

**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 Rules

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BILL: SB 186

INTRODUCER: Senator Hutson

SUBJECT: Resign-to-run Law

DATE: January 9, 2018

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

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fox</u>	<u>Ulrich</u>	<u>EE</u>	<b>Favorable</b>
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
3.	<u>Fox</u>	<u>Phelps</u>	<u>RC</u>	<b>Pre-meeting</b>

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## I. Summary:

SB 186 requires a state or local officer who seeks a federal public office to submit his or her resignation at least 10 days before the first day of qualifying for the federal office if the terms of the two offices overlap. A state officer's qualifying for a federal office while not submitting this resignation constitutes an automatic, immediately-effective resignation from his or her office. A similar "resign-to-run" law already applies to state or local officers who seek another state, district, county, or municipal public office.

The only substantive difference between the current bill language and a pre-2008 resign-to-run law applicable to state or local officers seeking federal office is that under the bill the resignation deadline is 10 days before qualifying.<sup>1</sup> Under the pre-2008 law, an officer had until the time of qualifying to submit his or her resignation.

## II. Present Situation:

The resign-to-run law requires a state or local officer to submit his or her resignation before qualifying for another state, district, county, or municipal public office if the terms of the offices overlap.<sup>2</sup> However, a state or local officer seeking a *federal* office is not required to resign before qualifying for a federal office having a term that overlaps that of his or her current office.

The resignation required of a state or local officer who seeks a state, district, county, or municipal public office having an overlapping term is irrevocable and must be submitted at least 10 days before the first day of the qualifying period for the office he or she intends to seek.<sup>3</sup> The

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<sup>1</sup> This is the same deadline that is in the current resign-to-run law.

<sup>2</sup> Section 99.012(3), F.S.

<sup>3</sup> A candidate must "qualify" for federal, state, or multi-county public office by filing the necessary paperwork with, and paying the qualifying fee to, the Florida Secretary of State. This must be done within the qualifying period. For a candidate seeking federal office, this period begins on at the moment after noon on the 120th day before the primary election and ends

resignation need not be effective upon its submission, but it must be effective by the earlier of two dates: the date on which the officer would take the other office, if elected, or the date the officer's successor is required to take office.

### **A Resign-to-Run Law Formerly Applied to State Officers Seeking Federal Office**

Through the end of 2007, state or local officers seeking an overlapping-term *federal* office were subject to a resign-to-run law that was similar to the current resign-to-run law.<sup>4</sup> However, effective January 1, 2008, the Legislature repealed the provision.

The 2008 change allows state senators and other state or local officers to qualify and run for a congressional office (U.S. Representative or U.S. Senator) without resigning from their current offices, regardless of whether the terms of the two offices would overlap. A run by a state officer seeking an overlapping-term federal office occurs most often in the case of an open congressional seat that is to be filled by a 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> The multiple special elections drain state resources because the state must reimburse the affected counties for the expenses of conducting the special elections in many instances.<sup>6</sup>

### **Examples Demonstrating Issues Stemming from the Lack of a Federal-Office Provision**

A plausible hypothetical example and past elections demonstrate how the lack of a resign-to-run law for state or local officeholders seeking federal offices may result in multiple special elections.

#### ***A Hypothetical Example***

Assume, for example, that an incumbent U.S. Representative decides not to seek re-election, leaving an open seat at the upcoming 2018 general election and a state senator whose 4-year term ends in 2020 runs for the congressional seat. Under current law, this senator does not have an incentive to resign from his or her Senate seat unless he or she wins the election. And if he or she wins, the Governor must call a special election after the general election to fill the vacant Senate seat.<sup>7</sup> Then, one or more members of the Florida House of Representatives will likely resign and qualify to run for the Senate seat. As a result, the Governor must call another special election to

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at noon on the 116th day before the primary election. For a candidate seeking state or multicounty district office, the qualifying period begins at noon of the 71st day before the primary election and ends at noon on the 67th day before the primary election. Section 99.061, F.S. And primary elections occur on the Tuesday 10 weeks before a general election. Section 100.061, F.S. However, the dates of special primary elections and special general elections are set by the Governor, after consultation with the Secretary of State. Section 100.111(2), F.S.

