

HB

130


Alaska State Legislature

Session: (Jan-May)
State Capitol, Room 208
Juneau, AK 99801-1182
(907) 465-4859
Fax (907) 465-3799

Interim: (June-Dec)
716 West 4th Avenue, Suite 300
Anchorage, AK 99501-2133
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John Harris Speaker of the House

To: Representative Bob Lynn, Chair
House State Affairs Committee

From: Representative John Harris 
Speaker of the House

Date: February 14, 2007

Subject: Hearing Request for HB 130

Please consider this request to hear House Bill 130: Resign to Run for Office, before your committee at your earliest possible convenience.

Background materials for the bill are attached. If you have questions or need additional information, please contact Tom Wright of my staff at 465-4859.

Thank you for your consideration of this request to schedule HB 130.

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SPONSOR STATEMENT

HOUSE BILL 130

“An Act prohibiting a state legislator, the governor or lieutenant governor from retaining office if the person runs for a different state or federal office and a part of the term of this different office runs concurrently with that of the office held; and providing for an effective date.”

House Bill 130 will level the playing field for candidates seeking higher office. The premise of the bill is that the governor, lieutenant governor or a legislator cannot run for another different state or federal office while maintaining their current office. This does not apply to seated officials who are in their last year of their term.

This is a fundamental issue of fairness. The power of incumbency and not holding a safe seat should they lose the election creates a huge advantage over an opponent who may not enjoy the same benefits of public office or who may have to give up their seat to run for higher office. Some of these advantages occur in fundraising, being able to speak in an official capacity to groups who realize the person's incumbency would survive an election for a different office, and other perks they may have as a continuing office holder. This would also help resolve any potential retribution should the office holder lose the election for a higher office.

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SECTIONAL ANALYSIS HOUSE BILL 130

“An Act prohibiting a state legislator, the governor or lieutenant governor from retaining office if the person runs for a different state or federal office and a part of the term of this different office runs concurrently with that of the office held; and providing for an effective date.”

Section 1: Amends AS 15.25.030(a), Declaration of candidacy. Conforming language adding reference to AS 24.05.045 and AS 44.19.038.

Section 2: Amends AS 15.25.105(a), Write-in candidates. Conforming language adding reference to AS 24.05.045 and AS 44.19.038.

Section 3: Amends AS 15.25.180(a), Requirements for petition. Conforming language adding reference to AS 24.05.045 and AS 44.19.038.

Section 4: Adds a new section to AS 24.05. Section states that a legislator who is not in the final year of office must resign that office if the legislator files as a candidate for a state or federal office if the term runs concurrently with the legislator's term of office. The resignation is to take place before the date of filing for the other office.

Section 5: Adds a new section to AS 44.19. Section states that a governor or lieutenant governor who is not in the final year of office must resign that office if the governor or lieutenant governor files as a candidate for a state or federal office if the term runs concurrently with the the governor's or lieutenant governor's term of office. The resignation is to take place before the date of filing for the other office.

Section 6: Immediate effective date.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 9, 2007

SUBJECT: Bill relating to a requirement that a legislator, the governor, or lieutenant governor resign from office if running for another public office. (Work Order No. 25-LS0459\A)

TO: Representative John Harris
Attn: Tom Wright

FROM: Alpheus Bullard *ALB*
Legislative Counsel

Enclosed is the draft bill you requested, requiring a legislator, the lieutenant governor, or governor to resign if running for another state or federal public office. While it is my opinion that the bill is constitutional, challenges to the bill could be brought on a variety of constitutional grounds. These constitutional issues and a drafting question are detailed in brief below.

Constitutional Issues.

1. Different litigants in disparate circumstances might charge that the bill is an infringement of First Amendment rights, a violation of the Equal Protection Clause of the Fourteenth Amendment, or imposes an unconstitutional qualification under Art. I, Secs. 2 and 3 of the United States Constitution or art. II, sec. 2, and art. III, sec. 2 of the Alaska Constitution.

The First Amendment.

