

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.

LBD89140-01-4

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.