor is  
26 elected and qualified.

27 ~~(c)~~ **(f)** A vacancy in the office of judge of a superior, probate, or  
28 county court shall be filled by the governor subject to the following:

- 29 (1) IC 33-5-5.1-37.1.
- 30 (2) IC 33-5-5.1-41.1.
- 31 (3) IC 33-5-29.5-39.
- 32 (4) IC 33-5-40-44.

33 **However, the governor may not fill a vacancy that occurs because**  
34 **of the death of a judge until the governor is notified of the death**  
35 **under IC 5-8-6.** The person who is appointed holds office for the  
36 remainder of the unexpired term.

37 SECTION 5. IC 3-13-7-2 IS AMENDED TO READ AS FOLLOWS  
38 [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) **This section applies to a**  
39 **vacancy in a county elected office (other than county council) not**  
40 **covered by section 1 of this chapter.**

41 **(b) A vacancy shall be filled by the board of commissioners of the**  
42 **county at a regular or special meeting. The county auditor shall give**

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1 notice of the meeting. ~~which~~ **Except as provided in subsection (d),**  
 2 **the meeting** shall be held ~~within~~ **not later than** thirty (30) days after  
 3 the vacancy occurs. The notice must:

- 4 (1) be in writing;  
 5 (2) state the purpose of the meeting;  
 6 (3) state the date, time, and place of the meeting; and  
 7 (4) be sent by first class mail to each commissioner at least ten  
 8 (10) days before the meeting.

9 ~~(b)~~ **(c)** Selections made under this section (or under IC 3-2-10-3(a)  
 10 before its repeal on March 4, 1986) are appointments pro tempore for  
 11 the purposes of Article 2, Section 11 of the Constitution of the State of  
 12 Indiana.

13 **(d) If a vacancy occurs because of the death of an elected county**  
 14 **officer, the board of commissioners shall meet and select an**  
 15 **individual to fill the vacancy not later than thirty (30) days after**  
 16 **the county auditor receives notice of the death under IC 5-8-6. The**  
 17 **county auditor may not give the notice required under subsection**  
 18 **(b) until the county auditor receives notice of the death under**  
 19 **IC 5-8-6.**

20 SECTION 6. IC 3-13-7-3 IS AMENDED TO READ AS FOLLOWS  
 21 [EFFECTIVE JULY 1, 2004]: Sec. 3. **(a) This section applies to a**  
 22 **vacancy in a county council not covered by section 1 of this chapter.**

23 **(b) A vacancy** shall be filled by a majority of the remaining  
 24 members of the council at a regular or special meeting. The county  
 25 auditor shall give notice of the meeting. ~~which~~ **Except as provided in**  
 26 **subsection (c), the meeting** shall be held ~~within~~ **not later than** thirty  
 27 (30) days after the vacancy occurs. The notice must:

- 28 (1) be in writing;  
 29 (2) state the purpose of the meeting;  
 30 (3) state the date, time, and place of the meeting; and  
 31 (4) be sent by first class mail to each council member at least ten  
 32 (10) days before the meeting.

33 **(c) If a vacancy occurs because of the death of a county council**  
 34 **member, the county council shall meet and select an individual to**  
 35 **fill the vacancy not later than thirty (30) days after the county**  
 36 **auditor receives notice of the death under IC 5-8-6. The county**  
 37 **auditor may not give the notice required under subsection (b) until**  
 38 **the county auditor receives notice of the death under IC 5-8-6.**

39 SECTION 7. IC 3-13-8-2 IS AMENDED TO READ AS FOLLOWS  
 40 [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) **As used in this section,**  
 41 **"judge" refers to a judge of a city court.**

42 **(b) If a judge wishes to resign from office, the judge must resign**

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as provided in IC 5-8-3.5.

(c) A vacancy that occurs because of the death of a judge may be certified to the governor under IC 5-8-6.

(d) A vacancy that occurs, other than by resignation in the office or death of a judge, of a city court shall be certified to the governor by the circuit court clerk of the county in which the judge resided.

(~~b~~) (e) A vacancy in the office of judge of a city court shall be filled by the governor. **However, the governor may not fill a vacancy that occurs because of the death of a judge until the governor receives notice of the death under IC 5-8-6.**

SECTION 8. IC 3-13-8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) **This section applies to a vacancy in the office of mayor of a first class city not covered by section 1 of this chapter.**

(b) **The vacancy shall be filled by the city-county council at a regular or special meeting. The city clerk shall give notice of the meeting. ~~which~~ Except as provided in subsection (d), the meeting shall be held ~~within~~ not later than thirty (30) days after the vacancy occurs. The notice must:**

- (1) be in writing;
- (2) state the purpose of the meeting;
- (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.

(~~b~~) (c) The city clerk shall preside at the meeting but may not vote unless there is a tie vote among the members of the council. The council must appoint one (1) of its own members to the office. Until the vacancy is filled, the president of the council shall serve as acting mayor.

