

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11054 HOUSE STATE AFFAIRS

# Alaskan Shellfish Growers Association



February 12, 2004

Rep. Bruce Weyhrauch  
 Capitol Building, Room 102  
 Juneau, AK 99811

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Dear Rep. Weyhrauch:

I'd like to take this opportunity to thank you on behalf of shellfish farmers throughout the state for your strong support for development of Alaska's shellfish farming industry. It is a relief to know we have at least one advocate in the Capitol who truly understands the needs of our developing industry.

There is one very troubling issue that has arisen recently and has the potential to literally destroy all of our recent hard-won gains. Two administration bills (HB399 and SB 275) instruct DEC to impose fees for the services of the food safety laboratory. DEC tells me that means growers would be faced with costs of \$125 for each sample submitted for analysis of toxin, such as paralytic shellfish poisoning (PSP).

This would put all current farms out of business and bring development to a grinding halt. In the case of my own farm, about 15% of my gross sales revenues would be eaten up by the fees. It's even worse for new farms. I talked to several farms to determine the number of samples they were required to submit in 2003. Here's what I found:

2003 Farm Businesses	No. Samples	\$/Sample	Annual Cost
PWS Oyster Farm	32	\$125	\$4,000
Kake Oyster Farm	20	\$125	\$2,500
POW Oyster/Clam Farm	86	\$125	\$10,750
POW Oyster/Clam Farm	198	\$125	\$24,750

The number of samples vary according to experience of the farm, season, amount of product sold and number of species produced, so the costs are significantly different from farm to farm. All of the farms I've contacted say the fees would put them out of business.

The impact on new farmers is the heaviest. Consider this example:

New Oyster Farm	Gross Sales*	DEC Fees	% of Rev.
50 doz./week for 18 weeks	\$3,375	\$1,250	37.04%
100 doz./week for 17 weeks	\$6,375	\$4,250	66.67%
200 doz./week for 17 weeks	\$12,750	\$2,500	19.61%
<b>Total</b>	<b>\$22,500</b>	<b>\$8,000</b>	<b>35.56%</b>

\*\$3.75/doz. farmgate

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The impact on the newly emerging geoduck farms in the Ketchikan area also would be heavy:

New Geoduck Farm	No. Samples	\$/Sample	Annual Cost
3 samples/sale/50 sales	150	\$125	\$18,750

Policymakers become accustomed to industry saying government fees or regulations will put them out of business, but it certainly is the case with these fees. Alaska shellfish farms are mom-and-pop businesses and they simply can't shoulder fees of this magnitude.

Important to keep in mind is the farms operate year round, selling relatively small amounts of product on a weekly basis. This feature increases economic benefits to local communities, allows farmers to charge premium prices, and provides Alaskans with the only fresh local seafood products they can buy 52 weeks a year. However, it also greatly increases the cost of PSP testing.

Under current PSP testing guidelines, geoduck divers can certify an entire bay for two days on the results of three tests. The divers might harvest 30,000 pounds of product from the bay during the two-day opening. Contrast the \$375 lab fee bill with the cost to a farmer to sell 30,000 pounds in weekly lots of 1,000 pounds: \$11,250.

Every state with extensive shellfish beds provides some level of testing to ensure public health for recreational and commercial harvested product. Shellfish growers are not charged for these tests anywhere else in the country, as it is regarded as a necessary public health service.

The state's current marine toxin testing program is an important safeguard for public health, as the aquatic farms are ensured of providing safe shellfish for local consumption. Outbreaks of PSP are an unfortunate fact of life in Alaska and the testing at farms provide the only information available in most areas about the risks of PSP.

Two things are clear to us: (1) the fees would sink most, if not all, existing farms, and (2) interest in starting new farms will cease if the fees are enacted. While we are very mindful of the state's precarious fiscal situation, ASGA believes transfer of the cost of these essential public health programs to the private sector would be self-defeating because the impacted businesses will go broke. As one grower commented, "The state won't have to build a new lab...there will be no customers."

I have had no success in my discussions with DEC officials who say their hands are tied. This is a decision only the legislature or governor can make. We need your help to stop this very bad idea.

  
Rodger Painter  
Vice President

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: HB 399  
(H) Publish Date: 1/28/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Environmental Conservation  
Title Relating to fees for the DEC RDU Multiple  
Component Commissioner's Office  
Sponsor Rules by Request  
Requester Governor Component No. 633

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>541.1</b>	<b>653.5</b>	<b>653.5</b>	<b>653.5</b>	<b>653.5</b>
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	(68.9)	(68.9)	(68.9)	(68.9)	(68.9)
1004 GF	0.0	(262.2)	(374.6)	(374.6)	(374.6)	(374.6)
1005 GF/Program Receipts	0.0	465.1	577.5	577.5	577.5	577.5
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
1052 Response Fund	0.0	(206.8)	(206.8)	(206.8)	(206.8)	(206.8)
1156 Receipt Supported Services	0.0	72.8	72.8	72.8	72.8	72.8
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

**ANALYSIS:** (Attach a separate page if necessary)

See Attached

Prepared by: Kristin Ryan, Director  
Division: Environmental Health  
Approved by: Kurt Fredriksson  
Agency: Department of Environmental Conservation

Phone 269-7644  
Date/Time 1/26/04 12:33 PM  
Date 1/26/2004

## FISCAL NOTE #1

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. HB 399

### ANALYSIS

This bill amends existing fee authority to allow DEC to recover the estimated actual costs of services provided for a pesticide registration program; seafood food/safety laboratory services; and contingency plan review and financial responsibility for noncrude oil operations. The bill also eliminates the prohibition on including travel costs in the estimated actual costs for services, adds late fee and permit revocation for nonpayment authority, and results in fund source changes from general fund or the Response Fund to general fund program receipts.

#### **FY2006**

##### **RDU: Environmental Health**

###### Component: All

Page 1, line 10. Removing the travel cost recovery prohibition in AS 44.46.025(a) will allow the department to recover costs from ongoing inspection and permit related activities. Estimated average costs that can be recovered, assuming field travel and associated per diem for inspections, not including complaint investigation, or non-fee generating travel, is \$90.0 beginning in FY2006. The programmatic breakdown for travel cost recovery and associated general fund replacement is:

Food Safety Program (RSS)	\$ 72.8
Laboratory Services (GFPR)	\$ 6.5
Drinking Water (GFPR)	<u>\$ 10.7</u>
	\$ 90.0

##### **RDU: Environmental Health**

###### Component: Laboratory Services/Pesticide Program

Page 2, line 14. Subsection (8) allows the department to recover direct costs from ongoing pesticide registration program activities. DEC will charge \$40.00 per pesticide brand registered beginning in FY2006. Fees will replace current general funds used to match the federal pesticide grant (\$68.9), and will replace general funds (\$59.9) for a position that processes registrations for manufacturers and suppliers of 5,500 pesticide brands sold in Alaska. Assumptions include a 40% reduction in the potential number of registrations, generating approximately \$132.0 annually.

##### **RDU: Environmental Health**

###### Component: Laboratory Services/Seafood Food Safety Lab

Page 2, line 15. Subsection (9) allows the department to recover program costs relating to services provided by the state seafood and food safety laboratory. SB 215 authorized the construction of a new seafood food safety lab. A move in date of July, 2005 with full operation by mid-FY2006 is expected. FY2006 revenue projections for testing drinking water and shellfish toxins for one half year is \$112.3. These receipts will double with the full year of operations in FY2007.

##### **RDU: Spill Prevention and Response**

###### Component: Industry Preparedness

Page 2, line 16. Subsection (10) allows the department to recover estimated actual costs relating to the ongoing Plan Review for Oil Discharge Prevention and Contingency Plans (C-Plans) for noncrude oil operations and the related C-Plan Financial Responsibility requirement.

Financial responsibility applications: 980 per year at \$150 per application = \$147,000

Nontank vessel contingency plans: 128 per year at \$250 per application = \$32,000

Other operator contingency plans - new applications: 10 per year at \$1,000 each = \$10,000

Other operator contingency plans - significant amendments: 10 per year at \$500 each = \$5,000

Other operator contingency plans - renewal applications: 17 per year at \$750 each = \$12,750

Current funding source for these activities is the Oil and Hazardous Substance Release Prevention and Response Fund. Fee revenues would replace expenditures from this funding source. Fees would be assessed beginning in FY2006. Total fund source change resulting from the noncrude C-Plan review and financial responsibility requirements is \$206.8.

FISCAL NOTE #1

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. HB 399

ANALYSIS (cont.)

RDU: Air & Water Quality

Component: Water Quality

Page 3, line 9. Adds a new section in AS 44.46 allowing the department to assess late fees against a person who has failed to pay monetary charges. The section also allows the department to revoke or refuse to issue a permit or approval until payment of the charge is made. In 2002-2003 there were over 650 statements for past due balances. With statutory authority to compel clients to pay late fees on outstanding balances we estimate that the number of subsequent statements billed would be reduced by 75% and view the late fee as a deterrent to growing delinquent accounts along with the ability to revoke or refuse to issue authorization for nonpayment. At an average cost per statement of \$14.64 we expect late fees to be minimal and have not included them as a new revenue source.

FISCAL NOTE #1

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. HB 399

ANALYSIS CONTINUATION

FY2006 Impacts to Funding by Section

FUND SOURCE	EH Travel	EH Lab Pesticides	EH Lab Fees	SPAR C-Plans	AWQ-WQ	Total
1002 Federal Receipts						0.0
1003 GF Match		(68.9)				(68.9)
1004 GF	(90.0)	(59.9)	(112.3)			(262.2)
1005 GF/Program Receipts	17.2	128.8	112.3	206.8		465.1
1037 GF/Mental Health						0.0
1052 Response Fund				(206.8)		(206.8)
1156 Receipt Supported Services	72.8					72.8
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

	EH Travel	EH Lab Pesticides	EH Lab Fees	SPAR C-Plans	AWQ-WQ	Total
Revenues	90.0	132.0	112.3	206.8		541.1

FY2007 and Out Years  
Impacts to Funding by Section

FUND SOURCE	EH Travel	EH Lab Pesticides	EH Lab Fees	SPAR C-Plans	AWQ-WQ	Total
1002 Federal Receipts						0.0
1003 GF Match		(68.9)				(68.9)
1004 GF	(90.0)	(59.9)	(224.7)			(374.6)
1005 GF/Program Receipts	17.2	128.8	224.7	206.8		577.5
1037 GF/Mental Health						0.0
1052 Response Fund				(206.8)		(206.8)
1156 Receipt Supported Services	72.8					72.8
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

	EH Travel	EH Lab Pesticides	EH Lab Fees	SPAR C-Plans	AWQ-WQ	Total
Revenues	90.0	132.0	224.7	206.8		653.5

9F local  
Budget hole fund switch  
Shell Shuck Shippers  
Packer  
2 yrs.  
Budget hole

100% dropped off  
and that built  
pays for lab testing  
licensing fee  
PSP bio toxin  
admin

best fee - harvestor  
\$173.00 / yr  
largest Shucker packer  
\$1189.00  
multi million  
dollar plants  
for licenses

2nd year

Washington doesn't charge per test

Id. how many were commercial vs recreational or both

Solely commercial only  
figured out how much of

37% of lab budget divided by  
all

goey ducks were doing more  
intertidal

Oregon : Cal

**PHONE CALL**

For LINDA Date 2-17-04 Time 3:40 <sup>AM</sup><sub>PM</sub>  
M Jennifer Of WA. St. Health Dept  
Phone 360 236 3325 Fax \_\_\_\_\_  
Remarks \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Signed \_\_\_\_\_

Telephoned  
 Returned Your Call  
 Please Call  
 Will Call Again  
 Came to See You  
 Wants to See You

**Sparco**  
B-E-A-R-I-N-G

SPR02301

# Department of Health Division of Environmental Health

## Office of the Assistant Secretary

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FAX 236-2250

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Gregg Grunenfelder, Acting Chief Administrator..... 236-3053  
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Laurie Bahr, Contracts & Grants Administrator..... 236-3015  
Vicki Bouvier, EHP Rules Coordinator..... 236-3013  
Jill Christensen, Secretary Administrative..... 236-3005  
Kelly Cooper, EHP Rules Coordinator..... 236-3012  
Linda Gibson, Grant Management Analyst..... 236-3016  
Jan Haywood, Leg Coordinator and Rules Program Manager  
..... 236-3011  
Eric Inouye, Operations Director..... 236-3010  
Teresa Lohr, EHP Web Coordination..... 236-3014  
Susan May, Emergency Preparedness Planner..... 236-3334  
(VACANT), MSD Budget Program Specialist..... 236-3015

## Drinking Water

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Rich Hoey, Acting Office Director..... 236-3110  
Shy Sittler, Secretary Administrative..... 236-3091  
Danielle Bregent, Office Assistant Senior..... 236-3088

## Constituent Relations

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Denise Clifford, Constituent Relations Manager..... 236-3098  
Dennis Campbell, Liaison to Local Health..... 236-3158  
Jim Hudson, Division Technical Advisor..... 236-3131  
Scott Decker, EPA Counter-Terrorism Project..... 236-3162  
Ginny Stern, Environmental Planner..... 236-3134

## Headquarters Operations

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Peggy Johnson, Deputy Director..... 236-3101

## Division Services

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Diana Horan, Administrative Assistant..... 236-3170  
Karena McGovern, Management Analyst..... 236-3094

## Training and Outreach

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Abigail Hughes, Secretary Administrative..... 236-3164  
Steve Kelso, Communications..... 236-3127  
Donna Lynch, Communications..... 236-3167  
Judy Sides, Publications, Internet..... 236-3096  
Ronni Woolrich, Public Disclosure/Training..... 236-3092

## Program Development

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Peter Beaton, Program Development..... 236-3150  
Tim Blake, Program Development..... 236-3124  
Sean Orr, Program Development..... 236-3153  
Theresa Phillips, Program Development..... 236-3147  
Jim Rioux, Program Development..... 236-3154  
Bill Thurston, Program Development..... 236-3126

## Information Management (I.M.)

BUILDING 12  
MAIL STOP 47822

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Michael Heath, Client Program Specialist..... 236-3106  
Cathie Lucas, Implementation Manager..... 236-3121  
Marie O'Leary, Programmer..... 236-3112  
Brett Freier, Database Programmer..... 236-3163  
Nguyen Lam, Programmer..... 236-3109  
Steve Leibenguth, GIS Project Manager..... 236-3148  
Tin Nguyen, Programmer..... 236-3144  
David Preston, Programmer..... (206) 464-6543  
Tegan Wilson, Programmer, GIS Analyst..... 236-3136  
Charles Lander, I.M. Operations Manager..... 236-3118  
Holly Duggan, Sentry Help Desk Coordinator..... 236-3140  
Jack Eden, Programmer..... 236-3120  
Marian Ibanez, Data Compiler..... 236-3103  
Heather Kearney, Data Entry..... 236-3108

## Water Quality Section

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Meliss Maxfield, Section Manager..... 236-3178  
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Derrick Dennis, Lead, Copper, and Nitrate Programs... 236-3122  
Donna Freier, GWI Program Manager..... 586-5179  
Dick Pedlar, Compliance Program..... 236-3115  
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# Department of Health

## Division of Environmental Health

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 Terri Notestine, Cross-Connection Control Program.... 236-3133  
 Simon T... , Cross-Connection Control Program..... 236-3132

### Water System Support Section

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 MAILSTOP 47822

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 Megan McKay, Secretary Administrative ..... 236-3042  
 John Aden, RSS Compliance Manager..... 236-3157  
 Cheryl Bergener, Operator Certification Program..... 236-3137  
 Chris Gagnon, DW State Revolving Fund Program Manager  
 ..... 236-3095  
 Denise Garrett, Operator Certification Program..... 236-3099  
 Lar. y Granish, Operator Certification Program..... 236-3141  
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### Field Operations

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 Sharon Denney, Secretary Administrative..... 236-3111  
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### Eastern Operations Section

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 Danielle Finley, Secretary Senior ..... (509) 456-2826  
 Karla Griffin, Water Facility Inventory ..... (509) 456-5076  
 Megan Harding, Planning of Water Rights..... (509) 456-2717  
 Jeff Johnson, Engineer, GWI..... (509) 456-2797  
 Tom Justus, Engineer, SRF Assistance..... (509) 456-2453  
 Pat McCaffery, Coliform Monitoring Program (509) 456-2788  
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 Nancy Feagin, Engineer, SWTR .....(253) 395-6765  
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### Southwest Operations Section

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 Sandy Brentlinger, Water Quality Specialist..... 753-5090  
 Brad Brooks, Water Facility Inventory .....664-9280  
 Jerrod Davis, Engineer .....586-2510  
 Craig Downs, Engineer .....664-9696  
 Norma Smith, Office Assistant Senior .....664-2657  
 Donna Frier, Source Monitoring and Water Quality, Lead and  
 Copper rule implementation, Technical Assistance to Utilities  
 and Local Health Departments with Respect to Water Quality  
 Sampling Monitoring Requirements .....586-5179  
 Belle Fuchs, Water Quality Program Manager.....586-5179  
 Linda Kildahl, Environmental Specialist.....664-2999  
 Karen Klocke, Environmental Planner.....664-2999  
 Jim McCauley, Engineer .....664-8734  
 Cheri Paine, Environmental Specialist .....753-2884  
 Jennifer Philbrook, Office Assistant Senior .....586-1410  
 Bonnie Waybright, Engineer.....753-2452  
 Mark Toy, Engineer .....586-5209  
 Denise Grant, Sanitary Survey Coordinator .....664-2203

# Department of Health

## Division of Environmental Health

### Environmental Health & Safety

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Laura Harper, Secretary Administrative ..... 236-3380

#### Local Health Support Section

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JoMarie Brauner, West Nile Virus Project ..... 236-3064  
Carolyn Comeau, Clandestine Drug Lab Program ..... 236-3381  
Molly Danielson, Health Educator ..... 236-3386  
Anne Duffy, Public Health Advisor ..... 236-3372  
Gary Fraser, Water Recreation Program ..... 236-3073  
Tom Gibbs, Zoonotics Program ..... 236-3060  
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#### Pesticide & Surveillance Section

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Bill Mason, Pesticide Investigations ..... 236-3367  
Golan Kedan, Pesticide Investigations ..... 236-3361  
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#### Wastewater Management Section

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John Eliasson, Wastewater Mgmt. Specialist ..... 236-3041  
Linda Gunnells, HSEES Coordinator ..... 236-3387  
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Ben Hamilton, Research Analyst ..... 236-3364  
Debra Jaqua, Health Educator ..... 236-3390  
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#### Spokane Office

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Richard Benson, Environmental Engineer .....(509) 456-6177  
Mamdouh El-Aarag, Environmental Engineer ....(509) 456-2754  
Jeanne Robitaille, Secretary Senior .....(509) 456-4431

### Environmental Health Assessments

BUILDING 2  
MAIL STOP 47846  
FAX 236-2251  
TOLL FREE 1-877-485-7316

Rob Duff, Acting Office Director .....236-3181  
Lorraine Edwards, Secretary Supervisor .....236-3200  
Terry Zier, Office Assistant Senior .....236-3182

