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State of Minnesota  
HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH  
SESSION

HOUSE FILE No. **39**

January 12, 2009

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The bill was read for the first time and referred to the Committee on State and Local Government Operations Reform,  
Technology and Elections

1.1 A bill for an act  
1.2 relating to elections; proposing an amendment to the Minnesota Constitution,  
1.3 article V, section 5, providing for an election to fill a vacancy in the office of  
1.4 governor; changing the procedure for a special election to fill a United States  
1.5 Senate vacancy; amending Minnesota Statutes 2008, sections 4.06; 204D.17,  
1.6 subdivision 1; repealing Minnesota Statutes 2008, section 204D.28.

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 Section 1. **CONSTITUTIONAL AMENDMENT PROPOSED.**

1.9 An amendment to the Minnesota Constitution is proposed to the people. If the  
1.10 amendment is adopted, article V, section 5, will read:

1.11 Sec. 5. In case a vacancy occurs from any cause whatever in the office of governor, the  
1.12 lieutenant governor shall be governor during ~~such~~ the time before an election is held to fill  
1.13 the vacancy. The election must be held no less than 60 days and no more than 120 days  
1.14 after the vacancy occurs. The compensation of the lieutenant governor shall be prescribed  
1.15 by law. The last elected presiding officer of the senate shall become lieutenant governor in  
1.16 case a vacancy occurs in that office. In case the governor is unable to discharge the powers  
1.17 and duties of his office, the same devolves on the lieutenant governor. The legislature may  
1.18 provide by law for the case of the removal, death, resignation, or inability both of the  
1.19 governor and lieutenant governor to discharge the duties of governor and may provide by  
1.20 law for continuity of government in periods of emergency resulting from disasters caused  
1.21 by enemy attack in this state, including but not limited to, succession to the powers and  
1.22 duties of public office and change of the seat of government.

1.23 Sec. 2. **SUBMISSION TO VOTERS.**

2.1 The proposed amendment shall be submitted to the people at the 2010 general  
2.2 election. The question submitted shall be:

2.3 "Shall the Minnesota Constitution be amended to provide that a permanent vacancy  
2.4 in the office of governor be filled by election?

2.5 Yes .....

2.6 No ....."

2.7 Sec. 3. Minnesota Statutes 2008, section 4.06, is amended to read:

2.8 **4.06 VACANCY; SUCCESSION; DISABILITY.**

2.9 (a) When a vacancy occurs, from any cause whatever, in the office of governor, the  
2.10 lieutenant governor shall become governor until an election is held to fill the vacancy and  
2.11 the last duly elected president of the senate shall become lieutenant governor for the  
2.12 remainder of the term. When a vacancy occurs, from any cause whatever, in the office of  
2.13 governor and in the office of lieutenant governor, the president of the senate shall become  
2.14 governor ~~for the remainder of the term~~ until an election is held to fill the vacancy. If there  
2.15 be no president of the senate, then the speaker of the house shall become governor for the  
2.16 remainder of the term; or if there be none, then the secretary of state, or the auditor, or  
2.17 the attorney general, in that order, shall upon resignation from office, become governor  
2.18 ~~for the remainder of the term~~ until an election is held to fill the vacancy.

2.19 (b) In case of the death or other failure to take office of the governor-elect, the  
2.20 lieutenant governor-elect shall become governor from the same time and in the same  
2.21 manner and for the same term as provided for the governor-elect. In case of the death or  
2.22 other failure to take office of both the governor-elect and lieutenant governor-elect, the last  
2.23 duly elected president of the senate, or in the case of death or other failure to take office,  
2.24 the last duly elected speaker of the house, or in the case of death or other failure to take  
2.25 office, the secretary of state-elect, or under the same circumstances the auditor-elect, or  
2.26 the attorney general-elect, in that order shall become governor from the same time and in  
2.27 the same manner and for the same term as provided for the governor-elect.

2.28 (c) If the governor transmits to the president of the senate and the speaker of the  
2.29 house a written declaration of an inability to discharge the powers and duties of the office  
2.30 of governor, and until the governor transmits a written declaration to the contrary, the  
2.31 powers and duties of the governor shall be discharged by the lieutenant governor.

2.32 (d) The governor may be declared unable to discharge the powers and duties of the  
2.33 office if a declaration is signed by four out of five of the following persons and transmitted  
2.34 to the president of the senate and the speaker of the house: the chief justice of the Supreme  
2.35 Court, the lieutenant governor, the governor's chief of staff, the governor's personal

3.1 physician, and a member of the governor's cabinet designated in advance by the governor.  
3.2 If no cabinet member has been designated, three out of four shall be sufficient. The  
3.3 lieutenant governor shall then discharge the powers and duties of the office of governor.

3.4 (e) The declaration remains in effect until the governor transmits to the president  
3.5 of the senate and the speaker of the house a written declaration that no inability exists,  
3.6 unless four out of five of the persons described in paragraph (d), or three out of four if no  
3.7 cabinet member has been designated, sign and transmit to the president of the senate and  
3.8 the speaker of the house within four days of the governor's declaration a declaration that  
3.9 the governor is unable to discharge the powers and duties of the office. In that event, the  
3.10 lieutenant governor shall continue to discharge the duties of the office until the legislature  
3.11 decides the issue, assembling within 48 hours for that purpose if not in session. If the  
3.12 legislature, within 21 days after receipt of the declaration that the governor is unable to  
3.13 discharge the powers and duties of the office or, if the legislature is not in session, within  
3.14 21 days after being required to assemble, determines by two-thirds vote of both houses  
3.15 that the governor is unable to discharge the powers and duties of the office, the lieutenant  
3.16 governor shall continue to discharge the powers and duties of the office. Otherwise, the  
3.17 governor shall resume the powers and duties of the office.

3.18 Sec. 4. Minnesota Statutes 2008, section 204D.17, subdivision 1, is amended to read:

3.19 Subdivision 1. **Special elections; exceptions.** A vacancy in the office of United  
3.20 States senator, representative in Congress ~~or,~~ state senator, or state representative shall be  
3.21 filled for the unexpired term by special election upon the writ of the governor as provided  
3.22 in sections 204D.17 to 204D.27; except that if Congress or the legislature will not be in  
3.23 session before the expiration of the vacant term no special election is required.

3.24 Sec. 5. **REPEALER.**

3.25 Minnesota Statutes 2008, section 204D.28, is repealed.

3.26 Sec. 6. **EFFECTIVE DATE.**

3.27 Section 3 is effective upon approval by the voters of the constitutional amendment  
3.28 proposed in section 1. Sections 4 and 5 are effective the day following final enactment.