

## CHAPTER 114

## VACATING OFFICE

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**114.01 Office deemed vacant in certain cases.—**

- (1) A vacancy in office shall occur:  
 (a) Upon creation of an office.  
 (b) Upon the death of the incumbent officer.  
 (c) Upon removal of the officer from office.  
 (d) Upon the resignation of the officer and acceptance thereof by the Governor.  
 (e) Upon the succession of the officer to another office.  
 (f) Upon the officer's unexplained absence for 60 consecutive days.  
 (g) Upon the officer's failure to maintain the residence required of him or her by law.  
 (h) Upon the failure of a person elected or appointed to office to qualify for office within 30 days from the commencement of the term of office.  
 (i) Upon the refusal of the person elected or appointed to accept the office.  
 (j) Upon the conviction of the officer of a felony as defined in s. 10, Art. X of the State Constitution.  
 (k) Upon final adjudication, in this state or in any other state, of the officer to be mentally incompetent.  
 (l) Upon the rendition of a final judgment of a circuit court of this state declaring void the election or appointment of the incumbent to office.

(2) With respect to paragraphs (b) and (f)–(k) of subsection (1), the Governor shall file an executive order with the Secretary of State setting forth the facts which give rise to the vacancy, and he or she shall include in such order the title of the office, the name of the incumbent officer or person who held the office, and the date on which the vacancy in office occurred. The office shall be considered vacant as of the date specified in the executive order or, in absence of such a date, as of the date the executive order is filed with the Secretary of State.

**History.**—s. 1, ch. 1633, 1868; RS 214; GS 298; RGS 396; CGL 461; s. 25, ch. 71-355; s. 1, ch. 77-235; s. 728, ch. 95-147.

**114.02 Absence from state of certain officers.—**

When any officer of the executive branch other than a Cabinet officer desires to be absent from the state for a period of 60 consecutive days or more, he or she shall be permitted to do so upon notifying the Governor in writing of this intention, but the officer shall return to the state and to the performance of his or her duties whenever requested by the Governor to do so, and upon the officer's failure so to do the Governor may declare the office vacant pursuant to s. 114.01.

**History.**—ch. 1749, 1870; RS 215; GS 299; RGS 397; CGL 462; s. 2, ch. 77-235; s. 729, ch. 95-147.

**114.03 Certain executive officers not to absent themselves from the state.—**

The Secretary of State, Attorney General, Comptroller, Treasurer, Commissioner of Education, and Commissioner of Agriculture shall reside at the capital, and no member of the Cabinet shall absent himself or herself from the state for a period of 60 consecutive days or more without the consent of the Governor and a majority of the Cabinet. If a Cabinet officer should refuse or fail to comply with and observe the requirements of this section, his or her office may be deemed vacant pursuant to paragraph (f) or paragraph (g) of s. 114.01(1), as appropriate.

**History.**—ch. 1845, 1871; RS 216; GS 300; RGS 398; CGL 463; s. 1, ch. 69-300; s. 2, ch. 77-235; s. 730, ch. 95-147.

**114.04 Filling vacancies.—**

Except as otherwise provided in the State Constitution, the Governor shall fill by appointment any vacancy in a state, district, or county office, other than a member or officer of the Legislature, for the remainder of the term of an appointive officer and for the remainder of the term of an elective office, if there is less than 28 months remaining in the term; otherwise, until the first Tuesday after the first Monday following the next general election. With respect to any office which requires confirmation by the Senate, the person so appointed may hold an ad interim term of office subject to the provisions of s. 114.05. Each secretary or division director of a department of the executive branch who is required by law to be appointed by the Governor and confirmed by the Senate shall serve at the pleasure of the Governor, unless otherwise provided by law, and the appointment of such person shall run concurrently with the term of the Governor making the appointment. In the event a Governor is elected to a second term of office pursuant to s. 5, Art. IV of the State Constitution, each secretary or division director so appointed shall be reappointed or, at the discretion of the Governor, replaced by a new appointee. Reappointments to the same office shall be subject to confirmation by the Senate as provided in s. 114.05.

**History.**—s. 2, ch. 1633, 1868; RS 217; GS 301; RGS 399; CGL 464; s. 1, ch. 70-385; s. 2, ch. 77-235; s. 68, ch. 79-400.