(d) **If a vacancy exists because of the death of the mayor, the council shall meet and select an individual to fill the vacancy not later than thirty (30) days after the city clerk receives notice of the death under IC 5-8-6. The city clerk may not give notice required under subsection (b) until the city clerk receives notice of the death under IC 5-8-6.**

SECTION 9. IC 3-13-8-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. (a) **This section applies to a vacancy in the city-county council of a first class city not covered by section 1 of this chapter.**

(b) **A vacancy shall be filled by a majority of the remaining members of the council at a regular or special meeting. The city clerk shall give notice of the meeting. ~~which~~ Except as provided in**

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1 **subsection (c), the meeting shall be held ~~within~~ not later than** thirty  
2 **(30) days after the vacancy occurs. The notice must:**

- 3 (1) be in writing;
- 4 (2) state the purpose of the meeting;
- 5 (3) state the date, time, and place of the meeting; and
- 6 (4) be sent by first class mail to each council member at least ten
- 7 (10) days before the meeting.

8 **(c) If a vacancy exists because of the death of a council member,**  
9 **the council shall meet and select an individual to fill the vacancy**  
10 **not later than thirty (30) days after the city clerk receives notice of**  
11 **the death under IC 5-8-6. The city clerk may not give the notice**  
12 **required under subsection (b) until the city clerk receives notice of**  
13 **the death under IC 5-8-6.**

14 ~~(b)~~ **(d)** The appointed member serves until a successor is elected  
15 and qualified at the next municipal or general election, whichever  
16 occurs first. The successor serves from noon January 1 following that  
17 election to noon January 1 following the next municipal election, as  
18 provided in IC 36-3-4-2. The persons appointed and elected must be  
19 resident voters in the district where the vacancy occurred, unless the  
20 vacancy occurred in an at large seat.

21 SECTION 10. IC 3-13-8-5 IS AMENDED TO READ AS  
22 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) **This section**  
23 **applies to** a vacancy in the office of mayor of a second class city not  
24 covered by section 1 of this chapter.

25 **(b) A vacancy shall be filled as follows:**

- 26 (1) If the city has a deputy mayor, the deputy mayor assumes the
- 27 office for the remainder of the unexpired term.
- 28 (2) If the city does not have a deputy mayor, the city controller
- 29 assumes the office for the remainder of the unexpired term.
- 30 (3) If the city does not have a deputy mayor and the office of city
- 31 controller is vacant, the common council shall fill the vacancy at
- 32 a regular or special meeting.

33 ~~(b)~~ **(c)** The city clerk shall give notice of the meeting required under  
34 subsection ~~(a)(3); which (b)(3).~~ **Except as provided in subsection (d),**  
35 **the meeting shall be held ~~within~~ not later than** thirty (30) days after  
36 the vacancy occurs. The notice must:

- 37 (1) be in writing;
- 38 (2) state the purpose of the meeting;
- 39 (3) state the date, time, and place of the meeting; and
- 40 (4) be sent by first class mail to each council member at least ten
- 41 (10) days before the meeting.

42 **(d) If a vacancy exists because of the death of the mayor, the**

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1 **council shall meet and select an individual to fill the vacancy not**  
 2 **later than thirty (30) days after the city clerk receives notice of the**  
 3 **death under IC 5-8-6. The city clerk may not give the notice**  
 4 **required under subsection (c) until the city clerk receives notice of**  
 5 **the death under IC 5-8-6.**

6 ~~(c)~~ (e) Until the vacancy is filled, the council shall designate one (1)  
 7 of its members to serve as acting mayor.

8 SECTION 11. IC 3-13-8-6 IS AMENDED TO READ AS  
 9 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. (a) **This section**  
 10 **applies to** a vacancy in the office of city clerk of a second class city not  
 11 covered by section 1 of this chapter.

12 **(b) A vacancy shall be filled by the mayor or acting mayor, subject**  
 13 **to the approval of the common council. However, if a vacancy exists**  
 14 **because of the death of the city clerk, the mayor or acting mayor**  
 15 **may not fill the vacancy until the mayor or acting mayor is notified**  
 16 **of the death under IC 5-8-6.**

17 ~~(b)~~ (c) The common council shall vote on the question of approving  
 18 the mayor or acting mayor's appointment at a regular or special  
 19 meeting. The president of the common council shall give notice of the  
 20 meeting, which shall be held ~~within~~ **not later than** thirty (30) days  
 21 after the appointment is made. The notice must:

- 22 (1) be in writing;
- 23 (2) state the purpose of the meeting;
- 24 (3) state the date, time, and place of the meeting; and
- 25 (4) be sent by first class mail to each council member at least ten  
 26 (10) days before the meeting.

27 SECTION 12. IC 3-13-8-7 IS AMENDED TO READ AS  
 28 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7. (a) **This section**  
 29 **applies to** a vacancy in the common council of a second class city not  
 30 covered by section 1 of this chapter.

