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## **The Office of Lieutenant Governor: A Bedrock Principle**

By Julia Hurst

*The office of lieutenant governor is the proven method of gubernatorial succession in the states and territories having stood the test of time and experience for more than 200 years. Of the few states which ever abolished the office of lieutenant governor, every one reinstated it. History reveals five principles to well written succession law utilizing the office of lieutenant governor. Moreover, states and territories continue to capitalize on the value of this office and its official with lieutenant governors garnering power and responsibility from the Constitution, statute, gubernatorial appointment, or through personal initiative. The trend line for the growth and value of the office is seen through new studies and increasing pay rates, growth in duties and political roles, and anecdotally through press.*

### **Introduction**

National and homeland security directives and federal emergency preparedness circulars say continuity of government planning, which includes gubernatorial succession planning, is an essential duty of states. For more than 200-years, the office of lieutenant governor occupied by a statewide elected official has been the proven method of gubernatorial succession. The experience of states show five key elements of effective succession law, as follows: a sufficiently deep and clearly delineated line of succession; clarity on resources available to successors during a succession; a thorough definition of when and under what circumstances a governor becomes “incapacitated”; and congruity of law for succession regardless of whether the succession occurs from physical vacancy, resignation, recall, or impeachment. Beyond the succession role, a lieutenant governor is the second highest ranking official in state or territorial government deriving powers four ways. Through the duties given this official, most states demonstrably leverage the office of lieutenant governor to improve the effectiveness and efficiency of state governance for the benefit of the state and its constituents.

### **Succession Lineage**

Every state and territorial constitution names an official who is first in line for gubernatorial succession. Gubernatorial succession may be caused by death, resignation, incapacitation (short-term or permanent), recall, or impeachment (permitted in every state but Oregon). The rate of gubernatorial succession in the states between 2000 – 2010 shows an increase since 1900. The official first in line of gubernatorial succession is a lieutenant governor in 43 states and another official in seven states. Arizona, Oregon, and Wyoming designate the Secretary of State first in line while Maine, New Hampshire, Tennessee, and West Virginia rely on the Senate President as first in line. Of these seven, Arizona, Tennessee, and West Virginia saw efforts in recent years to establish the office of lieutenant governor as a statewide elected official. In Tennessee and West Virginia, the senate president statutorily is given the title “lieutenant governor.” No state has abolished the office in the modern era, and of the few states that once abolished the office, every state reinstated the office.

### **Succession Law**

The increasing trend of gubernatorial successions has shown five key elements of well written succession law. Generally, every state should specify which officials constitute the line of gubernatorial succession, in what order they form the line, how deep the line is, and under what circumstances a person succeeds. Gubernatorial succession begins when the office is vacated prior to completion of a person’s official term. The office may be vacated as a result of death, resignation, incapacitation,

impeachment, or recall. A leader may be incapacitated due to location (ie. the official is out of the state or out of the country or in a war zone), physical ailment, unconscious state (ie. the official is anesthetized or in a coma), or the inability to effectively function (ie. the official is under federal indictment). State law should also specify if succession can occur for a temporary basis, such as a temporary incapacitation. Law should define how incapacitation is determined and should specify if a declaration of incapacitation can be temporary or permanent. Indiana specifies a procedure which includes a finding of incapacitation involving both legislative leaders and the state supreme court. Gubernatorial succession law should detail when and how a succession due to incapacitation is enacted.

Once a line of gubernatorial succession has activated, state law should clarify whether successors become “acting” officials (ie. is the “Acting Governor”) or whether the successor fully assumes the title and office. Lawmakers are well advised to carefully consider whether resulting vacancies should be filled (ie. such as a vacancy in the office of lieutenant governor), and if so, how. In states in which the senate president has succeeded to governor, questions of separation of power have resulted as the individual retained their senate post and became “Acting Governor.” Law should specify whether the succeeding official retains any part or power of their previous position. In any case of gubernatorial succession, the law should also be clear on the length of service of the successor. In most states, a successor completes the remaining term of office. Some states, however, require a special election within a specified time period or at the next regularly scheduled statewide election if more than half the term of service remains.

State leaders may also review state code to ensure that statute surrounding impeachment and recall provisions are not in conflict with Constitutional and statutory language on gubernatorial succession. For example, the 2003 gubernatorial recall election of then-California Gov. Gray Davis brought to light an inconsistency with otherwise established gubernatorial succession. In that state in the event of recall, the state supreme court ruled a new election for governor should be held simultaneous to the recall, negating gubernatorial succession as defined by the constitution. Recall law may also be reviewed to determine if a governor and lieutenant governor elected on a ticket are recalled as a ticket or not, as questioned in the 2012 recall effort in Wisconsin.

### **Lieutenant Governor’s Office**

The shared duty of every lieutenant governor is to provide clarity in leadership and continuity in governance should a vacancy in the governor’s office occur. All offices of lieutenant governor are generally accepted to have the power of “the bully pulpit.” Nearly all lieutenant governors now put forth legislative packages or testify on proposals and budget actions both at the state level and federally. Beyond this, a lieutenant governor may garner duties and authorities from the constitution, from statute, through gubernatorial appointment, through personal initiative or through a combination of these. Lieutenant governors generally may exercise any power not barred by constitution or law. These parameters mean the office of lieutenant governor is arguably the most diverse position across state governments. The office of lieutenant governor may be shaped in a state or territory to meet the greatest needs of the particular state on an ongoing basis and at the moment in time.