The First Amendment to the United States Constitution prohibits abridging freedom of speech. The Supreme Court has held in Clements v. Fashing, 102 S. Ct. 2836 (1982) that a "resign to run" state constitutional provision similar to the statute you have requested places an insignificant burden on an elected state office holder's First Amendment rights and "a State [may] define the benefits and burdens of different elective offices in any particular manner." Id. at 2848-49. A federal judge has called the question of the propriety of resign-to-run rules "settled doctrine." Wilbur v. Mahan, 3 F.3d 214, 219 (7th Cir. 1993) (Easterbrook, J. concurring). In this case, sitting public office holders running for another federal office would be denied their former income and the benefits of state office while running for another elected office. It seems unlikely that this restriction rises to the level of an impermissible abridgment of these candidates' freedom of speech or association under Alaska law. A restriction by government which has as its purpose the prohibition or prevention of some act other than communicative speech, but which affects speech being valid unless the interference with communication of ideas and information

outweighs the benefit to the governmental interest to be served. See Younger v. Harris, 401 U.S. 37 (1971).

Equal Protection.

This bill would create a classification that distinguishes between elected state office holders who wish to run for another public office before the last year of their term and all other persons. A state court in assessing an equal protection challenge would examine the nature and weight of the interests possessed by those burdened by the restriction, the importance of the interests underlying the bill, and the closeness of the means-to-end fit of the bill's restriction on state office holders with the state interests protected. In this case, the bill's creation of two potential would-be candidate groups does not disadvantage a constitutionally suspect class, the bill's prohibition against sitting state office holders running as candidates is rationally related to furthering substantial and important state interests in orderly and consistent government¹, and the burden borne by the newly created class is unlikely to be interpreted as unduly burdensome.

State and Federal Qualifications Clauses.

There exists some likelihood that the bill could be interpreted by a court to create a fourth and impermissible qualification for candidacy of "not an elected state office holder before the final year of the office holder's term."² If a court were to interpret the bill as creating such a qualification, the bill would not pass constitutional muster. The addition of a fourth qualification for office would require an amendment to the Alaska constitution. While I am unable to predict with certainty how a state court would treat the qualifications clause issues posed by this bill, similar "resign-to-run" statutes and state constitutional provisions have been upheld in federal and state courts against "qualifications clause" challenges. See Signorelli v. Evans, 637 F.2d 853 (2d Cir. 1980) and Oklahoma State Election Board v. Coats, 610 P.2d 776 (Okla. 1980). While a "resign-to-run" statute has never been before an Alaska court, in Alaskans for Legislative Reform v. State, 887 P.2d 960 (Alaska 1994), the court, in a review of permissible and impermissible candidate qualifications, observed that "a state 'resign-to-run' statute has been upheld because it did not actually bar a candidate from office. Rather, it simply required the candidate to sacrifice the security of the public office presently held for the prospect of obtaining a different position." Id. citing Coats at 780. I believe that an Alaska court would most likely hold that this bill does not seek to create an impermissible qualification, but is instead, a legitimate exercise of the state's plenary

¹ i.e. (1) encouraging elected public officials to devote themselves exclusively to the duties of the office held; (2) reducing the possibilities of public subsidies for persons using public office as a stepping stone; (3) preventing abuse of an office before and after an election; and (4) protecting the expectations of the electorate in voting a candidate into state office. See Joyner v. Mofford, 706 F.2d 1523, 1532 (1983).

² The three existing qualifications are age, citizenship, and residency; qualifications that have been held to be exclusive and that neither Congress nor the states may require more. See Alaskans for Legislative Reform v. State, 887 P.2d 960 (Alaska 1994).

Representative John Harris

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power to regulate the conduct of its own office holders without providing an absolute or permanent prohibition against the candidacy of any individual running for state or federal office.

2. You requested that the draft bill exempt a legislator, the lieutenant governor, or governor who is in the final year of the legislator's, lieutenant governor's, or governor's office from the bill's resignation requirement. This exemption, so phrased, may not be necessary given the draft bill's language concerning the existing office holder's filing for an office "the term or any part of the term of which runs concurrent with the legislator's [lieutenant governor's or governor's] term of office." While this language is not synonymous in its effect with the requested "final year" exemption, it may provide the same desired result.

If you have any questions, or if I can be of further assistance, please do not hesitate to contact me.

TLAB:med
07-074.med

Enclosure

Sec. 15.25.030. Declaration of candidacy.