#### Toxicology

BUILDING 2  
MAIL STOP 47846

Madeline Beery, Environmental Education Outreach ...236-3189  
Joan Hardy, Toxicological Support .....236-3173  
Denise Laflamme, Toxicological Support .....236-3174  
Koenraad Marien, Sr. Toxicological Support .....236-3175  
David McBride, Toxicological Support .....236-3176  
Milo Straus, CSEPP Project Manager .....236-3179  
Jim W. White, Toxicological Support .....236-3192

#### Environmental Epidemiology

BUILDING 2  
MAIL STOP 47846

Jim VanDerslice, Epidemiology Support .....236-3183  
Judy Bardin, Epidemiology Support .....236-3192  
Carrie Kuehn, EH Tracking Support .....(206) 667-6171  
Helen Murphy, Epidemiology Support .....236-3171  
Glen Patrick, Epidemiology Support .....236-3177  
Joanne Prado, Environmental Education Outreach .....236-3172  
Nancy West, GIS Support .....236-3185

#### Site Assessment Section

BUILDING 3  
MAIL STOP 47846  
FAX 236-3383

(VACANT), Acting Section Manager .....236-3371  
Marlene Johnson, Secretary Senior .....236-3370  
Paul Marchant, Public Health Advisor .....236-3375  
Lenford O'Garro, Public Health Advisor .....236-3376  
Barbara Trejo, Hydrogeologist .....236-3373  
Marcia Henning, Environmental Education Outreach...236-3378  
Gary Palcisko, Public Health Advisor .....236-3377

### Food Safety & Shellfish Programs

BUILDING 4  
MAIL STOP 47824  
FAX 236-2257

Jennifer Tebaldi, Office Director .....236-3325

# Department of Health

## Division of Environmental Health

Susie Lcland, Management Analyst ..... 236-3312  
Jan Jacobs, Health Services Consultant, SAC Coordinator  
..... 236-3316

### Food Safety Section

BUILDING 4  
MAIL STOP 47824

Dave Gifford, Section Manager ..... 236-3074  
Janet Anderberg, Public Health Advisor ..... (425) 745-1726  
Jerry Borchert, Biotoxin Monitoring Program ..... 236-3328  
Frank Cox, Biotoxin Monitoring Program ..... 236-3309  
Mary Ferluga, Public Health Advisor ..... (509) 734-7450  
Ned Therien, Public Health Advisor ..... 236-3071

### Growing Area Section

BUILDING 4  
MAIL STOP 47824

Bob Woolrich, Section Manager ..... 236-3329  
Becky Egolf, Secretary Administrative ..... 236-3331  
Clyde Bill, Water Quality Monitoring/Sampling ..... 236-3304  
Scott Berbells, Shoreline Survey Program Lead ..... 236-3324  
Bill Cleland, Shoreline Surveys, Sanitary Surveys, Spill  
Responses ..... 236-3306  
Greg Combs, Water Quality Monitoring, Biotoxin Sampling  
..... 236-3308  
Tim Determan, Puget Sound Ambient Monitoring Program  
..... 236-3311  
Don Lennartson, Restoration Projects ..... 236-3318  
Jerry Lukes, Ambient Monitoring Coordinator ..... 236-3319  
Don Melvin, Sanitary Survey Reports, Restoration Projects  
Leader Under PSWQA, Closure Response Coordinator  
..... 236-3320  
Frank Meriwether, Environmental Engineer ..... 236-3321

### Licensing and Certification Section

BUILDING 4  
MAIL STOP 47824

Jessie DeLoach, Section Manager ..... 236-3302  
Michalene Fontana, Secretary Administrative ..... 236-3301  
Cathy Barker, Sanitary Surveys ..... 236-3303  
Wayne Clifford, Pollution Prevention Lead ..... 236-3307  
Richard Lillie, Lead Inspector ..... 236-3313  
Carrie Fanz-West, Inspection Program ..... 236-3326  
Margaret Lamic, Secretary Administrative ..... 236-3317  
Helen Seyferlich, Tribal Shellfish Coordinator, ..... 236-3323

### Radiation Protection

BUILDING 5  
MAIL STOP 47827  
FAX 236-2255

Gary Robertson, Acting Office Director ..... 236-3210  
Mary Hepburn, Health Services Consultant ..... 236-3211  
Kathy Monte, Secretary Administrative ..... 236-3212

Earl Fordham, Eastern Regional Director ..... (509) 946-0234  
Terry Frazee, Western Regional Director ..... 236-3213

### Air Emissions & Defense Waste

BUILDING 5  
MAIL STOP 47827

Al Conklin, Section Manager ..... 236-3261  
Randy Acelrod, Radiation Health Physicist ..... (509) 946-0703  
Fred Adams, Radiation Health Physicist ..... (509) 946-0774  
Sarah Clark, Environmental Specialist ..... 236-3263  
Roy Evans, Radiation Health Physicist ..... 236-3265  
Tom Frazier, Radiation Health Physicist ..... (509) 377-3773  
Craig Lawrence, Radiation Health Physicist ..... 236-3267  
Gail Laws, Radiation Health Physicist ..... (509) 946-0712  
John Martell, Radiation Health Physicist ..... (509) 377-3898  
Joy Redman, Secretary Senior ..... 236-3260  
John Schmidt, Radiation Health Physicist ..... (509) 377-3827

### Environmental Radiation

BUILDING 5  
MAIL STOP 47827

Debra McBaugh, Section Manager ..... 236-3251  
Lynn Albin, Radiation Health Physicist ..... 236-3252  
Mike Brennan, Radiation Health Physicist ..... 236-3253  
Maxine Dunkelman, Radiation Health Physicist ..... 236-3257  
Sharon Grundhoffer, Secretary ..... 236-3258  
Dick Jaquish, Radiation Health Physicist ..... (509) 946-0534  
Eileen Kramer, Secretary Administrative ..... 236-3250  
Sandi Langford, Environmental Specialist ..... 236-3254  
Sean Murphy, Radiation Health Physicist ..... (509) 946-0380  
Mike Priddy, Radiation Health Physicist ..... (509) 946-0564  
Scott Van Verst, Research Investigator ..... 236-3256

### Nuclear Safety

BUILDING 5  
MAIL STOP 47827

Leo Wainhouse, Acting Section Manager ..... 236-3271  
Johanna Berkey, Radiation Health Physicist ..... (509) 946-0624  
Quinna Renner, Secretary Administrative ..... XXXXX  
Kim Butowicz, Health Services Consultant ..... 236-3270  
Bob Clark, Radiation Health Physicist ..... (509) 377-3797  
Dick Cowley, Nuclear Engineer ..... 236-3272  
Mark Henry, Radiation Health Physicist ..... (509) 946-0685  
Aileen Jeffries, Research Investigator ..... 236-3278

### Radioactive Materials

BUILDING 5  
MAIL STOP 47827

Arden Scroogs, Section Manager ..... 236-3221  
Curt DeMaris, Radiation Health Physicist ..... 236-3223  
Dorrie Dodson, Secretary Senior ..... 236-3220  
Annine Grumbles, Radiation Health Physicist ..... 236-3222  
Steve Matthews, Radiation Health Physicist ..... 236-3226

# Department of Health Division of Environmental Health

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Mike Robertson, Radiation Health Physicist .....(425) 771-5852  
Steve Matthews, Radiation Health Physicist ..... 236-3226  
Pam Walsh, Environmental Specialist..... 236-3227

## Waste Management

BUILDING 5  
MAIL STOP 47827

Mike Elsen, Acting Section Manager ..... 236-3241  
Jamil Ahmad, Radiation Health Physicist ..... 236-3242  
Al Danielson, Radiation Health Physicist.....(509) 377-3870  
Nancy Darling, Hydrogeologist..... 236-32- 4  
Kristin Felix, Secretary Administrative ..... 236-3240  
Dorothy Stoffel, Hydrogeologist .....(509) 456-3116  
Drew Thatcher, Radiation Health Physicist..... 236-3247

## X-Ray

BUILDING 5  
MAIL STOP 47827

Mike Odlaug, Section Manager ..... 236-3237  
Ed Bricker, Radiation Health Physicist ..... 236-3239  
Kelly Cameron, Radiation Health Physicist .....(509) 456-3289  
Phyllis Hurtado, Secretary Administrative ..... 236-3230  
Alton Jenkins, Environmental Specialist ..... 236-3231  
Scott Mantyla, Radiation Health Physicist ..... 236-3232  
Shirley Maxim, Radiation Health Physicist..... 236-3233  
Brob Pike, Radiation Health Physicist.....(509) 456-4425  
Mark Rodonich, Radiation Health Physicist.....(206) 281-6995  
Bill Rountree, Radiation Health Physicist ..... 236-3234  
Jim Self, Radiation Health Physicist..... 236-3235  
Dick Warner, Radiation Health Physicist .....(425) 712-3173

**HB**

**4 1 1**





**REPRESENTATIVE ERIC CROFT**

**Sponsor Statement HB 411  
PFD Privacy Act**

This legislation would allow a Permanent Fund Dividend applicant to check a box to keep the information disclosed on their form private, except in cases where disclosure of such information is required by the state or federal government.

Currently, the list of PFD applicants and their addresses are public information. Although this appears benign on the surface, to victims of violent crime disclosing their mailing address can be a terrifying and potentially life-threatening mistake.

There is no anticipated fiscal note for this bill.



Dear Legislators;

After five years, two domestic violence shelters, one protective order, counsel from seven attorneys, extensive internet research and a name and social change my son and I are free from a man who will kill us if he finds us. Today life is grand. We have a home, a great job, lots of friends and a wealth of information on domestic violence. My son enjoys playing hockey for the Boy's and Girl's Club and we are pretty normal, content tax paying folk. I earned over \$110,000 last year and paid almost 30% in taxes. No problem.

My question is this; will my son or I ever be able to collect our PFD with out endangering our lives? The PFD database is available to anyone. It's cheap and easy for anyone to access. This could mean death for us.

I do lead a very public life, under my new legal name, as a Loan Officer. This allows for me to provide for my son and not rely on social services. I stopped hiding and cowering a long time ago but that doesn't mean I need to make it easy for him to find us. I still use prudence and common sense.

Some say I should just be happy to be alive and moving on with my new life. I am. Does this mean I should be so happy that I don't at least try to collect a PFD to start my son's college fund? He will never see a dime in child support. If you say this is how it has to be then I will be ok with that. It just doesn't seem right. Wouldn't it be possible to pass some sort of legislation that can protect domestic violence survivor's names and address' from the public PFD database? I doubt I am the only woman in this situation.

Respectfully submitted,



PS: I have been busy trying to get my court approved name change documents off the State's name index. A very nice lady by the name of Christine Johnson, Deputy Alaska Court System Administrator, was very helpful and I am hopeful she will be successful in permanently removing my records from the site. I know I am not the only one who needs this extra precaution in place to help keep us safe as well.

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 411  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
 Title PF Dividend Application Records RDU Revenue Programs & Services  
Private Component Permanent Fund Dividend  
 Sponsor Representative Croft  
 Requester House State Affairs Component No. 981

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	16.5					
Travel						
Contractual	15.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>31.5</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Permanent Fund Dividend Fund	31.5					
<b>TOTAL</b>	<b>31.5</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0  
 Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time					
Part-time	3				
Temporary					

**ANALYSIS:** (Attach a separate page if necessary)

See Attached for analysis.

Prepared by: Sharon Bardon, Director Phone (907) 465-4785  
 Division Permanent Fund Dividend Division Date/Time 4/12/04 9:32 AM  
 Approved by: Steve Porter, Deputy Commissioner Date 4/12/2004  
 Agency Department of Revenue

## FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. HB 411

### ANALYSIS CONTINUATION

HB 411 - Fiscal Note Analysis

HB 411 proposes a check off on the annual Permanent Fund Dividend application to require the applicant's name and address be kept confidential. The bill allows the confidential name and address information to be released to a state or federal agency; in compliance with a court order or as directed by the individual. It is currently the policy of the division to publish names and mailing addresses only. In some cases, the physical and mailing address will be the same.

Most state and federal agencies access our data via the division web page.

The division projects that most applicants, given the option, will request their information be kept confidential.

Fiscal Impacts on the division include:

- Implementation - \$15.0 Reprogramming of the Dividend Application Information System and the associated mainframe applications can be accomplished for the 2005 dividend cycle in the course of a re-write of those applications currently underway. However, implementation of the re-writes is dependant on other system upgrades to be funded in a pending CIP request (PFD Image System Upgrades). This additional work may be done by contract to meet the deadline.
- Subsequent changes to individual records -\$3.5 The cost impact of processing requests from applicants who will need or want to change their check-off mid-cycle is difficult to estimate.
- Garnishments - \$13.0 Currently the division provides a file of all applicants to governmental agencies that want to garnish dividends. These agencies match the PFD file with their records using our unique identifier (ALN) and submit garnishments only for those who match. The bill as written does not allow sharing of the information with local government agencies. If we cannot share the file, or if the file is not complete, local government agencies will submit their full lists to PFD and we will have to do the matching process. Approximately 60,000 garnishments will need to be keyed into the system and matched.

• Other considerations:

The PFD Applicant file has become the state's data base of name and address information. Use of the PFD file is woven into the workings of many programs and businesses around the state. For example, it is used by local government law enforcement and assessors, native corporations, process servers, research entities, university and high school students, and private investigators.

HB 411 - Recommended Changes/Considerations

• This bill would plug only one hole in the problem of protecting vulnerable Alaskans; name and address information is available from other public sources. Better protection would be provided if vulnerable individuals used a post office box instead of a physical address.

• If the bill moves forward, the following changes would reduce the cost of the bill:

1) Include "local" in Section 1, line 12 - Including local government entities among those who could access the confidential data would reduce the fiscal note by \$13.0 (the cost of keying and matching garnishments)

**HB**

**4 1 4**



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elections@gov.state.ak.us



Regional Offices  
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Fairbanks 907.451.2835  
Juneau 907.465.3021  
Nome 907.443.5285

**STATE OF ALASKA**  
**Division of Elections**  
**Office of the Lieutenant Governor**

**TO:** The House State Affairs Committee

**THRU:** Representative Bruce Weyhrauch, Chairman

**DATE:** February 4, 2004

**FROM:** Laura A. Glaiser, Director  
Division of Elections

**SUBJECT:** Questions posed during House State Affairs hearing on HB 414 (February 3, 2004).

---

- 1) **Representative Seaton** asked for clarification about the proposed text in HB 414, Sec 7. AS 15.60.010 (21) regarding the definition of "political party". Due to the complexity of the answer, I would be pleased to discuss this with the Committee.
- 2) **Representative Berkowitz** asked two (2) questions:
  - *What is the cost to the State to conduct primary elections?*
    - The cost to conduct the 2002 primary elections was \$1,263.5.
  - *What is the cost to the State related to collecting and maintaining party affiliation data?*
    - It is difficult to isolate direct costs related with the collection of party affiliation data, as it is a component engrained in the voter registration system as a whole.

HOUSE STATE AFFAIRS STANDING COMMITTEE

DATE: 2/5

ISSUE: HB 4141 as amended

	YEA	NAY	PRESENT
Representative Coghill	✓		
Representative Lynn	✓		
Representative Berkowitz		✓	
Representative Gruenberg		✓	
Representative Holm, Vice Chair	✓		
Representative Seaton	✓		
Chairman Weyhrauch	✓		
<b>TOTALS:</b>			

PASSED 5 FAILED 2

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Nome 907.443.5285

**STATE OF ALASKA**  
**Division of Elections**  
**Office of the Lieutenant Governor**

**TO:** The House State Affairs Committee

**THRU:** Representative Bruce Weyhrauch, Chairman

**DATE:** February 4, 2004

**FROM:** Laura A. Glaiser, Director  
Division of Elections

**SUBJECT:** Questions posed during House State Affairs hearing on HB 414 (February 3, 2004).

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    - It is difficult to isolate direct costs related with the collection of party affiliation data, as it is a component engrained in the voter registration system as a whole.

AMENDMENT #1

adopted  
2/5/04  
offered by Rep. Seaton

HB 414

(Delete existing Section 7 starting at page 3, line 15 and insert new Sec. 7.)

15 \* Sec. 7. AS 15.60.010(21) is amended to read:

16 (21) "political party" means an organized group of voters that  
17 represents a political program and that either nominated a candidate for  
18 governor who received at least three percent of the total votes cast for governor  
19 at the preceding general election;

20 **or if the office of United States senator was on that ballot,**  
21 **that nominated a candidate for United States senator who**  
22 **received at least three percent of the total votes cast for United**  
23 **senator at that general election, or that nominated a candidate for United**  
24 **States representative who received at least three percent of the total votes**  
25 **cast for United States representative at that general election**

26 or has registered voters in the state equal in number to at least three percent  
27 of the total votes cast for governor at the preceding general election;

AMENDMENT

#2

adopted  
2/5/04  
4-3 vote

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: HB 414

1 Page 1, following line 3:

2 Insert a new bill section to read:

3 "\* Section 1. The uncodified law of the State of Alaska is amended by adding a new  
4 section to read:

5 LEGISLATIVE INTENT. It is the desire of this legislature that the provisions of this  
6 Act, which is substantially similar to that proposed in an initiative petition, not be repealed for  
7 at least two years after the Act's effective date."

8

9 Page 1, line 4:

10 Delete "Section 1"

11 Insert "Sec. 2"

12

13 Renumber the following bill sections accordingly.

# Alaska State Legislature

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Juneau, Alaska 99801-1182  
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Chair, Judiciary Committee

Vice-Chair, House Committee on  
Economic Development,  
Trade and Tourism

Member  
Oil & Gas Committee

## Representative Lesil McGuire

*House District 28*

### Sectional Analysis

#### HB 414

### "An Act relating to filling the vacancy in the office of United States senator, and to the definition of 'political party'"

**Section 1:** This bill section adds "United States senator" to the language that currently governs special elections held to replace vacancies in the office of U.S. representative. This bill section further clarifies the language controlling when a special election is not to be called, when a vacancy occurs 60 days or less before a primary election in a general election year.

**Section 2:** This bill section adds a new statutory section that specifies that a U.S. senator elected in a special election will hold office for the remainder of the unexpired term of the U.S. senator who previously held the U.S. Senate seat. This section further states when a specially elected U.S. senator will take office.

**Section 3:** This bill section adds "United States senator" to the language that currently governs political party petitions submitted on behalf of candidates for U.S. representatives in special elections.

**Section 4:** This bill section adds "United States senator" to the language that currently governs the provisions for the conduct of special elections for U.S. representative, and further enumerates what these provisions are, deleting a reference to a statutory section relating to special elections for U.S. Senator that had the effect of providing a list of such provisions. This latter statutory section is deleted by Section 8 of the bill.

**Section 5:** This bill section makes a conforming amendment that specifically enumerates the provisions that are to apply to special elections for governor and lieutenant governor, deleting a reference to a statutory section relating to special elections for U.S. senator that had the effect of providing a list of such provisions. This latter statutory section is deleted by Section 8 of the bill.

**Section 6:** This bill section makes a conforming amendment that specifically enumerates the provisions that are to apply to special elections for state senators, deleting a reference to a statutory section relating to special elections for U.S. senator that had the effect of providing a list of such provisions. This latter statutory section is deleted by Section 8 of the bill.

