



FINAL REPORT

Continuity of Government Planning Interim Study Committee

March 2007

MEMBERS

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Senator Larry McKibben, Co-chairperson
Senator Paul McKinley
Senator Steve Warnstadt

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Legislative Services Agency –
Legal Services Division.

AUTHORIZATION AND APPOINTMENT

The Legislative Council established the Continuity of Government Planning Interim Study Committee in 2006 and authorized the Committee to meet during the 2006 Legislative Interim. The Committee was given the following charge: Examine issues relating to the continued functioning of state government following a disaster, including gubernatorial succession, replacement of constitutional officers and department heads, legislative elections to fill vacancies, and continued funding of state government if the General Assembly is unable to meet and pass a budget.



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I. December 13, 2006, Meeting – Testimony and Discussion.

A. Continuity Laws.

1. **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.
2. **Gubernatorial Succession.**
 - Article IV, sections 17 and 19, of the Iowa Constitution provide that the line of gubernatorial 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 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.
 - 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.
3. **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.
4. **General Assembly Session Location.** 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.



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- 5. Funding Issues.** 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. Both the Executive Council and the Legislative Council are given limited general authority to expend moneys from funds not otherwise appropriated.

B. Continuity Planning.

- 1. 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 government and described planning considerations for developing a continuity plan for the General Assembly.
- 2. Planning Elements.** 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 a 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.

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

State government planning considerations involved Iowa's three branches of government. Some of the important planning considerations 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.

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.



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II. 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.

III. Materials Filed With the Legislative Services Agency – Legal Services Division.

The following materials listed were distributed to members of the Committee 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.](#)
4. [Iowa Homeland Security and Emergency Management Division – Iowa Continuity of Operations and Continuity of Government Implementation Plan template.](#)
5. [Iowa Homeland Security and Emergency Management Division – Congressional Continuity of Operations – An Overview of Concepts and Challenges.](#)
6. [Iowa Homeland Security and Emergency Management Division – Disaster Recovery and Business Continuity in State Legislatures – A Roundtable Discussion.](#)
7. [Iowa Homeland Security and Emergency Management Division – Iowa Continuity of Operations and Continuity of Government Planning Guidance.](#)