SLS 10RS-307

## **ORIGINAL**

Regular Session, 2010

SENATE BILL NO. 409

BY SENATOR LAFLEUR

SECRETARY OF STATE. Provides for the election of secretary of state by the legislature. (See Act)

1	AN ACT
2	To amend and reenact RS. 18:18.1(A), 421(A), and 1483(11), R.S. 36:741(B) and 743, R.S.
3	39:1401(B)(6), and R.S. 49:206 and 221.1, and to enact R.S. 18:17 and 21, relative
4	to the secretary of state; to provide for the election of the secretary of state by the
5	elected members of each house; to provide for a recommendation commission and
6	nominees; to provide for qualifications; to provide for qualifications for the office;
7	to provide for the term of office of the secretary of state; to prohibit the secretary of
8	state from holding other offices; to prohibit the secretary of state from engaging in
9	political activities; to remove certain references to the secretary of state; to remove
10	references to the first assistant to the secretary of state; to provide for effectiveness
11	and implementation; and to provide for related matters.
12	Be it enacted by the Legislature of Louisiana:
13	Section 1. R.S. 18:18.1(A), 421(A), and 1483(11) are hereby amended and reenacted
14	and R.S. 18:17 and 21 are hereby enacted to read as follows:
15	<u>§17. Secretary of state; appointment; qualifications; removal</u>
16	A. The secretary of state shall be appointed by the elected members of
17	each house in the manner provided by R.S. 18:21, for a term of six years. The

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1	secretary of state shall have attained the age of twenty-five years, be an elector
2	of the state, have no less than three years of election administration experience,
3	and have been a citizen of the United States and of the state for at least the
4	preceding five years. The secretary of state shall hold no other public office
5	except by virtue of his office as secretary of state.
6	<b>B.</b> The secretary of state may only be removed from office during his
7	term by the elected members of each house for malfeasance, willful misconduct
8	related to his official duties, willful and persistent failure to perform his duty,
9	gross misconduct, and the commission or conviction of a felony.
10	C. A vacancy in the office of secretary of state shall be filled for the
11	remainder of the term in the same manner as the original appointment.
12	* * *
13	§18.1. Political activities prohibited
14	A. Neither the No person who serves as secretary of state or commissioner
15	of elections nor any employee of the elections division within the Department of
16	State who is in the unclassified state service shall participate or engage in political
17	activity, including his own or any other candidacy for election to public office;
18	membership on any national, state, or local committee of a political party or faction;
19	making or soliciting contributions for any political party, faction, or candidate;
20	taking active part in the management of the affairs of a political party, faction,
21	candidate, or any political campaign, except to exercise his right as a citizen to
22	express his opinion privately and to cast his vote as he desires.
23	* * *
24	§21. Secretary of State Recommendation Commission; election; procedures
25	A. The Secretary of State Recommendation Commission is hereby
26	established. The purpose of the commission shall be to submit to the legislature
27	the name of any person or persons whom the commission recommends to
28	permanently fill a vacancy in the office of secretary of state. It shall be
29	comprised of the following members:

1	(1) The president and president pro tempore of the Senate.
2	(2) The speaker and speaker pro tempore of the House of
3	<u>Representatives.</u>
4	(3) The chairman and vice chairman of the Legislative Audit Advisory
5	<u>Council.</u>
6	(4) The chairman, or vice chairman if designated to serve by the
7	chairman, of each of the following committees:
8	(a) Senate and Governmental Affairs Committee.
9	(b) House and Governmental Affairs Committee.
10	(c) Senate Finance Committee.
11	(d) House Appropriations Committee.
12	(e) Senate Revenue and Fiscal Affairs Committee.
13	(f) House Ways and Means Committee.
14	<b>B.</b> The commission shall notify the members of the legislature of a
15	vacancy in the office of secretary of state within fifteen days after the
16	occurrence of such vacancy.
17	C. In addition to any other nominees considered by the commission for
18	the office of secretary of state, the commission shall also consider any nominee
19	submitted to the commission by a member of the legislature.
20	D. The commission shall submit to the legislature its recommendation
21	to fill the office of secretary of state not later than the convening of the next
22	legislative session after the occurrence of the vacancy in the office of secretary
23	<u>of state.</u>
24	E. The secretary of state shall be elected by the concurrence of a
25	majority of the elected members of each house and may be removed by the
26	concurrence of two-thirds of the elected members of each house.
27	* * *
28	§421. Secretary of state; first assistant and other employees of the secretary of state
29	A. The secretary of state is the chief election officer of the state. Except as