**Section 7:** This bill section expands the definition of "political party" to include results of statewide elections for U.S. senator or U.S. representative as secondary and tertiary criteria, respectively, that may enable an organized group of voters that represents a political program to qualify as a political party.

**Section 8:** This bill section deletes seven statutory sections from Chapter 40 of the Alaska Elections Act, in order to remove references from Alaska Statutes made unnecessary by the bill. These include: a reference to appointment of a person to fill a vacancy in the U.S. Senate; a reference to the timing of a special primary election made redundant by the bill; a reference to the proclamation calling a special election made inconsistent and unnecessary by the bill; a reference to the term to be served by the person elected in a special election made redundant by the bill; provisions pertaining to declaration of candidacy and date of nomination for a special election made redundant by the bill; provisions for the conduct of a special election made redundant by the bill; and, a definition of special primary election made unnecessary by the bill.

# Alaska State Legislature

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Chair, Judiciary Committee

Vice-Chair, House Committee on  
Economic Development,  
Trade and Tourism

Member  
Oil & Gas Committee

## Representative Lesil McGuire

*House District 28*

### Sponsor Statement

#### HB 414

### **"An Act relating to filling the vacancy in the office of United States senator, and to the definition of 'political party'"**

HB 414 seeks to redress two current shortcomings in Alaska's Elections Act. There are two primary components to HB 414, each a response to a clear call for changes to Alaska Statutes so as to provide: firstly, for the fairest method of selecting individuals for a vitally important public office; and, secondly, to respect the will of the Alaskan people regarding choices they make to associate as political parties.

HB 414 will change the way a vacancy in one of Alaska's two seats in the United States Senate is filled when such a vacancy occurs. Currently, Alaska law provides that the Governor appoints a person of his or her choice from the same political party as the person who vacated the seat, when one of Alaska's two U.S. Senate seats becomes vacant, a process governed by the 17th Amendment to the U.S. Constitution.

Last year a group of Alaskans calling itself "Trust the People" began gathering signatures to place an initiative on the ballot this year that would change Alaska Statutes to allow for a special election in the case of any vacancy in one of Alaska's two U.S. Senate seats. This group was successful in obtaining enough signatures, which allowed the Division of Elections to certify the petition, and prepare to place the initiative on the November 2004 ballot.

HB 414 listens to the will of the many Alaskans who signed petitions in favor of electing some one to fill a vacancy in one of Alaska's two U.S. Senate seats. The sections of the bill that change Alaska law relating to filling such vacancies are exactly the same, word for word, as the language of the initiative. Supporting HB 414 is a clear way to implement the will of a large number of Alaskan voters.

The second part of HB 414 addresses a lawsuit brought by the Green Party of Alaska against the State Division of Elections. The case grew out of the Green Party's dissatisfaction with the interplay between the results of the 2002 gubernatorial election and the definition of "political party" in the Alaska Elections Act. In order to obtain political party status, the current definition requires a party to have nominated a candidate for Governor who received at least three percent of the popular vote in the preceding gubernatorial election. Alternatively, a party is recognized if

it has registered voters under its banner equal in number to three percent of the total number of votes cast for Governor in the immediately preceding general election.

In 2002, the Green Party candidate for Governor garnered less than the minimum three percent needed to maintain the Green's status as a political party and, thus, the party sought an injunction of the law. The court acceded to the Green Party's request and enjoined enforcement of the law so that the Greens could avoid irreparable harm by continuing to participate in politics with the benefits of being a full political party. The order accompanying the court's injunction noted that the Green Party had been successful in winning over six percent of the vote in races for federal elective positions, namely U.S. Representative and U.S. Senator, and instructed the State to continue treating the Green Party with the deference due to a statutorily-defined political party until the General Election in November 2004 or until the Legislature, "corrects the problems with party eligibility in the statutes."

HB 414 responds directly to the court's order by expanding the types of statewide races to which the Division of Elections can look in ascertaining whether a party enjoys enough popular support to merit official status. It adds two different gauges to the law, so that if there is not a gubernatorial election, then an assemblage of voters can refer to its success in the most recent U.S. Senate or U.S. House race to earn official political party status under the statutes. The changes to the Alaska Elections Act wrought by the second half of HB 414 will inject fairness to the process of obtaining political party status in Alaska. Parties will be able to refer to their good showing in the most recent statewide race, never more than two years in the past, in order to demonstrate that they are supported by the voting public and deserve the statutory benefits conferred on political parties.

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 414  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: OOG  
 Title An Act relating to filling the vacancy in the office RDU Elections  
of United States senator, and to the definition of 'political party'. Component Elections  
 Sponsor House Judiciary  
 Requester House State Affairs Component No. 21

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill has no fiscal impact on the division, however, if a special election were required, the division would need to seek a special appropriation for that purpose. \*\* During the 1999 Legislative Session HB SCS CSHB 231 a GF appropriation of 939.0 was allocated to conduct a special election.

Prepared by: Leonard G. Jones  
 Division: Division of Elections  
 Approved by: Laura A. Glaiser, Director  
 Agency: Office of the Lt. Governor, Division of Elections

Phone 465-3051  
 Date/Time 2/2/04 9:45 AM  
 Date 2/2/2004

# LEGISLATIVE RESEARCH REPORT

FEBRUARY 20, 2002



REPORT NUMBER 02.133

## POLITICAL PARTY AFFILIATION OF APPOINTEES TO THE U.S. SENATE—LEGISLATIVE HISTORY

BY PATRICIA YOUNG, MANAGER

You wished to know the legislative history behind the requirement that, when filling a vacancy in the office of U.S. Senator, the governor must appoint an individual from the political party of the person who vacated the office.

As originally passed in 1960, the law in Alaska specified as follows in regard to the qualifications of appointees to the office of U.S. Senator:

The appointee shall be a member of the same political party as that which nominated the predecessor in office. If the predecessor in office was not nominated by a political party, the governor may appoint any qualified person.<sup>1</sup>

The provision remained unchanged until 1967 when lawmakers repealed the section. The act became law without Governor Hickel's signature and went into effect in April of 1967.<sup>2</sup>

In December of 1968, Senator E.L. (Bob) Bartlett, a Democrat, died in office. Because at that time the law was silent on the matter of political party affiliation of appointees, Republican Governor Hickel was able to appoint Ted Stevens, also a Republican, to fill the vacancy left by the death of Senator Bartlett. As you know, Senator Stevens still holds that seat.

In 1998, Alaska lawmakers amended AS 15.40.010, to require that the governor, within 30 days of the date of the vacancy, fill such vacancy by appointing an individual who, if the predecessor

<sup>1</sup> Codified at AS 15.40.020, the provision on qualification of appointee passed as Sec. 8.02, ch 83 SLA 1960.

<sup>2</sup> Ch 139 SLA 1967.

was nominated by a political party, has been for at least the previous six months a member of the same political party as the predecessor in office.<sup>3</sup>

As you may know, governors typically make temporary appointments to fill U.S. Senate vacancies. Alaska is one of a small minority of states, however, in which the governor is required to appoint an individual of the same political party as the predecessor in office.<sup>4</sup>

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I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

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<sup>3</sup> Chapter 30 SLA 1998 also specified that the governor's appointment is temporary until the vacancy is filled permanently by election, and that the vacancy must be permanently filled by special election if the predecessor's term would expire more than 30 months after the date of the vacancy. The date of the special primary election would be the date of the first primary election held more than 30 days after the vacancy; the date of the special general election would be the date of the first general election held after such primary election.

<sup>4</sup> The National Conference of State Legislatures (NCSL) compiled information on filling vacancies in the U.S. Senate from the *Senate Election Law Guidebook 2000: A Compilation of Senate Campaign Information Including Federal and State Laws Governing Election to the United States Senate*, a publication of the Committee on Rules and Administration, U.S. Senate (106<sup>th</sup> Congress, Revised to January 1, 2000; November 19, 1999). According to the NCSL compilation, at that time only Oregon and Wisconsin did not permit a governor to make an appointment filling such a vacancy. Also at that time, Arizona, Hawaii, Utah, and Wyoming were the only states in which the governor was required to appoint an individual from the same political party as the predecessor. The *Guidebook* is available in its entirety on-line at [http://rwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106\\_cong\\_documents&docid=f:sd014.106](http://rwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106_cong_documents&docid=f:sd014.106). We include as Attachment A the NCSL compilation of the laws regarding vacancies.

## **Attachment A**

National Conference of State Legislatures, Compilation of Information on Laws  
Governing Vacancies in the U.S. Senate, from  
*Senate Election Law Guidebook 2000: A Compilation of Senate Campaign  
Information Including Federal and State Laws Governing Election to the United  
States Senate*, a publication of the Committee on Rules and Administration, U.S.  
Senate (106<sup>th</sup> Congress, Revised to January 1, 2000; November 19, 1999)



NATIONAL CONFERENCE *of* STATE LEGISLATURES

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**State Laws Governing Vacancies in the U.S. Senate**

The process of filling vacancies in the U.S. Senate is governed by both state and federal law. The U.S. Constitution stipulates that states must hold a special election to fill a senate vacancy, and permits state legislatures to determine the timing of such special elections. It also permits a state legislature to empower the governor to make a temporary appointment to fill the vacancy until a special election is held. (See Appendix A)

Most state legislatures have granted governors the power to make such interim appointments. Oregon and Wisconsin are the only two states that do not permit the governor to make an appointment, and require that the senate seat remain vacant until filled at a special election.

In most states, the governor's temporary appointee remains in office until the next regularly-scheduled general election, when a new senator is elected. Even though this election coincides with a regularly-scheduled general election, it is deemed a special election because the person elected will not serve a full term as U.S. Senator. Rather, that person serves out the unexpired term of the vacated office.

In very few states, the governor's appointee fills the unexpired term of the office vacated.

(See Appendices B and C for details of state laws)

**Text of Federal Laws Governing U.S. Senate Vacancies**

**U.S. Constitution, Article I, Section 3**

...if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

**U.S. Constitution, 17<sup>th</sup> Amendment**

When vacancies happen in the representation of any state in the Senate, the executive authority of such state shall issue writs of election to fill such vacancies: Provided, that the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

**2 U.S.C. Sec. 8. Vacancies**

The time for holding elections in any State, district, or territory for a Representative or Delegate to fill a vacancy, whether such vacancy is caused by a failure to elect at the time prescribed by law, or by the death, resignation, or incapacity of a person elected, may be prescribed by the laws of the several States and territories respectively.

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

## Text of State Laws Governing U.S. Senate Vacancies

<p><b>ALABAMA</b></p> <p>The Governor may make temporary appointment of a Senator in the Senate of the Congress of the United States from Alabama, whenever a vacancy exists in that office, the appointee to hold office until his successor is elected and qualified (Sec. 36-9-7).</p> <p>Whenever a vacancy occurs in the office of Senator of and from the State of Alabama in the Senate of the United States more than 4 months before a general election, the Governor of Alabama shall forthwith order an election to be held by the qualified electors of the State to elect a Senator of and from the State of Alabama to the United States Senate for the unexpired term. If the vacancy occurs within 4 months of but more than 60 days before a general election, the vacancy shall be filled at that election. If the vacancy occurs within 60 days before a general election, the Governor shall order a special election to be held on the first Tuesday after the lapse of 60 days from and after the day on which the vacancy is known to the Governor, and the Senator elected at such special election shall hold office for the unexpired term (Sec. 36-9-8).</p> <p>The Governor must give notice of a special election to elect a Senator for an unexpired term in the same manner and for the same time as is prescribed for special elections to fill a vacancy in the office of Members of the House of Representatives (Sec. 36-9-9), i.e., by proclamation (Sec. 17-18-4). For special election procedures, see Sec. Sec. 17-18-1--17-18-7.</p>
<p><b>ALASKA</b></p> <p>When a vacancy occurs in the office of a United States Senator, the Governor, within 30 days, shall appoint a qualified person of the same political party of the predecessor to fill the vacancy. However, if the remainder of the term of the predecessor in the office will expire more than 30 calendar months after the vacancy, the vacancy will be filled by a special primary and special general election. (Sec. 15.40.010).</p> <p>The special primary election shall be held on the date of the first primary election that is held more than 30 days after the vacancy. The special election to fill the vacancy shall be held on the date of the first general election after the first primary election which is held more than 30 days after the vacancy occurs (Sec. 15.40.050).</p> <p>The Governor shall issue the proclamation calling the special election at least 80 days before the election (Sec. 15.40.060).</p> <p>At the special election a United States Senator shall be elected to fill the remainder of the unexpired term (Sec. 15.40.070).</p>
<p><b>ARIZONA</b></p> <p>When a vacancy occurs in the office of United States Senator by reason of death or resignation, or from any other cause, the vacancy shall be filled at the next general election. At such election the person elected shall fill the unexpired term of the vacated office. In the interim, the governor shall appoint a person to fill the vacancy. That appointee shall be of the same political party as the person vacating the office and shall serve until the person elected at the next general election is qualified and assumes office (Sec. 16-222).</p>
<p><b>ARKANSAS</b></p> <p>A vacancy in the United States Senate from Arkansas shall be filled by the governor by temporary appointment until the people fill the vacancy at the next ensuing general election for state and county officers to be held more than 60 days and less than 12 months after such vacancy shall occur; provided that if no general election for state and county officers shall occur within 12 months after such vacancy, the governor shall call a special election to be held not less than 60 days and not more than 120 days after the vacancy shall occur (Sec. 7-8-102).</p>
<p><b>CALIFORNIA</b></p> <p>If a vacancy occurs in the representation of this State in the Senate of the United States, the Governor may appoint and commission an elector of this State, who possesses the qualifications for the office, to fill the vacancy until his successor is elected and qualifies and is admitted to his seat by the United States Senate. However, whenever a vacancy occurs within term fixed by law to expire on the third day of January following the next general election, the person so appointed shall hold office for the remainder of the unexpired term unless such vacancy is filled at a special election held prior to such general election, in which case the person elected at such special election shall hold office for the remainder of the unexpired term. An election to fill a vacancy in the term of a United States Senator shall be held at the general election next succeeding the occurrence of the vacancy or at any special election</p>

(Sec. 10720).

The special election shall be proclaimed within 14 calendar days after the occurrence of the vacancy (Sec. 10700). When the vacancy occurs in a congressional office after the close of the nomination period in the final year of the term of office, the Governor may decline to issue an election proclamation at his discretion (Sec. 10701).

#### **COLORADO**

(1) Whenever a vacancy happens in the office of United States Senator from this State, the Governor shall make a temporary appointment to fill such vacancy until the same is filled by election.

(2) When a vacancy happens, the Governor shall direct the Secretary of State to include in the general election notice for the next general election a notice of the filling of such vacancy. The Secretary of State shall give notice accordingly. At such election the vacancy shall be filled for the unexpired term. If for any reason, no United States Senator is elected at the next general election, the person temporarily appointed by the Governor shall hold the office until a United States Senator is elected at a succeeding general election (Sec. 1-12-201).

#### **CONNECTICUT**

In case of a vacancy in the office of Senator in Congress, the Governor is empowered to fill such vacancy by appointment. If such vacancy occurs 60 or more days prior to a state election, the appointee shall serve until the third day of January following such election, and at such election there shall be elected a Senator in Congress to serve for the remaining portion, if any, of the term vacated. If such vacancy occurs within less than 60 days of a state election and the term vacated does not expire on the third day of January following such election, the appointee shall serve until the third day of January following the next such election but one, and at such next election but one there shall be elected a Senator in Congress to serve for the remaining portion, if any, of the term vacated. If such vacancy occurs within less than 60 days of a state election and the term vacated expires on the third day of January following, the appointee shall serve until such third day of January (Sec. 9-211).

#### **DELAWARE**

When a vacancy occurs in the office of the United States Senate, it shall be filled for the unexpired term at the next general election. The Governor may make a temporary appointment from among the qualified electors of the State until the vacancy is filled by the next general election (Sec. 7321).

#### **FLORIDA**

If a vacancy happens in the representation of the State in the United States Senate, the Governor shall issue a writ of election to fill such vacancy at the next general election; and the Governor may make a temporary appointment until the vacancy is filled by election (Sec. 100.161).

#### **GEORGIA**

In the event of a vacancy, it shall be filled by special election at the next November election, occurring at least 40 days after the occurrence of such vacancy, and until such election, the Governor may make a temporary appointment to fill such vacancy (Sec. 21- 2-542).

#### **HAWAII**

When a vacancy occurs in the office of a United States Senator, the vacancy shall be filled for the unexpired term at the following state general election, provided that the vacancy occurs not later than 4:30 p.m. on the 60th day prior to the date of the primary for nominating candidates to be voted for at the election; otherwise at the state general election next following. The chief election officer shall issue a proclamation designating the election for filling the vacancy. Pending the election, the governor shall make a temporary appointment to fill the vacancy and the person so appointed shall serve until the election and qualification of the person duly elected to fill the vacancy and shall be a registered member of the same political party as the Senator causing the vacancy. All candidates for the unexpired term shall be nominated and elected in accordance with this title (Sec. 17-1).

**IDAHO**

Whenever any vacancy shall occur in the office of United States Senator from the State of Idaho by death, resignation or otherwise, the governor shall have the power and is hereby authorized and empowered to fill such vacancy by appointment, and the person so appointed shall hold office until such time as a United States Senator is regularly elected to fill such vacancy at the next succeeding general election, and qualifies by virtue of such election; provided, however, that in case a vacancy occurs in the position of United States Senator from the state of Idaho within 30 days of any general election, no election for United States Senator to fill said vacancy shall be held at such general election (Sec. 59-910).

**ILLINOIS**

When a vacancy shall occur in the office of United States Senator from Illinois, the Governor shall make temporary appointment to fill such vacancy until the next election of representatives in Congress, at which time such vacancy shall be filled by election, and the senator so elected shall take office as soon thereafter as he shall receive his certificate of election (Sec. 5/25-8).

**INDIANA**

- (a) A vacancy that occurs, other than by resignation, in the United States Senate shall be certified to the governor by the secretary of state.
- (b) The governor shall immediately fill a vacancy in the United States Senate by appointing a person possessing the qualifications required under Article 1, Section 3, Clause 3 of the Constitution of the United States. The person appointed holds office until the next general election, when the vacancy shall be filled by the election of a Senator in a special election to hold office for the unexpired term.
- (c) If a vacancy in the United States Senate occurs after the last day on which notice of the special election can be published under IC 3-10-8-4, the person appointed under subsection (b) holds office until the vacancy is filled in a special election held at the time of the next general election for which notice can be published under IC 3-10-8-4 (Sec. 3-13-3-1).

**IOWA**

In the office of United States Senator, when the vacancy occurs when the Senate of the United States is in session or when such Senate will convene prior to the next general election, it shall be filled by the Governor. Such appointment shall be for the period until the vacancy is filled by election pursuant to law (Sec. 69.13).  
If a vacancy occurs in the office of Senator in the Congress of the United States 89 or more days prior to a general election, and the unexpired term in which the vacancy exists has more than 70 days to run after the date of that general election, the vacancy shall be filled for the balance of the unexpired term at that general election and the person elected to fill the vacancy shall assume office as soon as a certificate of election has been issued and the person qualified (Sec. 69.13).

