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Recommended Citation

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QUESTION OF THE PRESIDENTIAL SUCCESSION

JUNE 27, 1945.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BRYSON, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 3587]

The Committee on the Judiciary, to whom was referred the bill (H. R. 3587) to provide for the performance of the duties of the office of President in case of the removal, resignation, or inability both of the President and Vice President, after consideration, report the same favorably to the House with the recommendation that the bill do pass.

GENERAL STATEMENT

On June 19, 1945, the President of the United States addressed a message to the Congress making recommendations for legislation with respect to succession to the Presidency in case of the removal, death, resignation, or inability to act of the President and Vice President. The message reads as follows:

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES TRANSMITTING REQUEST FOR LEGISLATION DEALING WITH THE QUESTION OF THE PRESIDENTIAL SUCCESSION

To the Congress of the United States:

I think that this is an appropriate time for the Congress to reexamine the question of the Presidential succession.

The question is of great importance now because there will be no elected Vice President for almost 4 years.

The existing statute governing the succession to the office of President was enacted in 1886. Under it, in the event of the death of the elected President and Vice President, members of the Cabinet successively fill the office.

Each of these Cabinet members is appointed by the President, with the advice and consent of the Senate. In effect, therefore, by reason of the tragic death of the late President, it now lies within my power to nominate the person who would be my immediate successor in the event of my own death or inability to act.

I do not believe that in a democracy this power should rest with the Chief Executive.

Insofar as possible, the office of the President should be filled by an elective officer. There is no officer in our system of government, besides the President and Vice President, who has been elected by all the voters of the country.

The Speaker of the House of Representatives, who is elected in his own district, is also elected to be the presiding officer of the House by a vote of all the Representatives of all the people of the country. As a result, I believe that the Speaker is the official in the Federal Government whose selection, next to that of the President and Vice President, can be most accurately said to stem from the people themselves.

Under the law of 1792 the President pro tempore of the Senate followed the Vice President in the order of succession.

The President pro tempore is elected as a Senator by his State and then as Presiding Officer by the Senate. But the Members of the Senate are not as closely tied in by the elective process to the people as are the Members of the House of Representatives. A completely new House is elected every 2 years, and always at the same time as the President and Vice President. Usually it is in agreement politically with the Chief Executive. Only one-third of the Senate, however, is elected with the President and Vice President. The Senate might, therefore, have a majority hostile to the policies of the President and might conceivably fill the Presidential office with one not in sympathy with the will of the majority of the people.

Some of the events in the impeachment proceedings of President Johnson suggested the possibility of a hostile Congress in the future seeking to oust a Vice President who had become President, in order to have the President pro tempore of the Senate become the President. This was one of the considerations, among several others, which led to the change in 1886.

No matter who succeeds to the Presidency after the death of the elected President and Vice President, it is my opinion he should not serve any longer than until the next congressional election or until a special election called for the purpose of electing a new President and Vice President. This period the Congress should fix. The individuals elected at such general or special election should then serve only to fill the unexpired term of the deceased President and Vice President. In this way there would be no interference with the normal 4-year interval of general national elections.

I recommend, therefore, that the Congress enact legislation placing the Speaker of the House of Representatives first in order of succession in case of the removal, death, resignation, or inability to act of the President and Vice President. Of course, the Speaker should resign as a Representative in the Congress as well as Speaker of the House before he assumes the office of President.

If there is no qualified Speaker, or if the Speaker fails to qualify, then I recommend that the succession pass to the President pro tempore of the Senate, who should hold office until a duly qualified Speaker is elected.

If there be neither Speaker nor President pro tempore qualified to succeed on the creation of the vacancy, then the succession might pass to the members of the Cabinet as now provided, until a duly qualified Speaker is elected.

If the Congress decides that a special election should be held, then I recommend that it provide for such election to be held as soon after the death or disqualification of the President and Vice President as practicable. The method and procedure for holding such special election should be provided now by law, so that the election can be held as expeditiously as possible should the contingency arise.

In the interest of orderly, democratic government, I urge the Congress to give its early consideration to this most important subject.

HARRY S. TRUMAN.

THE WHITE HOUSE, June 19, 1945.

H. R. 3587, introduced by Mr. Sumners of Texas, is designed to carry into effect the recommendations of the President.

ANALYSIS OF THE BILL

The bill provides in subsection (a) that in the event there is neither a President nor a Vice President to discharge the powers and duties of the office of President, the Speaker of the House of Representatives shall, upon his resignation as Speaker and as Representative in Congress, act as President until the disability be removed, or a President shall be elected. The Speaker, upon succeeding to the Presidency, would continue to act until the expiration of the unexpired current

Presidential term or until a President is elected at a special election pursuant to the provisions of subsection (f). It is provided, however, that if the occasion for the succession of the Speaker to be Acting President is the failure of the President-elect and Vice-President-elect to qualify, or to the inability of the President or Vice President, the Acting President shall continue as such only until the President or Vice President qualifies or until the removal of the disability.

