



## U.S. OFFICE OF SPECIAL COUNSEL

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### **Congress Allows Most State and Local Public Employees to Run for Partisan Office**

On December 19, 2012, Congress passed the Hatch Act Modernization Act of 2012. The Act allows most state and local government employees to run for partisan political office. Prior to this change, state and local government employees were prohibited from running for partisan office if they worked in connection with programs financed in whole or in part by federal loans or grants. With the change, the federal Hatch Act no longer prohibits state and local government employees from running for partisan office unless the employee's salary is paid for completely by federal loans or grants.

**This change will allow hundreds of thousands of state and local government employees to participate more actively in the democratic process in their communities.**

Before entering a race as a candidate, employees should keep in mind the following:

- *Make sure your salary is not completely funded by federal loans or grants.* A very small number of state and local employees may continue to be prohibited from running for office by the federal Hatch Act. Before running for office, take steps to determine that your salary is not entirely -- 100% -- funded by federal loans or grants. Your state or local finance office should be able to clarify whether your salary is completely funded by federal loans or grants.
- *Make sure state or local law does not prohibit you from running.* Employees should also make sure that they are not prohibited from running for office by state or local law. Nearly every state, many localities, and the District of Columbia have ethics rules that govern the political activity of their employees. This includes, in some cases, the ability of employees to run for state or local office. While the rules under the federal Hatch Act have been relaxed with regard to partisan candidacies, states and localities are free to implement more rigid requirements at their discretion. OSC does not keep a comprehensive list of state and local political activity laws, and OSC does not enforce laws passed at the state or local level. Your state or local ethics office should be able to clarify whether any provision of state or local law prohibits you from running for office.
- *The Hatch Act restricts state or local employees from engaging in political misconduct.* The Hatch Act Modernization Act did not change the federal Hatch Act's prohibitions on coercive conduct or misuse of official authority for partisan purposes. A state or local employee is still covered by these prohibitions if the employee works in connection with a program financed in whole or in part by federal loans or grants, even if the connection is relatively minor. A covered employee who runs for office would violate the Hatch Act if the employee:
  - uses federal or any other public funds to support his own candidacy;
  - uses his state or local office to support his candidacy, including by using official email, stationery, office supplies, or other equipment or resources; or
  - asks subordinates to volunteer for his campaign or contribute to the campaign.

If you have questions about the Hatch Act or the Hatch Act Modernization Act, please call (800) 85-HATCH or (800) 854-2824, or write to [hatchact@osc.gov](mailto:hatchact@osc.gov).



# Resign-to-Run Law

**DE Reference Guide 0016 (Updated 06/2022)**

*These guidelines are for reference only. They are not to be construed as legal advice or representation. For any particular set of facts or circumstances, refer to the applicable state, federal law, and case law, and/or consult a private attorney before drawing any legal conclusions or relying upon this information.*

## RESIGN-TO-RUN LAW – GENERAL OVERVIEW

### • Governing law<sup>1</sup>

- An “officer” may not qualify as a candidate for another state, district, county or municipal public office if the terms or any part of the terms would overlap with each other if the person were to be elected and did not resign from the office the person presently holds.
- An officer who qualifies for *federal* public office must resign from his or her presently-held office if the terms, or any part, thereof, would overlap with each other. (See below “Exceptions to the resign-to-run law”)

- **Who is an “officer”?** An “officer” is any elected or appointed person who has the authority to exercise the sovereign powers pertaining to an office recognized under the State Constitution or state laws. With respect to a municipality, an “officer” means a person, whether elected or appointed, who has the authority to exercise municipal power as provided by the State Constitution, state laws, or municipal charter. (s. 99.012(1), F.S.)<sup>2</sup> “Officers” include, but are not limited to: mayors, city and county commissioners, state legislators, supervisors of elections, sheriffs, property appraisers, judges, school board members, superintendents of school, state attorneys and public defenders, municipal fire chiefs, medical examiners, and elected hospital board and airport authority members.

### • Exceptions to the resign-to-run law<sup>3</sup>

- Political party offices.
- Persons serving without salary on an appointed board or authority.
- Persons holding federal office.
- An elected officer running for federal office if the term of office presently held is scheduled to expire and be filled by election in the same primary and general election period as the federal office the officer is seeking.

### • Resignation process<sup>4</sup>

- In writing at least 10 days prior to the first day of qualifying for the office the officer seeks.
  - *For elected district, county, or municipal officers*, submit:
    - To the officer before whom he or she qualified for the office he or she holds,
    - Copy to the Governor and the Department of State.
  - *For appointed district, county, or municipal officers*, submit:
    - To the officer or authority which appointed him or her to the office he or she holds
    - Copy to the Governor and the Department of State.

<sup>1</sup> s. 99.012, F.S.