**KANSAS**

When a vacancy shall occur in the office of United States Senator from this state, the governor shall make a temporary appointment to fill such vacancy until the next election of representatives in Congress, at which time such vacancy shall be filled by election, and the senator so elected shall take office as soon thereafter as he shall receive his certificate of election (Sec. 25-318).

**KENTUCKY**

The Governor shall fill vacancies in the office of United States Senator by appointment until the next regular election at which members of the lower branch of Congress are elected, and shall, under the Seal of the Commonwealth, certify the appointment to the President of the Senate of the United States. The certificate of appointment shall be countersigned by the Secretary of State (Sec. 63.200).

**LOUISIANA**

The Governor may fill any vacancy in the office of United States Senator by appointment; however, if the United States Senate is in session when the vacancy occurs, the Governor, within ten days after receiving official notice of the vacancy, shall appoint a Senator to fill the vacancy. If a vacancy occurs in the office of United States Senator and the unexpired term is more than one year, any appointment to fill the vacancy shall be temporary, and any Senator so appointed shall serve until his successor is elected at a special election and takes office, and the Governor, within ten days after receiving official notice of the vacancy, shall issue his proclamation for a special election to fill the vacancy for the unexpired term. The date of the special election shall be established by the

Governor in accordance with the provisions of R.S. 18:402(E). The election shall be conducted and the returns shall be certified as in regular elections for United States Senator. (Sec. 1278(A), (B)).

#### MAINE

Within a reasonable time after a vacancy occurs, the Governor shall appoint a qualified person to fill the vacancy until his successor is elected and qualified. If the vacancy occurs 60 days or more before a regular primary election, nominees must be chosen at the primary and a successor elected for the remainder of the term at the general election. If the vacancy occurs less than 60 days before a regular primary election, nominees must be chosen at the next regular primary following the one in question, and a successor elected for the remainder of the term at the general election (Sec. 391).

#### MARYLAND

In the event of a vacancy in said office of Senator, however said vacancy may arise, the Governor of the State shall make a temporary appointment of a Senator who shall serve until the people shall fill such vacancy by nomination and election (Sec. 21-1(c)).

Special election.--It shall be the duty of the Governor of the State, within 10 days after such vacancy shall have been made or becomes known to him, to issue a proclamation accompanied by a writ of election declaring and providing that at the next ensuing primary election held for the nomination of candidates for the House of Representatives, candidates for said unexpired portion of the term of said office of Senator in which such vacancy has occurred shall be nominated in the manner aforesaid. The election of a Senator to fill such unexpired portion of said term shall take place at the next ensuing general congressional election (Sec. 21-1(d)).

#### MASSACHUSETTS

The vacancy shall be filled for the unexpired term at the following biennial state election provided said vacancy occurs not less than seventy days prior to the date of the primaries for nominating candidates to be voted for at such election, otherwise at the biennial state election next following. Pending such election the governor shall make a temporary appointment to fill the vacancy, and the person so appointed shall serve until the election and qualification of the person duly elected to fill such vacancy (ch. 54, Sec. 139).

#### MICHIGAN

Whenever a vacancy shall occur in the office of United States Senator, the Governor shall appoint, to fill the vacancy, some suitable person having the necessary qualifications for Senator. The person so appointed shall hold office from the time of his appointment and qualification until the first day of December following the next general November election which occurs more than one hundred twenty days after such vacancy happens. At such general November election, a United States Senator to fill such vacancy shall be elected and the person so elected shall hold office from the first day of December following such election for the balance of the unexpired term of the Senator whose vacancy is filled (Sec. 168.105).

#### MINNESOTA

Every vacancy shall be filled for the remainder of the term by a special election, except that no special election shall be held in the year before the term expires. The special election shall be held at the next November election if the vacancy occurs at least 6 weeks before the regular primary preceding that election. If the vacancy occurs less than 6 weeks before the regular primary preceding the next November election, the special election shall be held at the second November election after the vacancy occurs. The Governor may make a temporary appointment to fill any vacancy until the next special or regular election (Sec. 204D.28).

#### MISSISSIPPI

If a vacancy shall occur in the office of United States Senator from Mississippi by death, resignation, or otherwise, the Governor shall, within ten days receiving official notice of such vacancy, issue his proclamation for an election to be held in the State to elect a Senator to fill such unexpired term as may remain, provided the unexpired term is more than 12 months, and election shall be held within 90 days from the time the proclamation is issued and the returns of such election shall be certified to the Governor in the manner set out for regular elections unless the vacancy occurs in a year in which there shall be held a general state or congressional election, in which event the Governor's proclamation shall designate the general election day as the time for electing a Senator, and the vacancy shall be filled by appointment as hereinafter provided (Sec. 23-15-855).

In case of a vacancy, the Governor may appoint a Senator to fill such vacancy temporarily, and if the United States Senate is in session at the time the vacancy occurs, the Governor shall appoint a Senator within 10 days after receiving official notice thereof, and the Senator so appointed shall serve until his successor is elected and

commissioned; provided, that such unexpired term as he may be appointed to fill shall be for a longer time than 1 year, but if for a shorter time than one year, he shall serve for the full time of the unexpired term and no special election shall be called by the Governor, but his successor shall be elected at the regular election (Sec. 23-15- 855).

#### MISSOURI

Whenever a vacancy in the office of Senator of the United States occurs, the Governor shall appoint a person to fill such vacancy who shall continue in office until a successor shall have been duly elected and qualified according to law (Sec. 105.040).

#### MONTANA

If a vacancy occurs, an election to fill the vacancy shall be held at the next general election. If the election is invalid or not held at that time, the election to fill the vacancy shall be held at the next succeeding general election. The Governor may make a temporary appointment to fill the vacancy until an election is held (Sec. 13-25-202).

#### NEBRASKA

When a vacancy occurs in the representation of the State of Nebraska in the Senate of the United States, the office shall be filled by the Governor. The Governor shall appoint a suitable person possessing the qualifications necessary for senator to fill such vacancy. If the vacancy occurs within 60 days of a statewide general election and if the term vacated expires on the following January 3, the appointee shall serve until the following January 3, and if the term extends beyond the following January 3, the appointee shall serve until January 3 following the second statewide general election next succeeding his or her appointment. If the vacancy occurs more than 60 days before a statewide general election, the appointee shall serve until January 3 following the statewide general election and at the statewide general election a senator shall be elected to serve the unexpired term if any (Sec. 32-565).

#### NEVADA

If a vacancy occurs due to death, resignation or otherwise, the Governor may appoint some qualified person to fill the vacancy, who shall hold office until the next general election and until his successor shall be elected and seated (Sec. 304.030).

#### NEW HAMPSHIRE

If a vacancy occurs, the Governor shall fill the vacancy by temporary appointment until it is filled at the next general election. (Sec. 661:5).

#### NEW JERSEY

If a vacancy occurs, the Governor shall issue a writ of election to fill the same unless the term of service of the person whose office shall become vacant will expire within 6 months next after the happening of the vacancy (Sec. 19:27-4). If the vacancy shall happen within 64 days next preceding the primary prior to the general election, it shall be filled by election at the second succeeding election unless the Governor shall deem it advisable to call a special election therefor (Sec. 19:27-6).

The Governor may make a temporary appointment of a Senator whenever a vacancy shall occur by reason of any cause other than the expiration of the term; and such appointee shall serve as such Senator until a special election or general election shall have been held pursuant to law and the board of state canvassers can deliver to his successor a certificate of election (Sec. 19:3-26).

#### NEW MEXICO

If a vacancy occurs, the Governor shall make a temporary appointment to fill the vacancy until such time as an election is held to fill the vacancy for the unexpired term. The election to fill the vacancy for the unexpired term shall be held at the next general election occurring not less than thirty (30) days subsequent to the happening of such vacancy. If the vacancy occurs within thirty (30) days next preceding a general election, the person appointed by the Governor to fill the vacancy shall hold office until the next general election occurring more than thirty (30) days subsequent to the happening of the vacancy unless the term of office for such Senator shall sooner expire.

Candidates to fill a vacancy in the office of United States Senator for an unexpired term shall be nominated and elected in the same manner as candidates are nominated and elected for the full term (Sec. 1-15-14).

#### NEW YORK

At the general election next preceding the expiration of the term of office of a United States Senator from this state, a United States Senator shall be elected by the people for a full term of 6 years. Elections to fill a vacancy for an unexpired term shall be held as provided in the public officers law (Sec. 12-200).

If a vacancy occurs in any even-numbered calendar year on or after the 59th day prior to an annual primary election, the Governor shall make a temporary appointment to fill such vacancy until the third day of January in the year following the next even-numbered calendar year. If such vacancy occurs in any even-numbered calendar year on or before the 60th day prior to an annual primary election, the Governor shall make a temporary appointment to fill such vacancy until the third day of January in the next calendar year. If a vacancy occurs in any odd-numbered year, the Governor shall make a temporary appointment to fill such vacancy until the third day of January in the next odd-numbered calendar year. Such an appointment shall be evidenced by a certificate of the Governor which shall be filed in the Office of the State Board of Elections along with a writ of election (McKinney's Public Officers Law, Sec. 42(4-a)).

#### **NORTH CAROLINA**

Whenever there shall be a vacancy in the office of United States Senator from this State, whether caused by death, resignation, or otherwise than by expiration of term, the Governor shall appoint to fill the vacancy until an election shall be held to fill the office. The Governor shall issue his writ for the election of a Senator to be held at the time of the first election for members of the General Assembly that is held more than 60 days after the vacancy occurs. The person elected shall hold office for the remainder of the unexpired term. The election shall take effect from the date of the canvassing of the returns (Sec. 163-12).

#### **NORTH DAKOTA**

When a vacancy occurs in the office of United States senator from this state, the governor shall issue a writ of election to fill the vacancy at the next statewide primary or general election, whichever occurs first, and that occurs at least ninety days after the vacancy. However, if the next primary or general election at which the vacancy could be filled, occurs in the year immediately preceding the expiration of the term, then no election may be held. The governor, by appointment, may fill the vacancy temporarily, but any person so appointed shall serve only until the vacancy is filled by election or until the term expires if no election can be held (Sec. 16.1-13-08).

#### **OHIO**

If a vacancy occurs, the Governor shall make a temporary appointment of some suitable person having the necessary qualifications for Senator. The appointee shall hold office until the 15th of December succeeding the next regular state election which occurs more than 180 days after such vacancy happens. At that next regular state election, a special election to fill the vacancy shall be held, provided, that when the unexpired term ends within 1 year immediately following the date of such regular state election the appointment shall be for the unexpired term (Sec. 3521.02).

#### **OKLAHOMA**

Whenever a vacancy shall occur in the office of a member of the United States Senate from Oklahoma, such vacancy shall be filled at a special election to be called by the Governor within 30 days after occurrence of the vacancy. No special election shall be called if the vacancy occurs after March 1 of any even-numbered year if the term of the office expires the following year. In this case the candidate elected to the office at the regular General Election shall be appointed by the Governor to fill the unexpired term (Sec. 12-101).

#### **OREGON**

Under Article V, Section 16 of the Constitution of Oregon, if a vacancy occurs in the office of United States Senator, the vacancy shall be filled at the next general election provided such vacancy occur more than 20 days prior to such general election.

(1) If a vacancy in election or office of Representative in Congress or United States Senator occurs before the 61st day before the general election, the Governor shall call a special election to fill that vacancy. If a vacancy in election or office of United States Senator occurs after the 62nd day before the general election but on or before the general election, and if the term of that office is not regularly filled at that election, the Governor shall call a special election to fill the vacancy as soon as practicable after the general election.

(2) If a special election to fill the vacancy in election or office of Representative in Congress or United States Senator is called before the 80th day after the vacancy occurs, each major political party shall select its nominee for the office and certify the name of the nominee to the Secretary of State. The Secretary of State shall place the name of the nominee on the ballot.

(3) If a special election to fill the vacancy in election or office of Representative in Congress or United States Senator is called after the 79th day after the vacancy occurs, a special primary election shall be conducted by the Secretary of State for the purpose of nominating a candidate of each major political party. A declaration of candidacy or nominating petition may be filed not later than the 10th day following the issuance of the writ of

election (Sec. 188.120).

#### **PENNSYLVANIA**

If a vacancy occurs, it shall be filled for the unexpired term by the vote of the electors of the State at a special election held at the next general or municipal election, occurring at least 90 days after the happening of such vacancy. Candidates shall be nominated by political parties in accordance with party rules and by means of nomination certificates. Until such time as the vacancy shall be filled by an election, the Governor may make a temporary appointment to fill the vacancy (Sec. 2776).

#### **RHODE ISLAND**

If a vacancy occurs, it shall be filled at the next general election after the expiration of 70 days from the date of such vacancy. In case of such vacancy, the Governor shall make a temporary appointment of a person, pending the results of such an election (Sec. 17-4-9).

#### **SOUTH CAROLINA**

If a vacancy occurs, the Governor may fill such vacancy by appointment for the period of time intervening between the date of such appointment and January 3 following the next succeeding general election. But, if such vacancy occurs less than 100 days prior to any general election, the appointment shall be for the period of time intervening between the date of such appointment and January 3 following the second general election next succeeding. The Governor shall within 5 days after any such appointment order an election to occur at the time of the general election immediately preceding the expiration date of the appointment if at the expiration of such appointment an unexpired term shall remain. (Sec. 7-19-20).

#### **SOUTH DAKOTA**

If a vacancy occurs, it is the duty of the Governor within 10 days of the occurrence to issue a proclamation setting the date of and calling for a special election to fill the vacancy. If either a primary or general election is to be held within 6 months, an election to fill a vacancy in the office of representative in the United States Congress shall be held in conjunction with that election; otherwise, the election shall be held not less than 80 nor more than 90 days after the vacancy occurs (Sec. 12-11-1). The Governor may fill by temporary appointment, until a special election is held, vacancies in the office of U.S. Senator (Sec. 12-11-4).

#### **TENNESSEE**

If a vacancy occurs in the office of United States Senator, a successor shall be elected at the next regular November election and shall hold office until the term for which his predecessor was elected expires. If the vacancy will deprive the State of its full representation at any time Congress may be in session, the governor shall fill the vacancy by appointment until a successor is elected at the next regular November election and is qualified (Sec. 2-16-101).

#### **TEXAS**

The governor shall appoint a person to fill a vacancy in office if the vacancy exists or will exist when congress is in session. The appointee serves until a successor has been elected and has qualified (Sec. 204.002). If a vacancy occurs during an odd-numbered year or after the 62nd day before general primary election day in an even-numbered year, the remainder of the unexpired term shall be filled by a special election except that the minimum number of signatures that must appear on a petition accompanying a candidate's application for a place on the ballot is 5,000 (Sec. 204.005, Supp.).

#### **UTAH**

When a vacancy occurs in the office of U.S. senator, it shall be filled for the unexpired term at the next regular general election. The governor shall appoint a person to serve as U.S. senator until the vacancy is filled by election from one of three persons nominated by the state central committee of the same political party as the prior officeholder (Sec. 20A-1-502(2)).

#### **VERMONT**

If a vacancy occurs in the office of United States Senator, the governor shall call a special election to fill the vacancy. His proclamation shall specify a day for the special election and a day for a special primary. The special election shall be held not more than 3 months from the date that the vacancy occurs, except that, if vacancy occurs within 6 months of a general election, the special election may be held the same day as the general election (Sec. 2621). The governor may make an interim appointment to fill a vacancy in the office of United States Senator, pending the filling of the vacancy by special election (Sec. 2622).

**VIRGINIA**

When any vacancy occurs in the representation of the Commonwealth of Virginia in the United States Senate, the Governor shall issue a writ of election to fill the vacancy for the remainder of the unexpired term. The election shall be held on the next succeeding November general election date or, if the vacancy occurs within 120 days prior to that date, on the second succeeding November general election date. The Governor may make a temporary appointment to fill the vacancy until the qualified voters fill the same by election. (Sec. 24.2-207).

**WASHINGTON**

When a vacancy happens in the representation of the State in the Senate of the United States, the Governor shall make a temporary appointment until the people fill the vacancy by election (Sec. 29.68.070).

Whenever a vacancy occurs in the office of United States representative or United States senator from this state or any congressional district of this state, the governor shall order a special election to fill the vacancy. Within 10 days of such vacancy occurring, he or she shall issue a writ of election fixing a date for the special vacancy election not less than 90 days after the issuance of the writ, fixing a date for the primary for nominating candidates for the special vacancy election not less than 30 days before the day fixed for holding the special vacancy election, fixing the dates for the special filing period, and designating the term or part of the term for which the vacancy exists. If the vacancy occurs less than 6 months before a state general election and before the second Friday following the close of the filing period for that general election, the special primary and special vacancy elections shall be held in concert with the state primary and state general election in that year. If the vacancy occurs on or after the first day for filing under RCW 29.18.030 and on or before the second Friday following the close of the filing period, a special filing period of 3 normal business days shall be fixed by the governor and notice thereof given to all media, including press, radio, and television within the area in which the vacancy election is to be held, to the end that, insofar as possible, all interested persons will be aware of such filing period. The last day of the filing period shall not be later than the third Tuesday before the primary at which candidates are to be nominated. The names of candidates who have filed valid declarations of candidacy during this 3-day period shall appear on the approaching primary ballot. If the vacancy occurs later than the second Friday following the close of the filing period, a special primary and special vacancy election to fill the position shall be held after the next state general election but, in any event, no later than the 90th day following the November election. As used in this chapter, "county" means in the case of a vacancy in the office of United States senator, any or all of the counties in the state and, in the case of a vacancy in the office of United States representative, only those counties wholly or partly within the congressional district in which the vacancy has occurred (Sec. 29.68.080).

**WEST VIRGINIA**

Any vacancy occurring in the office of secretary of state, auditor, treasurer, attorney general, commissioner of agriculture, United States Senator, judge of the supreme court of appeals, or in any office created or made elective, to be filled by the voters of the entire state, or judge of a circuit court, shall be filled by the governor of the state by appointment. If the unexpired term of a judge of the supreme court of appeals, or a judge of the circuit court, be for less than 2 years, or if the unexpired term of any other office named in this section be for a period of less than 2 years and 6 months, the appointment to fill the vacancy shall be for the unexpired term. If the unexpired term of any office be for a longer period than above specified, the appointment shall be until a successor to the office has timely filed a certificate of candidacy, has been nominated at the primary election next following such timely filing and has thereafter been elected and qualified to fill the unexpired term. Proclamation of any election to fill an unexpired term shall be made by the governor of the state, and, in the case of an office to be filled by the voters of the entire state, shall be published prior to such election as a Class II-0 legal advertisement in compliance with the provisions of article 3 [Sec. 59-3-1 et seq.], chapter 59 of this code, and the publication area for such publication shall be each county of the state. If the election is to fill a vacancy in the office of judge of a circuit court, the proclamation shall be published prior to such election as a Class II-0 legal advertisement in compliance with the provisions of article 3, chapter 59 of this code, and the publication area for such publication shall be each county in the judicial circuit (Sec. 3-10-3).

