

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Ethics and Elections

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BILL: SB 186

INTRODUCER: Senator Hutson

SUBJECT: Resign-to-run Law

DATE: October 6, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Ulrich	EE	<b>Pre-meeting</b>
2.	_____	_____	JU	_____
3.	_____	_____	RC	_____

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**I. Summary:**

SB 186 requires a state or local officer seeking to run for *federal* office to submit an irrevocable resignation at least 10 days before the first day of qualifying for the office sought, *if* the terms of the two offices or any part of the terms run concurrently. Failure to do so results in an immediate and automatic resignation from the current office.

The only substantive difference between the current bill language and an analogous, pre-2008 resign-to-run requirement for officers seeking federal office is that it accelerates the resignation deadline by 10 days; prior to 2008 officers were simply required to submit an irrevocable resignation by the time they qualified.

This bill does not impact current federal office holders, who are not required to resign to run for election to another office or for reelection, where the terms of both offices overlap.

The bill takes effect upon becoming law.

**II. Present Situation:**

The resign-to-run law<sup>1</sup> prohibits an elected or appointed state or local officer from qualifying to run for another *state, district, county, or municipal* office if the terms or any part thereof overlap, unless the officer irrevocably resigns<sup>2</sup> from the office that he or she currently holds at

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<sup>1</sup> Section 99.012, F.S.

<sup>2</sup> Though irrevocable, the resignation does NOT need to be effective immediately. Rather, it must take effect no later than the *earlier* of: the date the officer would take office if elected; or, the date the officer's successor takes office.

least 10 days before qualifying starts (hereinafter, the “incumbent overlapping terms provision”).<sup>3</sup>

Until 2007, the law contained a similar incumbent overlapping terms provision for such officers seeking *federal* office, except that the irrevocable resignation had to be submitted by the time they qualified (instead of 10 days before qualifying starts).<sup>4</sup> In 2008, the Legislature repealed the federal resign-to-run portion of the law; as a result, the current incumbent overlapping terms provision DOES NOT apply to officers seeking *federal* office.

The 2008 change allows State Senators and other State or local officers to qualify and run for a congressional office (U.S. House Representative or U.S. Senator) *without* resigning their current office. This scenario occurs most often in the case of an open congressional seat filled by special election. If the officer wins the federal seat, a “domino effect” can result in multiple vacancies to be filled at historically low-turnout, special elections.<sup>5</sup> If the election involves a U.S. House or State legislative office, the State must reimburse the affected counties for the expenses of conducting the special election(s).<sup>6</sup>

For example, assume that an incumbent U.S. House Representative decides not to seek re-election, leaving an open seat at the upcoming 2018 general election. Because of staggered terms, a State Senator whose four-year term ends in 2020 could qualify to run for the seat without resigning from the Senate. If he or she won, the governor would have to call a special election after the general election to fill the vacant *Senate* seat.<sup>7</sup> One or more House members would likely qualify to run for that seat. If one of those House members won, the Governor would have to call another special election to fill the resulting vacant *House* seat.<sup>8</sup> And so forth and so on down to the local level.

Further, depending on the *timing* of the U.S. Senate or House vacancy and *when* the dominoes start to fall, a State Senator and/or House member might have to resign during a legislative session and leave constituents unrepresented in Tallahassee. This happened on April 13, 2010, when State Sen. Ted Deutch won a special election to fill the Florida 19<sup>th</sup> Congressional District seat vacated by former Rep. Robert Wexler. Senator Deutch not only missed the last two weeks of the 2010 regular session, but his constituents remained unrepresented for the subsequent July 20 special session called by Governor Charlie Crist to propose a constitutional amendment to ban offshore drilling in state waters.<sup>9</sup> Finally, because of the Senate President and Senate

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<sup>3</sup> Section 99.012(3),(7) F.S. The resign-to-run law also prohibits a person from qualifying as a candidate for *more than one* federal, state, district, county, or municipal office if the terms of the offices or any part thereof run concurrently (the “multi-candidate” prohibition). Section 99.012(2), F.S.

<sup>4</sup> Ch. 2007-30, § 14 LAWS OF FLA. (effective Jan. 1, 2008)

<sup>5</sup> Sometimes these special elections can be set to coincide with other elections, such as primaries and general elections; other times, they cannot.

