



West's Alaska Statutes Annotated Currentness

Title 39. Public Officers and Employees

Chapter 05. Qualifications, Appointment, and Tenure

→ § 39.05.080. Procedure for all appointments

Except as otherwise provided in a law relating to the positions or memberships on a specific board or commission, appointment to a position or membership shall be made in the following manner:

(1) Each governor shall present to the legislature the names of the persons appointed by that governor; each governor may present the name of a person appointed by a previous governor; only presentment that occurs during the time that the legislature is in regular session constitutes presentment under this section. The governor shall, within the first 15 days after the legislature convenes in regular session, present to the legislature for confirmation the names of the following persons: (A) persons appointed to a position or membership who have not previously been confirmed by the legislature, and (B) persons to be appointed to fill a position or membership the term of which will expire on or before March 1 during that session of the legislature. If an appointment is made after the first 15 days after the convening of the regular session but while the legislature is in regular session, the governor shall immediately present to the legislature for confirmation the name of the person appointed.

(2) When appointments are presented to the legislature for confirmation,

(A) the presiding officer of each house shall assign the name of each appointee to a standing committee of that house for a hearing, report, and recommendation; standing committees of the two houses assigned the same person's name for consideration may meet jointly to consider the qualifications of the person appointed and may issue either a separate or a joint report and recommendation concerning that person; then

(B) the legislature shall, before the end of the regular session in which the appointments are presented, in joint session assembled, act on the appointments by confirming or declining to confirm by a majority vote of all of the members the appointments presented.

(3) When the legislature declines to confirm an appointment, the legislature shall notify the governor of its action and a vacancy in the position or membership exists which the governor shall fill by making a new appointment. The governor may not appoint again the same

person whose confirmation was refused for the same position or membership during the regular session of the legislature at which confirmation was refused. The person whose name is refused for appointment by the legislature may not thereafter be appointed to the same position or membership during the interim between regular legislative sessions. Failure of the legislature to act to confirm or decline to confirm an appointment during the regular session in which the appointment was presented is tantamount to a declination of confirmation on the day the regular session adjourns.

(4) Pending confirmation or rejection of appointment by the legislature, persons appointed shall exercise the functions, have the powers, and be charged with the duties prescribed by law for the appointive positions or membership. However, the duration of an appointment made during the time period between regular sessions of the legislature by a person who is not still the governor on the first day of the next regular session ends on the date during the next regular session that the sitting governor presents for confirmation an appointment to the office. For the purpose of applying laws that limit the number of terms or parts of terms that may be served by a member of a board or commission, the part of the term of office that is served under an interim appointment immediately before the member is reappointed under this paragraph is considered to be merged with the part of the term of office that is served immediately after reappointment so that the two periods of service constitute only one part of a term. The duration of an appointment made during a regular session of the legislature and not presented to the legislature by the governor during that session ends no later than the last day of that session. The duration of an appointment made during an interim by a governor who is not in office at the beginning of the next regular session of the legislature ends no later than the last day of that regular session unless the governor who is in office during that session presents the person's name for confirmation. The same governor may not appoint the same person to the same position or membership if the person's appointment ends because of the governor's failure to present the person's name for confirmation.

#### CREDIT(S)

SLA 1955, ch. 64, § 4; SLA 1964, ch. 1, §§ 1--3; SLA 1967, ch. 2, § 1; SLA 1974, ch. 65, § 1; SLA 1975, ch. 82, § 2; SLA 1996, ch. 80, § 14; SLA 2002, ch. 45, § 1. Amended by SLA 2007, ch. 34, § 16, eff. Jan. 1, 2008.

#### CROSS REFERENCES

Boards of fisheries and game, see § 16.05.221.

#### LIBRARY REFERENCES

States  46.

Westlaw Key Number Search: 360k46.

C.J.S. States §§ 88, 158 to 161, 163 to 165, 195.

