

The Constant Evolution of the Office of Lieutenant Governor

By Julia Hurst

The office of lieutenant governor constantly evolves to offer the greatest service and value to a state. For more than 200 years, states have found no more clear and viable line of gubernatorial succession than the office of lieutenant governor. 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. This allows the office to evolve to lead on issues of the day or to address unique needs of the state. Electoral provisions, gubernatorial and legislative relationships, assigned duties, office structure and succession law itself impacts the efficiency and effectiveness of the office of lieutenant governor.

Introduction

The rate of lieutenant governors becoming governor appears to be increasing this century and the number of states looking to establish and grow the office of lieutenant governor is also on the rise. As 2011 began, 13 of the sitting governors had once served as lieutenant governor, an increase compared to past years. The rate of gubernatorial successions from 2000 to 2009 increased, too, over the rate of gubernatorial successions since 1900.

On Jan. 6, 2011, West Virginia's acting governor, Earl Ray Tomblin, called for a constitutional amendment creating the office of lieutenant governor. "We need to have some clarity in our constitution" regarding gubernatorial succession, he said. In fact, within the past three years, four of the seven states without a lieutenant governor have examined establishing the office (Arizona, Oregon, Tennessee and West Virginia). The office of lieutenant governor nationally is in a constant state of evolution, which is one of the strengths it gives a state.

Office of Lieutenant Governor

The two most common questions posed about the office of lieutenant governor are why the office should exist and what duties the officeholder should assume. The one shared duty of every lieutenant governor is that of gubernatorial succession. The office of lieutenant governor exists to provide clarity in leadership and continuity in governance should a vacancy in the governor's office occur. Forty-three states maintain an office of lieutenant governor. No state has abolished the office in the modern era, and each of the few states that has abolished the office has re-established it. This demonstrates that for more than 200 years states have found no more clear and viable line of succession than the office of lieutenant governor.

Once established, 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. These duties may be impacted by state succession law itself, by electoral law on the office of lieutenant governor, by gubernatorial and legislative relationships and by the structure of the office. This allows the office of lieutenant governor to lead on various issues and assume diverse forms depending on each state's perceived or unique needs. A lieutenant governor may be tapped to lead on the pressing issues of the day. Likewise, the office of lieutenant governor may evolve based on the respective expertise of the governor and lieutenant governor. Further, duties of the office may be established to ensure the lieutenant governor is involved in cabinet briefings or budget work to aid in the office's succession duty.

Succession Law

The effectiveness of the office of lieutenant governor in meeting its gubernatorial succession duty often relies on the clarity and thoroughness of a state's succession law. Gubernatorial succession provisions should ensure a sufficiently deep and clearly delineated line of succession; a thorough definition of incapacity; whether the successor becomes the "acting" or "actual" governor; and congruous succession plans in cases of impeachment and recall. The law should be deliberate in addressing the transfer of power from governor to lieutenant governor. Transfer of power may occur when a governor leaves the state, leaves the country or is incapacitated. Incapacitation may occur because a governor is in a war zone, is unconscious, is too physically ill to perform duties, or is

unwilling, unable or ill-advised to perform certain required duties. For example, on Dec. 12, 2008, state Attorney General Lisa Madigan petitioned the state supreme court as to whether then Gov. Rod Blagojevich should have been ruled temporarily incapacitated so he could not appoint a U.S. senator after the governor was arrested and under investigation for corruption regarding that appointment. Provisions should address transfer of power for both temporary and permanent incapacitation.

In states where recall or impeachment of the governor is permissible, law regarding these proceedings should be consistent with existing gubernatorial succession law. 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 any succession.

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. Whether a successor completes the term or serves until the next election may determine if s/he is acting governor or actual governor.

The efficiency of gubernatorial succession may be impacted by whether the new governor simultaneously retains his or her power as senate leader (as in New Jersey in periods from 2004 to 2007, or as in West Virginia in 2011), whether the subsequent vacancy in the office of lieutenant governor or first in line of succession is filled and how, and whether transition resources are made available as they often are after an election. In 2009, when New York Gov. David Paterson succeeded to governor, the office of lieutenant governor became vacant. In previous circumstances, the office of lieutenant governor had been left vacant. However, a state senate shutdown was in process. The senate tie-breaking vote of a lieutenant governor could have potentially solved the senate stalemate. Gov. Paterson ultimately decided he had the authority to appoint a new lieutenant governor and did so. The state supreme court upheld that decision. Law in this regard should also be clear as to whether an official succeeding next to governor must be elected or whether he or she may be appointed.

In some states, a new lieutenant governor may be appointed by the governor, but other state statutes mandate that only an elected official may succeed or serve as governor. In that instance, a lieutenant governor may be seated, but should a subsequent gubernatorial succession occur before that lieutenant governor is elected in his/her own right, the next elected official in line of succession would succeed.

Electoral Provisions

The requirements of age and residency, the method of nomination to the office and the ability of the officeholder to raise and hold funds all may impact the form the office of lieutenant governor takes in a state. Twenty-five states elect the governor and lieutenant governor as a team in the general election, while 18 states elect the officials separately. In some states where the officials are elected as a team in the general election, the officials come through the primary elections separately. This may result in an “arranged marriage” of sorts in the general election. State law should also address the ability of a lieutenant governor to raise and hold his or her own funds for campaign or electoral purposes and the duty to file related disclosure reports.

