



# MINUTES

## Continuity of Government Planning Study Committee

December 13, 2006

First Meeting of the Study Committee

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### MEMBERS PRESENT:

Senator John P. Kibbie, Co-chairperson  
Senator Larry McKibben, Co-chairperson  
Senator Paul McKinley  
Senator Steve Warnstadt

Representative Jodi Tymeson,  
Co-chairperson  
Representative Carmine Boal  
Representative Mary Gaskill  
Representative Rod Roberts

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## MEETING IN BRIEF

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Organizational staffing provided  
by: Ed Cook, Senior Legal  
Counsel, (515) 281-3994

Minutes prepared by: Mike  
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- I. **Procedural Business.**
- II. **Continuity Laws.**
- III. **Continuity Planning.**
- IV. **Recommendations.**
- V. **Materials Filed With the Legislative Services Agency.**



## Continuity of Government Planning Study Committee

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### I. Procedural Business.

**Call to Order.** The first meeting of the Continuity of Government Planning Study Committee was called to order by temporary Co-chairperson Representative Jodi Tymeson at 1:05 p.m. on Wednesday, December 13, 2006, in Room 305 of the State Capitol in Des Moines, Iowa. Members of the Committee who were present introduced themselves.

**Election of Co-chairpersons.** A motion was made and adopted unanimously that the temporary Co-chairpersons Senators John Kibbie and Larry McKibben and Representative Jodi Tymeson be made permanent Co-chairpersons.

**Proposed Rules.** The proposed rules which had been sent to all members were adopted unanimously.

**Adjournment.** The Committee was adjourned at 3:35 p.m.

### II. Continuity Laws.

**Overview.** Mr. Ed Cook, Senior Legal Counsel, Legal Services Division, Legislative Services Agency, addressed the Committee concerning the various constitutional and statutory provisions governing continuity of government following a disaster. Specifically, the Committee examined provisions governing gubernatorial succession, replacement of statewide elected officials, legislative elections to fill vacancies, and financing of government operations. In addition, issues governing the operation of the General Assembly following a disaster, including the location of session and applicable legislative voting requirements, were discussed.

**Gubernatorial Succession.** Mr. Cook stated that gubernatorial succession is largely governed by the Iowa Constitution. Article IV, sections 17 and 19, provide that the line of succession goes from Lieutenant Governor, President of the Senate, Speaker of the House, to Governor elected by joint convention of the General Assembly. The Constitution is not specific as to how the election of the Governor and Lieutenant Governor is accomplished in a joint convention. Co-chairperson Kibbie commented that if the original Governor was of one party and the legislature is of the other party, there should be something to keep the new Governor of the original Governor's party since that was the choice of the electorate.

Mr. Cook noted that the Constitution contemplates that the office of Governor could be vacated through a disability. While the Constitution does not provide for the determination of when a disability occurs, Code section 7.14 establishes the procedure for determining a vacancy by disability. Essentially, the Code section provides that the person next in line of succession to the office of the Governor, or the Chief Justice, may call a conference consisting of the person who is Chief Justice, the person who is Director of Mental Health, and the person who is the Dean of Medicine at the University of Iowa.

Mr. Cook continued by stating that the Constitution provides that the term of office for the Governor and Lieutenant Governor is four years. If the Lieutenant Governor succeeds to the office of Governor, the Constitution clearly provides that the powers and duties of Governor shall devolve upon the Lieutenant Governor, "for the residue of the term" or until the Governor is acquitted following impeachment or the Governor's disability is removed. However, the Constitution and the



Code are silent as to whether this would apply if the person succeeding to the office of Governor was the President of the Senate, Speaker of the House, or person elected by joint convention of the General Assembly.

**General Assembly Vacancy.** The Constitution provides that the Governor shall call an election to fill a vacancy for a senator or representative in the General Assembly. Code section 69.14 provides that if the vacancy occurs during the legislative session or within 45 days of the convening of any session, the Governor shall call a special election at the earliest practical time giving at least 18 days notice. The special election shall be held on a Tuesday and shall not be on the same day as a school election. If the vacancy occurs more than 45 days prior to the convening of any session but prior to the next general election, the Governor has five days to call a special election which shall be held with at least 40 days notice. Representative Boal raised the question of who calls the election if there is a legislative vacancy and the Governor's office is also vacant.

