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Gubernatorial Succession in the Event of a Catastrophic Incident

The purpose of this report is to address concern over succession planning for the Vermont Governor, constitutional officers, and State legislators in the event of a catastrophic incident. V.S.A. 20 defines “catastrophic incident” as, “any natural or manmade incident, including an incident of terrorism or a pandemic, which results in extraordinary levels of mass casualties, damage, or disruption severely affecting the population, infrastructure, environment, economy, or any governmental entity,” which is the definition that will be used in this report.¹ This report analyzes current Vermont laws and constitutional provisions that outline emergency succession planning in the state.² This report also analyzes how other states address continuity of governance.³ In addition to emergency succession planning this report includes proposals for continuity of governance by the Chief of the Vermont Capitol Police and the National Council of State Legislatures.⁴ This report concludes by reviewing what other states do in the instance in which the Governor leaves the state.⁵

Vermont’s Current Line of Succession

The current line of gubernatorial succession consists of the following five constitutional officers in the order listed below:

1. Lieutenant Governor
2. Speaker of the House
3. President Pro Tempore
4. Secretary of State
5. State Treasurer⁶

¹ “20 V.S.A. § 182: Internal Security and Public Safety: Emergency Interim Succession to Offices,” Vermont General Assembly, 2018, <https://legislature.vermont.gov/statutes/section/20/007/00182>.

² Vermont Constitution, Ch. II, sec. 3.; Vermont General Assembly, 20 V.S.A. § 184.

³ “State Gubernatorial Succession Law,” Council of State Governments, Accessed April 25, 2019, https://knowledgecenter.csg.org/kc/system/files/TIA_FF_Succession_Law_000.pdf.

⁴ Matthew Romei (Chief of Police, Capital Police Department), discussion with authors, April 3, 2019.; Kae Warnock (National Conference of State Legislatures Policy Specialist), email with authors, April 4, 2019.

⁵ Montana Constitution, Art. VI, Sec. 14, Cl. 3.; Connecticut Constitution, Art. XXII, Sec 18, Cl. c.; Kansas Constitution, Art. I, Sec. 11.; Mississippi Constitution, Art. V, Sec. 131.; New York Constitution, Art. IV, Sec. 5.; Texas Constitution, Art. XVI, Sec. c.

⁶ National Emergency Management Association, *States’ Lines of Succession of Gubernatorial Powers*, (2011), accessed April 14, 2019, <http://www.nlga.us/wp-content/uploads/States-Lines-of-Gubernatorial-Succession-2.pdf>.

Emergency Interim Successors

V.S.A 20 § 184 defines an emergency interim successor as “a person designated pursuant to this chapter, in the event the officer is unavailable, to exercise the powers and discharge the duties of an office until a successor is appointed or elected and qualified as may be provided by the constitution, statutes, charters and ordinances or until the lawful incumbent is able to resume the exercise of the powers and discharge the duties of the office.”⁷ After a state constitutional officer has been elected they have sixty days to appoint a minimum of five emergency interim successors.⁸ They are also responsible for creating the sequence that those emergency interim successors take office.⁹

Appointing Constitutional Leadership, Legislative Leadership, and Legislators

In the case of the incapacitation of the executive and legislative branches, the process of appointment differs based on circumstance. As noted previously, under V.S.A. 20 mandates that each legislative and constitutional officer appoints five emergency interim successors.¹⁰ Inquiries sent to the Secretary of State’s Office have failed to result in any evidence that legislative and constitutional leadership have appointed emergency interim successors. Without these emergency interim officers, the process of appointing legislative leadership, constitutional leadership, and legislators changes.¹¹

If there are one or more members of the legislature who are not incapacitated, they can appoint the Speaker of the House and President Pro-Tempore of the Senate.¹² According to the Vermont House Clerk, William MaGill, the legislature assumes they meet quorum requirements unless a member of the body questions it, thus even if there are not enough members to constitute a quorum, members can still meet and elect a new speaker and conduct normal responsibilities.¹³ The only people who have the authority to question the quorum are legislators.¹⁴ There is no legal process to challenge a quorum.¹⁵ House Clerk William MaGill stated that the courts will not interject in this matter because it is not within their purview.¹⁶ Therefore, the actions of the legislative body are proper if no one within the body questions the quorum.¹⁷

When the legislators who remain after a catastrophic incident appoint a new Speaker of the House, the Speaker is then acting Governor.¹⁸ The acting Governor can then appoint constitutional officers and legislators.¹⁹ The Vermont Constitution does not mandate that the appointed Governor choose legislators that are of the same party as their predecessor.²⁰ However, Vermont precedent allows

⁷ Vermont General Assembly, “20 V.S.A. § 182.”

⁸ Vermont General Assembly, “20 V.S.A. § 182.”

⁹ “20 V.S.A. § 184: Internal Security and Public Safety: Emergency Interim Succession To Offices,” Vermont General Assembly, 2018, <https://legislature.vermont.gov/statutes/section/20/007/00184>.

¹⁰ Vermont General Assembly, “20 V.S.A. § 182.”

¹¹ Vermont Constitution, Ch. II, Sec. 3.

¹² Vermont Constitution, Ch. II, Sec. 24.

¹³ William M. MaGill, email with authors, April 3, 2019.

¹⁴ William M. MaGill, email with authors, April 3, 2019.

¹⁵ William M. MaGill, email with authors, April 3, 2019.

¹⁶ William M. MaGill, email with authors, April 3, 2019.

¹⁷ William M. MaGill, email with authors, April 3, 2019.

¹⁸ BetsyAnn Wrask (Legislative Counsel), email with authors, March 25, 2019.

