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OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA

MEMORANDUM

TO: Becky Weimer, AAC Contact
Office of the Governor

FROM: Scott Meriwether 
Special Assistant
907.465.3509

DATE: September 3, 2014

RE: Filed Emergency Regulations: Division of Elections

Division of Elections: 6 AAC 25.225
Replacement for a withdrawn lieutenant governor candidate nominated by petition

Attorney General File:	Emergency Regulations
Regulation Filed:	9/2/2014
Effective Date:	9/2/2014
Expiration Date:	12/30/2014, unless made permanent by the adopting agency
Print:	212, January 2015

cc with enclosures: Linda Miller, Department of Law
Crystal Koeneman, Administrative Regulation Review Committee
Judy Herndon, LexisNexis

FINDING OF EMERGENCY

The Division of Elections finds that under AS 44.62,250, an emergency exists and that the attached regulation is necessary for the immediate preservation of the public peace and general welfare, that is, the orderly conduct of the 2014 general election. *O'Callaghan v. State, Director of Elections*, 6 P.3d 728, 730-31 (Alaska 2000). The facts constituting the emergency and supporting this finding include the following:

A non-party candidate for lieutenant governor was certified for placement on the general election ballot by the Division of Elections pursuant to AS 15.25.190. On September 2, 2014, that candidate withdrew his candidacy under AS 15.25.200. Under AS 15.25.110, there is a procedure in place for a party candidate for governor to fill the vacancy created by the withdrawal. There is no procedure in place at this time for a non-party candidate for governor to fill the vacancy created by the withdrawal. Previously, when a non-party candidate for lieutenant governor withdrew his candidacy, the Division of Elections adopted emergency regulations establishing a procedure for the non-party candidate for governor to fill the vacancy.

The Alaska Constitution requires that for the general election, candidates for governor and lieutenant governor must run together and must appear together on the general election ballot. No current statutes address what to do when a non-party candidate for lieutenant governor withdraws. To remedy the lack of express statutory direction, and in recognition of equal protection and the constitutionally-based principle that election laws must be interpreted in favor of access to the ballot (*Williams v. Rhodes*, 393 U.S. 23 (1968); *O'Callaghan v. State*, 826 P.2d 1132 (Alaska 1992); *Vogler v. Miller*, 660 P.2d 1192 (Alaska 1983)), a regulation is necessary in order to permit a non-party candidate for governor a process by which the vacancy can be filed.


Legislation cannot be enacted in time to address this situation because the Alaska State Legislature will not convene in regular session until January 20, 2015. There is insufficient time to comply with the complete regulation-adoption procedures of the Administrative Procedure Act between September 2, 2014, the date of the candidate's withdrawal, and the end of that week, the date by which the Division of Elections must send the general election ballot out for printing. Furthermore, a vacancy filled without a formalized procedure could result in a cloud on the ticket and cast the validity and/or outcome of the election into doubt. Therefore, in keeping with the orderly progression of the conduct of the November 4, 2014 general election, the adoption of an emergency regulation is necessary to timely provide a process for the non-party candidate for governor to nominate a candidate for lieutenant governor for the general election.

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ADOPTION ORDER

Under the authority of AS 15.15.010, AS 15.25.200, and art. III, sec. 8, Constitution of the State of Alaska, the attached 1 page of regulation changes are therefore adopted as emergency regulations to take effect immediately upon filing by the lieutenant governor, as provided in AS 44.62.180(3).

This action is not expected to require an increased appropriation.

DATE: 9/2/14
Juneau, Alaska



Gail Fenumiai Director,
Division of Elections

FILING CERTIFICATION

I, Mead Treadwell, Lieutenant Governor for the State of Alaska, certify that on Sept. 2, 2014, at 5:00 p.m., I filed the attached regulations according to the provisions of AS 44.62.



Lieutenant Governor

Effective: 9/2/2014.
Register: 2/2, January 2015.

Expires December 30, 2014
unless made "permanent"
by the adopting agency.

EMERGENCY REGULATION

Register 212 ^{January 2015}, October 2014. GOVERNOR'S OFFICE

6 AAC 25 is amended by adding a new section to read:

6 AAC 25.225. Replacement for a withdrawn lieutenant governor candidate

nominated by petition. If a candidate for lieutenant governor who was nominated by petition withdraws before the general election as provided in AS 15.25.200, the candidate for governor who was nominated by petition and who was associated with the withdrawn lieutenant governor candidate may provide to the director, no later than 64 days before the date of the general election, the name of a candidate for lieutenant governor to fill the vacancy. If the 64th day falls on a holiday, in accordance with AS 01.10.080, the deadline is no later than the close of business on the following business day. If the name of a candidate for lieutenant governor is timely provided under this section, the director will place the name of that candidate on the ballot for the general election jointly with the candidate for governor who provided the name under this section. (Eff. 9 / 2 / 14, Register 212 ^{January 2015}).

Authority: 15.15.010 15.25.200 15.15.030 Art. III, sec. 8, AK Const.