A bill for an act

relating to elections; proposing an amendment to the Minnesota Constitution, article V, section 5, providing for an election to fill a vacancy in the office of governor; changing the procedure for a special election to fill a United States Senate vacancy; amending Minnesota Statutes 2008, sections 4.06; 204D.17, subdivision 1; repealing Minnesota Statutes 2008, section 204D.28.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **CONSTITUTIONAL AMENDMENT PROPOSED.**

An amendment to the Minnesota Constitution is proposed to the people. If the amendment is adopted, article V, section 5, will read:

Sec. 5. In case a vacancy occurs from any cause whatever in the office of governor, the lieutenant governor shall be governor during ~~such~~ the time before an election is held to fill the vacancy. The election must be held no less than 60 days and no more than 120 days after the vacancy occurs. The compensation of the lieutenant governor shall be prescribed by law. The last elected presiding officer of the senate shall become lieutenant governor in case a vacancy occurs in that office. In case the governor is unable to discharge the powers and duties of his office, the same devolves on the lieutenant governor. The legislature may provide by law for the case of the removal, death, resignation, or inability both of the governor and lieutenant governor to discharge the duties of governor and may provide by law for continuity of government in periods of emergency resulting from disasters caused by enemy attack in this state, including but not limited to, succession to the powers and duties of public office and change of the seat of government.

Sec. 2. **SUBMISSION TO VOTERS.**

The proposed amendment shall be submitted to the people at the 2010 general election. The question submitted shall be:

"Shall the Minnesota Constitution be amended to provide that a permanent vacancy in the office of governor be filled by election?

Yes .....
No ....."

Sec. 3. Minnesota Statutes 2008, section 4.06, is amended to read:

4.06 VACANCY; SUCCESSION; DISABILITY.

(a) When a vacancy occurs, from any cause whatever, in the office of governor, the lieutenant governor shall become governor until an election is held to fill the vacancy and the last duly elected president of the senate shall become lieutenant governor for the remainder of the term. When a vacancy occurs, from any cause whatever, in the office of governor and in the office of lieutenant governor, the president of the senate shall become governor ~~for the remainder of the term~~ until an election is held to fill the vacancy. If there be no president of the senate, then the speaker of the house shall become governor for the remainder of the term; or if there be none, then the secretary of state, or the auditor, or the attorney general, in that order, shall upon resignation from office, become governor ~~for the remainder of the term~~ until an election is held to fill the vacancy.

(b) In case of the death or other failure to take office of the governor-elect, the lieutenant governor-elect shall become governor from the same time and in the same manner and for the same term as provided for the governor-elect. In case of the death or other failure to take office of both the governor-elect and lieutenant governor-elect, the last duly elected president of the senate, or in the case of death or other failure to take office, the last duly elected speaker of the house, or in the case of death or other failure to take office, the secretary of state-elect, or under the same circumstances the auditor-elect, or the attorney general-elect, in that order shall become governor from the same time and in the same manner and for the same term as provided for the governor-elect.

(c) If the governor transmits to the president of the senate and the speaker of the house a written declaration of an inability to discharge the powers and duties of the office of governor, and until the governor transmits a written declaration to the contrary, the powers and duties of the governor shall be discharged by the lieutenant governor.

(d) The governor may be declared unable to discharge the powers and duties of the office if a declaration is signed by four out of five of the following persons and transmitted to the president of the senate and the speaker of the house: the chief justice of the Supreme Court, the lieutenant governor, the governor's chief of staff, the governor's personal

physician, and a member of the governor's cabinet designated in advance by the governor. If no cabinet member has been designated, three out of four shall be sufficient. The lieutenant governor shall then discharge the powers and duties of the office of governor.

(e) The declaration remains in effect until the governor transmits to the president of the senate and the speaker of the house a written declaration that no inability exists, unless four out of five of the persons described in paragraph (d), or three out of four if no cabinet member has been designated, sign and transmit to the president of the senate and the speaker of the house within four days of the governor's declaration a declaration that the governor is unable to discharge the powers and duties of the office. In that event, the lieutenant governor shall continue to discharge the duties of the office until the legislature decides the issue, assembling within 48 hours for that purpose if not in session. If the legislature, within 21 days after receipt of the declaration that the governor is unable to discharge the powers and duties of the office or, if the legislature is not in session, within 21 days after being required to assemble, determines by two-thirds vote of both houses that the governor is unable to discharge the powers and duties of the office, the lieutenant governor shall continue to discharge the powers and duties of the office. Otherwise, the governor shall resume the powers and duties of the office.