31 **(b) A vacancy shall be filled by the remaining members of the**  
 32 **council at a regular or special meeting. The city clerk shall give notice**  
 33 **of the meeting. ~~which~~ Except as provided in subsection (c), the**  
 34 **meeting shall be held ~~within~~ not later than** thirty (30) days after the  
 35 vacancy occurs. The notice must:

- 36 (1) be in writing;
- 37 (2) state the purpose of the meeting;
- 38 (3) state the date, time, and place of the meeting; and
- 39 (4) be sent by first class mail to each council member at least ten  
 40 (10) days before the meeting.

41 **(c) If a vacancy exists because of the death of a council member,**  
 42 **the council shall meet and select an individual to fill the vacancy**

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1 **not later than thirty (30) days after the city clerk receives notice of**  
2 **the death under IC 5-8-6. The city clerk may not give the notice**  
3 **required under subsection (b) until the city clerk receives notice of**  
4 **the death under IC 5-8-6.**

5 SECTION 13. IC 3-13-8-8 IS AMENDED TO READ AS  
6 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8. (a) **This section**  
7 **applies to** a vacancy in the office of mayor of a third class city not  
8 covered by section 1 of this chapter.

9 **(b) A vacancy** shall be filled as follows:

- 10 (1) If the city has a deputy mayor, the deputy mayor assumes the
- 11 office for the remainder of the unexpired term.
- 12 (2) If the city does not have a deputy mayor, the common council
- 13 shall fill the vacancy at a regular or special meeting.

14 ~~(b)~~ **(c)** The city clerk-treasurer shall give notice of the meeting  
15 required under subsection ~~(a)(2)~~, **which (b)(2). Except as provided in**  
16 **subsection (d), the meeting shall be held within not later than thirty**  
17 **(30) days after the vacancy occurs. The notice must:**

- 18 (1) be in writing;
- 19 (2) state the purpose of the meeting;
- 20 (3) state the date, time, and place of the meeting; and
- 21 (4) be sent by first class mail to each council member at least ten
- 22 (10) days before the meeting.

23 **(d) If a vacancy exists because of the death of the mayor, the**  
24 **council shall meet and select an individual to fill the vacancy not**  
25 **later than thirty (30) days after the city clerk-treasurer receives**  
26 **notice of the death under IC 5-8-6. The city clerk-treasurer may**  
27 **not give the notice required under subsection (c) until the city**  
28 **clerk-treasurer receives notice of the death under IC 5-8-6.**

29 ~~(c)~~ **(e)** Until the vacancy is filled, the council shall designate one (1)  
30 of its members to serve as acting mayor.

31 SECTION 14. IC 3-13-8-9 IS AMENDED TO READ AS  
32 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. (a) **This section**  
33 **applies to** a vacancy in the office of city clerk-treasurer of a third class  
34 city not covered by section 1 of this chapter.

35 **(b) The vacancy** shall be filled by the mayor or acting mayor,  
36 subject to the approval of the common council. **However, if a vacancy**  
37 **exists because of the death of the city clerk-treasurer, the mayor or**  
38 **acting mayor may not fill the vacancy until the mayor or acting**  
39 **mayor is notified of the death under IC 5-8-6.**

40 ~~(b)~~ **(c)** The common council shall vote on the question of approving  
41 the mayor or acting mayor's appointment at a regular or special  
42 meeting. The mayor shall give notice of the meeting, which shall be

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1 held ~~within~~ **not later than** thirty (30) days after the appointment is  
2 made. The notice must:

- 3 (1) be in writing;
- 4 (2) state the purpose of the meeting;
- 5 (3) state the date, time, and place of the meeting; and
- 6 (4) be sent by first class mail to each council member at least ten  
7 (10) days before the meeting.

8 SECTION 15. IC 3-13-8-10 IS AMENDED TO READ AS  
9 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 10. (a) **This section**  
10 **applies to** a vacancy in the common council of a third class city not  
11 covered by section 1 of this chapter.

12 **(b) A vacancy** shall be filled by the remaining members of the  
13 council at a regular or special meeting. The city executive may break  
14 any tie vote.

15 ~~(b)~~ **(c)** The city clerk-treasurer shall give notice of the meeting.  
16 ~~which~~ **Except as provided in subsection (d), the meeting** shall be  
17 held ~~within~~ **not later than** thirty (30) days after the vacancy occurs.  
18 The notice must:

- 19 (1) be in writing;
- 20 (2) state the purpose of the meeting;
- 21 (3) state the date, time, and place of the meeting; and
- 22 (4) be sent by first class mail to each council member at least ten  
23 (10) days before the meeting.

24 **(d) If a vacancy exists because of the death of a council member,**  
25 **the council shall meet and select an individual to fill the vacancy**  
26 **not later than thirty (30) days after the city clerk-treasurer**  
27 **receives notice of the death under IC 5-8-6. The city**  
28 **clerk-treasurer may not give the notice required under subsection**  
29 **(c) until the city clerk-treasurer receives notice of the death under**  
30 **IC 5-8-6.**

31 SECTION 16. IC 3-13-9-2 IS AMENDED TO READ AS  
32 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) **This section**  
33 **applies to** a vacancy in the office of judge of a town court that is:

- 34 (1) not covered by section 1 of this chapter; or
- 35 (2) covered by section 1 of this chapter, but ~~exists~~ **existing** after  
36 the thirtieth day after the vacancy occurs.

