



**SENATE JOINT
RESOLUTION No. 5**

DIGEST OF INTRODUCED RESOLUTION

Citations Affected: Article 5 of the Constitution of the State of Indiana.

Synopsis: Exercise of the state's executive power. Provides for discharge of the governor's powers and duties if the governor dies, becomes disabled, resigns, or is removed from office. Provides for the discharge of the lieutenant governor's powers and duties if the lieutenant governor dies or is disabled. Provides for the discharge of the governor's powers and duties if neither the governor nor the lieutenant governor are able to discharge those powers and duties.

Effective: This proposed amendment must be agreed to by two consecutive general assemblies and ratified by a majority of the state's voters voting on the question to be effective.

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January 13, 2004, read first time and referred to Committee on Rules and Legislative Procedure.

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PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular General Assembly.

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SENATE JOINT RESOLUTION No. 5

A JOINT RESOLUTION proposing an amendment to Article 5 of the Constitution of the State of Indiana concerning the executive power of state government.

Be it resolved by the General Assembly of the State of Indiana:

- 1 SECTION 1. The following amendment to the Constitution of the
- 2 State of Indiana is proposed and agreed to by this, the One Hundred
- 3 Thirteenth General Assembly of the State of Indiana, and is referred to
- 4 the next General Assembly for reconsideration and agreement.
- 5 SECTION 2. THE CONSTITUTION OF THE STATE OF
- 6 INDIANA IS AMENDED BY STRIKING OUT ARTICLE 5,
- 7 SECTION 10.
- 8 SECTION 3. ARTICLE 5 OF THE CONSTITUTION OF THE
- 9 STATE OF INDIANA IS AMENDED BY ADDING A **NEW**
- 10 SECTION TO READ AS FOLLOWS: **Section 25. (a) If the**
- 11 **Governor-elect fails to assume office, the Lieutenant**
- 12 **Governor-elect becomes Governor and holds office for the term of**
- 13 **the Governor-elect.**



1 (b) If the Governor dies, resigns, or is removed from office, the
 2 Lieutenant Governor becomes Governor by operation of law and
 3 holds office for the unexpired term of the previous Governor. The
 4 oath of office taken by the Lieutenant Governor as Lieutenant
 5 Governor serves as the oath of office for the office of Governor.

6 (c) If the Governor transmits to the President pro tempore of
 7 the Senate and the Speaker of the House of Representatives the
 8 Governor's written statement that the Governor is unable to
 9 discharge the Governor's powers and duties, the Lieutenant
 10 Governor or the Acting Lieutenant Governor (if an Acting
 11 Lieutenant Governor is discharging the powers and duties of the
 12 Lieutenant Governor) becomes Acting Governor. Thereafter, if the
 13 Governor transmits to the President pro tempore of the Senate and
 14 the Speaker of the House of Representatives the Governor's
 15 written statement that the Governor is able to discharge the
 16 Governor's powers and duties, the Governor resumes those powers
 17 and duties.

18 (d) If the President pro tempore of the Senate and the Speaker
 19 of the House of Representatives file with the Supreme Court a
 20 petition stating that the Governor is unable to discharge the
 21 Governor's powers and duties, the Supreme Court shall meet not
 22 later than forty-eight hours after the petition is filed to decide the
 23 question. If the Court determines that the Governor is unable to
 24 discharge the Governor's powers and duties, the Lieutenant
 25 Governor or the Acting Lieutenant Governor (if an Acting
 26 Lieutenant Governor is discharging the powers and duties of the
 27 Lieutenant Governor) becomes Acting Governor. Thereafter, if the
 28 Governor files with the Supreme Court a petition stating that the
 29 Governor is able to discharge the Governor's powers and duties,
 30 the Supreme Court shall meet not later than forty-eight hours after
 31 the petition is filed to decide the question. If the Court determines
 32 that the Governor is able to discharge the Governor's powers and
 33 duties, the Governor resumes those powers and duties.

34 SECTION 4. ARTICLE 5 OF THE CONSTITUTION OF THE
 35 STATE OF INDIANA IS AMENDED BY ADDING A NEW
 36 SECTION TO READ AS FOLLOWS: Section 26. (a) If the
 37 Lieutenant Governor dies, resigns, or is removed from office, the
 38 Governor shall nominate an individual to be Lieutenant Governor.
 39 The nominated individual becomes Lieutenant Governor upon
 40 confirmation by a majority vote in each house of the General
 41 Assembly. The individual shall hold the office of Lieutenant
 42 Governor for the unexpired term of the previous Lieutenant

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1 Governor. If the General Assembly is not in session, the Governor
2 shall call it into special session to receive and act upon the
3 Governor's nomination. If either house of the General Assembly is
4 unable to assemble a quorum of its members to elect a Lieutenant
5 Governor under this subsection because of vacancies in the
6 membership of that house, the General Assembly shall convene not
7 later than forty-eight hours after a sufficient number of the
8 vacancies are filled to provide a quorum of members for that
9 house.