**Meeting Location.** Mr. Cook told the Committee that the Code provides that sessions of the General Assembly shall be held at the seat of government "unless the governor shall convene them at some other place in times of pestilence or public danger." Pursuant to the Constitution, the seat of government is designated as Des Moines. As a result, unless the Governor provides for a different location, the legislature's authority to change the location of session is limited to different locations in Des Moines.

**Funding Continuity.** The final comments made by Mr. Cook involved the continuity of governmental funding. The Constitution provides that, "(n)o money shall be drawn from the treasury but in consequence of appropriations made by law." As a result, if the legislature is somehow unable to meet and pass legislation appropriating money for a disaster, money can still be appropriated only if it is otherwise authorized by law. One mechanism established by the Code for providing funding for government without passage of a specific appropriations bill is commonly referred to as a standing appropriation.

Code section 7D.29 provides that the Executive Council "may incur the necessary expense to perform or cause to be performed any legal duty imposed on the council, and pay the same out of any money in the state treasury not otherwise appropriated." So long as moneys in the state treasury have not been otherwise appropriated, this section authorizes the expenditure of moneys without additional legislative action to perform any duty.

Similar to the authority granted the Executive Council, the Legislative Council is granted the authority to expend funds for the operation of the General Assembly from funds not otherwise appropriated.

### III. Continuity Planning.

**Overview.** Mr. Steve Zimmerman, Preparedness Bureau Chief, and Mr. Ken Brink, Chief Planner, both from the Iowa Homeland Security and Emergency Management Division, Department of Public Defense, discussed issues involved with continuity planning. The presenters discussed the tenets of continuity planning and the elements and objectives of good continuity planning. The presenters also discussed the continuity planning that has occurred for the executive branch of



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government and described planning considerations for developing a continuity plan for the General Assembly.

**Planning Elements.** In describing continuity planning, Mr. Zimmerman noted that the Federal Emergency Management Agency's definition for continuity planning is "an effort to ensure continuance of constitutional authority and essential services of government during wide range of emergencies and events." Continuity planning also deals with how an organization is to deal with potential emergency events, devising a plan that guards against disruption in case of events, describing the precautions taken so that the effects of a major event will be minimized, and identifying how an organization will be able to either maintain or quickly resume their essential functions or critical services.

Mr. Zimmerman listed the elements of a continuity plan. These include essential functions; vital records; delegations of authority; human capital; orders of succession; tests, training, and exercises; alternate facilities; devolution; interoperable communications; and reconstitution.

The presenters also gave a brief overview of the history of the continuity of planning on the federal and state government levels. State government planning considerations involved Iowa's three branches of government. Some of the important planning considerations mentioned involved the implementation both with and without warning; being operational no later than 12 hours after activation; the capability of maintaining sustained operations for up to 30 days; include scheduled testing, training, and exercising of agency personnel, equipment, systems, processes, and procedures used to support the agency; and provide for a regular risk analysis of current alternate operating facilities.

Mr. Zimmerman concluded by emphasizing that the Iowa Homeland Security and Emergency Management Division has numerous continuity planning resources available including articles, checklists, sample plans, software tools, training, and web resources.

### **IV. Recommendations.**

The Committee made the following recommendations:

1. The General Assembly should engage in continuity of government and operations planning which should include coordination with the executive branch in identifying alternative locations for continued operation of the General Assembly following a disaster.



2. The membership of the conference designated by statute to determine, if asked, whether the office of Governor be vacated due to disability should be changed to replace the nonexistent position of "Director of Mental Health."
3. Rules and statutes governing legislative procedure should be examined and modified, if necessary, to provide flexibility for the General Assembly to act if a disaster makes holding session and voting at a common location impossible.
4. Any statutory provisions inconsistent with the Iowa constitutional change providing that the office of Governor and Lieutenant Governor not be separately elected should be changed.

### **V. Materials Filed With the Legislative Services Agency.**

The following materials listed were distributed at or in connection with the meeting and are filed with the Legislative Services Agency. The materials may be accessed from the <Additional Information> link on the Committee's internet page:

<http://www.legis.state.ia.us/asp/Committees/Committee.aspx?id=151>

1. [Background Information](#) for Study Committee by Ed Cook, Senior Legal Counsel, Legislative Services Agency.
2. Outline of presentation of the Iowa Department of Public Defense, Steve Zimmerman, Preparedness Bureau Chief.
3. [2006 NCSL Presentation-An Overview of Legislative Continuity of Government & Operations Planning](#).