<sup>2</sup> See also *State ex rel. Holloway v. Sheats*, 83 So. 508, 509 (Fla. 1919). And see *State ex rel. Clyatt v. Hocker*, 22 So. 721 (Fla. 1897)(an “officer” is someone who exercises sovereign power, in part or wholly, either in making, executing or administering the laws and who derives his or her position from a duly and legally authorized election or appointment, whose duties are continuous in nature and defined by law, not contract.

<sup>3</sup> ss. 99.012(7) - (8), F.S.

<sup>4</sup> ss. [99.012](#)(3) - (4), F.S.

- For all other officers, submit:
  - To the Governor
  - Copy to the Department of State.<sup>5</sup>

Contact Information	
Address for Governor's office	Address for Department of State
Governor Ron DeSantis The Capitol 400 S. Monroe St. Tallahassee, FL 32399-0001 Email: Ron.DeSantis@eog.myflorida.com Fax: (850) 921-0733	Donna Brown Chief, Bureau of Election Records Department of State R.A. Gray Building, Room 316, 500 S. Bronough Street Tallahassee, Florida 32399-0250 Email: <a href="mailto:ElecRecords@dos.myflorida.com">ElecRecords@dos.myflorida.com</a> Fax: 850-245-6259 or -6260

- **Effective date of the resignation:** The resignation must take effect no later than the earlier of the following dates:
  - The date the officer would take office, if elected; or
  - The date the officer's successor is required to take office.
- **Resignation is irrevocable.** Once submitted, the resignation is irrevocable.
- **Automatic resignations.** An officer who qualifies for **federal** public office, but fails to submit a resignation pursuant to the resign-to-run law constitutes an automatic irrevocable resignation, effective immediately, from the office he or she presently holds.<sup>6</sup> The Department of State is then required to send a notice of the automatic resignation to the Governor. In the case of a district, county or municipal officer, a copy also is sent to the officer before the person qualified if officer held an elective office or the office or authority who appointed the officer.

**FREQUENTLY ASKED QUESTIONS – RESIGN-TO-RUN LAW:**

- **If someone is a school board member and will not seek re-election at the next general election but intends to qualify to run for state representative, will the person have to submit a resignation under the resign-to-run law?**
  - Yes. Section [100.041](#), F.S., reflects that the two-year term of office for a state representative begins upon election and the four-year term of office for a school board member begins on the second Tuesday following the general election. Therefore, if elected as a state representative, the term as a school board member, would not expire until two weeks after taking office as a state representative. This two-week overlap requires the school board member to submit a resignation under the resign-to-run law at least 10 days prior to qualifying as a candidate as a state representative.
- **What can an officer do if he or she missed the deadline for submitting the resignation 10 days prior to the beginning of the qualifying period for a state, county, district, or municipal office?**
  - If the officer still wishes to run for office, the officer may submit a resignation to take effect immediately or to take effect on a date prior to qualifying for office. In this situation, the officer qualifies as a non-officeholder and the "resign-to-run" law does not apply. (s. [99.012](#)(3)(g), F.S.) Note: If the officer is a candidate for **federal** office, the failure to satisfy the 10-day deadline operates as an automatic, immediate and irrevocable resignation from office. (s. [99.012](#)(4)(f)1., F.S.)
- **Does the "resign-to-run" law apply to subordinate officers, deputy sheriffs, or police officers?**

<sup>5</sup> ss. [99.012](#)(3)(e) and (4)(e), F.S.

<sup>6</sup> s. [99.012](#)(4)(f)1. F.S.