37 **(b) A vacancy** shall be filled by the town council at a regular or  
38 special meeting.

39 ~~(b)~~ **(c)** The town clerk-treasurer shall give notice of the meeting.  
40 ~~which~~ **Except as provided in subsections (e) and (f), the meeting**  
41 shall be held:

- 42 (1) ~~within~~ **not later than** thirty (30) days after the vacancy occurs

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1 if the vacancy is not covered by section 1 of this chapter; or  
2 (2) ~~within not later than~~ sixty (60) days after the vacancy occurs  
3 if the vacancy **is covered by section 1 of this chapter and** exists  
4 for more than thirty (30) days.

5 ~~(c)~~ **(d)** The notice must:  
6 (1) be in writing;  
7 (2) state the purpose of the meeting;  
8 (3) state the date, time, and place of the meeting; and  
9 (4) be sent by first class mail to each council member at least ten  
10 (10) days before the meeting.

11 **(e) If a vacancy:**  
12 **(1) is not covered by section 1 of this chapter; and**  
13 **(2) exists because of the death of a judge;**  
14 **the council shall meet and select an individual to fill the vacancy**  
15 **not later than thirty (30) days after the town clerk-treasurer**  
16 **receives notice of the death under IC 5-8-6. The town**  
17 **clerk-treasurer may not give the notice required under subsection**  
18 **(c) until the town clerk-treasurer receives notice of the death under**  
19 **IC 5-8-6.**

20 **(f) If a vacancy:**  
21 **(1) is covered by section 1 of this chapter;**  
22 **(2) exists because of the death of a judge; and**  
23 **(3) exists for more than thirty (30) days;**  
24 **the council shall meet and select an individual to fill the vacancy**  
25 **not later than sixty (60) days after the town clerk-treasurer**  
26 **receives notice of the death under IC 5-8-6. The town**  
27 **clerk-treasurer may not give the notice required under subsection**  
28 **(c) until the town clerk-treasurer receives notice of the death under**  
29 **IC 5-8-6.**

30 SECTION 17. IC 3-13-9-3 IS AMENDED TO READ AS  
31 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) **This section**  
32 **applies to** a vacancy in the office of town clerk-treasurer:

33 (1) not covered by section 1 of this chapter; or  
34 (2) covered by section 1 of this chapter, but existing after the  
35 thirtieth day after the vacancy occurs.

36 **(b) A vacancy** shall be filled by the town council at a regular or  
37 special meeting.

38 ~~(b)~~ **(c)** The president of the town council shall give notice of the  
39 meeting. ~~which~~ **Except as provided in subsections (e) and (f), the**  
40 **meeting** shall be held:

41 (1) ~~within not later than~~ thirty (30) days after the vacancy occurs  
42 if the vacancy is not covered by section 1 of this chapter; or

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1 (2) ~~within~~ **not later than** sixty (60) days after the vacancy occurs  
 2 if the vacancy **is covered by section 1 of this chapter and** exists  
 3 for more than thirty (30) days.  
 4 ~~(c)~~ **(d)** The notice must:  
 5 (1) be in writing;  
 6 (2) state the purpose of the meeting;  
 7 (3) state the date, time, and place of the meeting; and  
 8 (4) be sent by first class mail to each council member at least ten  
 9 (10) days before the meeting.  
 10 **(e) If a vacancy:**  
 11 (1) **is not covered by section 1 of this chapter; and**  
 12 (2) **exists because of the death of the town clerk-treasurer;**  
 13 **the council shall meet and select an individual to fill the vacancy**  
 14 **not later than thirty (30) days after the president of the town**  
 15 **council receives notice of the death under IC 5-8-6. The president**  
 16 **of the town council may not give the notice required under**  
 17 **subsection (c) until the president of the town council receives notice**  
 18 **of the death under IC 5-8-6.**  
 19 **(f) If a vacancy:**  
 20 (1) **is covered by section 1 of this chapter;**  
 21 (2) **exists because of the death of the town clerk-treasurer;**  
 22 **and**  
 23 (3) **exists for more than thirty (30) days;**  
 24 **the council shall meet and select an individual to fill the vacancy**  
 25 **not later than sixty (60) days after the president of the town council**  
 26 **receives notice of the death under IC 5-8-6. The president of the**  
 27 **town council may not give the notice required under subsection (c)**  
 28 **until the president of the town council receives notice of the death**  
 29 **under IC 5-8-6.**  
 30 SECTION 18. IC 3-13-9-4, AS AMENDED BY P.L.1-2003,  
 31 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 32 JULY 1, 2004]: Sec. 4. (a) **This section applies to** a vacancy in the  
 33 town council:  
 34 (1) not covered by section 1 of this chapter; or  
 35 (2) covered by section 1 of this chapter, but existing after the  
 36 thirtieth day after the vacancy occurs.  
 37 **(b) The vacancy** shall be filled by the remaining members of the  
 38 council at a regular or special meeting.  
 39 ~~(b)~~ **(c)** The town clerk-treasurer shall give notice of the meeting.  
 40 Except as provided in ~~subsection (d)~~ **or subsections (e), (f), (g), and**  
 41 **(h)**, the meeting shall be held:  
 42 (1) ~~within~~ **not later than** thirty (30) days after the vacancy occurs

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1 if the vacancy is not covered by section 1 of this chapter; or  
2 (2) ~~within not later than~~ sixty (60) days after the vacancy occurs  
3 if the vacancy is covered by section 1 of this chapter and exists for  
4 more than thirty (30) days.