10 (b) If the Lieutenant Governor transmits to the Governor the
11 Lieutenant Governor's written statement that the Lieutenant
12 Governor is unable to discharge the Lieutenant Governor's powers
13 and duties, the Governor shall appoint an individual to serve as
14 Acting Lieutenant Governor. Thereafter, if the Lieutenant
15 Governor transmits to the Governor the Lieutenant Governor's
16 written statement that the Lieutenant Governor is able to
17 discharge the Lieutenant Governor's powers and duties, the
18 Lieutenant Governor resumes those powers and duties.

19 (c) If the Governor files with the Supreme Court a petition
20 stating that the Lieutenant Governor is unable to discharge the
21 Lieutenant Governor's powers and duties, the Supreme Court shall
22 meet not later than forty-eight hours after the petition is filed to
23 decide the question. If the Court determines that the Lieutenant
24 Governor is unable to discharge the Lieutenant Governor's powers
25 and duties, the Governor shall appoint an individual to serve as
26 Acting Lieutenant Governor. Thereafter, if the Lieutenant
27 Governor files with the Supreme Court a petition stating that the
28 Lieutenant Governor is able to discharge the Lieutenant
29 Governor's powers and duties, the Supreme Court shall meet not
30 later than forty-eight hours after the petition is filed to decide the
31 question. If the Court determines that the Lieutenant Governor is
32 able to discharge the Lieutenant Governor's powers and duties, the
33 Lieutenant Governor resumes those powers and duties.

34 SECTION 5. ARTICLE 5 OF THE CONSTITUTION OF THE
35 STATE OF INDIANA IS AMENDED BY ADDING A NEW
36 SECTION TO READ AS FOLLOWS: Section 27. (a) If both the
37 office of Governor and Lieutenant Governor are vacant, the
38 General Assembly shall convene in joint session not later than
39 forty-eight hours after that occurrence and elect a Governor from
40 the same political party as the previous Governor by a majority
41 vote of each house.

42 (b) If either house of the General Assembly is unable to

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1 assemble a quorum of its members to elect a Governor under this
2 section because of vacancies in the membership of that house, the
3 General Assembly shall convene not later than forty-eight hours
4 after a sufficient number of the vacancies are filled to provide a
5 quorum of members for that house.

6 SECTION 6. ARTICLE 5 OF THE CONSTITUTION OF THE
7 STATE OF INDIANA IS AMENDED BY ADDING A NEW
8 SECTION TO READ AS FOLLOWS: Section 28. (a) If any of the
9 following applies, the General Assembly shall convene in joint
10 session not later than forty-eight hours after such occurrence and
11 select an Acting Governor from the same political party as the
12 Governor by a majority vote of each house:

13 (1) Both the Governor and Lieutenant Governor are
14 unable to discharge the powers and duties of their
15 respective offices.

16 (2) The office of Governor is vacant and the Lieutenant
17 Governor is unable to discharge the powers and duties of
18 the Lieutenant Governor.

19 (3) The Governor is unable to discharge the powers and
20 duties of the Governor and the office of Lieutenant
21 Governor is vacant.

22 (b) After the General Assembly acts under subsection (a), if the
23 Governor transmits to the President pro tempore of the Senate and
24 the Speaker of the House of Representatives the Governor's
25 written statement that the Governor is able to discharge the
26 Governor's powers and duties, the Governor resumes those powers
27 and duties.

28 (c) After the General Assembly acts under subsection (a), if the
29 Lieutenant Governor transmits to the President pro tempore of the
30 Senate and the Speaker of the House of Representatives the
31 Lieutenant Governor's written statement that the Lieutenant
32 Governor is able to discharge the Lieutenant Governor's powers
33 and duties, the Lieutenant Governor resumes those powers and
34 duties.

35 (d) After the General Assembly acts under subsection (a), if the
36 Governor remains disabled and the Lieutenant Governor transmits
37 to the President pro tempore of the Senate and the Speaker of the
38 House of Representatives the Lieutenant Governor's written
39 statement that the Lieutenant Governor is able to discharge the
40 Lieutenant Governor's powers and duties, the Lieutenant
41 Governor becomes Acting Governor.