**WISCONSIN**

Vacancies in the office of U.S. Senator shall be filled by election, as provided in Sec. 8.50(4)(b), for the residue of the unexpired term (Sec. 17.18). A vacancy in the office of U.S. Senator occurring prior to the 2nd Tuesday in May in the year of the general election shall be filled at a special primary and election. A vacancy in that office occurring between the 2nd Tuesday in May and the 2nd Tuesday in July in the year of the general election shall be filled at the September primary and general election (Sec. 8.50(4)(b)).

**WYOMING**

If a vacancy occurs in the office of United States Senator, the governor shall fill the vacancy by temporary appointment according to specified rules (Sec. 22-18-111(a)(i)).

APPENDIX C

Summary of State Laws Governing U.S. Senate Vacancies

	Date of Special Election	Interim Appointment	Term of Appointee	Restrictions on Appointment
Alabama	Such as the governor directs, if vacancy occurs more than 4 months before next general election	Yes – governor	Until successor is elected and qualified	None
Alaska	On date of the first primary & general that is held more than 30 days after the vacancy	Yes – governor	If predecessor's term has 30 months or more remaining, until special election is held.	Within 30 days Qualified person of same political party of predecessor
Arizona	Next general election	Yes – governor	Unexpired term of vacated office	Same political party as person vacating office
Arkansas	Next state/county general election more than 60 days and less than 12 months after vacancy occurs; if no general election falls during that time, governor must call a special to be held no less than 60 and no more than 120 days after the vacancy occurs	Yes – governor	Until next general election	None
California	Next general election succeeding vacancy; must be proclaimed within 14 days of vacancy; governor may decline to issue election proclamation if vacancy occurs after close of nomination period in final year of the term of office	Yes – governor	Until successor is elected, qualifies and is admitted to his seat by the Senate	An elector of the state who possess the qualifications for the office
Colorado	Next general election	Yes – governor	Until office is filled by election	None
Connecticut	Next general state election	Yes – governor	If vacancy occurs 60 or more days before an election, until Jan. 3 following election.	None
Delaware	Next general election	Yes – governor	Until vacancy is filled at next general election	Qualified elector of the state

	<b>Date of Special Election</b>	<b>Interim Appointment</b>	<b>Term of Appointee</b>	<b>Restrictions on Appointment</b>
<b>Florida</b>	Next general election	Yes – governor	Until vacancy is filled at next general election	None
<b>Georgia</b>	Next November election occurring at least 40 days after vacancy	Yes – governor	Until vacancy is filled at next general election	None
<b>Hawaii</b>	Following state general election, provided vacancy occurs no later than 4:30pm on 60 <sup>th</sup> day prior to primary; otherwise at state general election next following	Yes – governor	Until vacancy is filled at next general election	Registered member of same political party as Senator causing the vacancy
<b>Idaho</b>	Next regularly scheduled election for senator	Yes – governor	Until a Senator is regularly elected to fill such vacancy	None
<b>Illinois</b>	Next election of representatives in Congress	Yes – governor	Until vacancy filled at next general election	None
<b>Indiana</b>	Next general election	Yes – governor	Until the next general election	None
<b>Iowa</b>	If vacancy occurs 89 days or more prior to a general election, and unexpired term has more than 70 days to run after that election, vacancy is filled for balance of unexpired term at that general election	Yes – governor	Until vacancy is filled	None
<b>Kansas</b>	Next congressional election	Yes – governor	Until vacancy is filled at next election of representatives in Congress	None
<b>Kentucky</b>	Next congressional election	Yes – governor	Until vacancy is filled at next election of representatives in Congress	None
<b>Louisiana</b>	See RS 18:402(E)	Yes – governor	If unexpired term is more than one year, appointee serves until successor is elected at a special election	Within 10 days of receiving official notice of vacancy

	Date of Special Election	Interim Appointment	Term of Appointee	Restrictions on Appointment
Maine	Next general election	Yes – governor	Until the next regular election, if the vacancy occurs 60 days or more before a regular primary; until the next election following the one in question, if vacancy occurs less than 60 days before primary	None
Maryland	Next congressional election	Yes – governor	Until the people fill vacancy by nomination and election	None
Massachusetts	Next biennial state election	Yes – governor	Until next election	None
Michigan	Next general election	Yes – governor	Until first day of December following the next general November election which occurs more than 120 days after vacancy happens	None
Minnesota	Next November election	Yes – governor	Until next election	None
Mississippi	Within 90 days of appointment, unless vacancy occurs in the year of a regular general election, in which event the special election coincides with the general election	Yes, if unexpired term is more than 12 months – governor	Until successor is elected and commissioned	Appointment must be made within 10 days of receiving official notice of vacancy
Missouri	Next regularly scheduled election for senator	Yes – governor	Until successor is elected	None
Montana	Next general election	Yes – governor	Until election is held	None
Nebraska	Next general election	Yes – governor	Until following Jan. 3, if vacancy occurs within 60 days of a statewide general election and the term vacated expires on the following Jan. 3. If the term extends beyond the following Jan. 3, until Jan. 3 following the second statewide general election next succeeding his/her appointment.	None
Nevada	Next general election	Yes – governor	Until successor is elected	None
New Hampshire	Next general election	Yes – governor	Until next general election	None

	<b>Date of Special Election</b>	<b>Interim Appointment</b>	<b>Term of Appointee</b>	<b>Restrictions on Appointment</b>
<b>New Jersey</b>	If vacancy happens within 64 days of next primary, then it is filled at the second succeeding election unless the governor calls a special election	Yes – governor	Until a special election or general election is held	None
<b>New Mexico</b>	Next general election occurring not less than 30 days subsequent to the vacancy	Yes – governor	Until election is held to fill the vacancy for the unexpired term	None
<b>New York</b>	Next even-year general election	Yes – governor	If vacancy occurs in even-numbered year on or after the 59 <sup>th</sup> day prior to an annual primary, until the 3 <sup>rd</sup> day of January in the year following the next even-numbered calendar year. If vacancy occurs in an even year on or before the 60 <sup>th</sup> day prior to an annual primary, until the 3 <sup>rd</sup> of January in the next calendar year. If vacancy occurs in an odd year, until the 3 <sup>rd</sup> day of January in the next odd year.	None
<b>North Carolina</b>	Next election for members of the General Assembly	Yes – governor	Until election is held to fill the office	None
<b>North Dakota</b>	Next statewide primary or general election, whichever occurs first, and that occurs at least 90 days after the vacancy. If the next election at which the vacancy could be filled occurs in the year immediately preceding the expiration of the term, then no election may be held.	Yes – governor	Until election is held to fill the vacancy, or until the term expires if no election can be held	None

	Date of Special Election	Interim Appointment	Term of Appointee	Restrictions on Appointment
Ohio	Next regular state election	Yes – governor	Until Dec. 15 <sup>th</sup> succeeding the next regular state election which occurs more than 180 days after such vacancy happens; or if the unexpired term ends within 1 year immediately following the date of the next regular state election, the appointment is for the unexpired term	None
Oklahoma	Called by the governor within 30 days after occurrence of the vacancy. No special election if vacancy occurs after March 1 of an even year and the term of office expires the following year	If vacancy occurs after March 1 in an even year and the term of office expires the following year, the governor shall appoint the candidate elected to the office at the regular election to fill the unexpired term	Election Day – Jan. 3	Only the candidate elected at the regular election may be appointed
Oregon	Next general election, provided vacancy occurs more than 20 days prior to such general election. If vacancy occurs before 61 <sup>st</sup> day before the general election, the governor must call a special election. If a vacancy occurs after the 62 <sup>nd</sup> day before the general election and the term of that office is not regularly filled at that election, the governor must call a special election as soon as practicable after the general election	No	N/A	N/A
Pennsylvania	Next general or municipal election occurring at least 90 days after vacancy occurs	Yes – governor	Until vacancy is filled in an election	None
Rhode Island	Next general election after the expiration of 70 days from the date of the vacancy	Yes – governor	Until election	None

	<b>Date of Special Election</b>	<b>Interim Appointment</b>	<b>Term of Appointee</b>	<b>Restrictions on Appointment</b>
<b>South Carolina</b>	Next general election immediately preceding the expiration date of the appointment	Yes – governor	From date of appointment until January 3 of next succeeding general election. If vacancy occurs less than 100 days prior to general election, until January 3 following second general election next succeeding	None
<b>South Dakota</b>	If a primary or general election is to be held within 6 months, special election is held in conjunction with that election; other wise, special election is held not less than 80 nor more than 90 days after the vacancy occurs	Yes – governor	Until special election is held	None
<b>Tennessee</b>	Next regular November election	Yes – governor	Until successor is elected at next regular November election	None
<b>Texas</b>	If vacancy occurs during an odd year or after the 62 <sup>nd</sup> day prior to the next regular primary election, the remainder of the unexpired term is filled by a special election	Yes – governor	Until a successor is elected	None
<b>Utah</b>	Next regular general election	Yes – governor	Until vacancy is filled by election from one of three persons nominated by the state central committee of the same political party as the prior officeholder	None
<b>Vermont</b>	Special election held not more than 3 months from the date of the vacancy. If the vacancy occurs within 6 months of a general election, the special election may be held the same day as the general election	Yes – governor	Until vacancy is filled by special election	None

	Date of Special Election	Interim Appointment	Term of Appointee	Restrictions on Appointment
Virginia	Next succeeding November election, or if the vacancy occurs within 120 days prior to that date, on the second succeeding November general election date	Yes – governor	Until vacancy is filled by election	None
Washington	Special election not less than 90 days after issuance of writ (which must occur within 10 days of vacancy occurring). If vacancy occurs less than 6 months before a state general election, the special primary and vacancy election shall be held in concert with the state primary and general elections	Yes – governor	Until vacancy filled by election	None
West Virginia	Upon proclamation of the governor	Yes - governor	If unexpired term is less than 2 years and 6 months, appointment is for the unexpired term. If unexpired term is longer, appointment is until a successor is elected	None
Wisconsin	If vacancy occurs prior to the 2 <sup>nd</sup> Tuesday in May in the year of the general election, it is filled in a special election. A vacancy occurring between the 2 <sup>nd</sup> Tuesday in May and the 2 <sup>nd</sup> Tuesday in July in the year of the general election is filled at the September primary and general election.	No	N/A	N/A
Wyoming	??	Yes – governor	??	?? Gov. must select from a list of 3 nominated by the central comm. of same political party as predecessor. Sec. 22-18-111(a)(1).

# CRS Report for Congress

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## House and Senate Vacancies: How Are They Filled?

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### Summary

Vacancies in Congress occur due to the death, resignation, or declination (refusal to serve) of a Senator or Representative, or as the result of expulsion or exclusion by either house. The Constitution requires that vacancies in both houses be filled by special election, but in the case of the Senate, it empowers state legislatures to provide for temporary appointments by the state governor until special elections can be scheduled.

In practice, most Senate vacancies are filled by such appointments in the interim, while all House vacancies are filled by special elections. If, however, a House vacancy occurs late in the life of a Congress, many states will leave the seat empty until general election day, when a special election for the balance of the term and a regular election for the forthcoming Congress are held simultaneously.

Nominations for Senate special elections are usually by primary, while those for House special elections can be by primary, nominating petition, or party action, as specified by state law.

A plurality is necessary to win in most special elections, although there are significant variations in certain states.

### Procedures Governing Vacancies

Vacancies in Congress occur when a Senator or Representative dies, resigns, declines to serve, or is expelled or excluded from either house.

#### Senate

Procedures governing vacancies in the Senate were initially established by Article I, Section 3 of the Constitution, and amended by paragraph 2 of the 17th Amendment. The latter states:

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided* that the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

**Appointment of Interim Senators.** Prevailing practice is for state governors to fill Senate vacancies by appointment, with the appointee serving until a special election has been held, at which time the appointment expires immediately. In the event a seat becomes vacant between the time of a general election and the expiration of the term, however, the appointee usually serves the balance of the term, until the next regularly scheduled general election. This practice originated with the constitutional provision that applied prior to the popular election of senators, under which governors were directed to make temporary appointments when state legislatures were in recess. It was intended to ensure continuity in a state's Senate representation during the lengthy intervals between state legislative sessions.

The governor's direct authority to make interim appointments is specified in the various state laws. Oregon<sup>1</sup> and Wisconsin<sup>2</sup> do not allow the governor to make interim appointments, requiring, instead, a special election to fill any Senate vacancy. The State of Oklahoma also requires that Senate vacancies be filled by special elections, with an exception. If the vacancy occurs after March 1 of any even-numbered year and the term expires the following year, no special election is held; rather, the governor is required to appoint the candidate elected in the regular general election to fill the unexpired term.<sup>3</sup> At least five states restrict the governor's power to appoint interim Senators. Alaska, Arizona, and Hawaii require the governor to fill Senate vacancies with a person affiliated with the same political party as the previous incumbent.<sup>4</sup> Utah and Wyoming require the governor to select an interim senator from a list of three candidates proposed by the state central committee of the political party with which the previous incumbent was affiliated.<sup>5</sup>

Many states limit the term of office for interim senators to the date set for the special election. In these cases, the term of the interim senator expires immediately upon the election of the popularly chosen successor, who serves the balance of the Senate term, whether it is a few weeks or several years. Moreover, when an interim appointment is made late in the term, it is often customary for the interim senator to resign his or her seat immediately after the election, and for the governor to appoint the special election winner to serve the balance of the term. It is also customary, for the purposes of determining seniority, for the newly elected replacement senator to be sworn in as soon as possible.

**Nominations.** Nomination procedures for Senate special elections vary widely among the states. The majority require a special primary election to determine the major

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<sup>1</sup> Or. Rev. Stat. §188.120 (2001).

<sup>2</sup> Wis. Stat. § 17.18 (1999-2000).

<sup>3</sup> Okla. Stat. tit. 26, §12-101.

<sup>4</sup> Alaska Stat. §15.40.010 (2001); Ariz. Rev. Stat. §16.222 (2001); and Haw. Rev. Stat. § 17-1 (2001).

<sup>5</sup> Utah Code Ann. § 20A-1-502(2) (2001) and Wyo. Stat. § 22-18-111 (i) (2002).

party nominees, while minor party and independent candidates generally qualify by filing a requisite number of petitions for general election ballot placement. Finally, some states provide for nomination by party-determined procedures, such as by the party's state committee, or at a state party convention. Louisiana and Texas, which provide the major exceptions to these rules, are treated in the next section of this report.

**General Elections.** Generally, the governor has the authority to set the dates for both primary and general special elections within either a window of time or a specific number of days after the vacancy occurs, according to state requirements. In the interests of convenience, enhanced voter interest and participation, and economy, special elections are often scheduled to coincide with regular elections. A plurality of votes in the primary and general elections is sufficient to nominate or elect in most cases, although a number of southern states require a majority to nominate, providing for a runoff election if no candidate attains a majority.

Special election procedures in Georgia, Louisiana, and Texas constitute significant variations from the norm. Georgia requires a majority to elect in all congressional and statewide special elections. Louisiana and Texas provide for an all-parties special primary election. All candidates qualifying for placement on the ballot participate in the election, in which a majority is necessary to elect. Any candidate receiving more than 50% of the vote is declared elected. If no candidate receives a majority, the two receiving the most votes, regardless of party affiliation, compete in a second election, termed a general election in Louisiana and a runoff in Texas. Louisiana mandates the all-parties primary for regular as well as special elections, while the Texas practice is unique to that state's special elections.

One of the more interesting developments in Senate special elections in recent years was Oregon's 1996 decision to conduct both the primary and general elections to fill a Senate vacancy by mail-in ballot only, with no in-person voting at polling places.<sup>6</sup>

**Staff Disposition.** In the event of a Senator's death, his or her staff continue to be compensated for a period not exceeding 60 days (unless the Senate Committee on Rules and Administration determines that more time is needed to complete the closing of the office), performing duties under the direction of the Secretary of the Senate.<sup>7</sup>

## House of Representatives

The Constitution provides for cases in which House seats become vacant in Article I, Section 2, clause 4:

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<sup>6</sup> In 1998, voters in Oregon passed a ballot initiative that requires Oregon's biennial primary and general elections to be conducted by mail. This "vote-by-mail" system replaces traditional polling place elections, but voters can still hand-deliver their ballots to designated drop sites.

<sup>7</sup> S. Res. 458, 98<sup>th</sup> Cong., 2<sup>nd</sup> Sess., Oct. 4, 1984; as amended by S. Res. 173, 100<sup>th</sup> Cong., 1<sup>st</sup> Sess., Mar. 4, 1987, "Closing The Office of a Senator or Senate Leader Who Dies or Resigns," in U.S. Congress, Senate Committee on Rules and Administration, *Senate Manual, 106<sup>th</sup> Congress*, "Standing Orders of the Senate," Sec. 72, p. 108 (Washington: GPO, 2000).

When Vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The Constitution thus requires that all House vacancies be filled by special election. There is no constitutional provision for the appointment of interim Representatives.

**Scheduling.** The responsibility for scheduling special elections is vested in the state legislatures (2 U.S.C. 8):

The time for holding elections in any State, District, or Territory for a Representative to fill a vacancy, whether such vacancy is caused by the death, resignation, or incapacity of a person elected, may be prescribed by the laws of the several States and Territories respectively.

House vacancies that occur in the first session of a Congress are invariably filled by special elections. The responsibility for ordering a special election is vested in the governors of the states. Most states also either set a window of time, or prescribe an exact number of days after the vacancy occurs, in which nomination procedures and the special election must be held. Within these constraints, state governors and election authorities generally attempt to schedule special elections for a regular election day, in the interests of economy, convenience, and increased voter participation.

Procedures governing vacancies occurring during the second session of a Congress differ from state to state, and are largely dependent on the amount of time intervening between the vacancy and the next general election. For instance, if a House seat becomes vacant within six months of the expiration of the previous incumbent's term, many states allow the seat to remain vacant for a time, providing for a special election to be held on the regularly scheduled election day, at the same time that a regular election for that seat for the ensuing Congress is held. Other states, under these circumstances, do not provide for a special election, and the affected seat remains vacant until the ensuing Congress convenes the following January.

**Nominations.** Nomination procedures for House of Representatives special elections vary as widely among the states as do those for the Senate. Some states require a special primary election to determine the major party nominees, while minor party and independent candidates generally qualify by filing a requisite number of petitions for general election ballot placement. A plurality is sufficient to elect in most primary states, but some southern states require a majority to nominate in the primary. If no candidate attains a majority, then a runoff, or second, primary is held at a later date, in which the two candidates winning the most primary votes compete for the nomination. Others provide for nomination by such party-established procedures as party congressional district caucuses and conventions, or meetings of party committees or interested party members in jurisdictions comprising the affected congressional district.

**General Elections.** Special general election procedures for the House of Representatives generally mirror those for the Senate, with some variations. Once again, in most states a plurality is sufficient to elect in the general election. Several states, however, have adopted procedures for House special elections that effectively conjoin the nomination and election process, sometimes in combination with other variations. These include California, Georgia, Louisiana, and Texas.