<sup>6</sup> Section 100.102, F.S. If the special election can be run on another election date like a primary, then the additional costs are likely to be minimal, if any.

<sup>7</sup> Section 100.101(2), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> Governor Crist called the special session for July 20, 2010; the House of Representatives adjourned in less than 45 minutes. Associated Press, *Florida House quickly adjourns special session without voting on offshore drilling ban* (July 20, 2010), available at <http://www.foxnews.com/us/2010/07/20/florida-house-quickly-adjourns-special-session-voting-offshore-drilling-ban.html> (last accessed Feb.8, 2017). Therefore, in this instance, Senator Deutch’s constituents were not negatively impacted.

precedent, Sen. Deutch's District 30 office remained open and staffed to help constituents until the November 2010 general election — when Maria Lorts Sachs was elected to the office.<sup>10</sup>

Since the law took effect in 2008, staff was able to find three legislative special elections that serve witness to the domino effect, all of which started with Florida Senator Frederica Wilson's mid-term winning bid for a U.S. congressional seat in the November 2010 general election.<sup>11</sup>

### III. Effect of Proposed Changes:

SB 186 essentially re-adopts pre-2008 law making the “incumbent overlapping terms” provision of the resign-to-run law applicable to state and local officers seeking *federal* office. The only substantive change from the pre-2008 law involves the timing of the resignation.

Specifically, a state or local officer seeking to run for federal office must submit an irrevocable resignation no later than 10 days prior to the beginning of qualifying for the office sought, or the act of qualifying results in an automatic and immediate resignation from the current office. This change may reduce the potential for cascading “dominoes” and the associated potential for corresponding special elections, since it decreases the chances that State Senators and House members will consider a congressional run.

The bill contains a number of other technical and mechanical provisions for the new federal resignation requirement that resemble the current requirements for state and local officers seeking to run for a *different* state or local office with overlapping terms (i.e., to whom resignations are submitted, when the current offices are deemed vacant for purposes of subsequent elections, required notices, etc.).

SB 186 does not affect a current federal office holder, who is not required to resign-to-run for election to another office or for reelection.

It also makes a conforming change to clarify that state and local officers seeking to run for U.S. President or Vice President must resign their office if the terms overlap.

The bill takes effect upon becoming law.

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<sup>10</sup> In a communication from Sen. Deutch to Senate President Jeff Atwater, Sen. Deutch stated:

*I hope that Governor Crist will fill my Senate vacancy as soon as possible, especially considering the strong likelihood of a special session. I also strongly urge you to keep the District 30 office open and staffed until a new senator is seated, following recent Senate precedent. The District 30 constituents continue to rely on the Senate office staff's ability to navigate Florida's bureaucracy for Medicaid; unemployment; elder care issues; changes related to obtaining driver's licenses; and condominium and homeowner issues, to name a few.*

See Florida Senate Journal, Number 16 —Regular Session, p. 618 (April 15, 2010) (letter from Sen. Deutch to Pres. Atwater).

<sup>11</sup> The Democratic Special Primary (2.8.2011) and Special General Election in State Senate District 33 (3.1.2011), and the Democratic Special Primary in House District 103 (2.8.2011).

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

Reducing the number of special elections for U.S. House and State legislative races will reduce the need for campaign contributions and could adversely impact businesses that derive revenue from elections, such as campaign consultants, media outlets, direct mail, etc. The fiscal impact is indeterminate but expected to be minimal, given the relatively small number of special elections since the law took effect in 2008.

## C. Government Sector Impact:

***Non-Recurring***

The bill will reduce State reimbursements to counties for conducting primarily State legislative special primary and special general elections resulting from the early departure of a current office holder's successful campaign for federal office. Since the law took effect in 2008, the State has reimbursed counties just over \$1.7 million dollars for three special elections.<sup>12</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>12</sup> E-mail to Jonathan Fox, Chief Attorney, Senate Ethics and Elections Comm. from Rebecca Grissom, Budget and Legislative Analyst, Florida Department of State (Feb, 24, 2011).

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 99.012, 121.121.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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