- Generally, no, but the law will apply in a limited situation. A subordinate officer, deputy sheriff, or police officer is exempt from the resign-to-run law unless the person is seeking to qualify for a public office which is currently held by “an officer who has authority to appoint, employ, promote or otherwise supervise that person and who has qualified as a candidate for reelection to that office.” If the subordinate officer, deputy sheriff, or police officer must resign, the resignation must be effective upon qualifying for the office, not the later times specified above for an “officer.”
  - So, a deputy sheriff wishing to run for sheriff against an incumbent sheriff would have to resign, but if the incumbent sheriff is not seeking reelection, the deputy sheriff would not have to resign. Also, if a deputy sheriff wishes to run for a non-sheriff office (for example, state representative or city council), he or she would not have to resign under the “resign-to-run” law.
  - If a subordinate officer, deputy sheriff, or police officer must resign under this provision, he or she may not take an unpaid leave of absence instead of resigning.<sup>7</sup>
  - Subordinate officers would include, among others: assistant public defenders, assistant state attorneys, and deputy supervisors of elections. (s. 99.012(4), F.S.; visit the Division of Elections’ [Advisory Opinions webpage for relevant resign to run](#) opinions DE 08-04, 07-08, 99-01, 17-02, 17-03, 17-04, 18-07, 18-08 )
- **Does a city’s Chief of Police have to resign in order to run for another public office?**
    - It depends. The exemption mentioned in the answer to the question immediately above applies to a “police officer.” A “chief of police” is a police officer; therefore, the chief of police need only resign to run for public office if the chief is seeking to qualify for a public office which is currently held by "an officer who has authority to appoint, employ, promote or otherwise supervise that person and who has qualified as a candidate for reelection to that office." For example, a city’s chief of police would not have to resign to run for county sheriff unless the sheriff has the authority to appoint, employ, promote or otherwise supervise the chief of police and the incumbent sheriff has also qualified as a candidate for reelection. In the typical county-city relationship, the sheriff does not have the authority to appoint, employ, promote or otherwise supervise a city’s chief of police. However, for example, if a city mayor has the authority to hire and fire the chief of police, the chief of police could not run for city mayor without resigning as chief of police if the incumbent mayor is seeking re-election. (s. [99.012](#)(5), F.S.)
- **What happens if an officer does not comply with the “resign-to-run” law?**
    - If a final court order determines that a person did not comply with the resign-to-run law, the person may not be qualified as a candidate for an election or appear on the ballot. (s. 99.012(6), F.S.) Note, one of the qualifying papers is the candidate oath in which the candidate states that he or she has resigned from any office from which the candidate is required to resign; therefore, the filing officer may not look beyond the oath. However, the filing officer performs only a ministerial function in reviewing qualifying papers and cannot determine whether the contents of the qualifying papers are accurate. (s. 99.061(7)(c), F. S.) It takes a court order to remove the person’s name from the ballot.
    - Notwithstanding the above, an officer who qualifies for **federal** public office who fails to submit a resignation pursuant to the resign-to-run law will result in an automatic irrevocable resignation, effective immediately, from the office he or she presently holds. (s. 99.012(4)(f)1. F.S.) The Department of State is required to notify the Governor and the appropriate qualifying officer or appointing authority of the automatic resignation. (s. 99.012(4)(f)2., F.S.)
- **What is the difference in the treatment of “district” officers under the resign-to-run law and the dual office-holding constitutional provision?**

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<sup>7</sup> The Legislature removed the alternative approach of taking an unpaid leave of absence from the statute in 2000.

- The Attorney General has opined that district offices are not within the purview of the dual office-holding provisions of the Constitution. However, district offices, by express statutory provision, are subject to the provisions of the “resign-to-run” law. For example, an elected state or county officer may be appointed also to a district office. However, if the state or county officer later seeks reelection to the state or county office while occupying the district office, he or she would have to submit a resignation under the “resign-to-run” law from the district office before qualifying and running for reelection if the terms of office overlap, unless the district office consists of being a member on an appointed board or authority and the county or state officer receives no salary for being on the board or authority.
- **How does the “resign-to-run” law relate to the federal “Hatch Act?”**
  - The state resign-to-run law is entirely separate from the federal “Hatch Act.” (5 U.S.C. §§ 1501- 1508)
  - The federal Hatch Act applies to executive branch state and local employees who are principally employed in connection with programs financed in whole or in part by loans or grants made by the United States or a federal agency. The Act prohibits a state, county, or municipal employee from being a candidate for public office in a partisan election *if the employee’s salary is completely funded with federal dollars*. It is only when the covered employee’s entire salary is paid from federal funds that the employee would have to resign *under the Hatch Act* before becoming a candidate for partisan office. See 5 U.S.C. § 1502 (Hatch Act Modernization Act of 2012 (eff. 1.27.2013)).
    - Governors, Lieutenant Governors, mayors, elected heads of executive departments, and individuals holding elective office are specifically exempt from the Hatch Act prohibition against being a candidate for public office.
    - A partisan election means one in which any candidate will be listed on the ballot as a candidate for a political party.
  - Additionally, an employee’s conduct is also subject to the state and local laws and the regulations of the employing agency. Therefore, the employee should check with his or her supervisor, personnel office, or the agency’s general counsel to determine what state or local law or agency rules or policies may apply regarding the employee’s political activities.
- **Who to contact for questions or requests for advisory opinions on Hatch Act or Resign-to-Run law:**

HATCH Act	Resign-to Run Law
Hatch Act Unit U.S. Office of Special Counsel 1730 M Street, N.W., Suite 218 Washington, D.C. 20036-4505 Tel: (800) 85-HATCH; (800) 854-2824;(202) 804-7002; Email: <a href="mailto:hatchact@osc.gov">hatchact@osc.gov</a> ; Website: <a href="https://osc.gov/Services/Pages/HatchAct-Federal.aspx">https://osc.gov/Services/Pages/HatchAct-Federal.aspx</a>	Office of General Counsel Florida Department of State R.A. Gray Building 500 S. Bronough Street Tallahassee, Florida 32399-0250 Telephone: (850) 245-6536 Email: <a href="mailto:DOS.GeneralCounsel@DOS.MyFlorida.com">DOS.GeneralCounsel@DOS.MyFlorida.com</a>