All qualified candidates for House special elections in California compete in a special primary, regardless of party affiliation. Nomination is by petition. Any candidate receiving more than 50% of the vote in the primary is elected, and the general election is canceled. If no candidate receives the required majority, the single candidate of each party receiving the most votes competes in a special general election, wherein a plurality of votes is sufficient to elect. In the event that candidates of only one party compete in the primary, a plurality is sufficient to elect, and there is no general election.<sup>8</sup>

As noted previously, Georgia requires a majority to elect in all congressional and statewide special elections. If no candidate receives 50% of the vote, then a runoff, or second, election is held between the two candidates gaining the most votes.<sup>9</sup>

Louisiana procedures for House special elections are the same as those applying to its Senate elections. All candidates who qualify for ballot access compete in the primary election, in which a majority of votes is necessary to elect. A candidate receiving 50% of the vote is declared elected. If no candidate receives a majority, the two candidates receiving the most votes, regardless of party affiliation, compete in a second election, termed a general election. Louisiana mandates the all-parties primary for regular as well as special elections.<sup>10</sup>

Texas provides for an all-parties special primary election to fill House vacancies. All candidates qualifying for placement on the ballot participate in the election, in which a majority is necessary to elect. A candidate receiving 50% of the vote is declared elected. If no candidate receives a majority, the two candidates receiving the most votes, regardless of party affiliation, compete in a second election, termed a runoff in Texas. Unlike in Louisiana, in Texas the all-parties primary is unique to special elections.<sup>11</sup>

Winners of House special elections held concurrently with those for the ensuing Congress are often not sworn in as Members of the House of Representatives, since Congress has usually adjourned *sine die* before election day. They are, however, accorded the status of incumbent Representatives for the purposes of seniority, office selection, and staffing.

**Staff Disposition.** Staff of a deceased or resigned Representative are compensated until a successor is elected to fill the vacancy, performing duties under the direction of the Clerk of the House (2 U.S.C. 92 b,c).

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<sup>8</sup> *California Election Code*, § 10700-10707 (2001).

<sup>9</sup> *Georgia Election Code*, § 21-2-501 (2001).

<sup>10</sup> *Louisiana Election Code*, tit. 18, § 511, §512, and §1279. The Supreme Court's 1997 decision in *Foster v. Love* (522 U.S. 67 (1997)) affected only the timing of regular general elections in Louisiana; the all-parties nature of the procedure was not in question, and remains intact for both special and regularly scheduled elections.

<sup>11</sup> *Texas Election Law*, § 203.001-012, 0A; and 204.021.

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### *USCS Const. Amend. 17*

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## CONSTITUTION OF THE UNITED STATES OF AMERICA **AMENDMENTS** **AMENDMENT 17**

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### USCS Const. Amend. 17 (2003)

Election of Senators.

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This **amendment** shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

### **HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Explanatory notes:

The **Seventeenth Amendment** of the Constitution of the United States was proposed to the legislatures of the several states by the Sixty-second Congress on May 13, 1912, and was declared, in a proclamation of the Secretary of State, dated May 31, 1913, to have been ratified by the legislatures of the following states: Arizona, June 3, 1912; Arkansas, February 11, 1913; California, January 28, 1913; Colorado, February 5, 1913; Connecticut, April 8, 1913; Idaho, January 31, 1913; Illinois, February 13, 1913; Indiana, February 19, 1913; Iowa, January 30, 1913; Kansas, January 17, 1913; Maine, February 11, 1913; Massachusetts, May 22, 1912; Michigan, January 28, 1913; Minnesota, June 10, 1912; Missouri, March 7, 1913; Montana, January 30, 1913; Nebraska, March 14, 1913; Nevada, February 6, 1913; New Hampshire, February 19, 1913; New Jersey, March 17, 1913; New Mexico, March 13, 1913; New York, January 15, 1913; North Carolina, January 25, 1913; North Dakota, February 14, 1913; Ohio, February 25, 1913; Oklahoma, February 24, 1913; Oregon, January 23, 1913; Pennsylvania, April 2, 1913; South Dakota, February 19, 1913; Tennessee, April 1, 1913; Texas, February 7, 1913; Vermont, February 19, 1913; Virginia, February 4, 1913; Washington, February 7, 1913; West Wisconsin, February 18, 1913; and Wyoming, February 8, 1913.

Ratification was completed on April 8, 1913.

The **amendment** was subsequently ratified by Louisiana on June 11, 1914.

The **amendment** was rejected, and not subsequently ratified, by Utah on February 26, 1913.

## NOTES:

### RESEARCH GUIDE

#### Am Jur:

- 16A Am Jur 2d, Constitutional Law § 402.
- 25 Am Jur 2d, Elections § 103.
- 26 Am Jur 2d, Elections § 239.
- 77 Am Jur 2d, United States § 9.

#### Law Review Articles:

Choper. The Scope of National Power Vis-a-Vis the States: The Dispensability of Judicial Review. 86 Yale L J 1552.

### INTERPRETIVE NOTES AND DECISIONS

1. Generally
2. Primary elections
3. Special elections

#### 1. Generally

Requirement that United States senators from each state be "elected by the people thereof" does not require that candidate receive majority of votes cast at general election in order to be elected. Phillips v Rockefeller (1970, CA2 NY) 435 F2d 976.

Despite presumption of enfranchisement, there is no per se rule against disenfranchisement; rather Supreme Court has recognized that in special interest elections government can limit franchise to those who have required special interest. Duncan v Coffee County (1995, CA6 Tenn) 69 F3d 88, 1995 FED App 321P.

Word "qualifications" in constitutional provisions concerning election of members of the House of Representatives and Senators means natural endowments or requirements which fit person for place, office, or employment, or as elector; restrictions on right of voter to vote because of his failure to register or to vote in particular manner at certain time and place are limitations on right, and not on qualification to exercise it. Commonweath ex rel. Dummit v O'Connell (1944) 298 Kv 44, 181 SW2d 691.

#### 2. Primary elections

Political party's rule permitting registered voters not affiliated with any party to vote in that party's primary election for U.S. House of Representatives and Senate while remaining silent as to voting in that party's primary elections for state legislature, did not violate federal constitution under qualifications of federal congressional electors clause (Art I, § 2, Cl 1) and **Seventeenth Amendment**, since rule did not disenfranchise any voter in federal congressional election who was qualified to vote in primary or general election for more numerous house of that state's legislature, and **Seventeenth Amendment** and qualification of congressional electors clause do not require perfect symmetry of qualifications of voters in state and federal legislative elections. Tashjian v Republican Party (1986) 479 US 208, 93 L Ed 2d 514, 107 S Ct 544.

**Seventeenth Amendment** does not require state to hold primary for nominations to fill senatorial vacancy. Trinsey v Pennsylvania (1991, CA3 Pa) 941 F2d 224, cert den (1991) 502 US 1014, 116 L Ed 2d 750, 112 S Ct 658.

State executive committee of recognized political party may call special primary election for nomination of its candidate or candidates to be voted for in ensuing general election when, by reason of death, resignation, or otherwise, office of United States Senator becomes vacant at time when it is too late for candidate to qualify to be voted for in general primary elections held biennially, and when there is sufficient time intervening between happening of condition creating vacancy and date of ensuing general election in which to call and hold such special primary election; when such special primary election is called by state executive committee of recognized political party, it becomes duty of state and county officers to function in connection

with such special primary election in same manner and to same extent that they would function in connection with general primary election. State ex rel. Andrews v Grav (1936) 125 Fla 1, 169 So 501.

### 3. Special elections

Election directed to be held by writ of election issued by governor of state to fill vacancy in office of United States Senator, which election was to be held on same day as primary election, was special election at which absent voters ballots could not be cast. State ex rel. Lanier v Hall (1946) 74 ND 426, 23 NW2d 44 (superseded by statute on other grounds as stated in State ex rel. Kusler v Sinner (1992, ND) 491 NW2d 382).

Under **Seventeenth Amendment**, governor of state would be authorized to issue writ of election to fill vacancy caused by death of senator; such writ may be defined as written order from governor directed to proper authority commanding it to hold state-wide election on day certain, as provided by law, for purpose of electing senator for unexpired term of deceased senator. Advisory Opinion to Governor (1946) 157 Fla 885, 27 So 2d 409.

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*Secs. 15.35.140 — 15.35.170. Judges of the court of appeals: Requirements for retention in office. [Repealed, § 231 ch 100 SLA 1930. For current law, see AS 15.35.053 — 15.35.059.]*

## Chapter 40. Special Elections and Appointments.

### Article

1. United States Senate (§§ 15.40.010 — 15.40.135)
2. United States House of Representatives (§§ 15.40.140 — 15.40.220)
3. Governor and Lieutenant Governor (§§ 15.40.230 — 15.40.310)
4. Legislature (§§ 15.40.320 — 15.40.470)

### Article 1. United States Senate.

#### Section

10. Conditions and time of filling vacancy by appointment and special election
50. Date of special primary election and special election
60. Proclamation of special election

#### Section

70. Term of elected senator
75. Determination of candidates; date of nominations
130. General provision for conduct of special election
135. Definition

**Collateral references.** — 25 Am. Jur. 2d, Elections, § 1 et seq.; 26 Am. Jur. 2d, Elections, § 1 et seq.; 38 Am. Jur. 2d, Governor, §§ 5-7; 63C Am. Jur. 2d, Public Officers and Employees, §§ 87, 90, 103; 77 Am. Jur. 2d, United States, §§ 9-10.

29 C.J.S., Elections, §§ 1(3), 70-74; 91 C.J.S., United States, § 15.

What is "public place" within requirement as to posting of election notices. 90 ALR2d 1210.

**Sec. 15.40.010. Conditions and time of filling vacancy by appointment and special election.** When a vacancy occurs in the office of United States senator, the governor, at least five days after the date of the vacancy but within 30 days after the date of the vacancy, shall

(1) appoint a qualified person who, if the predecessor in office was nominated by a political party, has been, for the six months before the date of the vacancy, and is, on the date of appointment, a member of the same political party as that which nominated the predecessor in office to fill the vacancy temporarily until the vacancy is filled permanently by election; and

(2) by proclamation and subject to this chapter, call a special primary election and a special election to fill the vacancy for the remainder of the term of the predecessor in office if the predecessor's term would expire more than 30 calendar months after the date of the vacancy. (§ 8.01 ch 83 SLA 1960; am § 1 ch 30 SLA 1998; am § 1 ch 4 SLA 2002)

**Effect of amendments.** — The 1998 amendment, effective May 9, 1998, rewrote this section. The 2002 amendment, effective April 16, 2002, in the introductory language inserted "at least five days after the date of the vacancy but".

*Sec. 15.40.020. Qualification of appointee. [Repealed, § 1 ch 139 SLA 1967.]*

*Secs. 15.40.030, 15.40.040. Conditions for full, unexpired term appointment; conditions for part-term appointment and special election. [Repealed, § 6 ch 30 SLA 1998.]*

**Sec. 15.40.050. Date of special primary election and special election.** (a) The special primary election to determine a candidate who represents a political party in a special election shall be held on the date of the first primary election that is held more than 30 days after the vacancy occurs.

(b) The special election to fill the vacancy shall be held on the date of the first general election that is held after the first primary election that is held more than 30 days after the vacancy occurs. (§ 8.05 ch 83 SLA 1960; am § 2 ch 30 SLA 1998)

**Effect of amendments.** — The 1998 amendment, effective May 9, 1998, rewrote this section.

**Sec. 15.40.060. Proclamation of special election.** The governor shall issue the proclamation calling the special election at least 80 days before the election. (§ 8.06 ch 83 SLA 1960)

**Sec. 15.40.070. Term of elected senator.** At the special election, a United States senator shall be elected to fill the remainder of the unexpired term. The person elected shall take office on the date the United States senate first meets, convenes, or reconvenes following the certification of the results of the special election by the director. (§ 8.07 ch 83 SLA 1960; am § 159 ch 100 SLA 1980)

**Sec. 15.40.075. Determination of candidates; date of nominations.** (a) Subject to (b) — (d) of this section, candidates for the special election shall be nominated as provided in AS 15.25.

(b) Notwithstanding AS 15.25.040, the declaration of a member of a political party who seeks to become a candidate of the party in the special primary election under AS 15.40.010 is filed by either the actual physical delivery (1) of the declaration in person or by mail at or before 5:00 p.m., prevailing time, on the third day following the proclamation; or (2) by telegram or other reliable electronic means of a copy in substance of the statements made in paragraphs (1) — (5) of the declaration as required by AS 15.25.030(a) at or before 5:00 p.m., prevailing time, on the third day following the proclamation and also the actual physical delivery of the declaration containing paragraphs (1) — (16) as required by AS 15.25.030(a) to the United States Postal Service for delivery by the most expeditious means possible. If the declaration is not received within seven calendar days, the candidate shall be notified of nonreceipt. The candidate shall have the opportunity to refile the declaration with proof that a previous declaration has been filed in a timely manner and in accordance with law.

(c) Notwithstanding AS 15.25.150, an individual who will not be representing a political party shall be nominated by petition transmitted to the director before the 21st day after the vacancy occurs by

- (1) the actual physical delivery of the petition in person;
- (2) mail postmarked not later than midnight of that date; or
- (3) telegram of a copy in substance of the statements made in the petition.

(d) The director shall place on the special election ballot the name of the individual receiving the greatest number of votes by a political party in the special primary election under AS 15.40.010. For purposes of placement of the names of nominees on the special election ballot under this section, all candidates who properly file nominating petitions without designating a political group name shall be treated as candidates of the same political group. (§ 3 ch 30 SLA 1998)

*Secs. 15.40.080 — 15.40.120. Selection of nominees in manner provided for general election; designation of nominees by petition; requirements of petition for no-party candidates and by political parties; selection of political party nominees. [Repealed, § 6 ch 30 SLA 1998.]*

**Sec. 15.40.130. General provision for conduct of special election.** Unless specifically provided otherwise, all provisions regarding the conduct of the general election shall govern the conduct of the special election of United States senators, and all

provisions regarding the conduct of the primary election shall govern the conduct of the special primary election of United States senators, including, but not limited to, provisions concerning voter qualifications; provisions regarding the duties, powers, rights and obligations of the director, of other election officials, and of cities and organized boroughs; provision for notification of the election; provision for payment of election expenses; provisions regarding employees being allowed time from work to vote; provisions for the counting, reviewing, and certification of returns; provisions for the determination of the votes and of recounts, contests, and appeal; and provision for absentee voting. (§ 8.13 ch 83 SLA 1960; am § 162 ch 100 SLA 1980; am § 38 ch 59 SLA 1982; am § 4 ch 30 SLA 1998)

**Effect of amendments.** — The 1998 amendment, effective May 9, 1998, inserted “, and all provisions regarding the conduct of the primary election shall govern the conduct of the special primary elections of United States senators” near the beginning.

**Sec. 15.40.135. Definition.** In AS 15.40.010 — 15.40.135, “special primary election” means an election under AS 15.40.010 for the purpose of determining who will represent a political party in a special election to fill a vacancy of United States senator. (§ 5 ch 30 SLA 1998)

## Article 2. United States House of Representatives.

### Section

- 140. Condition and time of calling special election
- 150. Condition for holding special election with primary
- 160. Proclamation
- 170. Term of elected representative

### Section

- 180. Date of nominations
- 190. Requirements of petition for no-party candidates
- 200. Requirements of party petition
- 210. Selection of party nominees
- 220. General provisions for conduct of special election

**Collateral references.** — 25 Am. Jur. 2d, Elections, § 1 et seq.; 26 Am. Jur. 2d, Elections, § 1 et seq.; 38 Am. Jur. 2d, Governor, §§ 5-7; 63C Am. Jur. 2d, Public Officers and Employees, §§ 87, 90, 103; 77 Am. Jur. 2d, United States, §§ 9-10.

29 C.J.S., Elections, §§ 1(3), 70-74; 91 C.J.S., United States, § 15.

What is “public place” within requirement as to posting of election notices. 90 ALR2d 1210.

**Sec. 15.40.140. Condition and time of calling special election.** When a vacancy occurs in the office of United States representative, the governor shall, by proclamation, call a special election to be held on a date not less than 60, nor more than 90, days after the date the vacancy occurs. However, if the vacancy occurs on a date that is less than 60 days before or is on or after the date of the primary election in general election years, the governor may not call a special election. (§ 8.21 ch 83 SLA 1960; am § 30 ch 69 SLA 1970)

**Sec. 15.40.150. Condition for holding special election with primary.** If the vacancy occurs on a date not less than 60, nor more than 90, days before the date of the primary election, the governor shall, by proclamation, call the special election to be held on the date of the primary election. (§ 8.22 ch 83 SLA 1960; am § 31 ch 69 SLA 1970)

**Sec. 15.40.160. Proclamation.** The governor shall issue the proclamation at least 50 days before the election. (§ 8.23 ch 83 SLA 1960)

**Sec. 15.40.170. Term of elected representative.** At the special election, a United States representative shall be elected to fill the remainder of the unexpired term. The person elected shall take office on the date the United States house of representatives meets, convenes, or reconvenes following the certification of the results of the special election by the director. (§ 8.24 ch 83 SLA 1960; am § 163 ch 100 SLA 1980)

**Sec. 15.40.180. Date of nominations.** Candidates for the special election shall be nominated by petition transmitted by (1) the actual physical delivery of the petition in person; (2) by mail postmarked not later than midnight of the filing date; or (3) by telegram of a copy in substance of the statements made in the petition to the director before the 21st day after the vacancy occurs. (§ 8.25 ch 83 SLA 1960; am § 19 ch 125 SLA 1962; am § 164 ch 100 SLA 1980)

**Sec. 15.40.190. Requirements of petition for no-party candidates.** Petitions for the nomination of candidates not representing a political party shall be signed by qualified voters of the state equal in number to at least one percent of the number of voters who cast ballots in the preceding general election and shall state in substance that which is required for nomination petitions by AS 15.25.180. (§ 8.26 ch 83 SLA 1960; am § 165 ch 100 SLA 1980; am § 35 ch 85 SLA 1986)

**NOTES TO DECISIONS**

**Ballot access requirement.** — The amendment of a similar ballot access requirement increasing minimum signatures required from 1000 to 3 percent of votes cast in last election was held violative of free speech and equal protection clauses of the Alaska Constitution by effectively eliminating a new political party's access to the ballot. *Vogler v. Miller*, 651 P.2d 1 (Alaska 1982).

**Sec. 15.40.200. Requirements of party petition.** Petitions for the nomination of candidates of political parties shall state in substance that the party desires and intends to support the named candidate for the office of United States representative at the special election and requests that the name of the candidate nominated be placed on the ballot. (§ 8.27 ch 83 SLA 1960)

**Sec. 15.40.210. Selection of party nominees.** The nominees of political parties may be selected by the state convention or in any other manner prescribed by the party bylaws, and the petition shall be signed by the chairperson and secretary of the state convention, or if the nominees are selected by the party central committee, the petition shall be signed by the chairperson of the central committee or in any other manner prescribed by the party bylaws. (§ 8.28 ch 83 SLA 1960)

**Revisor's notes.** — In 2000, "chairperson" was substituted for "chairman" in accordance with sec. 95(3), ch. 82, SLA 2000.