42 (e) After the General Assembly acts under subsection (a), if the

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1 office of Governor is vacant and the Lieutenant Governor
2 transmits to the President pro tempore of the Senate and the
3 Speaker of the House of Representatives the Lieutenant
4 Governor's written statement that the Lieutenant Governor is able
5 to discharge the Lieutenant Governor's powers and duties, the
6 Lieutenant Governor becomes Governor under section 25 of this
7 article.

8 (f) If either house of the General Assembly is unable to
9 assemble a quorum of its members to act under this section
10 because of vacancies in the membership of that house, the General
11 Assembly shall convene not later than forty-eight hours after a
12 sufficient number of the vacancies are filled to provide a quorum
13 of members for that house.

14 SECTION 7. ARTICLE 5 OF THE CONSTITUTION OF THE
15 STATE OF INDIANA IS AMENDED BY ADDING A NEW
16 SECTION TO READ AS FOLLOWS: Section 29. (a) This section
17 applies until an individual becomes Governor or Acting Governor
18 under any of sections 25 through 28 of this article.

19 (b) An individual holding one (1) of the following offices
20 becomes Acting Governor, in the order listed:

- 21 (1) The Speaker of the House of Representatives.
- 22 (2) The President pro tempore of the Senate, if the office
- 23 described in subdivision (1) is vacant or if the individual
- 24 holding the office described in subdivision (1) is unable to
- 25 discharge the powers and duties of the office.
- 26 (3) The Treasurer of State, if the offices described in
- 27 subdivisions (1) and (2) are vacant or if the individuals
- 28 holding the offices described in subdivisions (1) and (2)
- 29 are unable to discharge the powers and duties of their
- 30 respective offices.
- 31 (4) The Auditor of State, if the offices described in
- 32 subdivisions (1) through (3) are vacant or if the
- 33 individuals holding the offices described in subdivisions
- 34 (1) through (3) are unable to discharge the powers and
- 35 duties of their respective offices.
- 36 (5) The Secretary of State, if the offices described in
- 37 subdivisions (1) through (4) are vacant or if the
- 38 individuals holding the offices described in subdivisions
- 39 (1) through (4) are unable to discharge the powers and
- 40 duties of their respective offices.
- 41 (6) The State Superintendent of Public Instruction, if the
- 42 offices described in subdivisions (1) through (5) are

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vacant or if the individuals holding the offices described in subdivisions (1) through (5) are unable to discharge the powers and duties of their respective offices.

SECTION 8. ARTICLE 5 OF THE CONSTITUTION OF THE STATE OF INDIANA IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS: **Section 30. (a) An individual who serves as Acting Governor may exercise all the Governor's powers and duties. An individual who serves as Acting Governor surrenders the Governor's powers and duties when the earliest of the following occurs:**

- (1) The Governor's term of office expires.**
- (2) The Governor resumes the Governor's powers and duties.**
- (3) Another individual becomes Acting Governor.**
- (4) The individual is unable to discharge the Governor's powers and duties.**

(b) An individual who serves as Acting Lieutenant Governor has all the Lieutenant Governor's powers and duties. An individual who serves as Acting Lieutenant Governor surrenders those powers and duties when the earliest of the following occurs:

- (1) The Lieutenant Governor's term of office expires.**
- (2) The Lieutenant Governor resumes the Lieutenant Governor's powers and duties.**
- (3) Another individual becomes Acting Lieutenant Governor.**
- (4) The individual is unable to discharge the Lieutenant Governor's powers and duties.**

(c) An individual who serves as Acting Governor by virtue of another office the individual holds does not forfeit the other office upon becoming Acting Governor. The individual may discharge the powers and duties of the other office while serving as Acting Governor.

SECTION 9. ARTICLE 5 OF THE CONSTITUTION OF THE STATE OF INDIANA IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS: **Sec. 31. (a) Whenever a question arises under this article whether an individual is able to discharge the powers and duties of an office, the Supreme Court shall decide the question.**

(b) Except as provided in sections 25 and 26 of this article, any state officer may file a petition with the Supreme Court to determine whether an individual is able to discharge the powers and duties of an office.

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1 (c) An individual who has been determined unable to discharge
2 the powers and duties of an office may file a petition with the
3 Supreme Court for a determination that the individual is able to
4 discharge the powers and duties of the office.

5 (d) If a petition is filed under this section, the Supreme Court
6 shall meet not later than forty-eight hours after the petition is filed
7 to decide the question.

8 (e) A decision of the Supreme Court is final.

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