5 ~~(c)~~ (d) The notice must:  
6 (1) be in writing;  
7 (2) state the purpose of the meeting;  
8 (3) state the date, time, and place of the meeting; and  
9 (4) be sent by first class mail to each council member at least ten  
10 (10) days before the meeting.

11 ~~(d)~~ Notwithstanding subsection (b); (e) If a vacancy:  
12 (1) is not covered by **subsection (f) or** section 1 of this chapter;  
13 and

14 (2) exists because a circumstance has occurred under  
15 ~~IC 36-5-2-6.5(2) through~~ IC 36-5-2-6.5(3);  
16 the town council shall meet and select an individual to fill the vacancy  
17 not later than thirty (30) days after the town council determines that a  
18 circumstance has occurred under ~~IC 36-5-2-6.5(2) through~~  
19 IC 36-5-2-6.5(3).

20 (f) If a vacancy:  
21 (1) is not covered by subsection (e) or section 1 of this chapter;  
22 and  
23 (2) exists because a circumstance has occurred under  
24 IC 36-5-2-6.5(2);

25 the town council shall meet and select an individual to fill the  
26 vacancy not later than thirty (30) days after the town  
27 clerk-treasurer receives notice of the death under IC 5-8-6. The  
28 town clerk-treasurer may not give the notice required by  
29 subsection (c) until the town clerk-treasurer receives notice of the  
30 death under IC 5-8-6.

31 ~~(e)~~ Notwithstanding subsection (b); (g) If a vacancy:  
32 (1) is covered by section 1 of this chapter **and not covered by**  
33 **subsection (h);**  
34 (2) exists because a circumstance has occurred under  
35 ~~IC 36-5-2-6.5(2) through~~ IC 36-5-2-6.5(3); and  
36 (3) exists for more than thirty (30) days;

37 the council shall meet and select an individual to fill the vacancy not  
38 later than sixty (60) days after the town council determines that a  
39 circumstance has occurred under ~~IC 36-5-2-6.5(2) through~~  
40 IC 36-5-2-6.5(3).

41 (h) If a vacancy:  
42 (1) is covered by section 1 of this chapter and not covered by

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1           **subsection (g);**  
 2           **(2) exists because a circumstance has occurred under**  
 3           **IC 36-5-2-6.5(2); and**  
 4           **(3) exists for more than thirty (30) days;**  
 5           **the council shall meet and select an individual to fill the vacancy**  
 6           **not later than sixty (60) days after the town clerk-treasurer**  
 7           **receives notice of the death under IC 5-8-6. The town**  
 8           **clerk-treasurer may not give the notice required by subsection (c)**  
 9           **until the town clerk-treasurer receives notice of the death under**  
 10           **IC 5-8-6.**

11           SECTION 19. IC 3-13-10-2 IS AMENDED TO READ AS  
 12           FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. **(a) This section**  
 13           **applies to** a vacancy in the office of township trustee not covered by  
 14           section 1 of this chapter.

15           **(b) The vacancy** shall be filled by the board of commissioners of  
 16           the county at a regular or special meeting. The county auditor shall give  
 17           notice of the meeting. ~~which~~ **Except as provided in subsection (c), the**  
 18           **meeting shall be held within not later than** thirty (30) days after the  
 19           vacancy occurs. The notice must:

- 20           (1) be in writing;
- 21           (2) state the purpose of the meeting;
- 22           (3) state the date, time, and place of the meeting; and
- 23           (4) be sent by first class mail to each commissioner at least ten
- 24           (10) days before the meeting.

25           **(c) If the vacancy exists because of the death of the township**  
 26           **trustee, the board of commissioners shall meet and select an**  
 27           **individual to fill the vacancy not later than thirty (30) days after**  
 28           **the county auditor receives notice of the death under IC 5-8-6. The**  
 29           **county auditor may not give the notice required under subsection**  
 30           **(b) until the county auditor receives notice of the death under**  
 31           **IC 5-8-6.**

32           SECTION 20. IC 3-13-10-3, AS AMENDED BY P.L.90-2002,  
 33           SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 34           JULY 1, 2004]: Sec. 3. **(a) This section applies to** a vacancy in the  
 35           office of township assessor not covered by section 1 of this chapter.

36           **(b) A vacancy** shall be filled by the county assessor, subject to the  
 37           approval of the department of local government finance. **Except as**  
 38           **provided in subsection (c),** the county assessor shall make the  
 39           appointment ~~within~~ **not later than** thirty (30) days after the vacancy  
 40           occurs. If the vacancy occurred because the elected township assessor  
 41           failed to qualify or was removed, the person who is appointed must be  
 42           of the same political party as the elected township assessor.