**Sec. 15.40.220. General provisions for conduct of special election.** Unless specifically provided otherwise, all provisions regarding the conduct of the general election shall govern the conduct of the special election of the United States representative, including, but not limited to, provisions specifically referred to in AS 15.40.130. (§ 8.29 ch 83 SLA 1960)

**Article 3. Governor and Lieutenant Governor.**

**Section**

- 230. Condition and time of calling special election
- 240. Conditions for holding special election with primary or general election
- 250. Proclamation of special election
- 260. Term of elected governor and lieutenant governor

**Section**

- 270. Date of nominations
- 280. Requirements of petition for no-party candidates
- 290. Requirements of party petition
- 300. Selection of party nominees
- 310. General provisions for conduct of special election

**Collateral references.** — 25 Am. Jur. 2d, Elections, § 1 et seq.; 26 Am. Jur. 2d, Elections, § 1 et seq.; 38 Am. Jur. 2d, Governor, § 2.  
 29 C.J.S., Elections, §§ 1(3), 70-74; 81A C.J.S., States, §§ 87-89.

What is "public place" within requirement as to posting of election notices. 90 ALR2d 1210.

**Sec. 15.40.230. Condition and time of calling special election.** When a person appointed to succeed to the office of lieutenant governor succeeds to the office of acting governor, the acting governor shall, by proclamation, call a special election to be held on a date not less than 60, nor more than 90, days after the date the vacancy in the office of the governor occurred. However, if the vacancy occurs on a date that is less than 60 days before or is on or after the date of the primary election in years in which a governor is regularly elected, the acting governor shall serve the remainder of the unexpired term and may not call a special election. (§ 8.31 ch 83 SLA 1960; am § 32 ch 69 SLA 1970)

**Cross references.** — For special election in case of second vacancy in office of governor, see AS 44.19.044; for simultaneous vacancies, see AS 44.19.046.

**Sec. 15.40.240. Conditions for holding special election with primary or general election.** If the vacancy occurs on a date not less than 60, nor more than 90, days before the date of the primary election in years in which a governor is regularly elected or if the vacancy occurs on a date not less than 60, nor more than 90, days before the date of the primary election or general election in election years in which a governor is not regularly elected, the acting governor shall, by proclamation, call the special election to be held on the date of the primary election or general election. (§ 8.32 ch 83 SLA 1960; am § 33 ch 69 SLA 1970)

**Sec. 15.40.250. Proclamation of special election.** The acting governor shall issue the proclamation at least 50 days before the election. (§ 8.33 ch 83 SLA 1960)

**Sec. 15.40.260. Term of elected governor and lieutenant governor.** At the special election, a governor and a lieutenant governor shall be elected to fill the remainder of the unexpired terms and shall take office on the date the results of the special election are certified. (§ 8.34 ch 83 SLA 1960)

**Sec. 15.40.270. Date of nominations.** Candidates for the special election shall be nominated by petition transmitted by (1) actual physical delivery of the petition in person; (2) by mail postmarked not later than midnight of the filing date; or (3) by telegram of a copy in substance of the statements made in the petition to the director before the 21st day after the vacancy occurs. (§ 8.35 ch 83 SLA 1960; am § 20 ch 125 SLA 1962; am § 166 ch 100 SLA 1980)

**Sec. 15.40.280. Requirements of petition for no-party candidates.** Petitions for the nomination of candidates not representing a political party shall be signed by qualified voters of the state equal in number to at least one percent of the number of voters who cast ballots in the preceding general election, shall include nominees for the office of governor and lieutenant governor, and shall state in substance that which is required for nomination petitions by AS 15.25.180. (§ 8.36 ch 83 SLA 1960; am § 167 ch 100 SLA 1980; am § 36 ch 85 SLA 1986)

**Sec. 15.40.290. Requirements of party petition.** Petitions for the nomination of candidates of political parties shall state in substance that the party desires and intends to support the named candidates for the offices of governor and lieutenant governor at the

special election and requests that the names of the two candidates nominated be placed on the ballot. (§ 8.37 ch 83 SLA 1960)

**Sec. 15.40.300. Selection of party nominees.** The nominees of political parties may be selected by state convention or in any other manner prescribed by the party bylaws, and the petition shall be signed by the chairperson and secretary of the state convention, or, if the nominees are selected by the party central committee, the petition shall be signed by the state chairperson of the political party or in any other manner prescribed by the party bylaws. (§ 8.38 ch 83 SLA 1960; am § 62 ch 82 SLA 2000)

**Effect of amendments.** — The 2000 amendment, effective July 1, 2000, substituted "by the state chairperson of the political party" for "by the chairman of the central committee" near the end of the section and made stylistic changes.

**Sec. 15.40.310. General provisions for conduct of special election.** Unless specifically provided otherwise, all provisions regarding the conduct of the general election shall govern the conduct of the special election of the governor and lieutenant governor, including, but not limited to, provisions specifically referred to in AS 15.40.130. (§ 8.39 ch 83 SLA 1960)

### Article 4. Legislature.

**Section**

- 320. Condition and time for filling vacancy by appointment
- 330. Qualification and confirmation of appointee
- 340. Date of office of appointee
- 350. Procedure upon rejection
- 360. Term of appointed representative
- 370. Conditions for full, unexpired term senate appointment
- 380. Conditions for part-term senate appointment and special election

**Section**

- 390. Date of special election
- 400. Proclamation of special election
- 410. Term of elected senator
- 420. Selection of nominees in manner provided for general election
- 430. Designation of nominees by petition
- 440. Requirements of petition for no-party candidates
- 450. Requirements of petition by political party
- 460. Selection of political party nominees
- 470. General provision for conduct of special election

**Collateral references.** — 25 Am. Jur. 2d, Elections, § 1 et seq.; 26 Am. Jur. 2d, Elections, § 1 et seq.; 38 Am. Jur. 2d, Governor, §§ 5-7; 63C Am. Jur. 2d, Public Officers and Employees, §§ 87, 90, 103-121.

29 C.J.S., Elections, §§ 1(3), 70-74; 81A C.J.S., States, §§ 43, 71, 87.  
What is "public place" within requirement as to posting of election notices. 90 ALR2d 1210.

**Sec. 15.40.320. Condition and time for filling vacancy by appointment.** When a vacancy occurs in the state legislature, the governor, within 30 days, shall appoint a qualified person to fill the vacancy. However, if the remainder of the term of the predecessor in office will expire or if a vacancy in the state senate will be filled by a special election before the legislature will next meet, convene, or reconvene, the governor may not fill the vacancy. (§ 8.51 ch 83 SLA 1960)

**Sec. 15.40.330. Qualification and confirmation of appointee.** (a) The appointee shall meet the qualifications of a member of the legislature as prescribed in § 2, art. II of the state constitution, shall be a member of the same political party as that which nominated the predecessor in office, and shall be subject to confirmation by a majority of the members of the legislature who are members of the same political party which nominated the predecessor in office and of the same house as was the predecessor in office. If the predecessor in office was not nominated by a political party or if no other member of the predecessor's political party is a member of the predecessor's house of the legislature, the governor may appoint any qualified person. If the appointee is not a member of a political party, the appointment is not subject to confirmation. If the

bribe receiving, commercial bribery, bribery, receiving a bribe, perjury, perjury by inconsistent statements, endangering the welfare of a minor, escape, promoting contraband, interference with official proceedings, receiving a bribe by a witness or a juror, jury tampering, misconduct by a juror, tampering with physical evidence, hindering prosecution, terroristic threatening, riot, criminal possession of explosives, unlawful furnishing of explosives, promoting prostitution, criminal mischief, misconduct involving a controlled substance or an imitation controlled substance, permitting an escape, promoting gambling, possession of gambling records, distribution of child pornography, and possession of child pornography;

(8) "general election" means the election held on the Tuesday after the first Monday in November of even-numbered years;

(9) "hand-counted ballot" means a ballot designated to be counted by hand in precincts where precinct tabulators are not available;

(10) "house district" means one of the districts described in art. VI, sec. 1, Constitution of the State of Alaska;

(11) "judicial district" means one of the districts defined in AS 22.10.010;

(12) "lieutenant governor" includes an appointed lieutenant governor, governor, or acting governor if a vacancy has occurred in the office of lieutenant governor or governor;

(13) "limited political party" means a political group which organizes for the purpose of selecting candidates for electors for President and Vice-President;

(14) "local election" means a regular or special election held by a borough, city, school district, or regional educational attendance area;

(15) "master register" means the list of all registered voters in the state which is maintained by the director of elections;

(16) "member of a political party" means a person who supports the political program of a party;

(17) "oath" includes affirmation;

(18) "official registration list" means the list of all voters qualified to vote at a particular election compiled in accordance with AS 15.07.125;

(19) "party district committee" means the political party committee that performs the executive function for a region representing an area larger than a precinct and smaller than the state;

(20) "political group" means a group of organized voters which represents a political program and which does not qualify as a political party;

(21) "political party" means an organized group of voters that represents a political program and that either nominated a candidate for governor who received at least three percent of the total votes cast for governor at the preceding general election or has registered voters in the state equal in number to at least three percent of the total votes cast for governor at the preceding general election;

(22) "precinct" means the territory within which resident voters may cast votes at one polling place;

(23) "precinct tabulators" means an electronic optical scanning ballot tabulation system or other tabulator designated by the director to electronically count ballots.

(24) "presidential election year" means a year in which the presidential electors are elected;

(25) "proposition" means an initiative, referendum, or constitutional amendment submitted at an election to the public for vote;

(26) "qualified voter" means a person who has the qualification of a voter and is not disqualified as provided by art. V, § 2, of the state constitution and AS 15.05.030;

(27) "question" means an issue placed on the ballot to determine whether a judge or justice shall be accepted or rejected, whether a constitutional convention shall be called, whether a state debt shall be contracted, or whether a state official shall be recalled;

## Selected States' Statutory Definition of "Political Party"

Following are twenty states' statutory definitions of "political party." This information was compiled through the combined efforts of Tim Storey at the National Conference of State Legislatures and searches we conducted of online statutory resources.

### ALABAMA

#### TITLE 17. ELECTIONS CHAPTER 16. PRIMARY ELECTIONS ARTICLE 1. GENERAL PROVISIONS

Ala. Code § 17-16-2 (2003)

#### Political parties; defined

An assemblage or organization of electors which, at the general election for state and county officers then next preceding the primary, casts more than 20 percent of the entire vote cast in any county is hereby declared to be a political party within the meaning of this chapter within such county; and an assemblage or organization of electors which, at the general election for state officers then next preceding the primary, casts more than 20 percent of the entire vote cast in the state is hereby declared to be a political party within the meaning of this chapter for such state.

#### CASE NOTES

#### CONSTITUTIONALITY.

Section 17-7-1(a)(2) as applied to those political parties ineligible to hold primary elections under Alabama law, violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States; and, accordingly it cannot be enforced against political parties ineligible to hold primary elections under Alabama law in a way that requires such parties to certify their candidates prior to the last date on which any political party eligible to hold a primary election may certify any of its candidates where no contest is filed. *Whig Party v. Siegelman*, 500 F. Supp. 1195 (N.D. Ala. 1980).

### ALASKA

#### TITLE 15. ELECTIONS CHAPTER 60. GENERAL PROVISIONS

Alaska Stat. § 15.60.010 (2003)

#### Definitions

(21) "political party" means an organized group of voters that represents a political program and that either nominated a candidate for governor who received at least three percent of the total votes cast for governor at the preceding general election or has registered voters in the state equal in number to at least three percent of the total votes cast for governor at the preceding general election;

## ARKANSAS

### TITLE 7. ELECTIONS CHAPTER 1. GENERAL PROVISIONS

Ark. Code Ann. § 7-1-101 (2003)

#### Definitions

(18) (A) "Political party" means any group of voters which at the last-preceding general election polled for its candidate for Governor in the state or nominees for presidential electors at least three percent (3%) of the entire vote cast for the office.

(B) No group of electors shall assume a name or designation which is so similar in the opinion of the Secretary of State to that of an existing political party as to confuse or mislead the voters at an election.

(C) When any political party fails to obtain three percent (3%) of the total votes cast at an election for the office of Governor or nominees for presidential electors, it shall cease to be a political party;

## CALIFORNIA

### ELECTIONS CODE DIVISION 5. Political Party Qualifications CHAPTER 2. Parties Qualified to Participate in the Primary Election

Cal Elec Code § 5100 (2003)

#### Qualification of party to participate in primary election

A party is qualified to participate in any primary election under any of the following conditions:

(a) If at the last preceding gubernatorial election there was polled for any one of its candidates for any office voted on throughout the state, at least 2 percent of the entire vote of the state.

(b) If on or before the 135th day before any primary election, it appears to the Secretary of State, as a result of examining and totaling the statement of voters and their political affiliations transmitted to him or her by the county elections officials, that voters equal in number to at least 1 percent of the entire vote of the state at the last preceding gubernatorial election have declared their intention to affiliate with that party.

(c) If on or before the 135th day before any primary election, there is filed with the Secretary of State a petition signed by voters, equal in number to at least 10 percent of the entire vote of the state at the last preceding gubernatorial election, declaring that they represent a proposed party, the name of which shall be stated in the petition, which proposed party those voters desire to have participate in that primary election. This petition shall be circulated, signed, verified and the signatures of the voters on it shall be certified to and transmitted to the Secretary of State by the county elections officials substantially as provided for initiative petitions. Each page of the petition shall bear a caption in 18-point boldface type, which caption shall be the name of the proposed party followed by the words "Petition to participate in the primary election."

## COLORADO

### TITLE 1. ELECTIONS GENERAL, PRIMARY, AND CONGRESSIONAL VACANCY ELECTIONS ARTICLE 1. ELECTIONS GENERALLY PART 1. DEFINITIONS AND GENERAL PROVISIONS

Colo. Rev. Stat. § 1-1-104 (2003)

#### Definitions

(22) "Major political party" means any political party that at the last preceding gubernatorial election was represented on the official ballot either by political party candidates or by individual nominees and whose candidate at the last preceding gubernatorial election received at least ten percent of the total gubernatorial votes cast.

(22.5) "Major political party affiliation" means an elector's decision to affiliate with a major political party, as defined in subsection (22) of this section.

(25) "Minor political party" means a political party other than a major political party that satisfies one of the conditions set forth in section 1-4-1303 (1) or has submitted a sufficient petition in accordance with section 1-4-1302.

(23.3) "Nonpartisan election" means an election that is not a partisan election.

(23.6) "Partisan election" means an election in which the names of the candidates are printed on the ballot along with their affiliation. The existence of a partisan election for the state or for a political subdivision as a part of a coordinated election does not cause an otherwise nonpartisan election of another political subdivision to become a partisan election.

(24) "Political organization" means any group of registered electors who, by petition for nomination of an unaffiliated candidate as provided in section 1-4-802, places upon the official general election ballot nominees for public office.

(25) "Political party" means either a major political party or a minor political party.

## CONNECTICUT

Conn. Gen. Stat. § 9.372 (2003)

Definitions. The following terms, as used in this chapter and sections 9-51 to 9-67, inclusive, 9-169e, 9-217, 9-236 and 9-361, shall have the following meanings:

- (1) "Caucus" means any meeting, at a designated hour and place, or at designated hours and places, of the enrolled members of a political party within a municipality or political subdivision thereof for the purpose of selecting party-endorsed candidates for a primary to be held by such party or for the purpose of transacting other business of such party;
- (2) "Convention" means a meeting of delegates of a political party held for the purpose of designating the candidate or candidates to be endorsed by such party in a primary of such party for state or district office or for the purpose of transacting other business of such party;
- (3) "District" means any geographic portion of the state which crosses the boundary or boundaries between two or more towns;
- (4) "District office" means an elective office for which only the electors in a district, as defined in subdivision (3) of this section, may vote;
- (5) "Major party" means (A) a political party or organization whose candidate for Governor at the last-preceding election for Governor received, under the designation of that political party or organization, at least twenty per cent of

the whole number of votes cast for all candidates for Governor or (B) a political party having, at the last- preceding election for Governor, a number of enrolled members on the active registry list equal to at least twenty per cent of the total number of enrolled members of all political parties on the active registry list in the state;

(6) "Minor party" means a political party or organization which is not a major party and whose candidate for the office in question received at the last-preceding regular election for such office, under the designation of that political party or organization, at least one per cent of the whole number of votes cast for all candidates for such office at such election;

## DELAWARE

### TITLE 15. ELECTIONS PART I. ADMINISTRATIVE AGENCIES CHAPTER 1. PURPOSE AND MEANING OF ELECTION LAWS

Del. Code. Ann. 15, § 101 (2003)

(13) "Party" or "political party" means any political organization which elects a state committee and officers of a state committee, by a state convention composed of delegates elected from each representative district in which the party has registered members, and which nominates candidates for electors of President and Vice-President, or nominates candidates for offices to be decided at the general election. All political parties shall be divided into 2 classes:

a. "Major political party" means any political party which, as of December 31 of the year immediately preceding any general election year, has registered in the name of that party voters equal to at least 5 percent of the total number of voters registered in the State.

b. "Minor political party" means any political party which does not qualify as a major political party.

## FLORIDA

### TITLE 9. ELECTORS AND ELECTIONS CHAPTER 97. QUALIFICATION AND REGISTRATION OF ELECTORS PART I. GENERAL PROVISIONS

Fla. Stat. § 97.021 (2003)

#### FIRST OF TWO VERSIONS OF THIS SECTION

§ 97.021. Definitions (effective until January 1, 2004)

(14) "Minor political party" is any group as defined in this subsection which on January 1 preceding a primary election does not have registered as members 5 percent of the total registered electors of the state. Any group of citizens organized for the general purposes of electing to office qualified persons and determining public issues under the democratic processes of the United States may become a minor political party of this state by filing with the department a certificate showing the name of the organization, the names of its current officers, including the members of its executive committee, and a copy of its constitution or bylaws. It shall be the duty of the minor political party to notify the department of any changes in the filing certificate within 5 days of such changes.

### TITLE 9. ELECTORS AND ELECTIONS CHAPTER 103. PRESIDENTIAL ELECTORS; POLITICAL PARTIES; EXECUTIVE COMMITTEES AND MEMBERS

Political parties

- (1) Each political party of the state shall be represented by a state executive committee. County executive committees and other committees may be established in accordance with the rules of the state executive committee. A political party may provide for the selection of its national committee and its state and county executive committees in such manner as it deems proper. Unless otherwise provided by party rule, the county executive committee of each political party shall consist of at least two members, a man and a woman, from each precinct, who shall be called the precinct committeeman and committeewoman. For counties divided into 40 or more precincts, the state executive committee may adopt a district unit of representation for such county executive committees. Upon adoption of a district unit of representation, the state executive committee shall request the supervisor of elections of that county, with approval of the board of county commissioners, to provide for election districts as nearly equal in number of registered voters as possible. Each county committeeman or committeewoman shall be a resident of the precinct from which he or she is elected.
- (2) The state executive committee of a political party may by resolution provide a method of election of national committeemen and national committeewomen and of nomination of presidential electors, if such party is entitled to a place on the ballot as otherwise provided for presidential electors, and may provide also for the election of delegates and alternates to national conventions.
- (3) The state executive committee of each political party shall file with the Department of State the names and addresses of its chair, vice chair, secretary, treasurer, and members and shall file a copy of its constitution, bylaws, and rules and regulations with the Department of State. Each county executive committee shall file with the state executive committee and with the supervisor of elections the names and addresses of its officers and members.
- (4) Any political party other than a minor political party may by rule provide for the membership of its state or county executive committee to be elected for 4-year terms at the first primary election in each year a presidential election is held. The terms shall commence on the first day of the month following each presidential general election; but the names of candidates for political party offices shall not be placed on the ballot at any other election. The results of such election shall be determined by a plurality of the votes cast. In such event, electors seeking to qualify for such office shall do so with the Department of State or supervisor of elections not earlier than noon of the 57th day, or later than noon of the 53rd day, preceding the first primary election. The outgoing chair of each county executive committee shall, within 30 days after the committee members take office, hold an organizational meeting of all newly elected members for the purpose of electing officers. The chair of each state executive committee shall, within 60 days after the committee members take office, hold an organizational meeting of all newly elected members for the purpose of electing officers.
- (5) In the event no county committeeman or committeewoman is elected, or a vacancy occurs from any other cause in any county executive committee, the county chair shall call a meeting of the county executive committee by due notice to all members, and the vacancy shall be filled by a majority vote of those present at a meeting at which a quorum is present. Such vacancy shall be filled by a qualified member of the political party residing in the district where the vacancy occurred and for the unexpired portion of the term.
- (6) (a) In addition to the members provided for in subsection (1), each county executive committee shall include all members of the Legislature who are residents of the county and members of their respective political party and who shall be known as at-large committeemen and committeewomen.  
  