## NOTES OF DECISIONS

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### 1. Appointments by prior governor

Governor's power to reconsider prior governor's appointment of defendant to vacant position on Alaska Public Utilities Commission (APUC) ended when defendant assumed powers of office, even though defendant's right to office was contingent upon confirmation by legislature; thus, governor could not remove defendant from office without complying with statutes governing removal from APUC. Const. Art. 3, § 26; AS 39.05.080(1), 42.05.035. *Cook v. Botelho*, 1996, 921 P.2d 1126. Public Utilities ⚡ 142

### 2. Appointments during legislative recess

Neither Alaska Constitution nor appointment statutes prevented governor from appointing Alaska Public Utilities Commission (APUC) member to full term while legislature was in recess, nor did they prevent legislature from confirming such appointee. Const. Art. 3, § 27; AS 39.05.080(1). *Cook v. Botelho*, 1996, 921 P.2d 1126. Public Utilities ⚡ 142

Once governor named appointee to vacant position in Alaska Public Utilities Commission (APUC) during recess of legislature, legislature, upon reconvening, could confirm appointee without awaiting presentment of appointee by governor's successor. AS 39.05.080(1). *Cook v. Botelho*, 1996, 921 P.2d 1126. Public Utilities ⚡ 142

### 3. Confirmation of appointment

Legislature may confirm appointee, once governor's appointment is complete, without awaiting communication of appointment from executive. AS 39.05.080(1). *Cook v. Botelho*, 1996, 921 P.2d 1126. States ⚡ 46

Appointment of executive officers of state government is an "executive function" rather than a legislative one. Const. art. 3, §§ 1, 16. *Bradner v. Hammond*, 1976, 553 P.2d 1. States ⚡ 46

Confirmation of appointment of executive officers of state government is an attribute of appointive power of Governor rather than a distinct legislative power. Const. art. 2, § 1; art. 3, §§ 1 et seq., 16. *Bradner v. Hammond*, 1976, 553 P.2d 1. States ⚡ 46

AS § 39.05.080

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#### 4. Public record disclosure

Time sheets that indicate hours work for public employer are properly included in definition of "public records" under Public Records Act and are not subject to confidentiality provisions for "state personnel records." AS 39.05.080. *Alaska Wildlife Alliance v. Rue* (1997) Alaska, 948 P.2d 976. Records 58

AS § 39.05.080, AK ST § 39.05.080

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West's Alaska Statutes Annotated Currentness

Title 44. State Government

▣ Chapter 19. Office of the Governor

▣ Article 1. Powers and Duties

→ **§ 44.19.026. Designation of temporary substitute for lieutenant governor**

The lieutenant governor may designate a head of a principal executive department, or more than one such officer in the alternative, who shall temporarily be custodian of the state seal and perform the authenticating functions of the lieutenant governor during such time as the lieutenant governor succeeds to the office of governor, acts as governor, is absent from the state, or otherwise is not available at the state capital to perform the above authenticating functions. The designation shall be in writing, signed by the lieutenant governor, and filed in the office of the lieutenant governor. The designation is effective until revoked by a later designation executed and filed in the same manner.

## CREDIT(S)

SLA 1962, ch. 22, § 1.

## LIBRARY REFERENCES

States  42.

Westlaw Key Number Search: 360k42.

C.J.S. States §§ 174, 243.

AS § 44.19.026, AK ST § 44.19.026

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West's Alaska Statutes Annotated Currentness

Title 44. State Government

Chapter 19. Office of the Governor

Article 2. Succession

→ **§ 44.19.040. Appointment of successor to lieutenant governor**

After taking an initial term of office, the governor shall appoint, from among the officers who head the principal departments of the state government or otherwise, a person to succeed to the office of lieutenant governor if the office of lieutenant governor becomes vacant. The appointment is subject to confirmation by a majority of the members of the legislature meeting in joint session. The person designated and confirmed is next in line for succession to the office of lieutenant governor, subject to the pleasure of the governor. If the person designated and confirmed is removed from or vacates the appointment, the governor shall appoint a successor subject to confirmation in the same manner as the person initially appointed.

## CREDIT(S)

SLA 1959, ch. 174, § 2.

## LIBRARY REFERENCES

States ↪ 42.

Westlaw Key Number Search: 360k42.

C.J.S. States §§ 174, 243.