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1 (c) If a vacancy exists because of the death of the township  
2 assessor, the county assessor shall make the appointment required  
3 under subsection (b) not later than thirty (30) days after the county  
4 assessor receives notice of the death under IC 5-8-6. The county  
5 assessor may not fill the vacancy as required by subsection (b) until  
6 the county assessor receives notice of the death under IC 5-8-6.

7 SECTION 21. IC 3-13-10-4 IS AMENDED TO READ AS  
8 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. (a) This section  
9 applies to a vacancy on the township board of a township not covered  
10 by section 1 of this chapter.

11 (b) A vacancy shall be filled by the board of commissioners of the  
12 county at a regular or special meeting. The county auditor shall give  
13 notice of the meeting. ~~which~~ Except as provided in subsection (c), the  
14 meeting shall be held ~~within~~ not later than thirty (30) days after the  
15 vacancy occurs. The notice must:

- 16 (1) be in writing;
- 17 (2) state the purpose of the meeting;
- 18 (3) state the date, time, and place of the meeting; and
- 19 (4) be sent by first class mail to each commissioner at least ten  
20 (10) days before the meeting.

21 (c) If a vacancy exists because of the death of a township board  
22 member, the meeting required under subsection (b) shall be held  
23 not later than thirty (30) days after the county auditor receives  
24 notice of the death under IC 5-8-6. The county auditor may not  
25 give the notice required under subsection (b) until the county  
26 auditor receives notice of the death under IC 5-8-6.

27 SECTION 22. IC 3-13-10-5 IS AMENDED TO READ AS  
28 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) This section  
29 applies to a vacancy in the office of judge of a small claims court or  
30 small claims court constable not covered by section 1 of this chapter.

31 (b) A vacancy shall be filled by the township board at a regular or  
32 special meeting. The chairman of the township board shall give notice  
33 of the meeting. ~~which~~ Except as provided in subsection (c), the  
34 meeting shall be held ~~within~~ not later than thirty (30) days after the  
35 vacancy occurs. The notice must:

- 36 (1) be in writing;
- 37 (2) state the purpose of the meeting;
- 38 (3) state the date, time, and place of the meeting; and
- 39 (4) be sent by first class mail to each board member at least ten  
40 (10) days before the meeting.

41 (c) If a vacancy exists because of the death of a judicial officer,  
42 the meeting required under subsection (b) shall be held not later

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1 **than thirty (30) days after the chairman of the township board**  
2 **receives notice of the death under IC 5-8-6. The chairman of the**  
3 **township board may not give the notice required under subsection**  
4 **(b) until the chairman of the township board receives notice of the**  
5 **death under IC 5-8-6.**

6 SECTION 23. IC 3-13-11-3, AS AMENDED BY P.L.174-2002,  
7 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
8 JULY 1, 2004]: Sec. 3. (a) Except as provided in ~~subsection~~  
9 **subsections (b) and (c)** and section 3.5 of this chapter, not later than  
10 ten (10) days after a vacancy occurs in an office subject to this chapter,  
11 the county chairman:

12 (1) of the county in which the greatest percentage of the  
13 population of the election district of the office is located; and

14 (2) of the same political party that elected or selected the official  
15 who vacated the office;

16 shall give notice of a caucus to all eligible precinct committeemen.

17 (b) A county chairman may give notice of a caucus before the time  
18 specified under subsection (a) if a vacancy will exist because the  
19 official has:

20 (1) submitted a written resignation under IC 5-8-3.5; or

21 (2) been elected to another office.

22 (c) Notwithstanding IC 5-8-4, a person may not withdraw the  
23 person's resignation after the resignation has been accepted by the  
24 person authorized to accept the resignation less than seventy-two (72)  
25 hours before the announced starting time of a caucus under this section.

26 (d) Except as provided in **subsection (e) and** section 3.5 of this  
27 chapter, a caucus under this section shall be held after giving notice to  
28 caucus members under section 4 of this chapter and not later than thirty  
29 (30) days after the vacancy occurs.

30 **(e) If a vacancy exists in an office because a circumstance has**  
31 **occurred under IC 36-5-2-6.5(2), the caucus shall meet and select**  
32 **an individual to fill the vacancy not later than thirty (30) days after**  
33 **the county chairman receives notice of the death under IC 5-8-6.**  
34 **The county chairman shall give notice to caucus members under**  
35 **section 4 of this chapter. The county chairman may not give the**  
36 **notice required under section 4 of this chapter until the county**  
37 **chairman receives notice of the death under IC 5-8-6.**

38 SECTION 24. IC 3-13-11-3.5, AS AMENDED BY P.L.1-2003,  
39 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
40 JULY 1, 2004]: Sec. 3.5. (a) If a vacancy exists on a town council  
41 because a circumstance has occurred under ~~IC 36-5-2-6.5(2) through~~  
42 IC 36-5-2-6.5(3), the caucus shall meet and select an individual to fill

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1 the vacancy not later than thirty (30) days after the county chairman  
2 receives a notice of the vacancy under IC 5-8-5. ~~If the vacancy is due~~  
3 ~~to the death of a town council member and the county chairman is~~  
4 ~~aware of the member's death before receiving a notice of the death, the~~  
5 ~~caucus may meet before the county chairman receives the notice of the~~  
6 ~~death.~~

- 7 (b) The county chairman shall:  
8 (1) give notice of the caucus meeting to caucus members under  
9 section 4 of this chapter; and  
10 (2) keep the notice of the vacancy with the records of the caucus.

