

# STATE OF NEW YORK

9541

## IN SENATE

May 16, 2024

Introduced by Sen. SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

### CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY

proposing an amendment to article 4 and article 6 of the constitution, in relation to the filling of vacancies in the office of lieutenant-governor or governor and the powers and duties of such offices

1 Section 1. Resolved (if the Assembly concur), That section 5 of arti-  
2 cle 4 of the constitution be amended to read as follows:

3 § 5. In case of the removal of the governor from office or of [~~his or~~  
4 ~~her~~] the governor death or resignation, the lieutenant-governor shall  
5 become governor for the remainder of the term.

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

8 In case the governor is impeached[~~, is absent from the state~~] or is  
9 otherwise unable to discharge the powers and duties of the office of  
10 governor, the lieutenant-governor shall act as governor until the  
11 inability shall cease or until the term of the governor shall expire.

12 In case of the failure of the governor-elect to take the oath of  
13 office at the commencement of [~~his or her~~] such governor-elect's term,  
14 the lieutenant-governor-elect shall act as governor until the governor  
15 shall take the oath.

16 The legislature may by law provide for the case wherein both the  
17 governor-elect and the lieutenant-governor-elect shall decline to serve,  
18 die, be ineligible for office, or otherwise be unable to take the oath  
19 of office at the commencement of the term, or in the case wherein the  
20 election fails to produce a result, including by declaring who shall  
21 then act as governor or the manner in which one who is to act shall be  
22 selected, and such person shall act accordingly until a governor or  
23 lieutenant-governor shall have qualified.

24 § 2. Resolved (if the Assembly concur), That section 6 of article 4 of  
25 the constitution be amended to read as follows:

26 § 6. The lieutenant-governor shall possess the same qualifications of  
27 eligibility for office as the governor. The lieutenant-governor shall be  
28 the president of the senate but shall have only a casting vote therein.  
29 The lieutenant-governor shall receive for [~~his or her~~] their services an

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

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1 annual salary to be fixed by joint resolution of the senate and assem-  
2 bly.

3 In case of vacancy in the offices of both governor and lieutenant-gov-  
4 ernor, a governor and lieutenant-governor shall be elected for the  
5 remainder of the term at the next general election happening not less  
6 than three months after both offices shall have become vacant. No  
7 election of a lieutenant-governor shall be had in any event except at  
8 the time of electing a governor.

9 In case of vacancy in the offices of both governor and lieutenant-gov-  
10 ernor or if both of them shall be impeached[, ~~absent from the state~~] or  
11 otherwise unable to discharge the powers and duties of the office of  
12 governor, the temporary president of the senate shall act as governor  
13 until the earlier of the cessation of the vacancy or inability [~~shall~~  
14 ~~cease~~] of the governor or lieutenant-governor or until a new governor  
15 shall be elected.

16 [~~In case of vacancy in the office of lieutenant-governor alone, or if~~  
17 ~~the lieutenant-governor shall be impeached, absent from the state or~~  
18 ~~otherwise unable to discharge the duties of office, the temporary presi-~~  
19 ~~dent of the senate shall perform all the duties of lieutenant-governor~~  
20 ~~during such vacancy or inability.~~]

21 If, when the duty of acting as governor devolves upon the temporary  
22 president of the senate, there be a vacancy in such office or the tempo-  
23 rary president of the senate shall be [~~absent from the state or other-~~  
24 ~~wise~~] unable to discharge the powers and duties of the office of gover-  
25 nor, the speaker of the assembly shall act as governor [~~during such~~  
26 until the earlier of the cessation of the vacancy or inability of the  
27 governor or lieutenant-governor or until a new governor shall be  
28 elected.

29 Whenever the temporary president of the senate or the speaker of the  
30 assembly shall act as governor, that officer shall be required to vacate  
31 that officer's seat in the legislature and the temporary president of  
32 the senate or speaker of the assembly position. Notwithstanding the  
33 foregoing, if the temporary president of the senate or the speaker of  
34 the assembly shall act as governor in the case of impeachment of the  
35 governor or in the case the governor is unable to discharge the powers  
36 and duties of the office, under section nine of this article, the tempo-  
37 rary president of the senate or speaker of the assembly shall not be  
38 required to vacate that officer's seat in the legislature and the tempo-  
39 rary president of the senate or speaker of the assembly position unless  
40 provided below, but that person shall not be permitted to discharge any  
41 powers and duties of that officer's seat in the legislature or any  
42 powers and duties of the temporary president of the senate or speaker of  
43 the assembly position until that person is no longer acting as governor.  
44 However, if the temporary president of the senate or the speaker of the  
45 assembly acts as governor beyond sixty consecutive days, that officer  
46 shall then be required to vacate that officer's seat in the legislature  
47 and the temporary president of the senate or speaker of the assembly  
48 position, and such vacancy shall not render that officer ineligible to  
49 continue to act as governor. The temporary president of the senate or  
50 speaker of the assembly may decline to act as governor, thus making them  
51 unable to act as governor.

