

## HOUSE JUDICIARY COMMITTEE

### Report H.B. 5

#### Scope of Problem

1. The immediate problem before the Legislature is that of executive succession and vacancies only. Vacancies and succession in the legislative and judicial branches of the state government will undoubtedly, and should properly, be the subject of other bills.

Matters such as defining absence (Art. III, Secs. 9 and 12), disqualification (Art. III, Sec. 10) and disability, mental or physical (Art. III, Sec. 12), should likewise be the subject of further separate legislation.

The duration of the appointment of the successor to the secretary of state is not set forth because recess appointments are covered by Sec. 27, Art. III and other general law should treat of this subject and perhaps touch on the duration of the secretary of state's appointment.

#### "Acting Governor" Required

2. The term "acting governor" is found in the Committee substitute bill because it is required by Sec. 13, Art. III of the Constitution. It does not appear in H.B. 5 or S.B. 8 but should be used as the Constitution distinguishes between a governor elected by the people, and one chosen otherwise.

#### State Election to Fill Secretary of State Vacancy Impossible

3. The Constitution prohibits an election to fill a vacancy in the office of governor only when the secretary of state succeeds him. (Sec. 11, Art. III -- "...the secretary of state shall succeed ... for the remainder of the term."). Thus it is possible for a successor to the governor, other than the secretary of state, to be elected at an intervening general election.

An election definitely cannot be held to fill a vacancy in the office of secretary. (Sec. 13, Art. III -- "No election of a secretary of state shall be held except at the time of electing a governor.").

#### Speaker and President Will Decline Secretary's Position

4. The Committee rejects Section 3 of both H.B. 5 and S.B. 8 as impractical and unworkable. It is considered very unlikely that the speaker or president of the senate would desire to succeed to the office of secretary of state and they should not be forced to do so.

The Committee likewise rejects the provisions (Sections 1) of both senate and house bills that permit the acting governor to serve the full term regardless of the date of vacancy and with no possibility of selection of a successor at an intervening general election.

#### Desirability of Joint Legislative Election

5. A joint legislative election is desirable because:

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(a) Sixty members are closer to the people than just 40 or just 20;

(b) A better cross-section of public desire and opinion is available;

(c) Two year terms of house members make them theoretically more responsive to the people and more a mirror of the people's wishes than senate members with four year terms;

(d) Districts of house members are closer to the people (smaller) than senate districts, hence house members are supposed to more closely reflect the people's wishes (in theory) than our learned colleagues.

#### Situation in Other States

6. Comparisons with succession laws of other states should be made with care because both houses of Alaska's legislature are chosen on the basis of population, whereas the senate in other states is invariably chosen on the basis of area considerations only.

Succession laws of other states are again not of much value -- e.g., New Jersey, where provision is made for election of the governor at the next general election and where president of senate, then the speaker succeeds in the interval. The Committee substitute would actually closely approximate the New Jersey plan except for speaker instead of senate president during the interval and substitution of joint legislative election until selection at next general election if vacancy created less than half way through term. Eight states without lieutenant governors provide for succession by president of senate but again the practicality of this method will depend upon whether a new governor is to be chosen by the people at a general election prior to the end of his term. (Facts from "Constitutional Studies", Vol. 2, PAS, p. 5 and 6, Chapter VI.)

Moreover, it must be remembered that whereas in other states many officials are elected, we in Alaska elect only the two top officials.

#### Oregon method -- (Art. V, Sec. 8 (1945 amendment))

After governor, president of senate, then speaker of house, secretary of senate and state treasurer; election at next general election to replace.

#### Washington method -- (Art. 3, Sec. 10 (amendment 6 - 1910))

If vacancy in both office of governor and lieutenant governor, then secretary of state, treasurer, auditor, attorney general, superintendent of public instruction and commissioner of public lands; election at next general election if vacancy created 30 days prior to election.

#### Problem Remote

7. The possibilities of the governor's and secretary's offices both becoming simultaneously vacant is remote but yet a very distinct possibility in our air minded state.

#### Most Outstanding Alaskan can be Chosen

8. A feature of the house Committee substitute bill is the fact that a truly outstanding Alaskan, recognized as such by a majority of legislators, could be elected acting governor, although not a member of the legislature.

Committee Recommendation

1. House Bill No. 5 not pass.
2. Committee Substitute for House Bill No. 5 do pass.

(a) The title meets the requirements of Sec. 13, Art. II, and the body of the committee substitute is in correct form.

(b) The substitute follows the requirements of the Constitution and therefore represents a legally sufficient bill.

(c) In substance the proposals are deemed practical, workable and in the best interests of Alaskans.

/s/ John Hellenthal  
John Hellenthal, Chairman

/s/ Frank Chapados  
Frank Chapados

/s/ J. Ray Roady  
J. Ray Roady

/s/ Bruce Kendall  
Bruce Kendall

Minority Report

A permanently designated successor to the governor should always be available in the event the governor and secretary both die in office. At the time the speaker is elected one of his qualifications should be fitness for gubernatorial service. If a governor has to be selected only when the State has no executive, such an atmosphere is not conducive to deliberate weighing of the qualifications of the candidates.

Succession of the executive should not be delayed until the legislature can act for the following reasons:

1. The State should have executive guidance that is uninterrupted for even the short time that a legislature in session would require to select a governor.

2. Selection of a governor at the time the office is vacant is not conducive to a deliberate appraisal of the qualifications of the candidate.

