

Senate Joint Resolution G (Substitute S-1 as reported)
Sponsor: Senator Ken Sikkema
Committee: Government Operations

Date Completed: 3-3-99

RATIONALE

Since the present State Constitution was drafted at the Constitutional Convention of 1961-62, a number of concerns have been voiced regarding vacancies in the office of Lieutenant Governor. When former Governor George Romney left the governorship in 1969 to become U.S. Secretary of Housing and Urban Development, and then-Lieutenant Governor Milliken assumed the governorship, the office of Lieutenant Governor became vacant and remained so until James Brickley was elected to it in 1970. The prolonged vacancy resulted from the fact that there is no provision in the present Constitution for filling vacancies in the office. Article V, Section 26 of the Constitution provides, "In case of the conviction of the governor on impeachment, his removal from office, his resignation or his death, the lieutenant governor, the elected secretary of state, the elected attorney general and such other persons designated by law shall in that order be governor for the remainder of the governor's term." Further, it states, "If the governor or the person in line of succession to serve as governor is absent from the state, or suffering under an inability, the powers and duties of the office of the governor shall devolve in order of precedence until the absence or inability giving rise to the devolution of power ceases." Under another constitutional provision, "Vacancies in the office of secretary of state and attorney general shall be filled by appointment by the governor" (Article V, Section 21). Thus, the office of Lieutenant Governor is the only chief executive office not covered expressly in the Constitution by a succession provision.

Attempts to fill a vacancy in the office through statutory provisions have been declared unconstitutional (as described in **BACKGROUND**, below). It has been pointed out that having no provision to fill a vacancy in the office could cause potential problems; in particular, if a Governor were to vacate that office and there were no Lieutenant Governor in place to fill the position, the Secretary of State would become Governor. This means that if the Secretary of State were from a party different than that of the Governor who vacated the office, then the head of the executive branch of government would be switched from one party to another without

a vote of the people. It has been suggested that the voters be presented with a constitutional amendment that would allow for the filling of a vacancy in the Lieutenant Governor's office.

CONTENT

The joint resolution proposes an amendment to Article V, Section 21 of the State Constitution to provide that a vacancy in the office of Lieutenant Governor would have to be filled by appointment by the Governor, with the advice and consent of the Senate.

The joint resolution would have to be submitted to the voters at the next general election, if two-thirds of the members elected and serving in each house of the Legislature approved the resolution.

BACKGROUND

Prior to 1969, Section 67 of the Michigan Election Law provided for filling a vacancy in the office of Lieutenant Governor by appointment by the Governor with the advice and consent of the Senate, if it was in session. In 1968, however, the Attorney General opined that that provision in Section 67 violated the Constitution (Opinion of the Attorney General, No. 4625). The opinion noted that Article V, Section 26 requires that the order of ascension to a vacant Governor's office be by the Lieutenant Governor, followed by an *elected* Secretary of State and an *elected* Attorney General, although the word "elected" before the office of Lieutenant Governor was omitted. This omission, coupled with the omission of a provision in Article V, Section 21 for the filling of a vacancy in the office of Lieutenant Governor, "...evidences an intent on the part of the framers of the Constitution that such vacancy remain unfilled".

Section 67 of the Election Law was amended in 1969 to provide that if a vacancy in the office of Lieutenant Governor occurred, the Senate must appoint an acting Lieutenant Governor of the Governor's party to serve the remainder of the term. This power has

never been used. Further, in 1995, in response to an inquiry from a State Representative as to whether the Senate could appoint a person to fill a vacancy in the office of Lieutenant Governor, the Attorney General ruled that, even though under Section 106(1) the power to fill a vacancy has been shifted from the Governor to the Senate, the Senate may not fill a vacancy because there is no authority under the Constitution to fill a vacancy in that office (Opinion of the Attorney General, No. 6849).

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

While attempts have been made to provide for filling a vacancy in the office of Lieutenant Governor by statute, these efforts have been declared unconstitutional. Filling such a vacancy presents some problems. If the Governor were allowed to fill the vacancy by appointment, he or she could select a person who had never been elected, meaning that if for some reason the Governor were no longer in office, the person who would replace him or her could be someone whom the voters had had no voice in choosing. On the other hand, if the Senate were allowed to fill the vacancy, even though the person filling the vacancy had been placed there by the voters' elected officials (Senators), there could be a situation in which a Senate dominated by one party elected to fill the vacancy with someone to whom the Governor objected; in effect, the party in power in the Senate could dictate to the other party in charge of the executive branch an important member of its high executive officers. Further, if the present situation is allowed to remain, it is possible that if a Governor were succeeded by a Lieutenant Governor, and the Lieutenant Governor vacancy were not filled (as is currently the law), then an elected Secretary of State would ascend to the Governor's office. If the Secretary of State were from another party, this would result in changing the executive branch from one party to another.

It is obvious that the problem of filling a vacancy in the office of Lieutenant Governor needs a solution. The joint resolution would give the voters an opportunity to solve the dilemma by allowing both the Governor and the Senate to participate in the choice. If approved, this would allow the Governor to choose someone from his or her own party, and would allow the voters to have a voice, through their elected Senators, in the selection. While this would not entirely solve the problem of having an unelected person in line to fill the Governor's office should it

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become vacant, it would allow for a vacancy to be filled with at least some direction from the voters.

Opposing Argument

According to the Official Record of the Constitutional Convention, on May 8, 1962, an amendment to the draft Constitution was proposed in order to require that a vacancy in the office of Secretary of State and Attorney General be filled by appointment by the Governor, with the advice and consent of the Senate. The "advice and consent" requirement was eventually removed. A convention delegate, Mr. W.F. Hanna, argued that if the Senators were of one party and the Governor of another, then the majority party in the Senate could have undue power over the Governor's party in filling that party's vacated offices. This argument could apply as well to the appointment of a person to Lieutenant Governor, and is as applicable today as it was then.

Response: Requiring the advice and consent of the Senate would at least ensure that the peoples' elected representatives voted on the selection.

Legislative Analyst: G. Towne

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: B. Bowerman