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1	otherwise provided by law, the first assistant deputy secretary appointed by the
2	secretary of state possesses all the powers and authority granted by law to the
3	secretary of state and may perform any of the duties and exercise any of the
4	functions of the secretary of state. The first assistant deputy secretary and other
5	employees of the secretary of state are subject to his direction and supervision and
6	shall perform the duties assigned to them by law and by the secretary of state. The
7	secretary of state is responsible for the performance or nonperformance of their
8	official duties by his first assistant deputy secretary and other employees.
9	* * *
10	§1483. Definitions
11	As used in this Chapter, the following terms shall have the meanings herein
12	given to each unless the context clearly indicates otherwise:
13	* * *
14	(11) "Major office" means the following offices: governor, lieutenant
15	governor, secretary of state, attorney general, state treasurer, commissioner of
16	agriculture, commissioner of insurance, the superintendent of education, public
17	service commissioner, justice of the supreme court, court of appeal judge, district
18	court judge in a judicial district comprised of a single parish with a population in
19	excess of four hundred fifty thousand persons as determined by the most recently
20	published decennial federal census where the election district is parishwide, as long
21	as these offices are elective offices, and any candidate for office with an election
22	district containing a population in excess of two hundred fifty thousand persons as
23	determined by the most recently published decennial federal census.
24	* * *
25	Section 2. R.S. 36:741(B) and 743 are hereby amended and reenacted to read as
26	follows:
27	§741. Department of State; creation; domicile; purposes and functions
28	* * *
29	B. The secretary of state shall serve at a salary fixed by the legislature and

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1	the secretary shall serve as the executive head and chief administrative officer of
2	the Department of State and shall have the responsibility for the policies of the
3	department and for the administration, control, and operation of the functions,
4	programs, and affairs of the department as provided by law.
5	* * *
6	§743. Deputy secretary
7	There shall be a deputy secretary of the department, who shall be appointed
8	by the secretary of state with consent of the Senate and who shall serve at the
9	pleasure of the secretary of state at a salary fixed by the secretary of state, which
10	salary shall not exceed the amount approved for such position by the legislature
11	while in session. The deputy secretary shall be the first assistant to the secretary of
12	state appointed pursuant to Article IV, Section 13 of the constitution. The duties and
13	functions of the deputy secretary of state shall be determined and assigned by the
14	secretary of state. He shall serve as acting secretary of state in the absence of the
15	secretary of state as provided by law.
16	Section 3. R.S. 39:1401(B)(6) is hereby amended and reenacted to read as follows:
17	§1401. State Bond Commission
18	* * *
19	B. Said members may be represented at meetings of the State Bond
20	Commission by the persons designated as follows:
21	* * *
22	(6) The secretary of state, by the first assistant deputy secretary of state,
23	undersecretary of management and finance, or by legal counsel for the Department
24	of State;
25	* * *
26	Section 4. R.S. 49:206 and 221.1 are hereby amended and reenacted to read as
27	follows:
28	\$206. Temporary absence of governor and lieutenant governor, order of those who
29	shall act as governor

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1	When both the governor and the lieutenant governor are temporarily absent
2	from the state at the same time and neither can be contacted as a result of the
3	existence of an emergency situation, the official whose title appears first in the
4	following list and who is present in the state shall act as governor to maintain the
5	necessary continuity of state government:
6	(1) The elected secretary of state;
7	(2) The elected attorney general;
8	(3)(2) The elected treasurer;
9	(4)(3) The presiding officer of the Senate; and.
10	(5)(4) The presiding officer of the House of Representatives.
11	* * *
12	§221.1. Designees; powers
13	The secretary of state is hereby authorized to designate the first assistant
14	secretary of state, the undersecretary of management and finance, the deputy
15	secretary of state, the confidential assistant, or the legal counsel for the Department
16	of State to represent him at any meeting of any board, commission, or other public
17	body of which the secretary of state is a member. In such a case, any action taken or
18	vote made by said designee shall carry the full force and effect as if made by the
19	secretary of state.
20	Section 5. The secretary of state in office on the effective date of this Act shall
21	continue to serve until noon on January 14, 2011, and his term of office shall end at that
22	time. If the elected members of each house are not able to make an appointment in
23	accordance with the provisions of this Act prior to the effective date of this Act, the elected
24	members of each house shall appoint an interim secretary of state who shall take office at
25	noon on January 14, 2011, and who shall serve until such time as the elected members of
26	each house elects a secretary of state as provided in this Act.
27	Section 6. This Act shall take effect and become operative if and when the proposed

amendment of Article IV, Sections 3(A), 7, and 14 of the Constitution of Louisiana and the
proposal to amend Article XIV of the Constitution of Louisiana by adding a new Part IV,

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- 1 to be comprised of Section 41, all contained in the Act which originated as Senate Bill No.
- 2 \_\_\_\_\_ of this 2010 Regular Session of the Legislature is adopted at the statewide election
- 3 to be held on November 2, 2010, and becomes effective.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Tim Prather.