(b) Each state executive committee shall include, as at-large committeemen and committeewomen, all members of the United States Congress representing the State of Florida who are members of the political party, all statewide elected officials who are members of the party, and the President of the Senate or the Minority Leader in the Senate, and the Speaker of the House of Representatives or the Minority Leader in the House of Representatives, whichever is a member of the political party, and 20 members of the Legislature who are members of the political party. Ten of the legislators shall be appointed with the concurrence of the state chair of the respective party, as follows: five to be appointed by the President of the Senate; five by the Minority Leader in the Senate; five by the Speaker of the House of Representatives; and five by the Minority Leader in the House.

(c) When a political party allows any member of the state executive committee to have more than one vote per person, other than by proxy, in a matter coming before the state executive committee, the 20 members of the Legislature appointed under paragraph (b) shall not be appointed to the state executive committee and the following elected officials who are members of that political party shall be appointed and shall have the following votes:

1. Governor: a number equal to 15 percent of votes cast by state executive committeemen and committeewomen;
2. Lieutenant Governor: a number equal to 5 percent of the votes cast by state executive committeemen and committeewomen;
3. Each member of the United States Senate representing the state: a number equal to 10 percent of the votes cast by state executive committeemen and committeewomen;
4. Attorney General: a number equal to 5 percent of the votes cast by state executive committeemen and committeewomen;
5. Chief Financial Officer: a number equal to 5 percent of the votes cast by state executive committeemen and committeewomen;
6. Commissioner of Agriculture: a number equal to 5 percent of the votes cast by state executive committeemen and committeewomen;
7. President of the Senate: a number equal to 10 percent of the votes cast by state executive committeemen and committeewomen;
8. Minority leader of the Senate: a number equal to 10 percent of the votes cast by state executive committeemen and committeewomen;
9. Speaker of the House of Representatives: a number equal to 10 percent of the votes cast by state executive committeemen and committeewomen;
10. Minority leader of the House of Representatives: a number equal to 10 percent of the votes cast by state executive committeemen and committeewomen; and
11. Each member of the United States House of Representatives representing the state: a number equal to 1 percent of the votes cast by state executive committeemen and committeewomen.

(d) 1. The governing body of each state executive committee as defined by party rule shall include as at-large committeemen and committeewomen all statewide elected officials who are members of such political party; up to four members of the United States Congress representing the state who are members of such political party and who shall be appointed by the state chair on the basis of geographic representation; the permanent presiding officer selected by the members of each house of the Legislature who are members of such political party; and the minority leader selected by the members of each house of the Legislature who are members of such political party.

2. All members of the governing body shall have one vote per person.

(7) Members of the state executive committee or governing body may vote by proxy.

(8) The conducting of official business in connection with one's public office constitutes good and sufficient reason for failure to attend county or state executive committee meetings or a meeting of the governing body.

## GEORGIA

### TITLE 21. ELECTIONS CHAPTER 2. ELECTIONS AND PRIMARIES GENERALLY ARTICLE 1. GENERAL PROVISIONS

Ga. Code Ann. § 21-2-2 (2002)

#### Definitions

(25) "Political party" or "party" means any political organization which at the preceding:

(A) Gubernatorial election nominated a candidate for Governor and whose candidate for Governor at such election polled at least 20 percent of the total vote cast in the state for Governor; or

(B) Presidential election nominated a candidate for President of the United States and whose candidates for presidential electors at such election polled at least 20 percent of the total vote cast in the nation for that office.

## HAWAII

### DIVISION 1. GOVERNMENT TITLE 2. ELECTIONS CHAPTER 11. ELECTIONS, GENERALLY PART V. PARTIES

Haw. Rev. Stat. § 11-61 (2003)

#### Political party" defined

(a) The term "political party" means any party which has qualified as a political party under sections 11-62 and 11-64 and has not been disqualified by this section. A political party shall be an association of voters united for the purpose of promoting a common political end or carrying out a particular line of political policy and which maintains a general organization throughout the State, including a regularly constituted central committee and county committees in each county other than Kalawao.

(b) Any party which does not meet the following requirements or the requirements set forth in sections 11-62 to 11-64, shall be subject to disqualification:

(1) A party must have had candidates running for election at the last general election for any of the offices listed in paragraph (2) whose terms had expired. This does not include those offices which were vacant because the incumbent had died or resigned before the end of the incumbent's term; and

(2) The party received at least ten per cent of all votes cast:

(A) For any of the offices voted upon by all the voters in the State; or

(B) In at least fifty per cent of the congressional districts; or

(3) The party received at least four per cent of all the votes cast for all the offices of state senator statewide; or

(4) The party received at least four per cent of all the votes cast for all the offices of state representative statewide; or

(5) The party received at least two per cent of all the votes cast for all the offices of state senate and all the offices of

state representative combined statewide.

Hawaii makes no provision for write-in voting in its primary or general elections; however, the Hawaii election law system provides for easy access to the ballot until the cutoff date for the filing of nominating petitions, two months before the primary; consequently, any burden on voters' freedom of choice and association is borne only by those who fail to identify their candidate of choice until days before the primary. *Burdick v. Takushi*, 504 U.S. 428, 112 S. Ct. 2059, 119 L. Ed. 2d 245 (1992). Hawaii's interest in avoiding the possibility of unrestrained factionalism at the general election provides adequate justification for its ban on write-in voting in November. *Burdick v. Takushi*, 504 U.S. 428, 112 S. Ct. 2059, 119 L. Ed. 2d 245 (1992). When a State's ballot access laws pass constitutional muster as imposing only reasonable burdens on First and Fourteenth Amendment rights--as do Hawaii's election laws--a prohibition on write-in voting will be presumptively valid, since any burden on the right to vote for the candidate of one's choice will be light and normally will be counterbalanced by the very state interests supporting the ballot access scheme. *Burdick v. Takushi*, 504 U.S. 428, 112 S. Ct. 2059, 119 L. Ed. 2d 245 (1992).

Hawaii promotes the two-stage, primary-general election process of winnowing out candidates by permitting the unopposed victors in certain primaries to be designated office holders; this focuses the attention of voters upon contested races in the general election and this would not be possible, absent the write-in voting ban. *Burdick v. Takushi*, 504 U.S. 428, 112 S. Ct. 2059, 119 L. Ed. 2d 245 (1992).

Cited in *Hustace v. Doi*, 60 Haw. 282, 588 P.2d 915 (1978).

#### OPINIONS OF ATTORNEY GENERAL

Change of party name—Although amendments, including name changes, made by a corporation are governed by statute, which provides for amendment only after two-thirds vote of all stockholders, amendments by associations, such as political parties, are governed by existing rules as enacted in their constitution and bylaws; and where the constitution and bylaws of a political party permit amendments to be made to it by the executive committee, a name change made by the executive committee of the party appears to be permissible. Op. Att'y Gen. No. 82-1 (1982).

Use of "democratic" in party name—The initial registrant of the name "Democratic Party of Hawaii" may exclusively refer to itself by this name, but the state may not prohibit the use of the word "Democratic" when another party seeks to use that as part of its party name, such as "The Independent Democratic Party of Hawaii." Op. Att'y Gen. No. 82-1 (1982).

Blank ballots should not be counted as votes cast when determining the qualifications of political parties under subsection (b). Op. Att'y Gen. No. 81-6 (1981).

### IDAHO

#### GENERAL LAWS TITLE 34. ELECTIONS CHAPTER 1. DEFINITIONS

Idaho Code § 34-109 (2003)

"Political party" defined

"Political party" means an affiliation of electors representing a political group under a given name as authorized by law.

#### GENERAL LAWS TITLE 34. ELECTIONS CHAPTER 5. POLITICAL PARTIES -- ORGANIZATION

Idaho Code § 34-501 (2003)

"Political party" defined -- Procedures for creation of a political party

(1) A "political party" within the meaning of this act, is an organization of electors under a given name. A political party shall be deemed created and qualified to participate in elections in any of the following three (3) ways:

(a) By having three (3) or more candidates for state or national office listed under the party name at the last general election, provided that those individuals seeking the office of president, vice president and president elector shall be considered one candidate, or

(b) By polling at the last general election for any one of its candidates for state or national office at least three per cent (3%) of the aggregate vote cast for governor or for presidential electors.

(c) By an affiliation of electors who shall have signed a petition which shall:

(A) State the name of the proposed party in not more than six (6) words;

(B) State that the subscribers thereto desire to place the proposed party on the ballot;

(C) Have attached thereto a sheet or sheets containing the signatures of at least a number of qualified electors equal to two per cent (2%) of the aggregate vote cast for presidential electors in the state at the previous general election at which presidential electors were chosen;

(D) Be filed with the secretary of state on or before August 30 of even numbered years;

(E) The format of the signature petition sheets shall be prescribed by the secretary of state and shall be patterned after, but not limited to, such sheets as used for state initiative and referendum measures;

(F) The petitions and signatures so submitted shall be verified in the manner prescribed in section 34-1807, Idaho Code.

(G) The petition shall be circulated no earlier than August 30 of the year preceding the general election.

(2) Upon certification by the secretary of state that the petition has met the requirements of this act such party shall, under the party name chosen, have all the rights of a political party whose ticket shall have been on the ballot at the preceding general election.

The newly certified party shall proceed to hold a state convention in the manner provided by law; provided, that at the initial convention of any such political party, all members of the party shall be entitled to attend the convention and participate in the election of officers and the nominations of candidates. Thereafter the conduct of any subsequent convention shall be as provided by law.

## ILLINOIS

### CHAPTER 10. ELECTIONS ELECTION CODE

#### ARTICLE 8. NOMINATIONS OF MEMBERS OF THE GENERAL ASSEMBLY

10 Ill. Comp. Stat. 5/8-2 (2003)

Sec. 8-2. The term "political party" as used in this article shall mean a political party which, at the next preceding election for governor, polled at least five per cent of the entire vote cast in the State; Provided, that no political

organization or group shall be qualified as a political party hereunder, or given a place on a ballot, which organization or group is associated, directly or indirectly, with Communist, Fascist, Nazi or other un-American principles and engages in activities or propaganda designed to teach subservience to the political principles and ideals of foreign nations or the overthrow by violence of the established constitutional form of government of the United States and the State of Illinois.

## ANALYSIS

### CHANGING POLITICAL PARTIES

Restrictions upon party switching by political candidates and establishment of the periods of time involved are, within constitutional limitations, matters for legislative determination. *Sperling v. County Officers Electoral Bd.*, 57 Ill. 2d 81, 309 N.E.2d 589 (1974).

### ESTABLISHED PARTIES

An individual or group of less than five percent has a right to place a name upon the primary ballot by petition with the requisite number of signatures, and if such group or political party in the ensuing election polls more than five percent of the vote in such election, then it becomes an "established political party" for the subdivision in which the election was held and is entitled to the identical rights to which political parties are entitled with a like percentage of votes. *Progressive Party v. Flynn*, 400 Ill. 102, 79 N.E.2d 516 (1948).

## INDIANA

Title 3  
Section 5  
Chapter 2

Ind. Code Ann. § 3-5-2-5.5 (2003)

"Bona fide political party"

Sec. 5.5. "Bona fide political party" means:

- (1) a major political party; or
- (2) a political party that has:
  - (A) nominated at least one (1) candidate for political office during the preceding five (5) years;
  - (B) held a convention; or
  - (C) raised money and filed the financial reports required by law.

As added by P.L.3-1993, SEC.3.

## KANSAS

### CHAPTER 25. ELECTIONS ARTICLE 39. FILLING VACANCIES IN OFFICES AND CANDIDACIES

Kan. Stat. Ann. § 25-3901 (2002)

Definitions.

As used in this act, unless the context otherwise requires, the words and terms defined in article 25 of chapter 25 of Kansas Statutes Annotated shall have the meaning therein ascribed thereto, to the extent that the same are not in conflict with the following:

- (a) "District office" means the office of district judge, district magistrate judge, county commissioner, state

representative, state senator, district attorney or county attorney.

(b) "Party" means a political party having a state and national organization and of which the officer or candidate whose position has become vacant was a member.

(c) "Party candidacy" means a candidate of a political party for a party nomination at a primary election or the party candidate at a general election.

(d) "General election" means the election held on the Tuesday succeeding the first Monday in November in even-numbered years.

(e) "Primary election" means the election held on the first Tuesday in August in even-numbered years.

(f) "County chairman" or "county chairperson" means the chairperson of the county central committee, provided to be elected under K.S.A. 25-3802 and amendments thereto, of the political party of which the officer or candidate whose position has become vacant was a member.

## IOWA

### TITLE II. ELECTIONS AND OFFICIAL DUTIES SUBTITLE 1. ELECTIONS CHAPTER 43. PARTISAN NOMINATIONS -- PRIMARY ELECTION

Iowa Code § 43.2 (2003)

#### Definitions.

The term "political party" shall mean a party which, at the last preceding general election, cast for its candidate for president of the United States or for governor, as the case may be, at least two percent of the total vote cast for all candidates for that office at that election. It shall be the responsibility of the state commissioner to determine whether any organization claiming to be a **political party** qualifies as such under the foregoing **definition**.

A political organization which is not a "political party" within the meaning of this section may nominate candidates and have the names of such candidates placed upon the official ballot by proceeding under chapters 44 and 45.

As used in this chapter, unless the context otherwise requires, "book", "list", "record", or "schedule" kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

## NORTH CAROLINA

### CHAPTER 163. ELECTIONS AND ELECTION LAWS SUBCHAPTER 04 . POLITICAL PARTIES ARTICLE 9. POLITICAL PARTY DEFINITION

N.C. Gen. Stat. § 163-96 (2003)

(a) **Definition.** -- A **political party** within the meaning of the election laws of this State shall be either:

(1) Any group of voters which, at the last preceding general State election, polled for its candidate for Governor, or for presidential electors, at least ten percent (10%) of the entire vote cast in the State for Governor or for presidential

electors; or

(2) Any group of voters which shall have filed with the State Board of Elections petitions for the formulation of a new political party which are signed by registered and qualified voters in this State equal in number to two percent (2%) of the total number of voters who voted in the most recent general election for Governor. Also the petition must be signed by at least 200 registered voters from each of four congressional districts in North Carolina. To be effective, the petitioners must file their petitions with the State Board of Elections before 12:00 noon on the first day of June preceding the day on which is to be held the first general State election in which the new political party desires to participate. The State Board of Elections shall forthwith determine the sufficiency of petitions filed with it and shall immediately communicate its determination to the State chairman of the proposed new political party.

(b) Petitions for New Political Party. -- Petitions for the creation of a new political party shall contain on the heading of each page of the petition in bold print or all in capital letters the words: "THE UNDERSIGNED REGISTERED VOTERS IN COUNTY HEREBY PETITION FOR THE FORMATION OF A NEW POLITICAL PARTY TO BE NAMED AND WHOSE STATE CHAIRMAN IS , RESIDING AT AND WHO CAN BE REACHED BY TELEPHONE AT THE SIGNERS OF THIS PETITION INTEND TO ORGANIZE A NEW POLITICAL PARTY TO PARTICIPATE IN THE NEXT SUCCEEDING GENERAL ELECTION."

All printing required to appear on the heading of the petition shall be in type no smaller than 10 point or in all capital letters, double spaced typewriter size. In addition to the form of the petition, the organizers and petition circulators shall inform the signers of the general purpose and intent of the new party.

The petitions must specify the name selected for the proposed political party. The State Board of Elections shall reject petitions for the formation of a new party if the name chosen contains any word that appears in the name of any existing political party recognized in this State or if, in the Board's opinion, the name is so similar to that of an existing political party recognized in this State as to confuse or mislead the voters at an election.

The petitions must state the name and address of the State chairman of the proposed new political party.

(b1) Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained, and it shall be the chairman's duty:

(1) To examine the signatures on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county.

(2) To attach to the petition his signed certificate

a. Stating that the signatures on the petition have been checked against the registration records and

b. Indicating the number found qualified and registered to vote in his county.

(3) To return each petition, together with the certificate required by the preceding subdivision, to the person who presented it to him for checking.

The group of petitioners shall submit the petitions to the chairman of the county board of elections in the county in which the signatures were obtained no later than 5:00 P.M. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections as provided in subsection (a)(2) of this section. Provided the petitions are timely submitted, the chairman of the county board of elections shall proceed to examine and verify the signatures under the provisions of this subsection. Verification shall be completed within two weeks from the date such petitions are presented.

## KENTUCKY

### TITLE X. ELECTIONS CHAPTER 118. CONDUCT OF ELECTIONS

KRS § 118.015 (2003)

#### Definitions

As used in this chapter, unless the context otherwise requires:

(1) A "political party" is an affiliation or organization of electors representing a political policy and having a constituted authority for its government and regulation, and whose candidate received at least twenty percent (20%) of the total vote cast at the last preceding election at which presidential electors were voted for;

## MAINE

### Title 21-A: Elections Chapter 1: General Provisions Subchapter 1: Definitions, Construction, and Application

Me. Rev. Stat. Ann. Tit. 21, § 1.1 (2003)

#### Definitions

22. Major party. "Major party" means a political party polling the greatest or the next greatest number of votes cast for Governor at the last gubernatorial election. [1985, c. 161, §6 (new).]

24. Minor party. "Minor party" means a political party other than a major party. [1985, c. 161, §6 (new).]

28. Party. "Party" means a political organization which has qualified to participate in a primary or general election under chapter 5. [1985, c. 161, §6 (new).]

### Title 21-A: Elections Chapter 5: Nominations Subchapter 1: By Political Parties Article 1: Party Qualification

Me. Rev. Stat. Ann. Tit. 21, § 5.1 (2003)

#### Qualified parties

1. Primary election. A party qualifies to participate in a primary election if its designation was listed on the ballot of either of the 2 preceding general elections and if:

A. The party held municipal caucuses as prescribed by Article II in at least one municipality in each county in the State during the election year in which the designation was listed on the ballot and any interim election year and fulfills this same requirement during the year of the primary election; [1999, c. 450, §1 (amd).]

B. The party held a state convention as prescribed by Article III during the election year in which the designation was