

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 **§17. Secretary of state; appointment; qualifications; removal**

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**

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. 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.

\* \* \*

§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.

\* \* \*

§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 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**





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.

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

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#### DIGEST

Present constitution 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. Present constitution 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. Present constitution 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.

Proposed law 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.

Proposed law 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.

Proposed law 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.

Proposed law 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

two-thirds of the elected members of each house and will serve a term of six years.

Proposed law requires the secretary of state to have the same qualifications as provided by present constitution 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.

Proposed law 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.

Proposed law 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.

Present law 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.

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

Proposed law 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.

Present law 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.

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

Proposed law 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.

Proposed law 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 proposed constitutional amendment (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)