CACR 1 - AS INTRODUCED

2023 SESSION

23-0130
02/05

CONSTITUTIONAL AMENDMENT
CONCURRENT RESOLUTION ***1***

RELATING TO: the governor.

PROVIDING THAT: there be a lieutenant governor who shall assume the duties of the governor if the governor is incapacitated.

SPONSORS: Rep. Moffett, Merr. 4; Rep. Adjutant, Graf. 16; Rep. Schultz, Merr. 29; Rep. Kenney, Straf. 10

COMMITTEE: Executive Departments and Administration

ANALYSIS

This constitutional amendment concurrent resolution establishes the office of lieutenant governor and changes succession provisions in the event a governor is unable to perform the duties of the office.

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Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type

CACR 1 - AS INTRODUCED

23-0130
02/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

CONCURRENT RESOLUTION PROPOSING CONSITUTIONAL AMENDMENT

RELATING TO: the governor.

PROVIDING THAT: there be a lieutenant governor who shall assume the duties of the governor if the governor is incapacitated.

Be it Resolved by the House of Representatives, the Senate concurring, that the Constitution of New Hampshire be amended as follows:

I. That articles 41, 42, 49, and 49-a of the second part of the constitution be amended to read as follows:

[Art.] 41. [Governor, Supreme Executive Magistrate***; Lieutenant Governor***.] There shall be a supreme executive magistrate, who shall be styled the Governor of the State of New Hampshire, and whose title shall be His Excellency. ***There shall be a Lieutenant-governor chosen at the same time, and for the same term as the governor.*** The executive power of the State is vested in the Governor. The Governor shall be responsible for the faithful execution of the laws. He may, by appropriate court action or proceeding brought in the name of the State, enforce compliance with any constitutional or legislative mandate, or restrain violation of any constitutional or legislative power, duty, or right, by any officer, department or agency of the State. This authority shall not be construed to authorize any action or proceedings against the legislative or judicial branches.

[Art.] 42. [Election of Governor ***and Lieutenant-governor***; Return of Votes; Electors; If No Choice, Legislature to Elect One of Two Highest Candidates; Qualifications for Governor.] The Governor ***and Lieutenant-governor*** shall be chosen biennially in the month of November[~~; and~~]***.*** ***They shall be chosen jointly, by the casting by each voter of a single vote applicable to both offices.*** The votes for Governor ***and Lieutenant-governor*** shall be received, sorted, counted, certified and returned, in the same manner as the votes for Senators; and the Secretary shall lay the same before the Senate and House of Representatives, on the first Wednesday following the first Tuesday of January to be by them examined, and in case of an election by a plurality of votes through the state, the choice shall be by them declared and published. And the qualifications of electors of the Governor shall be the same as those for Senators; and if no [~~person~~] ***persons*** shall have a plurality of votes, the Senate and House of Representatives shall, by joint ballot elect [~~one of~~] the [~~two~~] ***respective*** persons, having the highest number of votes, who shall be declared Governor ***and Lieutenant-governor***. And no person shall be eligible to [~~this~~] ***either*** office, unless at the time of his election, he shall have been an inhabitant of this State for 7 years next preceding, and unless he shall be of the age of 30 years.