52 The legislature may provide for the devolution of the duty of acting  
53 as governor in any case not provided for in this article. Should the  
54 legislature provide a line of succession beyond the speaker of the  
55 assembly, it shall consist of either statewide elected officers or heads  
56 of executive departments who have been confirmed by the senate to lead

1 their departments, or a combination thereof. If the duty of acting as  
2 governor devolves upon any official in a line of succession provided by  
3 the legislature, such official shall act as governor until the earlier  
4 of the cessation of the vacancy or inability of the governor or lieuten-  
5 ant-governor or the election of a new governor. If the duty of acting as  
6 governor devolves upon a line of succession provided by the legislature  
7 and no official in that line is able to discharge the powers and duties  
8 of the office of governor, whether due to inability or vacancy, the  
9 official who is highest in order of the following list whose vacancy or  
10 inability has ceased shall act as governor until the earlier of the  
11 cessation of the vacancy or inability of the governor or lieutenant-gov-  
12 ernor or the election of a new governor: temporary president of the  
13 senate and speaker of the assembly.

14 If an official acts as governor under this section, such official  
15 shall discharge all the powers and duties of the office of governor and  
16 shall be subject to section nine of this article as if such official had  
17 been elected governor.

18 § 3. Resolved (if the Assembly concur), That article 4 of the consti-  
19 tution be amended to add a new section 9 to read as follows:

20 § 9. 1. Governor's declaration of inability. Whenever the governor  
21 transmits to the lieutenant-governor, the temporary president of the  
22 senate, the speaker of the assembly, the minority leader of the senate  
23 and the minority leader of the assembly a written declaration of inabil-  
24 ity to discharge the powers and duties of the office of governor, and  
25 until the governor thereafter transmits to them a written declaration to  
26 the contrary, such powers and duties shall be discharged by the lieuten-  
27 ant-governor, or other person next in line of succession as provided by  
28 law, as acting governor.

29 2. Lieutenant-governor's declaration of inability. Whenever the lieu-  
30 tenant-governor transmits to the governor, the temporary president of  
31 the senate, the speaker of the assembly, the minority leader of the  
32 senate and the minority leader of the assembly a written declaration of  
33 inability to discharge the powers and duties of the office of lieuten-  
34 ant-governor, and until the lieutenant-governor thereafter transmits to  
35 them a written declaration to the contrary, the lieutenant-governor  
36 shall not have the powers and duties of the office of lieutenant-gover-  
37 nor and the line of succession to the governor's office shall exclude  
38 the lieutenant-governor, and the person next in line of succession as  
39 provided by law shall serve as acting governor if the line of succession  
40 is invoked.

41 3. Committee on gubernatorial inability. A committee on gubernatorial  
42 inability shall be comprised of the lieutenant-governor, the attorney  
43 general, comptroller and six heads of executive departments, divisions  
44 or offices, as provided by law, who shall have been confirmed by the  
45 senate to lead their departments, divisions or offices. For the purpose  
46 of determining lieutenant-governor inability under subdivisions five,  
47 seven and nine of this section, the governor shall take the place of the  
48 lieutenant-governor on the committee.

49 4. Lieutenant-governor and committee on gubernatorial inability's  
50 declaration of the governor's inability. Whenever a majority of the  
51 committee on gubernatorial inability shall transmit to the temporary  
52 president of the senate, the speaker of the assembly, the minority lead-  
53 er of the senate and the minority leader of the assembly their written  
54 declaration that the governor is unable to discharge the powers and  
55 duties of the office of governor, the lieutenant-governor shall imme-  
56 diately assume the powers and duties of the office as acting governor.

1 5. Governor and committee on gubernatorial inability's declaration of  
2 the lieutenant-governor's inability. Whenever a majority of the commit-  
3 tee on gubernatorial inability shall transmit to the temporary president  
4 of the senate, the speaker of the assembly, the minority leader of the  
5 senate and the minority leader of the assembly their written declaration  
6 that the lieutenant-governor is unable to discharge the powers and  
7 duties of the office of lieutenant-governor, the lieutenant-governor  
8 shall not have the powers and duties of the office of lieutenant-gover-  
9 nor and the line of succession to the governor's office shall exclude  
10 the lieutenant-governor, and the person next in line of succession as  
11 provided by law shall serve as acting governor if the line of succession  
12 is invoked.

13 6. Governor's declaration of no inability. When, following a declara-  
14 tion of inability as provided in subdivision four of this section, the  
15 governor transmits to the lieutenant-governor, the temporary president  
16 of the senate, the speaker of the assembly, the minority leader of the  
17 senate and the minority leader of the assembly a written declaration  
18 that no inability exists, the governor shall resume the powers and  
19 duties of the office of governor on the fourth day after making such  
20 announcement or at such earlier time after such announcement as may be  
21 determined by the committee, unless a majority of the committee on  
22 gubernatorial inability shall transmit within four days to the temporary  
23 president of the senate, the speaker of the assembly, the minority lead-  
24 er of the senate and the minority leader of the assembly their written  
25 declaration that the governor is unable to discharge the powers and  
26 duties of the office of governor.