11 SECTION 25. IC 5-8-5-1, AS AMENDED BY P.L.1-2003,  
12 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
13 JULY 1, 2004]: Sec. 1. This chapter applies when a vacancy must be  
14 filled under:

- 15 (1) IC 3-13-9; or  
16 (2) IC 3-13-11;  
17 due to a reason set forth in ~~IC 36-5-2-6.5(2) through~~ IC 36-5-2-6.5(3).

18 SECTION 26. IC 5-8-5-3, AS AMENDED BY P.L.1-2003,  
19 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
20 JULY 1, 2004]: Sec. 3. (a) The town council may hold a public meeting  
21 to determine whether a circumstance has occurred under  
22 ~~IC 36-5-2-6.5(2) through~~ IC 36-5-2-6.5(3) that results in a vacancy on  
23 the town council. The town council may set a meeting for making the  
24 determination on its own motion, or a person may petition the town  
25 council to set a meeting to make the determination. The town council  
26 may grant or deny a petition for a meeting.

27 (b) If a person files a petition with the council, the petition must  
28 state the basis for the person's claim that a circumstance has occurred  
29 under ~~IC 36-5-2-6.5(2) through~~ IC 36-5-2-6.5(3).

30 SECTION 27. IC 5-8-5-4, AS AMENDED BY P.L.1-2003,  
31 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
32 JULY 1, 2004]: Sec. 4. (a) If the town council is reasonably satisfied  
33 that any circumstance has occurred under ~~IC 36-5-2-6.5(2) through~~  
34 IC 36-5-2-6.5(3), the council may, by an affirmative vote of a majority  
35 of the members appointed to the body, vote to declare a vacancy in the  
36 town council membership. The member who is alleged to have vacated  
37 the member's seat may participate in the meeting as a member, but may  
38 not vote on the issue.

39 (b) If the member who is the subject of the petition or motion does  
40 not attend the meeting at which the town council makes the  
41 determination that a vacancy exists, the town council shall mail notice  
42 of its determination to the member.

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1 (c) If the town council determines that a vacancy exists, the town  
2 clerk-treasurer shall give the circuit court clerk notice of the  
3 determination not later than five (5) days after the date of the town  
4 council's determination. The circuit court clerk shall give notice to the  
5 county chairman if a caucus is required under IC 3-13-11 to fill the  
6 vacancy.

7 SECTION 28. IC 5-8-6 IS ADDED TO THE INDIANA CODE AS  
8 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
9 1, 2004]:

10 **Chapter 6. Notice of Death of an Officeholder**

11 **Sec. 1. This chapter applies when a vacancy must be filled**  
12 **under:**

- 13 (1) IC 3-13-4;
- 14 (2) IC 3-13-5;
- 15 (3) IC 3-13-6;
- 16 (4) IC 3-13-7;
- 17 (5) IC 3-13-8;
- 18 (6) IC 3-13-9;
- 19 (7) IC 3-13-10; or
- 20 (8) IC 3-13-11;

21 **due to the death of an officeholder.**

22 **Sec. 2. As used in this chapter, "officeholder" refers to a person**  
23 **who holds a state office, legislative office, local office, or school**  
24 **board office (as defined in IC 3-5-2).**

25 **Sec. 3. (a) A person who knows of the death of an officeholder**  
26 **may certify the death to the following:**

27 (1) **The governor, in the case of the death of any of the**  
28 **following:**

29 (A) **An individual who holds a state office (as defined in**  
30 **IC 3-5-2-48).**

31 (B) **An individual who is a judge of a circuit, superior,**  
32 **probate, county, or city court.**

33 (2) **The secretary of state, in the case of the death of an**  
34 **individual who holds a legislative office.**

35 (3) **The circuit court clerk of the county in which the**  
36 **officeholder resided, in the case of the death of an officeholder**  
37 **of a county, city, town, township, or school corporation not**  
38 **covered under subdivision (1).**

39 **(b) A person who certifies the death of an officeholder shall:**

40 (1) **state the information the person has that causes the person**  
41 **to believe the officeholder has died; and**

42 (2) **certify, under the penalties for perjury, that to the best of**

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1 the person's knowledge and belief, the information stated is  
2 true.

3 **Sec. 4. When the governor:**

4 (1) obtains information concerning the death of an individual  
5 who:

- 6 (A) holds a state office (as defined in IC 3-5-2-48); or
- 7 (B) is a judge of a circuit, superior, probate, county, or city  
8 court; and

9 (2) is reasonably satisfied that the information described in  
10 subdivision (1) is true;

11 the governor shall fill the vacancy as provided by law.