[Art.] 49. [[~~President of Senate~~] ***Lieutenant Governor***, etc., To Act as Governor When Office Vacant; [~~Speaker of House~~] ***President of Senate*** to Act When Office of ***Lieutenant Governor*** Is also Vacant.] In the event of the death, resignation, removal from office, failure to qualify, physical or mental incapacity, absence from the State, or other incapacity of the Governor, the [~~president of the senate~~] ***Lieutenant-governor***, for the time being, shall act as Governor until the vacancy is filled or the incapacity is removed; and if the [~~president of the senate~~] ***Lieutenant-governor***, for any of the above-named causes, shall become incapable of performing the duties of Governor, the same shall devolve upon the [~~speaker of the house of representatives~~] ***President of the Senate***, for the time being, or in the case of the like incapacity of the [~~***speaker]***~~ ***President***, upon the[~~secretary of state~~] ***Speaker of the House of Representatives***, or in case of his like incapacity, upon the [~~state treasurer~~] ***Secretary of State***, each of whom, in that order, shall act as Governor, as hereinabove provided, until the vacancy is filled or the incapacity removed. Whenever a vacancy for the duration or remainder of the Governor's term of office occurs before the commencement of the last year of such term, a special election for Governor shall take place to fill the vacancy, as provided by law. Whenever the [~~speaker of the house~~] ***President of the Senate*** acts as Governor, he shall act as such only until such time as the vacancy is filled or the incapacity removed in either the office of Governor or of [~~president of the senate~~] ***Lieutenant-governor***, whichever occurs first. Whenever either the [~~secretary of state~~] ***Speaker of the House of Representatives*** or the [~~treasurer~~] ***Secretary of State*** acts as Governor, he shall act as such only until such time as the vacancy is filled or the incapacity removed in the offices of Governor, of [~~president of the senate~~] ***Lieutenant-governor*** or of [~~speaker of the house~~] ***President of the Senate***, whichever occurs first. While acting as Governor under this article, the ***Lieutenant-governor,*** President of the Senate, Speaker of the House, ***or*** Secretary of State[~~or state treasurer~~], as the case may be, shall be styled Acting Governor, shall not be required to take an additional oath of office, shall have and exercise all the powers, duties and authorities of, and receive compensation equal to that of the office of Governor; and the capacity of each such officer to serve as President of the Senate as well as Senator, Speaker of the House of Representatives as well as Representative, ***or*** Secretary of State, [~~or state treasurer,~~] as the case may be, or to receive the compensation of such office, shall be suspended only. While the Governor or an acting Governor is absent from the State on official business, he shall have the power and authority to transact such business.

[Art.] 49-a [Prolonged Failure to Qualify; Vacancy in Office of Governor Due to Physical or Mental Incapacity, etc.] Whenever the Governor transmits to the Secretary of State and President of the Senate his written declaration that he is unable to discharge the powers and duties of his office by reason of physical or mental incapacity and until he transmits to them a written declaration to the contrary, the [~~president of the senate~~] ***Lieutenant-governor***, for the time being, shall act as Governor as provided in article 49, subject to the succession provisions therein set forth. Whenever it reasonably appears to the Attorney General and a majority of the Council that the Governor is

unable to discharge the powers and duties of his office by reason of physical or mental incapacity, but the Governor is unwilling or unable to transmit his written declaration to such effect as above provided, the Attorney General shall file a petition for declaratory judgment in the Supreme Court requesting a judicial determination of the ability of the Governor to discharge the powers and duties of his office. After notice and hearing, the Justices of the Supreme Court shall render such judgment as they find warranted by a preponderance of the evidence; and, if the Court holds that the Governor is unable to discharge the powers and duties of his office, the [~~president of the senate~~] ***Lieutenant-governor***, for the time being, shall act as Governor as provided in article 49, subject to the succession provisions therein set forth, until such time as the disability of the Governor is removed or a newly elected Governor is inaugurated. Such disability, once determined by the Supreme Court, may be removed upon petition for declaratory judgment to the Supreme Court by the Governor if the Court finds, after notice and hearing, by a preponderance of the evidence that the Governor is able to discharge the powers and duties of his office. Whenever such disability of the Governor, as determined by his written declaration or by judgment of the Supreme Court, has continued for a period of 6 months, the General Court may, by concurrent resolution adopted by both Houses, declare the office of Governor vacant. Whenever the Governor elect fails to qualify by reason of physical or mental incapacity or any cause other than death or resignation, for a period of 6 months following the inauguration date established by this Constitution, the General Court may, by concurrent resolution adopted by both Houses, declare the office of Governor vacant. The provisions of article 49 shall govern the filling of such vacancy, either by special election or continued service of an acting Governor. If the General Court is not in session when any such 6-month period expires, the acting Governor, upon written request of at least 1/4 of the members of each House, shall convene the General Court in special session for the sole purpose of considering and acting on the question whether to declare a vacancy in the office of Governor under this article.

