S T A T E O F N E W Y O R K

2845

2009-2010 Regular Sessions

I N A S S E M B L Y

January 21, 2009

Introduced by M. of A. SCHIMMINGER, GALEF, GUNTHER, KAVANAGH, JAFFEE, MAISEL, FIELDS, KELLNER, LANCMAN, CAMARA, DINOWITZ, BROOK-KRASNY -- Multi-Sponsored by -- M. of A. CHRISTENSEN, COOK, DelMONTE, GABRYSZAK, GOTTFRIED, JEFFRIES, JOHN, KOON, LIFTON, LUPARDO, MAGEE, MAYERSOHN, ORTIZ, PAULIN, REILLY, J. RIVERA, SCARBOROUGH, STIRPE, SWEENEY, TOWNS -- read once and referred to the Committee on Governmental Operations

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY

proposing an amendment to sections 5 and 6 of article 4 and section 3 of article 6 of the constitution, in relation to gubernatorial inability and succession

Section 1. Resolved (if the Senate concur), That sections 5 and 6 of article 4 of the constitution be amended to read as follows:

S 5. In case of the removal of the governor from office or of his or her death or resignation, the lieutenant-governor shall become governor for the remainder of the term.

In case the governor-elect shall decline to serve or shall die, the lieutenant-governor-elect shall become governor for the full term.

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.

In case of the failure of the governor-elect to take the oath of office at the commencement of his or her term, the lieutenant-governor-elect shall act as governor until the governor shall take the oath.

WHENEVER THE GOVERNOR TRANSMITS TO THE CHIEF JUDGE OF THE COURT OF APPEALS, THE LIEUTENANT-GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, THE MINORITY LEADER OF THE SENATE, AND THE MINORITY LEADER OF THE ASSEMBLY A WRITTEN DECLARATION OF INABILITY TO DISCHARGE THE POWERS AND DUTIES OF THE OFFICE OF GOVERNOR, AND UNTIL THE GOVERNOR THEREAFTER TRANSMITS TO THEM A WRITTEN DECLARATION TO THE CONTRARY, SUCH POWERS AND DUTIES SHALL BE DISCHARGED BY THE LIEUTENANT-GOVERNOR OR OTHER PERSON NEXT IN LINE OF SUCCESSION, AS ACTING GOVERNOR.

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

LBD89052-01-9

WHENEVER THE LIEUTENANT-GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, THE MINORITY LEADER OF THE SENATE, AND THE MINORITY LEADER OF THE ASSEMBLY, ACTING UNANIMOUSLY, TRANSMIT TO THE CHIEF JUDGE OF THE COURT OF APPEALS THEIR WRITTEN DECLARATION THAT THE GOVERNOR IS UNABLE TO DISCHARGE THE POWERS AND DUTIES OF THE OFFICE OF GOVERNOR, TOGETHER WITH THE REASONS FOR THEIR DECLARATION, THE CHIEF JUDGE SHALL, UPON DUE NOTICE TO THE GOVERNOR, PROMPTLY CONVENE THE COURT FOR THE PURPOSE OF DETERMINING THE ABILITY OR INABILITY OF THE GOVERNOR TO DISCHARGE THE POWERS AND DUTIES OF THE OFFICE OF GOVERNOR. IF THE COURT OF APPEALS DETERMINES THAT THE GOVERNOR IS UNABLE TO DISCHARGE THE POWERS AND DUTIES OF THE OFFICE OF GOVERNOR, SUCH POWERS AND DUTIES SHALL BE DISCHARGED BY THE LIEUTENANT-GOVERNOR OR OTHER PERSON NEXT IN LINE OF SUCCESSION, AS ACTING GOVERNOR; OTHERWISE THE GOVERNOR SHALL CONTINUE TO DISCHARGE THE POWERS AND DUTIES OF SUCH OFFICE. IF, HOWEVER, AT ANY TIME PRIOR TO THE FINAL ADJUDICATION BY THE COURT, THE GOVERNOR TRANSMITS A WRITTEN DECLARATION OF INABILITY TO THE CHIEF JUDGE, LIEUTENANT-GOVERNOR, TEMPORARY PRESIDENT OF THE SENATE, SPEAKER OF THE ASSEMBLY, MINORITY LEADER OF THE SENATE, AND MINORITY LEADER OF THE ASSEMBLY, ALL FURTHER PROCEDURE SHALL BE AS PROVIDED IN THE PARAGRAPH IMMEDIATELY ABOVE.