<sup>4</sup> Chapter 2007-30, s. 14, Laws of Fla. The timeframe for submitting a resignation was slightly different than the one in current law; the resignation had to be submitted before qualifying (instead of 10 days before qualifying).

<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., requires the state to reimburse counties whenever “any special election or special primary election is held as required in s. 100.101 . . .” Section 100.101, F.S., requires a special election for certain vacancies, such as a state legislative office or a congressional office, but not, for example, a U.S. Senate office. As to the costs themselves, 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.

fill any vacant *House* seat.<sup>8</sup> This cascade of vacant offices and special elections to fill the offices could continue down to the local level.

### ***Examples from the Recent Past***

Depending on the timing of a U.S. Senate or U.S. House vacancy, a state legislator who wins a federal election could have to resign during a legislative session, leaving constituents unrepresented in Tallahassee. This happened on April 13, 2010, when State Sen. Ted Deutch won a special election to fill the Florida 19th Congressional District seat vacated by former Rep. Robert Wexler. Sen. Deutch not only missed the last 2 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> The office remained vacant until it was filled by Maria Lorts Sachs, who prevailed in the regular election in November, 2010.

Following the 2008 repeal of the resign-to-run law applying to state or local officers seeking federal office, staff was able to find one series of elections which occurred as a result of a state officer resigning only after winning a federal office.<sup>10</sup> This occurred when State Sen. Fredrica Wilson won a U.S. House seat in the 2010 general election.

### **III. Effect of Proposed Changes:**

SB 186 requires a state or local officer who seeks a federal public office to submit his or her resignation before qualifying for the federal office if the terms of the two offices overlap. Thus, as to these candidates, the bill imposes the same “resign-to-run” requirement that already applies to state or local officers who seek another state, district, county, or municipal public office.

Specifically, a state or local officer seeking to run for federal office must submit an irrevocable resignation at least 10 days before the beginning of the qualifying period for the office sought. However, the resignation need not be effective until the earlier of the date the resigning officer would take office or the date the resigning officer’s successor is required to take office. The bill further provides that the failure of a state officer to timely submit the resignation “constitutes an automatic, irrevocable resignation, effective immediately,” from his or her current office.<sup>11</sup>

Regarding the bill’s technical and mechanical provisions, they closely track those of the current resign-to-run law—e.g., to whom resignations are submitted, when the current offices are deemed vacant for purposes of subsequent elections, and who must send and receive notice of the resignation.

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

<sup>9</sup> Governor Crist called the special session for July 20, 2010, but the House of Representatives adjourned in less than 45 minutes after it convened. Associated Press, *Florida House quickly adjourns special session without voting on offshore drilling ban*, (July 20, 2010), FOX NEWS, <http://www.foxnews.com/us/2010/07/20/florida-house-quickly-adjourns-special-session-voting-offshore-drilling-ban.html> (last visited Oct. 17, 2017). Therefore, in this instance, Sen. Deutch’s constituents did not appear to have been affected.

<sup>10</sup> The series of special elections included the Democratic Special Primary (Feb. 8, 2011) and Special General Election in State Senate District 33 (March 1, 2011) and the Democratic Special Primary in House District 103 (Feb. 8, 2011).

<sup>11</sup> Current law does not expressly state this is as consequence for a state officer who fails to resign before qualifying for another state, district, county, or municipal public office.

Lastly, the bill makes a conforming change to clarify that a state or local officer seeking to run for the office of U.S. President or Vice President must resign his or her office if the terms of the offices overlap.

### **Likely Impact of the Bill**

It appears likely that the bill will decrease the occurrence of resignations by state officers, and thus the occurrence of special elections required to fill their offices and the offices of those who seek their offices—the “domino effect.”

### **Effective Date**

The bill takes effect upon becoming a law.

## **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 federal 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, and direct-mail operations. The fiscal impact is unknown but is expected to be minimal, given the relatively small number of special elections since a similar resign-to-run law was repealed in 2008.

### **C. Government Sector Impact:**

The bill may reduce the need for the state to reimburse counties for the costs of conducting special elections resulting from the early departure of a current state officeholder who successfully runs for federal office. However, 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.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 99.012 and 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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<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).