II. That the above amendment proposed to the constitution be submitted to the qualified voters of the state at the state general election to be held in November, 2024.

III. That the selectmen of all towns, cities, wards and places in the state are directed to insert in their warrants for the said 2024 election an article to the following effect: To decide whether the amendments of the constitution proposed by the 2023 session of the general court shall be approved.

IV. That the wording of the question put to the qualified voters shall be:

"Are you in favor of amending articles 41, 42, 49, and 49-a of the second part of the constitution to read as follows:

[Art.] 41. [Governor, Supreme Executive Magistrate; Lieutenant Governor.] There shall be a supreme executive magistrate, who shall be styled the Governor of the State of New Hampshire, and whose title shall be His Excellency. There shall be a Lieutenant-governor chosen at the same time, and for the same term as the governor. The executive power of the State is vested in the Governor.

The Governor shall be responsible for the faithful execution of the laws. He may, by appropriate court action or proceeding brought in the name of the State, enforce compliance with any constitutional or legislative mandate, or restrain violation of any constitutional or legislative power, duty, or right, by any officer, department or agency of the State. This authority shall not be construed to authorize any action or proceedings against the legislative or judicial branches.

[Art.] 42. [Election of Governor and Lieutenant-governor; Return of Votes; Electors; If No Choice, Legislature to Elect One of Two Highest Candidates; Qualifications for Governor.] The Governor and Lieutenant-governor shall be chosen biennially in the month of November. They shall be chosen jointly, by the casting by each voter of a single vote applicable to both offices. The votes for Governor and Lieutenant-governor shall be received, sorted, counted, certified and returned, in the same manner as the votes for Senators; and the Secretary shall lay the same before the Senate and House of Representatives, on the first Wednesday following the first Tuesday of January to be by them examined, and in case of an election by a plurality of votes through the state, the choice shall be by them declared and published. And the qualifications of electors of the Governor shall be the same as those for Senators; and if no persons shall have a plurality of votes, the Senate and House of Representatives shall, by joint ballot elect the respective persons, having the highest number of votes, who shall be declared Governor and Lieutenant-governor. And no person shall be eligible to either office, unless at the time of his election, he shall have been an inhabitant of this State for 7 years next preceding, and unless he shall be of the age of 30 years.

[Art.] 49. [Lieutenant Governor, etc., To Act as Governor When Office Vacant; President of Senate to Act When Office of Lieutenant Governor Is also Vacant.] In the event of the death, resignation, removal from office, failure to qualify, physical or mental incapacity, absence from the State, or other incapacity of the Governor, the Lieutenant-governor, for the time being, shall act as Governor until the vacancy is filled or the incapacity is removed; and if the Lieutenant-governor, for any of the above-named causes, shall become incapable of performing the duties of Governor, the same shall devolve upon the President of the Senate, for the time being, or in the case of the like incapacity of the President, upon the Speaker of the House of Representatives, or in case of his like incapacity, upon the Secretary of State, each of whom, in that order, shall act as Governor, as hereinabove provided, until the vacancy is filled or the incapacity removed. Whenever a vacancy for the duration or remainder of the Governor's term of office occurs before the commencement of the last year of such term, a special election for Governor shall take place to fill the vacancy, as provided by law. Whenever the President of the Senate acts as Governor, he shall act as such only until such time as the vacancy is filled or the incapacity removed in either the office of Governor or of Lieutenant-governor, whichever occurs first. Whenever either the Speaker of the House of Representatives or the Secretary of State acts as Governor, he shall act as such only until such time as the vacancy is filled or the incapacity removed in the offices of Governor, of Lieutenant-governor or of President of the Senate, whichever occurs first. While acting as Governor under this

article, the Lieutenant-governor, President of the Senate, Speaker of the House, or Secretary of State, as the case may be, shall be styled Acting Governor, shall not be required to take an additional oath of office, shall have and exercise all the powers, duties and authorities of, and receive compensation equal to that of the office of Governor; and the capacity of each such officer to serve as President of the Senate as well as Senator, Speaker of the House of Representatives as well as Representative, or Secretary of State, as the case may be, or to receive the compensation of such office, shall be suspended only. While the Governor or an acting Governor is absent from the State on official business, he shall have the power and authority to transact such business.

