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I N  S E N A T E

April 30, 2010

Introduced by Sens. BRESLIN, SCHNEIDERMAN, SAMPSON, VALESKY, KRUEGER, ADAMS, DUANE -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY

proposing amendments to sections 5 and 6 of article 4 of the constitution, relating to the filling of vacancies in the office of lieutenant-governor and the powers and duties of such office

Section 1. Resolved (if the Assembly concur), That the third undesignated paragraph of section 5 of article 4 of the constitution be amended to read as follows:

In case the governor is impeached[, is absent from the state or is otherwise unable to discharge the powers and duties of the office of governor], the lieutenant-governor shall act as governor until [the inability shall cease or until] the term of the governor shall expire. WHENEVER THE GOVERNOR TRANSMITS TO THE TEMPORARY PRESIDENT OF THE SENATE AND SPEAKER OF THE ASSEMBLY HIS OR HER WRITTEN DECLARATION THAT HE OR SHE IS UNABLE TO DISCHARGE THE POWERS AND DUTIES OF HIS OR HER OFFICE, AND UNTIL HE OR SHE TRANSMITS TO THEM A WRITTEN DECLARATION TO THE CONTRARY, SUCH POWERS AND DUTIES SHALL BE DISCHARGED BY THE LIEUTENANT-GOVERNOR AS ACTING GOVERNOR. WHENEVER THE LIEUTENANT-GOVERNOR AND A MAJORITY OF EITHER THE PRINCIPAL OFFICERS OF THE EXECUTIVE DEPARTMENT OR OF SUCH OTHER BODY AS THE LEGISLATURE MAY BY LAW PROVIDE TRANSMIT TO THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY THEIR WRITTEN DECLARATION THAT THE GOVERNOR IS UNABLE TO DISCHARGE THE POWERS AND DUTIES OF HIS OR HER OFFICE, THE LIEUTENANT-GOVERNOR SHALL IMMEDIATELY ASSUME THE POWERS AND DUTIES OF THE OFFICE AS ACTING GOVERNOR. THEREAFTER, WHEN THE GOVERNOR TRANSMITS TO THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY HIS OR HER WRITTEN DECLARATION THAT NO INABILITY EXISTS, HE OR SHE SHALL RESUME THE POWERS AND DUTIES OF HIS OR HER OFFICE UNLESS THE LIEUTENANT-GOVERNOR AND A MAJORITY OF EITHER THE PRINCIPAL OFFICERS OF THE EXECUTIVE DEPARTMENT OR OF SUCH OTHER BODY AS THE LEGISLATURE MAY BY LAW PROVIDE TRANSMIT WITHIN FOUR DAYS TO THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY THEIR WRITTEN DECLARATION THAT THE GOVERNOR IS UNABLE TO DISCHARGE THE POWERS AND DUTIES OF HIS OR HER OFFICE. THEREUPON THE

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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LEGISLATURE SHALL DECIDE THE ISSUE, ASSEMBLING WITHIN FORTY-EIGHT HOURS FOR THAT PURPOSE IF NOT IN SESSION. IF THE LEGISLATURE, WITHIN TWENTY-ONE DAYS AFTER RECEIPT OF THE LATTER WRITTEN DECLARATION, OR, IF THE LEGISLATURE IS NOT IN SESSION, WITHIN TWENTY-ONE DAYS AFTER THE LEGISLATURE IS REQUIRED TO ASSEMBLE, DETERMINES BY TWO-THIRDS VOTE OF BOTH HOUSES THAT THE GOVERNOR IS UNABLE TO DISCHARGE THE POWERS AND DUTIES OF HIS OR HER OFFICE, THE LIEUTENANT-GOVERNOR SHALL CONTINUE TO DISCHARGE THE SAME AS ACTING GOVERNOR; OTHERWISE, THE GOVERNOR SHALL RESUME THE POWERS AND DUTIES OF HIS OR HER OFFICE.

S 2. Resolved (if the Assembly concur), That the third, fourth and fifth undesignated paragraphs of section 6 of article 4 of the constitution be amended to read as follows:

In case of vacancy in the offices of both governor and lieutenant-governor or if both of them shall be impeached[, absent from the state] or otherwise unable to discharge the powers and duties of the office of governor, the temporary president of the senate shall act as governor until the inability shall cease or until a governor shall be elected.

In case of vacancy in the office of lieutenant-governor alone, or if the lieutenant-governor shall be [impeached, absent from the state or otherwise] unable to discharge the duties of office, the temporary president of the senate shall perform all the duties of lieutenant-governor [during] UNTIL such vacancy BE FILLED or DURING THE PENDENCY OF SUCH inability. IN CASE OF THE REMOVAL OF THE LIEUTENANT-GOVERNOR ALONE FROM OFFICE OR OF HIS OR HER DEATH, RESIGNATION, IMPEACHMENT OR ASCENSION TO GOVERNOR, THE OFFICE OF LIEUTENANT-GOVERNOR SHALL BE FILLED FOR THE REMAINDER OF THE TERM BY APPOINTMENT OF THE GOVERNOR, SUBJECT TO CONFIRMATION OF SUCH APPOINTMENT BY MAJORITY VOTE OF EACH HOUSE OF THE LEGISLATURE.

If, when the duty of acting as governor devolves upon the temporary president of the senate, there be a vacancy in such office or the temporary president of the senate shall be [absent from the state or otherwise] unable to discharge the duties of governor, the speaker of the assembly shall act as governor during such vacancy or inability.

S 3. Resolved (if the Assembly concur), That the foregoing amendment be referred to the first regular legislative session convening after the next succeeding general election of members of the assembly, and, in conformity with section 1 of article 19 of the constitution, be published for 3 months previous to the time of such election.