In the event there is no Speaker or the Speaker fails to qualify as Acting President, it is provided in subsection (b) that the President pro tempore of the Senate shall, upon his resignation as such and as Senator, discharge the powers and duties of the office of President until the President is elected pursuant to subsection (f) or until the expiration of the current Presidential term, but in no case after a qualified and prior entitled individual is able to act. Thus the President pro tempore of the Senate would not continue to serve after a duly qualified Speaker is available to serve as Acting President. For this reason subsection (b) describes the function of the President pro tempore in relation to the Presidency as simply the discharge of the powers and duties of the office of President.

In the event there is no President pro tempore of the Senate to serve pursuant to subsection (b), it is provided in subsection (c) that the powers and duties of the office of President shall be discharged by the officer of the United States who is highest on the following list and who is not under disability: Secretary of State, Secretary of the Treasury, Secretary of War, Attorney General, Postmaster General, Secretary of the Navy, Secretary of the Interior, Secretary of Agriculture, Secretary of Commerce, Secretary of Labor. As in the case of the President pro tempore, a member of the Cabinet thus discharging the powers and duties of President is to serve until the expiration of the current Presidential term, or until a special election is held pursuant to subsection (f), but in no event after a qualified Speaker of the House is able to serve.

Provision for special election is contained in subsection (f). It is therein provided that if the event by reason of which the Speaker is required to act as President occurs more than 90 days immediately preceding the regular congressional election in November, in a year in which there is no regular Presidential election, a special election is to be held on the Tuesday after the first Monday in November in the year of the next regular congressional election. This provision for an election at the usual time for congressional elections would apply in the event of a vacancy occurring in the period between the beginning of a Presidential term and 90 days prior to the next regular November congressional election. Should a vacancy occur during the second biennium of a Presidential term, no special election is provided. If a vacancy should occur less than 90 days prior to a regular congressional election in November, there is likewise no provision for a special election, in the view that there would be inadequate time to hold such election in conjunction with the next regular congressional election, and hence the individual succeeding to the Presidency would continue to serve until the next regular Presidential election.

The procedure to be followed in relation to a special election is to conform to the procedure for regular Presidential elections. The term of the President and Vice President chosen at a special election

is to begin on the 20th of January immediately following their election and is to end with the close of the unexpired term for which the special election was held.

CONSTITUTIONALITY OF THE BILL

The Constitution provides in article II, section 1:

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

In designating the Speaker as the "officer [who] shall then act as President" in the contingencies described in the Constitution, the bill resembles the original statute governing succession to the Presidency. That statute, enacted by the Second Congress on March 1, 1792, provided that in the contingencies stated "the President of the Senate or, if there is none, then the Speaker of the House of Representatives for the time being, shall act as President until the disability is removed or a President is elected." This statute remained in force almost a century until 1886, when the present law was enacted. The act of 1792 thus represents a construction by an early Congress, whose views of the Constitution have been long regarded as authoritative, of the provision empowering Congress to designate the "officer" who shall act as President. The act of 1792 reflects also a long-continued acquiescence in the construction of the Constitution under which the Speaker and the President pro tempore of the Senate are deemed to be officers within the meaning of article II. Their resignation as a condition of serving as President is required by the provision in article I, section 6, that no person holding any office under the United States shall be a member of either House during his continuance in office.

The provision of the bill for a special election is founded upon the provision of article II, section 1, that the officer acting as President shall so act "until the disability be removed, or a President shall be elected." It is quite clear that this constitutional clause was intended to authorize a special Presidential election. The original proposal in the Constitutional Convention was that the designated successor should act "until the time of electing a President shall arrive." This wording was changed to the present form on motion of Madison on the ground that the original proposal "would prevent a supply of the vacancy by an intermediate election of the President." While the Constitution is not explicit on the question whether a special election may be for the unexpired term rather than for a full 4-year term, it does not provide that the term of each incumbent shall be 4 years, but that the President shall hold his office "during the term of 4 years." This language appears to have reference to a fixed quadrennial term, permitting the filling of an unexpired portion thereof by election. The tradition of special elections for unexpired terms of other officers also supports the provision of the bill in this regard.

CHANGES IN EXISTING LAW

The bill repeals sections 1 and 2 of the act of January 19, 1886 (24 Stat. 1; U. S. C., 1940 edition, title 3, secs. 21 and 22):

SEC. 21. In case of removal, death, resignation, or inability of both the President and Vice President of the United States, the Secretary of State, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of the Treasury, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of War, or if there be none, or in case of his removal, death, resignation, or inability, then the Attorney General, or if there be none, or in case of his removal, death, resignation, or inability, then the Postmaster General, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of the Navy, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of the Interior, shall act as President until the disability of the President or Vice President is removed or a President shall be elected: *Provided*, That whenever the powers and duties of the office of President of the United States shall devolve upon any of the persons named herein, if Congress be not then in session, or if it would not meet in accordance with law within twenty days thereafter, it shall be the duty of the person upon whom said powers and duties shall devolve to issue a proclamation convening Congress in extraordinary session, giving twenty days' notice of the time of meeting.

SEC. 22. Section 21 of this title shall only be held to describe and apply to such officers as shall have been appointed by the advice and consent of the Senate to the offices therein named, and such as are eligible to the office of President under the Constitution, and not under impeachment by the House of Representatives of the United States at the time the powers and duties of the office shall devolve upon them respectively.