Sec. 4. Minnesota Statutes 2008, section 204D.17, subdivision 1, is amended to read:

Subdivision 1. **Special elections; exceptions.** A vacancy in the office of United States senator, representative in Congress ~~or~~, state senator, or state representative shall be filled for the unexpired term by special election upon the writ of the governor as provided in sections 204D.17 to 204D.27; except that if Congress or the legislature will not be in session before the expiration of the vacant term no special election is required.

Sec. 5. **REPEALER.**

Minnesota Statutes 2008, section 204D.28, is repealed.

Sec. 6. **EFFECTIVE DATE.**

Section 3 is effective upon approval by the voters of the constitutional amendment proposed in section 1. Sections 4 and 5 are effective the day following final enactment.

204D.28 UNITED STATES SENATE VACANCY; MANNER OF FILLING.

Subdivision 1. **Scope of section.** Every vacancy in the office of United States senator shall be filled in the manner provided in this section.

Subd. 2. **Definitions.** The definitions in subdivisions 3 to 5 apply to this section.

Subd. 3. **Vacancy.** "Vacancy" means a vacancy in the Office of United States Senator.

Subd. 4. **November election.** "November election" means:

(a) the state general election in even-numbered years; or

(b) the first Tuesday after the first Monday in November of odd-numbered years.

Subd. 5. **Regular state primary.** "Regular state primary" means:

(a) the state primary at which candidates are nominated for offices elected at the state general election; or

(b) a primary held four weeks before the first Tuesday after the first Monday in November of odd-numbered years.

Subd. 6. **Special election required; exception; when held.** Every vacancy shall be filled for the remainder of the term by a special election held pursuant to this subdivision; except that no special election shall be held in the year before the term expires.

The special election shall be held at the next November election if the vacancy occurs at least six weeks before the regular state primary preceding that election. If the vacancy occurs less than six weeks before the regular state primary preceding the next November election, the special election shall be held at the second November election after the vacancy occurs.

Subd. 7. **Special primary; when held.** A special primary shall be held at the regular state primary preceding the November election at which the special election is held.

Subd. 8. **Notice of special election.** The secretary of state shall issue an official notice of any special election required to be held pursuant to this section not later than ten weeks before the special primary, except that if the vacancy occurs ten weeks or less before the special primary, the secretary of state shall issue the notice no later than two days after the vacancy occurs. The notice shall state the office to be filled, the opening and closing dates for filing of candidacy and the dates of the special primary and special election. For the purposes of those provisions of sections 204D.17 to 204D.27 that apply generally to special elections, this notice shall be used in place of the writ of the governor.

Subd. 9. **Filing by candidates.** The time for filing of affidavits and nominating petitions for candidates to fill a vacancy at a special election shall open six weeks before the special primary or on the day the secretary of state issues notice of the special election, whichever occurs later. Filings shall close four weeks before the special primary.

Subd. 10. **United States senator; candidates; designation of term.** When the names of candidates for both offices of United States senator are required to be placed on the same ballot, the expiration date of the term of each office shall be printed on the ballot opposite the name of each candidate for nomination or election to that office.

Subd. 11. **Temporary appointment.** The governor may make a temporary appointment to fill any vacancy. An appointee shall hold office until a successor is elected and qualified at a special election or until a successor is elected pursuant to subdivision 12.

Subd. 12. **Succession by regularly elected senator.** An individual who is elected to the office of United States senator for a regular six-year term when the office is vacant or is filled by an individual appointed pursuant to subdivision 11, shall also succeed to the office for the remainder of the unexpired term.

Subd. 13. **Application of other laws.** Except as otherwise provided in this section, all of the provisions of sections 204D.22 to 204D.27 that apply generally to other special elections apply to a special election held pursuant to this section.