Nearly half the lieutenant governors act as governor in various circumstances (ie. some act as governor when the governor is out of state). Holders of this office are the only state officials with specific powers in both the legislative and executive branches. Nearly half the lieutenant governors preside over the state senates and cast tie-breaking votes in the senate. Just past the midway point in the 2012 General Assembly session, Virginia Lt. Governor Bill Bolling had cast 10 tiebreaking votes on issues ranging from voting to eminent domain to drug screening of some welfare recipients. Some lieutenant governors are

directors of agencies or departments of state government. This may occur through statutory designation or through gubernatorial appointment. By statute, the South Carolina lieutenant governor leads the Office on Aging. In Colorado, Lt. Governor Joseph Garcia is director of the department for higher education through gubernatorial appointment.

### **Gubernatorial Role**

Governors and legislators have a role and responsibility in the evolution of the office of lieutenant governor in a state or territory. A governor may name the lieutenant governor to lead a department, to serve on the Cabinet, to have a role in budget making, to be a liaison to the legislature, or more. These actions may be taken formally or informally. Governors have used executive orders to delegate duties. Virginia Lt. Governor Bill Bolling was named "Chief Job Creation Officer" via an executive order which detailed his role to co-chair the Economic Development Commission and serve as a Cabinet member coordinating state economic development efforts. Lieutenant governors may be named to chair or serve on commissions by the governor or the legislature, a role quantifiably acknowledged since 2002 in Dr. David Winder's report "The Lieutenant Governor's Level of Activity in State Policymaking: Chairing Commissions as Key Factor."

The method of election of a lieutenant governor may impact the disposition of duties to the office by the governor. Eighteen states elect the lieutenant governor separately from the governor while the remainder elect the officials on a team ticket, though the ticket may be "an arranged marriage." In "an arranged marriage," an electorate chooses the candidate for each office in a primary election, caucus, or convention and the results pair the officials as a team ticket at the general election. Officials who choose to run together on a "team ticket" may have a relationship which results in the lieutenant governor garnering a specific set of duties directly through gubernatorial appointment. Conversely, a lieutenant governor elected separately from a governor, and who may even be of the opposite party, may find power in being independent of the governor on issue positions and public statements.

### **Legislative Role**

As noted, the legislators also have a role in developing the office of lieutenant governor to its greatest effectiveness for a state or territory. Like a governor, legislators may name a lieutenant governor to chair or serve on a commission, with the commission being temporary or permanent. A legislature may also designate a lieutenant governor to lead an agency or department. This may be by designating the official to lead a specific agency or department or by requiring the governor to name the lieutenant governor to lead some agency or department. The legislature or voters themselves in some states may place a referendum on the office's duties on a ballot. For example, a referendum passed in 1992 in Missouri established the "Office of Advocacy and Assistance for the Elderly" within the Lieutenant Governor's office.

### **Diverse Office**

The diverse means by which a lieutenant governor may obtain responsibilities leads to a diverse office nationally. It also means an office of lieutenant governor in a given state may have a portfolio of work which ranges from statutory roles to gubernatorially appointed tasks to items of personal initiative. The Indiana lieutenant governor, for example, presides over the state senate with a tie-breaking vote, she manages five state agencies administering nearly \$1 billion in programs, and she has more than 40 statutory duties covering 50 different sectors of government. These duties include leading the Indiana State Department of Agriculture, the Office of Energy Development, the Indiana Housing and Community Development Authority, the Office of Community and Rural Affairs, and the Office of Tourism Development while chairing the state's Counter Terrorism and Security Council.

The growth and effective use of the office is in part confirmed by the fact that the office of lieutenant governor was the only statewide elected office to see an increase in real income in the 30-year period ending in 2005. *State Legislator Compensation: A Trend Analysis*, published by The Council of State Governments in 2006, showed the lieutenant governor was the only statewide official whose real income increased as a national average between 1975 and 2005. As an anecdotal measure, the USA Today newspaper wrote in August of 2005 that the office of lieutenant governor is a significant, visible and often controversial office. In a 2010 report, University of Virginia's Dr. Larry Sabato, one of the nation's most quoted college professors, noted "It's twice as good to be lieutenant governor," pointing out lieutenant governors have a success rate twice as high as attorneys general at becoming governor.

### **Political Players**

In 2009, it was Dr. Sabato that called the growing gubernatorial succession rate "Lieutenant Governor Mania." Data shows approximately one in every four governors in the nation for the past 100 years first served as lieutenant governor. No office in the past 25 years had a better success rate of becoming governor. When gubernatorial inaugurations were completed in January of 2012, 14 of the sitting governors had first served as lieutenant governor, an increase of one from the previous year. In this 2012 presidential election year, lieutenant governors are making presidential endorsements, serving as state chairs for presidential contenders, and several will have roles in party conventions. Lieutenant governors must always be ready for succession, should it occur, and their daily duties lend them to a range of state responsibilities and political roles to the benefit of the states and their constituents.

### **About the Author**

**Julia Hurst** has 20 years of state government experience, having served as executive director of the National Lieutenant Governors Association since 2002. She formerly served as chief operating officer of The Council of State Governments, as chief of staff to a legislative caucus and spent time as a multi-state lobbyist in the fields of health care and telecommunications. For more, visit [www.nlga.us](http://www.nlga.us).