[Art.] 49-a [Prolonged Failure to Qualify; Vacancy in Office of Governor Due to Physical or Mental Incapacity, etc.] Whenever the Governor transmits to the Secretary of State and President of the Senate his written declaration that he is unable to discharge the powers and duties of his office by reason of physical or mental incapacity and until he transmits to them a written declaration to the contrary, the Lieutenant-governor, for the time being, shall act as Governor as provided in article 49, subject to the succession provisions therein set forth. Whenever it reasonably appears to the Attorney General and a majority of the Council that the Governor is unable to discharge the powers and duties of his office by reason of physical or mental incapacity, but the Governor is unwilling or unable to transmit his written declaration to such effect as above provided, the Attorney General shall file a petition for declaratory judgment in the Supreme Court requesting a judicial determination of the ability of the Governor to discharge the powers and duties of his office. After notice and hearing, the Justices of the Supreme Court shall render such judgment as they find warranted by a preponderance of the evidence; and, if the Court holds that the Governor is unable to discharge the powers and duties of his office, the Lieutenant-governor, for the time being, shall act as Governor as provided in article 49, subject to the succession provisions therein set forth, until such time as the disability of the Governor is removed or a newly elected Governor is inaugurated. Such disability, once determined by the Supreme Court, may be removed upon petition for declaratory judgment to the Supreme Court by the Governor if the Court finds, after notice and hearing, by a preponderance of the evidence that the Governor is able to discharge the powers and duties of his office. Whenever such disability of the Governor, as determined by his written declaration or by judgment of the Supreme Court, has continued for a period of 6 months, the General Court may, by concurrent resolution adopted by both Houses, declare the office of Governor vacant. Whenever the Governor elect fails to qualify by reason of physical or mental incapacity or any cause other than death or resignation, for a period of 6 months following the inauguration date established by this Constitution, the General Court may, by concurrent resolution adopted by both Houses, declare the office of Governor vacant. The provisions of article 49 shall govern the filling of such vacancy, either by special election or continued service of an acting Governor. If the General Court is not in session when any such 6-month period expires, the acting Governor, upon written request of at least 1/4 of the members of each House, shall convene the General Court in special

session for the sole purpose of considering and acting on the question whether to declare a vacancy in the office of Governor under this article."

V. That the secretary of state shall print the question to be submitted on a separate ballot with other constitutional questions or on the official ballot. The ballot containing the question shall include 2 ovals next to the question allowing the voter to vote "Yes" or "No." If no oval is marked, the ballot shall not be counted on the question. The outside of the ballot shall be the same as the regular official ballot except that the words "Questions Relating to Constitutional Amendments proposed by the 2023 General Court" shall be printed in bold type at the top of the ballot.

VI. That if the proposed amendment is approved by 2/3 of those voting on the amendment, it becomes effective when the governor proclaims its adoption.

VII. Voters' Guide.

AT THE PRESENT TIME, there is no office of lieutenant governor in New Hampshire. In the event a governor is incapacitated or otherwise unable to perform the duties of the office, the constitution provides that the president of the senate shall assume the duties of the governor. If the president of the senate is unable to assume or perform the duties of the governor, the constitution provides that speaker of the house of representatives, the secretary of state, or the state treasurer would act as governor, in that order.

IF THE AMENDMENT IS ADOPTED, there will be a lieutenant-governor, elected jointly with the governor. If the governor were to become incapacitated or otherwise unable to perform the duties of the office, the lieutenant-governor would be the first in order of succession to assume the duties of governor, followed by the president of the senate, the speaker of the house of representatives, and the secretary of state.