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

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

§ 5. In case of the removal of the governor from office or of [~~his or her~~] the governor 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~~] such governor-elect's term, the lieutenant-governor-elect shall act as governor until the governor shall take the oath.

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

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

§ 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~~] their services an

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

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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 **earlier of the cessation of the vacancy or** inability [~~shall cease~~] **of the governor or lieutenant-governor** or until a **new** 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.~~]

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 **powers and** duties of **the office of** governor, the speaker of the assembly shall act as governor [~~during such~~] **until the earlier of the cessation of the** vacancy or inability **of the governor or lieutenant-governor or until a new governor shall be elected**.

Whenever the temporary president of the senate or the speaker of the assembly shall act as governor, that officer shall be required to vacate that officer's seat in the legislature and the temporary president of the senate or speaker of the assembly position. Notwithstanding the foregoing, if the temporary president of the senate or the speaker of the assembly shall act as governor in the case of impeachment of the governor or in the case the governor is unable to discharge the powers and duties of the office, under section nine of this article, the temporary president of the senate or speaker of the assembly shall not be required to vacate that officer's seat in the legislature and the temporary president of the senate or speaker of the assembly position unless provided below, but that person shall not be permitted to discharge any powers and duties of that officer's seat in the legislature or any powers and duties of the temporary president of the senate or speaker of the assembly position until that person is no longer acting as governor. However, if the temporary president of the senate or the speaker of the assembly acts as governor beyond sixty consecutive days, that officer shall then be required to vacate that officer's seat in the legislature and the temporary president of the senate or speaker of the assembly position, and such vacancy shall not render that officer ineligible to continue to act as governor. The temporary president of the senate or speaker of the assembly may decline to act as governor, thus making them unable to act as governor.

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

their departments, or a combination thereof. If the duty of acting as governor devolves upon any official in a line of succession provided by the legislature, such official shall act as governor until the earlier of the cessation of the vacancy or inability of the governor or lieutenant-governor or the election of a new governor. If the duty of acting as governor devolves upon a line of succession provided by the legislature and no official in that line is able to discharge the powers and duties of the office of governor, whether due to inability or vacancy, the official who is highest in order of the following list whose vacancy or inability has ceased shall act as governor until the earlier of the cessation of the vacancy or inability of the governor or lieutenant-governor or the election of a new governor: temporary president of the senate and speaker of the assembly.

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

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

§ 9. 1. Governor's declaration of inability. Whenever the governor transmits 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 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 provided by law, as acting governor.

2. Lieutenant-governor's declaration of inability. Whenever the lieutenant-governor transmits to the 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 lieutenant-governor, and until the lieutenant-governor thereafter transmits to them a written declaration to the contrary, the lieutenant-governor shall not have the powers and duties of the office of lieutenant-governor and the line of succession to the governor's office shall exclude the lieutenant-governor, and the person next in line of succession as provided by law shall serve as acting governor if the line of succession is invoked.

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

4. Lieutenant-governor and committee on gubernatorial inability's declaration of the governor's inability. Whenever a majority of the committee on gubernatorial inability shall transmit to the temporary president of the senate, the speaker of the assembly, the minority leader of the senate and the minority leader of the assembly their written declaration that the governor is unable to discharge the powers and duties of the office of governor, the lieutenant-governor shall immediately assume the powers and duties of the office as acting governor.

5. Governor and committee on gubernatorial inability's declaration of the lieutenant-governor's inability. Whenever a majority of the committee on gubernatorial inability shall transmit to the temporary president of the senate, the speaker of the assembly, the minority leader of the senate and the minority leader of the assembly their written declaration that the lieutenant-governor is unable to discharge the powers and duties of the office of lieutenant-governor, the lieutenant-governor shall not have the powers and duties of the office of lieutenant-governor and the line of succession to the governor's office shall exclude the lieutenant-governor, and the person next in line of succession as provided by law shall serve as acting governor if the line of succession is invoked.

6. Governor's declaration of no inability. When, following a declaration of inability as provided in subdivision four of this section, the governor transmits 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 a written declaration that no inability exists, the governor shall resume the powers and duties of the office of governor on the fourth day after making such announcement or at such earlier time after such announcement as may be determined by the committee, unless a majority of the committee on gubernatorial inability shall transmit within four days to the temporary president of the senate, the speaker of the assembly, the minority leader of the senate and the minority leader of the assembly their written declaration that the governor is unable to discharge the powers and duties of the office of governor.

7. Lieutenant-governor's declaration of no inability. When, following a declaration of inability as provided in subdivision five of this section, the lieutenant-governor transmits to the 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 that no inability exists, the lieutenant-governor shall resume the powers and duties of the office of lieutenant-governor and return to the line of succession to the governor's office on the fourth day after making such announcement or at such earlier time after such announcement as may be determined by the committee, unless a majority of the committee on gubernatorial inability shall transmit within four days to the temporary president of the senate, the speaker of the assembly, the minority leader of the senate and the minority leader of the assembly their written declaration that the lieutenant-governor is unable to discharge the powers and duties of the office of lieutenant-governor.

8. Legislative determination of gubernatorial inability. If there is a disagreement between the governor and a majority of the committee on gubernatorial inability concerning whether the governor is unable to discharge the powers and duties of the office of governor, the legislature shall decide whether the governor is unable to discharge the powers and duties of the office of the governor, assembling within forty-eight hours from the expiration of the four days described above for that purpose if not in session. If the legislature, within twenty-one days after being required to assemble for that purpose, determines by two-thirds vote of all members elected to each house of the legislature, each house acting separately, that the governor is unable to discharge the powers and duties of the office of governor, the lieutenant-governor shall continue to exercise the powers and duties of the office of governor; otherwise, the governor shall resume the powers and duties of that office.

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

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

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

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

§ 5. 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.