27 7. Lieutenant-governor's declaration of no inability. When, following  
28 a declaration of inability as provided in subdivision five of this  
29 section, the lieutenant-governor transmits to the governor, the tempo-  
30 rary president of the senate, the speaker of the assembly, the minority  
31 leader of the senate and the minority leader of the assembly a written  
32 declaration that no inability exists, the lieutenant-governor shall  
33 resume the powers and duties of the office of lieutenant-governor and  
34 return to the line of succession to the governor's office on the fourth  
35 day after making such announcement or at such earlier time after such  
36 announcement as may be determined by the committee, unless a majority of  
37 the committee on gubernatorial inability shall transmit within four days  
38 to the temporary president of the senate, the speaker of the assembly,  
39 the minority leader of the senate and the minority leader of the assem-  
40 bly their written declaration that the lieutenant-governor is unable to  
41 discharge the powers and duties of the office of lieutenant-governor.

42 8. Legislative determination of gubernatorial inability. If there is a  
43 disagreement between the governor and a majority of the committee on  
44 gubernatorial inability concerning whether the governor is unable to  
45 discharge the powers and duties of the office of governor, the legisla-  
46 ture shall decide whether the governor is unable to discharge the powers  
47 and duties of the office of the governor, assembling within forty-eight  
48 hours from the expiration of the four days described above for that  
49 purpose if not in session. If the legislature, within twenty-one days  
50 after being required to assemble for that purpose, determines by two-  
51 thirds vote of all members elected to each house of the legislature,  
52 each house acting separately, that the governor is unable to discharge  
53 the powers and duties of the office of governor, the lieutenant-governor  
54 shall continue to exercise the powers and duties of the office of gover-  
55 nor; otherwise, the governor shall resume the powers and duties of that  
56 office.

1 9. Legislative determination of lieutenant-governor-gubernatorial  
2 inability. If there is a disagreement between the lieutenant-governor  
3 and a majority of the committee on gubernatorial inability concerning  
4 whether the lieutenant-governor is unable to discharge the powers and  
5 duties of the office of lieutenant-governor, the legislature shall  
6 decide whether the lieutenant-governor is unable to discharge the powers  
7 and duties of the office, assembling within forty-eight hours from the  
8 expiration of the four days described above for that purpose if not in  
9 session. If the legislature, within twenty-one days after being required  
10 to assemble for that purpose, determines by two-thirds vote of all  
11 members elected to each house of the legislature, each house acting  
12 separately, that the lieutenant-governor is unable to discharge the  
13 powers and duties of the office of lieutenant-governor, the lieutenant-  
14 governor shall remain without the powers and duties of the office and  
15 the line of succession to the governor's office shall continue to  
16 exclude the lieutenant-governor; otherwise, the lieutenant-governor  
17 shall resume the powers and duties of that office.

18 10. Procedure for vacancy in the committee on gubernatorial inability.  
19 If there is a vacancy in the office of lieutenant-governor when the  
20 legislature makes its determination under subdivision eight of this  
21 section, the person next in line of succession as determined by law  
22 shall act as governor under the procedures set forth in this section.  
23 For the purposes of subdivisions four, five, six, seven, eight and nine  
24 of this section, should there be a vacancy in the committee on gubernatorial  
25 inability or should the committee be otherwise unable to collect  
26 the votes of all members, a written declaration or transmission required  
27 under those sections shall require a two-thirds vote of the members who  
28 are voting.

29 § 4. Resolved (if the Assembly concur), That section 24 of article 6  
30 of the constitution be amended to read as follows:

31 § 24. The assembly shall have the power of impeachment by a vote of a  
32 majority of all the members elected thereto. The speaker of the assembly  
33 shall not vote on an impeachment against the governor or lieutenant-gov-  
34 ernor. The court for the trial of impeachments shall be composed of the  
35 president of the senate, the senators, or the major part of them, and  
36 the judges of the court of appeals, or the major part of them. On the  
37 trial of an impeachment against the governor or lieutenant-governor,  
38 neither the lieutenant-governor nor the temporary president of the  
39 senate shall act as a member of the court. No judicial officer shall  
40 exercise [~~his or her~~] such officer's office after articles of impeach-  
41 ment against [~~him or her~~] such officer shall have been preferred to the  
42 senate, until [~~he or she~~] such officer shall have been acquitted.  
43 Before the trial of an impeachment, the members of the court shall take  
44 an oath or affirmation truly and impartially to try the impeachment  
45 according to the evidence, and no person shall be convicted without the  
46 concurrence of two-thirds of the members present. Judgment in cases of  
47 impeachment shall not extend further than to removal from office, or  
48 removal from office and disqualification to hold and enjoy any public  
49 office of honor, trust, or profit under this state; but the party  
50 impeached shall be liable to indictment and punishment according to law.

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