## NOTES OF DECISIONS

Disaster emergencies 1

1. Disaster emergencies

Under the Alaska Disaster Act (AS 26.23 et seq.) the power to declare a condition of disaster emergency rests with the Governor; and, in the event the elected Governor is unable to hold the office, the authority of the office may be assumed by the Lieutenant Governor or the person appointed under AS 44.19.040, as appropriate. The person with the authority of the Governor would have the power to declare a disaster emergency under AS 26.23.020(c). Alaska Op.Atty.Gen. 663-97-0323, (July 17, 1997) 1997 WL 1089539.

AS § 44.19.040

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AS § 44.19.040, AK ST § 44.19.040

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AS § 44.19.042

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West's Alaska Statutes Annotated Currentness

Title 44. State Government

Chapter 19. Office of the Governor

Article 2. Succession

→ § 44.19.042. Succession to office

If a vacancy occurs in the office of governor and the regularly elected lieutenant governor succeeds to the office of governor as provided by art. III, § 11, of the constitution, or if the office of lieutenant governor otherwise becomes vacant, the person designated as next successor to the office of lieutenant governor as provided in AS 44.19.040 succeeds to the office of lieutenant governor for the remainder of the term vacated, or until a special election is held. When the person appointed under AS 44.19.040 succeeds to the office of lieutenant governor, the governor shall appoint a person to succeed to the office of lieutenant governor in case of a subsequent vacancy.

CREDIT(S)

SLA 1959, ch. 174, § 3.

## LIBRARY REFERENCES

States 41.

Westlaw Key Number Search: 360k41.

C.J.S. States §§ 171 to 174, 240 to 242.

AS § 44.19.042, AK ST § 44.19.042

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Title 44. State Government

Chapter 19. Office of the Governor

Article 2. Succession

**→ § 44.19.044. Special election in case of second vacancy in office of governor**

If the regularly elected lieutenant governor succeeds to the office of governor as provided in the constitution and thereafter, during the same regular gubernatorial term, the office of governor again becomes vacant, the appointed lieutenant governor succeeds to the office of acting governor until a special election to elect a governor and lieutenant governor is held.

## CREDIT(S)

SLA 1959, ch. 174, § 4.

## CROSS REFERENCES

Special elections, generally, see § 14.40.230 et seq.

## LIBRARY REFERENCES

States 41.

Westlaw Key Number Search: 360k41.

C.J.S. States §§ 171 to 174, 240 to 242.

AS § 44.19.044, AK ST § 44.19.044

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West's Alaska Statutes Annotated Currentness

Title 44. State Government

▣ Chapter 19. Office of the Governor

▣ Article 2. Succession

→ **§ 44.19.046. Simultaneous vacancies**

If vacancies in the office of governor and the office of lieutenant governor occur simultaneously, the person appointed under AS 44.19.040 succeeds directly to the office of acting governor until successors to the respective offices are elected in a special election.

## CREDIT(S)

SLA 1959, ch. 174, § 5.

## CROSS REFERENCES

Per diem and travel expenses, see § 39.20.180.  
Special elections, generally, see § 14.40.230 et seq.

## LIBRARY REFERENCES

States ↪ 41.  
Westlaw Key Number Search: 360k41.  
C.J.S. States §§ 171 to 174, 240 to 242.

AS § 44.19.046, AK ST § 44.19.046  
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AK Const. Art. 3, § 11

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The Constitution of the State of Alaska (Refs & Annos)  
    ▣ Article III. The Executive  
        → **§ 11. Vacancy**

In case of a vacancy in the office of governor for any reason, the lieutenant governor shall succeed to the office for the remainder of the term.

#### CREDIT(S)

1970 SJR 2, approved August 25, 1970, October 10, 1970.

#### CROSS REFERENCES

Governor's office, succession, see § 44.19.040 et seq.

#### LIBRARY REFERENCES

States 51.  
Westlaw Key Number Search: 360k51.  
C.J.S. States §§ 88, 151, 153, 169 to 170.

AK Const. Art. 3, § 11, AK CONST Art. 3, § 11  
Current through the 2008 Second Regular and Fourth Special Session of the 25th Legislature.

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