(a) A member of a political party who seeks to become a candidate of the party in the primary election shall execute and file a declaration of candidacy. The declaration shall be executed under oath before an officer authorized to take acknowledgments and must state in substance

- (1) the full name of the candidate;
- (2) the full mailing address of the candidate;
- (3) if the candidacy is for the office of state senator or state representative, the house or senate district of which the candidate is a resident;
- (4) the office for which the candidate seeks nomination;
- (5) the name of the political party of which the person is a candidate for nomination;
- (6) the full residence address of the candidate, and the date on which residency at that address began;
- (7) the date of the primary election at which the candidate seeks nomination;
- (8) the length of residency in the state and in the district of the candidate;
- (9) that the candidate will meet the specific citizenship requirements of the office for which the person is a candidate;
- (10) that the candidate is a qualified voter as required by law;
- (11) that the candidate will meet the specific age requirements of the office for which the person is a candidate; if the candidacy is for the office of state representative, that the candidate will be at least 21 years of age on the first scheduled day of the first regular session of the legislature convened after the election; if the candidacy is for the office of state senator, that the candidate will be at least 25 years of age on the first scheduled day of the first regular session of the legislature convened after the election; if the candidacy is for the office of governor or lieutenant governor, that the candidate will be at least 30 years of age on the first Monday in December following election or, if the office is to be filled by special election under AS 15.40.230 - 15.40.310, that the candidate will be at least 30 years of age on the date of certification of the results of the special election; or, for any other office, by the time that the candidate, if elected, is sworn into office;
- (12) that the candidate requests that the candidate's name be placed on the primary election ballot;

(13) that the required fee accompanies the declaration;

(14) that the person is not a candidate for any other office to be voted on at the primary or general election and that the person is not a candidate for this office under any other declaration of candidacy or nominating petition;

(15) the manner in which the candidate wishes the candidate's name to appear on the ballot; and

(16) that the candidate is registered to vote as a member of the political party whose nomination is being sought.

(b) A person filing a declaration of candidacy under this section, other than a person subject to AS 24.60 who is filing a declaration for a state legislative office, shall simultaneously file with the director a statement of income sources and business interests that complies with the requirements of AS 39.50. A person who is subject to AS 24.60 and is filing a declaration of candidacy for state legislative office shall simultaneously file with the director a disclosure statement that complies with the requirements of AS 24.60.200.

(c) An incumbent public official, other than a legislator, who has a current statement of income sources and business interests under AS 39.50 on file with the Alaska Public Offices Commission, or an incumbent legislator who has a current disclosure statement under AS 24.60.200 on file with the Alaska Public Offices Commission, is not required to file a statement of income sources and business interests or a disclosure statement with the declaration of candidacy under (b) of this section.

Sec. 15.25.105. Write-in candidates.

(a) If a candidate does not appear on the primary election ballot or is not successful in advancing to the general election and wishes to be a candidate in the general election, the candidate may file as a write-in candidate. Votes for a write-in candidate may not be counted unless that candidate has filed a letter of intent with the director stating

(1) the full name of the candidate;

(2) the full residence address of the candidate and the date on which residency at that address began;

(3) the full mailing address of the candidate;

(4) the name of the political party or political group of which the candidate is a member, if any;

(5) if the candidate is for the office of state senator or state representative, the house or senate district of which the candidate is a resident;

(6) the office that the candidate seeks;

(7) the date of the election at which the candidate seeks election;

(8) the length of residency in the state and in the house district of the candidate;

(9) the name of the candidate as the candidate wishes it to be written on the ballot by the voter;

(10) that the candidate meets the specific citizenship requirements of the office for which the person is a candidate;

(11) that the candidate will meet the specific age requirements of the office for which the person is a candidate; if the candidacy is for the office of state representative, that the candidate will be at least 21 years of age on the first scheduled day of the first regular session of the legislature convened after the election; if the candidacy is for the office of state senator, that the candidate will be at least 25 years of age on the first scheduled day of the first regular session of the legislature convened after the election; if the candidacy is for the office of governor or lieutenant governor, that the candidate will be at least 30 years of age on the first Monday in December following election or, if the office is to be filled by special election under AS 15.40.230 - 15.40.310, that the candidate will be at least 30 years of age on the date of certification of the results of the special election; or, for any other office, by the time that the candidate, if elected, is sworn into office;

(12) that the candidate is a qualified voter as required by law; and

(13) that the candidate is not a candidate for any other office to be voted on at the general election and that the candidate is not a candidate for this office under any other nominating petition or declaration of candidacy.

(b) If a write-in candidate is running for the office of governor, the candidate must file a joint letter of intent together with a candidate for lieutenant governor. Both candidates must be of the same political party or group.