## DIGEST

<u>Present constitution</u> provides that there will be a Department of State, headed by the secretary of state. Provides that the secretary of state will be the chief election officer for the state and provides for other specified duties. <u>Present constitution</u> provides in part that the secretary of state will be elected for a four-year term at the time of election of members of the legislature and that the secretary's term begins at noon on the second Monday in Jan. after the election. <u>Present constitution</u> provides qualifications of statewide elected officials. Requires that to be eligible, by the date of his qualification as a candidate, a person will have attained age 25, be an elector, and have been a citizen of the U.S. and of La. for at least the preceding five years. Provides that during his tenure in office, a statewide elected official will hold no other public office except by virtue of his elected office.

<u>Proposed law</u> creates the Secretary of State Recommendation Commission that will submit to the legislature the name of any person or persons whom the commission recommends to permanently fill a vacancy in the office of secretary of state.

<u>Proposed law</u> provides that the commission will be comprised of the following members:

- \* The president and president pro tempore of the Senate.
- \* The speaker and speaker pro tempore of the House of Representatives.
- \* The chairman and vice chairman of the Legislative Audit Advisory Council.
- \* The chairman, or vice chairman if designated to serve by the chairman, of each of the following committees:

Senate and Governmental Affairs Committee.

House and Governmental Affairs Committee.

Senate Finance Committee.

House Appropriations Committee.

Senate Revenue and Fiscal Affairs Committee.

House Ways and Means Committee.

<u>Proposed law</u> provides that the commission will notify the members of the legislature of a vacancy in the office of secretary of state within 15 days after the occurrence of such vacancy. The commission will submit to the legislature its recommendation to fill the office of secretary of state not later than the convening of the next legislative session after the occurrence of the vacancy in the office of secretary of state.

<u>Proposed law</u> provides that the secretary of state will be elected by the concurrence of a majority of the elected members of each house and may be removed by the concurrence of

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<u>Proposed law</u> requires the secretary of state to have the same qualifications as provided by <u>present constitution</u> for statewide elected officials; additionally requires the secretary of state to have no less than three years of election administration experience, and prohibits the secretary of state from holding any other public office except by virtue of his office as secretary. Provides that the secretary of state serve at a salary fixed by the legislature.

<u>Proposed law</u> provides that if the recommendation commission fails to submit nominees in the time required, the legislature will make the appointment of a qualified person without nominees. Provides that a vacancy in the office will be filled in the same manner as the original appointment.

<u>Proposed law</u> additionally provides that the secretary of state may only be removed from office during his term by the legislature for malfeasance, willful misconduct related to his official duties, willful and persistent failure to perform his duty, gross misconduct, and the commission or conviction of a felony.

<u>Present law</u> prohibits the commissioner of elections and any employee of the elections division within the Dept. of State who is in the unclassified state service from participating or engaging in political activity, including his own or any other candidacy for election to public office; membership on any national, state, or local committee of a political party or faction; making or soliciting contributions for any political party, faction, or candidate; taking active part in the management of the affairs of a political party, faction, candidate, or any political campaign, except to exercise his right as a citizen to express his opinion privately and to cast his vote as he desires.

<u>Proposed law</u> additionally prohibits the secretary of state from participating or engaging in political activity and otherwise retains <u>present law</u>.

<u>Proposed law</u> removes reference to the elected secretary of state as a person authorized to act as governor in the temporary absence of the governor and lieutenant governor and removes reference to the secretary of state as a "major office candidate" for purposes of the Campaign Finance Disclosure Act.

<u>Present law</u> provides that when the secretary of state appoints a deputy secretary, he will be the first assistant to the secretary appointed pursuant to Const. Art. IV, §13. Further provides that the first assistant will serve as acting secretary of state in the absence of the secretary of state as provided by law.

<u>Present law</u> additionally provides relative to persons authorized to serve as a designee of the secretary of state and makes reference to the first assistant.

<u>Proposed law</u> retains provisions for a deputy secretary but removes references to such deputy secretary being the first assistant appointed pursuant to the constitution and additionally removes references to the first assistant secretary of state and provides instead that the deputy secretary is authorized to serve as a designee of the secretary of state.

<u>Proposed law</u> provides for the legislature to appoint an interim secretary of state to take office at noon on Jan. 14, 2011, if the legislature is unable to elect a secretary of state in accordance with the Act prior to the effective date of the Act and provides that such interim secretary of state shall serve until a secretary of state is elected as provided in the Act.

Effective if and when the <u>proposed constitutional amendment</u> (SB No. \_\_\_\_\_, 2010 R.S.) providing for the election of the secretary of state by the elected members of each house is adopted and becomes effective.

(Amends R.S. 18:18.1(A), 421(A), and 1483(11), R.S. 36:741(B) and 743, R.S. 39:1401(B)(6), and R.S. 49:206, and 221.1; adds R.S. 18:17 and 21)