Vacancies, whether the result of a member’s death, an appointment to a new position, or resignation for other reasons, occur on a regular basis in U.S. state legislatures. Less common is for this turnover to get much or any public attention. But in 2018, in search of voting trends ahead of this November’s general election, political observers have sometimes focused on the results of races to fill single state legislative seats. Meanwhile, a dispute in Wisconsin over its law governing legislative vacancies and special elections captured national interest.

A closer look at the laws in the Midwest (a mix of statutory and constitutional provisions) reveals a variety of approaches in use for filling vacancies, with some type of appointment process used in seven Midwestern states and special elections required in Wisconsin and three others.

**Different methods of appointment**

South Dakota Rep. Tom Pischke, a Republican, says that when his Democratic colleagues leave Pierre for the weekend during session, they sometimes joke amongst themselves “to drive safely, because remember, the governor has the power to appoint.”

Most states in this region that allow for legislative appointments ensure that the replacement legislator is from the same political party as his or her predecessor. Not so in South Dakota, however. And Pischke sees another problem with the governor’s power to appoint. “It’s a separation-of-powers issue to me; I don’t think the executive branch should be making the decision on who serves in the legislative branch,” he says.

He proposed this year (HJR 1002 [2]) to take away this gubernatorial power in the South Dakota Constitution. A new process would instead be established by the Legislature, with only one stipulation: “the person appointed to fill the vacancy shall be a member of the same political party, if any, as the person who previously held the legislative office.”

HJR 1002 did not advance this year, but if it had, South Dakota would have joined five other Midwestern states that ensure partisan continuity when legislative vacancies, and subsequent appointments, occur. Illinois, Indiana, Kansas and North Dakota give control of the appointment process to the parties themselves, while in Ohio, members of the partisan legislative caucus that lost a member choose the replacement.

But South Dakota is not alone in how it currently handles vacancies: The Nebraska governor, with very few constraints, has the power to fill openings in the state’s nonpartisan Unicameral Legislature.

**Wisconsin dispute over special elections**

Four states in the Midwest — Iowa, Michigan, Minnesota and Wisconsin — require their governors to order special elections to fill legislative vacancies. In Minnesota, for example, though the rules can vary depending on when the legislator left office, the governor typically must call for a special election within five days of when the position becomes vacant; the election then must be held within 35 days.

Questions about timing and the governor’s duty to call special elections were the focus of this year’s controversy in Wisconsin. In that state, two legislators left their positions in December 2017. Under Wisconsin law, any vacancy occurring before the second Tuesday in May of a regularly scheduled election year “shall be filled as promptly as possible by special election.”

But Gov. Scott Walker did not immediately call special elections to fill the two seats, saying the law only required this action for vacancies that occurred between the start of the election year and that second Tuesday in May. His office, too, cited concerns about the cost of holding special elections for legislators who would not be seated until after the close of
However, three judges issued separate rulings ordering Walker to call the special elections. He chose not to appeal those decisions to the state Supreme Court, and the two special elections were held in June.

*Capital Closeup is an ongoing series of CSG Midwest articles focusing on institutional issues in state governments and legislatures.*

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