(c) A letter of intent under (a) of this section must be filed not later than five days before the general election.

Sec. 15.25.180. Requirements for petition.

- (a) The petition must state in substance
 - (1) the full name of the candidate;
 - (2) the full residence address of the candidate and the date on which residency at that address began;
 - (3) the full mailing address of the candidate;
 - (4) the name of the political group, if any, supporting the candidate;
 - (5) if the candidacy is for the office of state senator or state representative, the house or senate district of which the candidate is a resident;
 - (6) the office for which the candidate is nominated;
 - (7) the date of the election at which the candidate seeks election;
 - (8) the length of residency in the state and in the district of the candidate;
 - (9) that the subscribers are qualified voters of the state or house or senate district in which the candidate resides;
 - (10) that the subscribers request that the candidate's name be placed on the general election ballot;
 - (11) that the proposed candidate accepts the nomination and will serve if elected, with the statement signed by the proposed candidate;
 - (12) the name of the candidate as the candidate wishes it to appear on the ballot;
 - (13) that the candidate is not a candidate for any other office to be voted on at the primary or general election and that the candidate is not a candidate for this office under any other nominating petition or declaration of candidacy;
 - (14) that the candidate meets the specific citizenship requirements of the office for which the person is a candidate;
 - (15) that the candidate will meet the specific age requirements of the office for which the person is a candidate; if the candidacy is for the office of state representative, that the candidate will be at least 21 years of age on the first scheduled day of the first regular session of the legislature convened after the election; if the candidacy is for the office of state senator, that the candidate will be at least 25 years of age on the first scheduled day of the first regular session of the legislature convened after the election;

and if the candidacy is for the office of governor or lieutenant governor, that the candidate will be at least 30 years of age on the first Monday in December following election or, if the office is to be filled by special election under AS 15.40.230 - 15.40.310, that the candidate will be at least 30 years of age on the date of certification of the results of the special election; or, for any other office, by the time that the candidate, if elected, is sworn into office;

(16) that the candidate is a qualified voter; and

(17) if the candidacy is for the office of the governor, the name of the candidate for lieutenant governor running jointly with the candidate for governor.

(b) A person filing a nominating petition under this section, other than a person subject to AS 24.60 who is filing a petition for a state legislative office, shall simultaneously file with the director a statement of income sources and business interests that complies with the requirements of AS 39.50. A person who is subject to AS 24.60 and is filing a nominating petition for state legislative office shall simultaneously file with the director a disclosure statement that complies with the requirements of AS 24.60.200.

(c) An incumbent public official, other than a legislator, who has a current statement of income sources and business interests under AS 39.50 on file with the Alaska Public Offices Commission, or an incumbent legislator who has a current disclosure statement under AS 24.60.200 on file with the Alaska Public Offices Commission, is not required to file a statement of income sources and business interests or a disclosure statement with the nominating petition under (b) of this section.

Article 02. COMPOSITION AND MEMBERS

Sec. 24.05.020. Composition.

The legislature is composed of two houses: a senate consisting of 20 members and a house of representatives consisting of 40 members.

Sec. 24.05.030. Qualifications of members.

A member of the legislature shall be a qualified voter who has been a resident of the state for at least three years and of the district from which elected for at least one year immediately preceding filing for office. A senator shall be at least 25 years of age and a representative at least 21 years of age at the time of taking the oath of office.

Sec. 24.05.040. Dual office.

A member of the legislature may not hold any other office or position of profit under the United States or the state. During the term for which elected and for one year thereafter, a legislator may not be nominated, elected, or appointed to any other office or position of profit which has been created, or the salary or emoluments of which have been increased, while the legislator was a member. This section does not prevent any person from seeking or holding the office of governor, lieutenant governor, or member of Congress. This section does not apply to employment by or election to a constitutional convention. A member may serve on or at the behest of an interim committee of the legislature.

Sec. 24.05.050. Membership on boards and commissions.

A member of the legislature may serve on a board or commission of the state government only if the membership of legislators on the board or commission is specifically authorized by law.

Sec. 24.05.060. Disqualifications.

A person is not qualified for membership in the legislature who is disqualified to hold public office under the provisions of art. XII, Sec. 4, Constitution of the State of Alaska, and as it may be implemented by law. Each member of the legislature, before entering upon the duties of the office, shall take the oath of office prescribed in art. XII, Sec. 5, Constitution of the State of Alaska, and such further oath or affirmation prescribed by law for members of the legislature or other officers of the state.