IF THERE IS A VACANCY IN THE OFFICE OF LIEUTENANT-GOVERNOR, TEMPORARY PRESIDENT OF THE SENATE, SPEAKER OF THE ASSEMBLY, MINORITY LEADER OF THE SENATE, OR MINORITY LEADER OF THE ASSEMBLY, THE PROCEDURE SET FORTH ABOVE FOR DETERMINING THE ABILITY OR INABILITY OF THE GOVERNOR TO DISCHARGE THE POWERS AND DUTIES OF THE OFFICE OF GOVERNOR SHALL PROCEED UPON THE UNANIMOUS DECLARATION OF THE REMAINING OFFICERS.

AFTER AN ADJUDICATION OF GUBERNATORIAL INABILITY BY THE COURT OF APPEALS, WHENEVER THE TEMPORARY PRESIDENT OF THE SENATE, SPEAKER OF THE ASSEMBLY, MINORITY LEADER OF THE SENATE, AND MINORITY LEADER OF THE ASSEMBLY, ACTING UNANIMOUSLY, TRANSMIT TO THE CHIEF JUDGE THEIR WRITTEN DECLARATION THAT THE INABILITY HAS CEASED, SUCH DECLARATION SHALL BE CONCLUSIVE AND THE GOVERNOR SHALL RESUME THE POWERS AND DUTIES OF THE OFFICE OF GOVERNOR. ABSENT SUCH DECLARATION, BUT NO EARLIER THAN THIRTY DAYS AFTER AN ADJUDICATION OF GUBERNATORIAL INABILITY BY THE COURT OF APPEALS, WHENEVER THE GOVERNOR TRANSMITS TO THE CHIEF JUDGE A WRITTEN DECLARATION THAT NO INABILITY EXISTS, THE CHIEF JUDGE SHALL, UPON DUE NOTICE TO THE LIEUTENANT-GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, THE MINORITY LEADER OF THE SENATE, AND THE MINORITY LEADER OF THE ASSEMBLY, RECONVENE THE COURT FOR THE PURPOSE OF DETERMINING WHETHER OR NOT THE INABILITY HAS CEASED. THE CHIEF JUDGE SHALL PROMPTLY RECONVENE THE COURT FOR THE PURPOSE OF DETERMINING WHETHER OR NOT THE INABILITY HAS CEASED IF THE DECLARATION OF THE GOVERNOR IS ACCOMPANIED BY THOSE OF A MAJORITY OF THE SPECIFIED LEGISLATIVE OFFICERS. IF THE COURT DETERMINES THAT THE INABILITY HAS CEASED, THE GOVERNOR SHALL RESUME THE POWERS AND DUTIES OF THE OFFICE OF GOVERNOR; OTHERWISE SUCH POWERS AND DUTIES SHALL CONTINUE TO BE DISCHARGED BY THE LIEUTENANT-GOVERNOR OR OTHER PERSON NEXT IN LINE OF SUCCESSION.

S 6. The lieutenant-governor shall possess the same qualifications of eligibility for office as the governor. The lieutenant-governor shall be the president of the senate but shall have only a casting vote therein. The lieutenant-governor shall receive for his or her services an annual salary to be fixed by joint resolution of the senate and assembly.

In case of vacancy in the offices of both governor and lieutenant-governor, a governor and lieutenant-governor shall be elected for the remainder of the term at the next general election happening not less than three months after both offices shall have become vacant. No

election of a lieutenant-governor shall be had in any event except at the time of electing a governor.

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 such vacancy or inability.

UPON A VACANCY IN THE OFFICE OF LIEUTENANT-GOVERNOR, THE GOVERNOR SHALL NOMINATE A LIEUTENANT-GOVERNOR, WHO SHALL TAKE OFFICE FOR THE REMAINDER OF THE TERM UPON CONFIRMATION BY CONCURRENT RESOLUTION OF BOTH HOUSES OF THE LEGISLATURE, IF A MAJORITY OF ALL MEMBERS ELECTED TO EACH HOUSE CONCUR THEREIN.

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.

The legislature may provide for the devolution of the duty of acting as governor in any case not provided for in this article.

S 2. Resolved (if the Senate concur), That section 3 of article 6 of the constitution be amended by adding a new subdivision c to read as follows:

C. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION A OF THIS SECTION, THE COURT OF APPEALS SHALL HAVE ORIGINAL AND EXCLUSIVE JURISDICTION TO DETERMINE ALL QUESTIONS OF GUBERNATORIAL INABILITY AS PROVIDED UNDER ARTICLE FOUR OF THIS CONSTITUTION AND SHALL ADOPT AND PUBLISH RULES THEREFOR.

S 3. Resolved (if the Senate concur), That the foregoing amendments 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.