/s/ James E. Fisher  
James E. Fisher

1 IN THE HOUSE BY SENATE STATE AFFAIRS COMMITTEE  
2 SENATE COMMITTEE SUB. FOR COMMITTEE SUB. FOR HOUSE BILL NO. 5  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FIRST LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act providing for succession to the  
7 offices of governor and secretary of  
8 state; and setting an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 Section 1. The Legislature of the State of Alaska finds and  
11 declares it to be in the best interests of the people of Alaska  
12 that the offices of governor and secretary of state of Alaska,  
13 being the only elective offices of the executive branch of the  
14 government, should as nearly as possible be constantly occupied  
15 only by persons chosen by a majority of the voters of the State.  
16 When vacancies therein occur, there should be the least necessary  
17 interval until the voters may again choose persons for these  
18 offices and during which interval there should be the least  
19 necessary interruption in the continuity of administrative programs  
20 and activities of the State.

21 Sec. 2. The governor, following his initial assumption of  
22 office and thereafter as provided by this Act, shall appoint,  
23 from among the officers who head the principal departments of the  
24 state government or otherwise, a person to succeed to the office  
25 of secretary of state in the event that the office of secretary of  
26 state becomes vacant for any reason. The appointment of a person  
27 next in line to become secretary of state shall be subject to con-  
28 firmation by a majority of the members of the legislature meeting  
29 in joint session. The person so designated and confirmed shall

1 remain the next in line for succession to the office of secretary  
2 of state, subject to the pleasure of the governor. In the event  
3 any person so designated and confirmed is removed from or vacates  
4 the appointment for any reason, a successor shall be appointed by  
5 the governor and confirmed by the legislature in like manner as the  
6 person initially appointed.

7       Sec. 3. If a vacancy occurs in the office of governor and the  
8 regularly elected secretary of state succeeds to the office of  
9 governor as provided by Article III, Section II, of the Constitution  
10 of the State of Alaska and thus leaves a vacancy in the office of  
11 secretary of state, or if the office of secretary of state other-  
12 wise becomes vacant, the person designated as next successor to the  
13 office of secretary of state, as provided in Sec. 2 of this Act,  
14 shall then succeed to the office of secretary of state for the re-  
15 mainder of the term vacated, or until a special election may be  
16 held as is otherwise specified in this Act. Upon succession to the  
17 office of secretary of state by a person appointed pursuant to  
18 Sec. 2 herein, the governor shall again appoint a person to succeed  
19 to the office of secretary of state in the event of a subsequent  
20 vacancy in such office.

21       Sec. 4. In the event the regularly elected secretary of  
22 state succeeds to the office of governor as provided in the Con-  
23 stitution of the State of Alaska and thereafter, during the same  
24 regular gubernatorial term, the office of governor again becomes  
25 vacant, the appointed secretary of state shall succeed to the  
26 office of acting governor for the interim until a special election  
27 to elect a governor and secretary of state shall be held, which  
28 election shall be held within not less than sixty nor more than  
29 ninety days after such vacancy occurs.

1           Sec. 5. If vacancies in the office of governor and the  
2 office of secretary of state occur simultaneously, the person  
3 appointed pursuant to Sec. 2 of this Act shall succeed directly to  
4 the office of acting governor until successors to the respective  
5 offices are elected in a special election, which shall be held  
6 within not less than sixty nor more than ninety days after  
7 the occurrence of such vacancies in the same manner as otherwise  
8 provided in this Act.

9           Sec. 6. The laws of the State of Alaska governing elections  
10 for governor and secretary of state shall, to the extent applic-  
11 able, govern any special election for filling vacancies as  
12 required by this Act. The acting governor shall by proclamation  
13 fix the date of any special election held pursuant to this Act.

14           Sec. 7. Nominations for governor and secretary of state for  
15 a special election under this Act shall be made by political  
16 parties in the manner prescribed for filling post-primary  
17 nomination vacancies under Sec. 38-4-11, ACLA 1949, or as may be  
18 otherwise provided by law. The nomination of candidates shall be  
19 certified as required for other candidates for state office by the  
20 chairman and secretary of the central committee of each political  
21 party. Certification of candidates shall be made within twenty  
22 days after the vacancy occurs.

23           Sec. 8. Persons who do not represent a political party may  
24 become independent candidates for the office of governor, and for  
25 the office of secretary of state if joined with an independent  
26 candidate for governor, by filing applications in the manner  
27 provided in Sec. 38-5-10 ACLA 1949, to the extent applicable.  
28 Such applications shall be filed within 20 days after the vacancy  
29 occurs, as required for other candidates for state office.

1           Sec. 9. Immediately upon the certification, as provided by  
2 the law relating to elections, of the results of any special  
3 election held under the terms of this Act, the persons elected  
4 shall succeed to the offices of governor and secretary of state  
5 as though they had been elected for regular terms. The terms of  
6 office of those so elected shall be the remainder of the regular  
7 terms of the vacated offices.

8           Sec. 10. If a vacancy requiring a special election hereunder  
9 occurs within not more than ninety but not less than sixty days  
10 preceding the time fixed for a primary election or a general  
11 election at which a governor is not regularly to be elected, the  
12 special election shall be held coincident with such primary or  
13 general election. If such vacancy occurs within ninety days  
14 preceding a general election at which a governor is regularly  
15 to be elected, no special election shall be held and the acting  
16 governor serving by virtue of his appointment under Sec. 2  
17 shall serve in the interim until the regularly elected successor  
18 assumes office.

19           Sec. 11. This Act shall become effective upon its passage  
20 and approval or upon its becoming law without such approval.

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