Sec. 24.05.070. Election and expulsion.

Each member of the legislature shall be elected from the district and in conformity with the procedures established by the state constitution and the laws of the state. Each house is the judge of the election and qualifications of its members and may expel a member with the concurrence of two-thirds of its members.

Sec. 24.05.080. Terms.

The term of each member of the legislature begins on the second Monday in January following a presidential election year; however, following a gubernatorial election year, the term of each member begins on the third Tuesday in January. The term of representatives is two years, and the term of senators is four years. One-half of the senators shall be elected every two years.

Sec. 24.05.085. Resignation.

A member resigns by submitting a resignation in writing to the presiding officer of the house to which the member was elected or appointed, with information copies to the governor, the director of elections, and the executive director of the Legislative Affairs Agency for appropriate administrative action. The resignation is effective on the date specified in the resignation or, if no date is specified, 10 days after the date of mailing the resignation. The resignation may be withdrawn, in the same manner as it was submitted, at any time before it becomes effective.

Sec. 24.05.087. [*Renumbered as AS 24.05.184*].

Article 01. POWERS AND DUTIES

Sec. 44.19.010. Office of the Governor.

The Office of the Governor includes the lieutenant governor, the budget officer, and the staff that the governor finds necessary to administer the executive powers of the state.

Sec. 44.19.015. State budget.

The governor shall direct the preparation and administration of the state budget.

Sec. 44.19.017. International trade.

(a) The Office of the Governor is authorized to foster the growth of

(1) trade between Alaska and foreign countries; and

(2) international trade within the state and administer Alaska foreign offices.

(b) The governor shall maintain foreign offices, including an office located in Tokyo, Japan and Seoul, Republic of Korea. The foreign offices shall serve as outlets for information related to economic development, resources, and trade and as contact points for government and private industry of Alaska and the Pacific Rim nations of Asia and other foreign countries to promote and maintain trade between the state and those countries.

(c) The governor shall staff the foreign offices with persons the governor selects based on their experience, training, and linguistic ability. The governor shall solicit ideas from the legislature regarding desirable staff qualifications and its recommendations of persons to staff the offices. The governor may hire additional personnel as necessary.

(d) The governor shall direct all state agencies, and request the federal government and private industry, to provide necessary reports, brochures, and information requested by the governor.

(e) The governor shall prepare a report annually on the activities and accomplishments of the Office of the Governor under this section and notify the legislature that the report is available.

(f) The expenses of operating the activities of the Office of the Governor under this section, including its foreign offices, shall be included in appropriations made to the Office of the Governor.

Sec. 44.19.020. Duties of the lieutenant governor.

The lieutenant governor shall

(1) administer state election laws;

(2) appoint notaries public;

(3) adopt regulations under AS 44.62 (Administrative Procedure Act) that establish for the broadcasting of notices under AS 44.62.190 and 44.62.310(e) the frequency of the broadcasts, appropriate broadcast times, and the locations for the broadcasts; the regulations must be reasonably calculated to provide the widest possible exposure of the notices.

Sec. 44.19.022. Custodian of state seal.

The lieutenant governor is the custodian of the state seal.

Sec. 44.19.023. State museum management [Repealed, E.O. No. 34 (1974)].

Repealed or Renumbered

Sec. 44.19.024. Fees for issuing certificate.

For issuing each certificate with the seal of the state affixed, the lieutenant governor shall collect a fee of \$5 for each certificate.

Sec. 44.19.025. [Renumbered as AS 44.99.001].

Repealed or Renumbered

Sec. 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.

Sec. 44.19.028. Interim boards.

The governor may establish the interim advisory boards, councils, and commissions the governor considers necessary. The governor may prescribe the functions and authority of interim boards, councils, and commissions and fix the compensation of their members. An interim board, council, or commission remains in existence only until the adjournment of the next regular or reconvened session of the legislature.

Sec. 44.19.030. Printing governor's message.

The governor shall have the governor's message printed and distributed to each member of the legislature within 24 hours after it is delivered or with all possible speed.

Sec. 44.19.035. Jones Act repeal.

The governor shall use best efforts and all appropriate means to persuade the United States Congress to repeal 46 U.S.C. 861, et seq., known as the Jones Act.