All methods of election for the governor and lieutenant governor have strengths and weaknesses. If the candidates decide to run together, one may presume they have discussed collaborative methods of governance in designing the office of lieutenant governor for its greatest contribution to the state during that administration. Conversely, if candidates are independent of each other, a lieutenant governor may pursue his/her own priorities and may seek to act as a balance to the governor. In any case, the legislature may opt to place permanent or temporary roles with the lieutenant governor via statute. The lieutenant governor may take on a permanent role or office or lead commissions created to tackle specific issues.

Gubernatorial and Legislative Relationships

Whether the governor and lieutenant governor are elected on a ticket together or separately often affects the evolution of the office of lieutenant governor during a term. In more than half the states, though, the office of lieutenant governor is also entwined with the legislature as the only official with specific roles in both the executive and legislative branches. In 27 states, the lieutenant governor (or official first in line of gubernatorial succession) also serves as presiding officer of the state senate.

LIEUTENANT GOVERNORS

In four of those states—Maine, New Hampshire, Tennessee and West Virginia—the official first in gubernatorial succession is the senate president. In the remaining states, a statewide elected lieutenant governor presides over the senate. The power of that position ranges from casting tie-breaking votes and making parliamentary rulings to assigning bills and members to committees. The role of a lieutenant governor in the senate may also impact the evolution of the office in a term. All lieutenant governors, regardless of their method of election or specific legislative duties, will and must pay close attention to their relationships with the governor and legislature.

Lieutenant Governor Duties

So, what may an office of lieutenant governor look like with regard to daily duties and authorities? After Sept. 11, 2001, homeland security became a new emphasis at the state level just as budgets were struggling. States had to do more with less and many looked to an enhanced office of lieutenant governor to meet their needs. Lieutenant governors in Iowa, Vermont, Indiana, Nebraska, Pennsylvania and Rhode Island have held various roles in emergency preparedness and homeland security. Others assumed roles in commerce, with lieutenant governors in California, Nevada and Louisiana leading on tourism and economic development.

Since 2001, some lieutenant governors have served dual roles as cabinet members or agency heads. In 2004, the South Carolina legislature moved the Office of Aging under the leadership of the office of the lieutenant governor. The lieutenant governors of Alaska and Utah oversee their respective elections divisions. Colorado Lt. Gov. Joseph Garcia is director of the department of higher education and Ohio Lt. Gov. Mary Taylor is director of the department of insurance. Over time, lieutenant governors in Kansas, Minnesota and North Dakota have led divisions or agencies of state government.

Recent years have shown an increase in executive orders directing authority and responsibility to the office of lieutenant governor. Virginia Executive Order No. 1 (2010) named the lieutenant governor the chief jobs creation officer and specified authorities over crosscutting divisions of government. New Jersey Executive Order No. 3 (2010) named the lieutenant governor chair of a Red Tape Commission, which will review every state regulation. On his first day as governor,

Ohio's John Kasich signed Executive Order 2011-01K, naming the lieutenant governor chair of the Common Sense Initiative, with specific duties and authorities regarding small business and regulations. Gov. Lincoln Chaffee signed the executive order on the Rhode Island Health Care Commission in January 2011, to create a commission under the chairmanship of the lieutenant governor and assign specific duties and cross-agency authorities.

Still other lieutenant governors may see their responsibilities expand through legislative action. In New Mexico, legislators created a Children's Cabinet by statute with a specific provision requiring either the governor or lieutenant governor chair the group, with crosscutting authority to call meetings and collaboratively lead 11 cabinet secretaries to set shared goals in regard to youth. The Washington lieutenant governor, by statute, is chairman of the Joint Committee on International Relations and Economic Development. The Indiana lieutenant governor at one time had more than 40 statutory duties, ranging from head of counterterrorism and director of the commerce department to the lead on tourism and rural affairs. In short, the office of lieutenant governor may evolve in its daily leadership role to be what a state most needs at a given time.

Office Structure

The support structure given an office of lieutenant governor also may impact the ability of the office to perform efficiently. The salary set for a lieutenant governor is one item of consideration. The current salaries of all lieutenant governors do not represent an apples-to-apples comparison. For example, New Jersey created an office of lieutenant governor, but did not set a salary or appropriate funds. New Jersey Lt. Gov. Kim Guadagno, the state's first, serves dually as secretary of state, in part to provide the funding for a salary. Likewise, in Colorado a salary is set for the lieutenant governor, but when Lt. Gov. Joseph Garcia was tapped to dually serve as director of the department of higher education, the governor noted his new salary would be set somewhere in between the lieutenant governor salary and the department head salary with the state accruing the resulting savings. South Dakota's Matt Michels is only the second full-time lieutenant governor of the state. The governor made that decision and, in setting up the new duties of the position, he also changed the salary.

Other items to consider include office space, funding for staff positions, and, in the event of

gubernatorial succession, the availability of transition dollars. While most lieutenant governors maintain one office, some have as many as two or three. Funding for staff of the office of lieutenant governor may reflect the geographic area to be covered, the duties of the office or the size of the state. In some instances, governors and lieutenant governors elected on a ticket in the general election may opt to share some or all staff. Most commonly, this may take the form of sharing policy staff, with each office maintaining its own scheduler, communications team and leadership. And, finally, if a lieutenant governor does succeed a governor, a state may want to establish a permanent statutory or budget provision that would allocate some funds to assist in the transition. Like electing a new governor, some expense will be associated with a transition. Many states allocate these funds as a succession occurs.

About the Author

Julia Hurst has nearly 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 has spent time as a multi-state lobbyist in fields ranging from health care to telecommunications. For more, visit www.nlga.us.