12 **Sec. 5. (a) When the secretary of state:**

13 (1) obtains information concerning the death of an individual  
14 who holds a legislative office; and

15 (2) is reasonably satisfied that the information described in  
16 subdivision (1) is true;

17 the secretary of state shall give notice of the death to the state  
18 chairman of the political party that elected or selected the deceased  
19 individual.

20 (b) The secretary of state shall give the notice required by  
21 subsection (a) not later than seventy-two (72) hours after the  
22 requirements of subsection (a)(1) and (a)(2) are satisfied.

23 **Sec. 6. (a) When a circuit court clerk:**

24 (1) obtains information concerning the death of an  
25 officeholder of a county, city, town, township, or school  
26 corporation not subject to section 4 of this chapter; and

27 (2) is reasonably satisfied that the information described in  
28 subdivision (1) is true;

29 the circuit court clerk shall give notice of the death to the person  
30 described in subsection (b).

31 (b) The circuit court clerk shall give the notice required by  
32 subsection (a) to:

33 (1) the person who must give notice of any meeting or caucus  
34 required to fill the vacancy caused by the death; or

35 (2) if a meeting or caucus is not required to fill the vacancy,  
36 the person who has the power to fill the vacancy.

37 (c) The circuit court clerk shall give the notice required by  
38 subsection (a) not later than seventy-two (72) hours after the  
39 requirements of subsection (a)(1) and (a)(2) are satisfied.

40 SECTION 29. IC 20-3-11-3.1, AS AMENDED BY P.L.38-2003,  
41 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
42 JULY 1, 2004]: Sec. 3.1. (a) The board of school commissioners

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1 consists of seven (7) members. Each member shall be elected on a  
 2 nonpartisan basis in primary elections held in the county as specified  
 3 in this section. Five (5) of the members shall be elected from the school  
 4 board districts in which they reside and two (2) members shall be  
 5 elected at large. Not more than two (2) of the members who serve on  
 6 the board may reside in the same school board district. When a  
 7 candidate runs for one (1) of the district positions on the board, only  
 8 eligible voters residing in the candidate's district may vote for that  
 9 candidate. When a person is a candidate for one (1) of the at-large  
 10 positions, eligible voters from all the districts may vote for that  
 11 candidate. When a candidate files to run for a position on the board, the  
 12 candidate must specify whether the candidate is running for a district  
 13 or an at-large position. All members elected to the board serve four (4)  
 14 year terms. A candidate who runs for a district or an at-large position  
 15 wins if the candidate receives the greatest number of votes of all the  
 16 candidates against whom the candidate runs. Districts shall be  
 17 established within the school corporation by the state board of  
 18 education. The districts shall be drawn on the basis of precinct lines  
 19 and as nearly as practicable, of equal population with the population of  
 20 the largest not to exceed the population of the smallest by more than  
 21 five percent (5%). District lines must not cross precinct lines. The state  
 22 board of education shall establish balloting procedures for the election  
 23 under IC 3 and other procedures required to implement this section.

24 (b) Each member of the board of school commissioners serves under  
 25 section 2 of this chapter. **In accordance with subsection (e)**, the  
 26 vacancies in the board of school commissioners shall be filled  
 27 temporarily by the school board as soon as practicable after the  
 28 vacancy occurs. The member chosen by the board to fill a vacancy  
 29 holds office until the member's successor is elected and qualified. The  
 30 successor shall be elected at the next regular school board election  
 31 occurring after the date on which the vacancy occurs, at which time the  
 32 vacancy shall be filled for the remainder of the term.

33 (c) Persons elected to serve on the board begin their terms on July  
 34 1 of the year of their election.

35 (d) Notwithstanding any law to the contrary, voters shall cast their  
 36 votes for school board candidates by voting system or paper ballot.  
 37 However, the same method used to cast votes for all other offices for  
 38 which candidates have qualified to be on the election ballot must be  
 39 used for the school board offices.

40 **(e) If a vacancy in the board of school commissioners exists**  
 41 **because of the death of a board member, the remaining members**  
 42 **of the board shall meet and select an individual to fill the vacancy**

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1       **in accordance with subsection (b) after the secretary of the board**  
2       **receives notice of the death under IC 5-8-6.**  
3       SECTION 30. IC 20-5-3-3.5 IS ADDED TO THE INDIANA CODE  
4       AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
5       1, 2004]: **Sec. 3.5. (a) This section applies to a school corporation**  
6       **subject to section 3 of this chapter.**  
7       **(b) The definitions in IC 3-5-2 apply to this section.**  
8       **(c) If a vacancy in a school board office exists because of the**  
9       **death of a school board member, the remaining members of the**  
10       **governing body shall meet and select an individual to fill the**  
11       **vacancy after the secretary of the governing body receives notice**  
12       **of the death under IC 5-8-6 and in accordance with section 3 of this**  
13       **chapter.**

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