**114.05 Issuance of letter of appointment; confirmation by the Senate; refusal or failure to confirm.—**

(1) When a vacancy in office is filled by appointment which requires confirmation by the Senate:

(a) The Governor shall issue and transmit to the Secretary of State for filing a letter of appointment. The letter shall contain the legal authority under which the appointment is made; the proper designation of the office; the full name and address of the appointee; the term of office to which the appointment is made; and the effective date of the appointment, which date shall be on or after the date of recording of the letter of appointment. The Secretary of State shall promptly file the letter and transmit to the appointee an oath of office, questionnaire for executive appointment, and bond form when required. Upon receipt of the questionnaire, oath of

office, and bond if required, the Secretary of State shall transmit to the appointee a certificate of appointment, under seal, certifying that the appointment was made of the appointee to the office, for the term indicated in the letter of appointment. The certificate shall also provide that the appointment is subject to confirmation by the Senate at the next regular session of the Legislature following the effective date of the appointment.

(b) The Department of State shall distribute and cause to be prepared and submitted by each appointee a biographical questionnaire, verified under oath or affirmation, in the form prescribed by the President of the Senate. The department shall transmit the completed questionnaire and a copy of the certificate of appointment to the President of the Senate or his or her designee within 30 days from the receipt by the department of the letter of appointment. Upon receipt of the certificate, the President of the Senate shall lay the appointment before the Senate for confirmation in accordance with this section and the applicable Senate rules.

(c) If the Senate confirms the appointment, the fact of such confirmation shall be spread upon the pages of the Journal of the Senate; and thereafter a certificate of Senate confirmation shall be issued by the President of the Senate and attested to by the Secretary of the Senate. A true copy of this certificate shall be filed with the Secretary of State, and the original thereof shall be delivered to the appointee. Upon receipt by him or her of the certificate of Senate confirmation, the Secretary of State shall cause a commission to be prepared and transmitted to the Governor for signature. After the commission has been duly signed, countersigned, and sealed, it shall be delivered to the appointee. The commission shall specify, among the other things prescribed in paragraph (a), the date on which the appointment was confirmed and the expiration date of the term of office.

(d) If the Senate refuses to confirm the appointment, the fact of such refusal or rejection shall be spread upon the pages of the Journal of the Senate; and thereafter a certificate of refusal to confirm shall be issued, attested, filed, and delivered in accordance with paragraph (c). Unless an earlier date is specified in the motion to refuse to confirm, the ad interim term of the appointee whose appointment has been rejected by the Senate shall end at the adjournment of the session of the Senate at which the vote on his or her confirmation was taken. An appointee whose appointment to office has been rejected by the Senate shall hold over until his or her successor is appointed and qualified, but the period of such holdover shall not exceed 30 days from the adjournment of the session of the Senate. No person whose appointment to office has been rejected by the

Senate shall be eligible for appointment to the same office for 1 year after the date of filing of the certificate of refusal to confirm.

(e) If the Senate votes to take no action or if for any other reason it fails to consider an appointment during the regular session immediately following the effective date of the appointment, the failure to act shall be noted in the pages of the Journal of the Senate; and thereafter a certificate, stating that the Senate voted to take no action or failed to consider the appointment, shall be issued, attested, filed, and delivered in accordance with paragraph (c). With respect to appointments on which the Senate fails to act during the regular session of the Legislature immediately following the effective date of the appointment, a vacancy in office shall exist upon the adjournment sine die of the Legislature. The appointee shall hold over until his or her successor is appointed and qualified; however, such period of holding over shall not exceed 45 days. The appointee may be reappointed.

(f) If the Senate voted to take no action or for any other reason failed to consider an appointment during the regular session immediately following the effective date of the appointment and the appointee was thereupon reappointed to the same office, and if the Senate votes to take no action or for any other reason fails to consider the reappointment of the same person to the same office during the regular session immediately following the effective date of the reappointment, the reappointment of such person to such office shall be deemed to have been rejected; the office shall become vacant upon the adjournment sine die of the regular session immediately following the effective date of the reappointment; and the appointee shall not hold over in that office or be eligible for reappointment in that office for 1 year thereafter.

(2) Upon request, any agency of government in this state is authorized to provide information to the Senate or the appropriate Senate standing or select committee or subcommittee thereof. Upon request of the Senate President or the appropriate Senate standing or select committee or subcommittee thereof, the Department of Law Enforcement shall make and cause to be furnished to the Senate President or the appropriate Senate standing or select committee or subcommittee thereof the results of an inquiry or investigation involving the criminal history relating to any person whose appointment to office is subject to Senate confirmation.

(3) Notwithstanding anything contained herein to the contrary, the Senate may, upon the affirmative vote of a majority of those present, consider an appointment at any time it is in session.

**History.**—s. 3, ch. 77-235; s. 10, ch. 79-8; s. 56, ch. 81-259; s. 731, ch. 95-147.