¹⁹ Vermont Constitution, Ch.II, Sec. 24.

²⁰ Vermont Constitution, Ch.II, Sec. 20.

local parties to recommend individuals to the governor whom they believe will act in their best interest.²¹

In the case that both the constitutional leadership and every member of both the Senate and the House are incapacitated, there is no existing plan to appoint constitutional leaders or legislators. V.S.A. 20 works to prevent a catastrophic incident from completely incapacitating Vermont's state government. Therefore, if state officers have not appointed interim successors in the event that every constitutional officer and legislator is incapacitated, then Vermont's State Government would be incapable of serving the public.

In the case of a catastrophic incident that completely incapacitates the elected constitutional officers, Michigan has an emergency succession plan that is similar to that of Vermont.²² In 1959, the Michigan State Legislature passed PA 202, the Emergency Interim Succession Act.²³ This law mandates that the Governor, Secretary of State, and Attorney General each designate five people to assume the duties of their offices in the case of an emergency. PA 202, however, is only implemented in the case that every constitutional successor is incapacitated.²⁴

Iowa's succession plan is different from that of Michigan and Vermont. In the case that a catastrophic incident incapacitates every individual in the line of succession, the Supreme Court would convene the legislature to elect a Governor and Lieutenant Governor.²⁵ However, Iowa's plan does not elaborate on the succession process in the case that both the constitutional leadership and the Supreme Court justices are incapacitated.²⁶

Proposals for Continuity of Governance

Matthew Romei, Chief of Police, Vermont Capitol Police

Matthew Romei, Chief of Vermont Capitol Police, provided two proposals for maintaining continuity of governance in the event of a catastrophic incident. First, he recommended that during events when all members of the legislature and members of the gubernatorial line of succession are in the same room, such as during the State of the State address, that either the Secretary of State or the State Treasurer be off-site so as to serve as a designated survivor.²⁷ Second, he recommended that the Vermont legislature should add ten more officers to the gubernatorial line of succession.²⁸ He proposed that the gubernatorial line of succession should be carried out in the following order:

1. Lieutenant Governor
2. Speaker of the House
3. President Pro Tem of the Senate
4. Secretary of State

²¹ Ellie French, "Three-term Springfield Rep. Robert Forguites dies unexpectedly," *VT Digger*, April 9, 2019, <https://vtdigger.org/2019/04/09/three-term-springfield-rep-robert-forguites-dies-unexpectedly/>.

²² Bill Ballanger, "Gubernatorial Succession: The Story Nobody Knows," *The Ballenger Report*, September 7, 2016, <http://www.theballengerreport.com/gubernatorial-succession-story-nobody-knows/>.

²³ The Ballenger Report, "Gubernatorial Succession: The Story Nobody Knows."

²⁴ The Ballenger Report, "Gubernatorial Succession: The Story Nobody Knows."

²⁵ James Lynch, "No 'designated survivor' in Iowa gubernatorial succession plan," *Sioux City Journal*, September 20, 2016, https://siouxcityjournal.com/news/state-and-regional/iowa/no-designated-survivor-in-iowa-gubernatorial-succession-plan/article_44926b95-181e-5950-bb7e-d33e487c4d0a.html.

²⁶ *Sioux City Journal*, "No 'designated survivor' in Iowa gubernatorial succession plan."

²⁷ Matthew Romei, discussion with authors, April 3, 2019.

²⁸ Matthew Romei, discussion with authors, April 3, 2019.

5. Treasurer
6. Auditor of Accounts
7. Attorney General
8. Secretary of Administration
9. Secretary of Natural Resources
10. Secretary of Agriculture
11. Secretary of Commerce
12. Secretary of Human Services
13. Secretary of Transportation
14. Secretary of Education
15. Secretary of Digital Services²⁹

Romei stated that this proposed line of succession mirrors the federal line of succession.³⁰

National Conference of State Legislatures Recommendations

Kae Warnock, a policy specialist with the National Conference of State Legislatures, explained that when she consults with states on making emergency succession plans, she recommends the following steps:

1. Consult the state Constitution for rules pertaining to the Governor, continuity of governance, and succession plans.
2. In the event that no line of succession exists, establish one. Determine who has the authority to make policy decisions during emergencies, as well.
3. Consider the risks if the state takes no action.
4. Establish multiple forms of communication between the government, staff, and the general public. Consider establishing a phone tree for rapid communication between staff members. Set dates and times for briefings and updates on the emergency communication protocol.
5. Identify vitally important systems and determine back up locations for their functions to be carried out. Regularly update these systems.
6. Determine who has the power to close the building in the event of an emergency.
7. Determine whether remote operation of all or part of the government is possible. If so, determine the duration period of possible remote operation.
8. Consult the state constitution to determine if it is possible to establish alternate sites for government operations. If so, establish those sites and determine what materials would be necessary to operate the government.
9. Ensure that members of the government and staff are aware that there is a plan for continuity of government, and explain what the plan contains.
10. Test the plan and train employees.³¹

Continuity of Governance in Other States

The issue of how to handle continuity of governance in the event of a catastrophic incident is affecting other states as well. According to the Council of State Governments some states fail to write plans for longer lines of succession and protocol for the continuity of governance, despite being mandated to do so by their constitutions.³²

²⁹ Matthew Romei (Chief of Police, Capital Police Department), email with authors, April 13, 2019.

³⁰ Matthew Romei, email with authors, April 13, 2019.

³¹ Kae Warnock, email with authors, April 4, 2019.

³² Council of State Governments, "State Gubernatorial Succession Law."

The Council of State Governments compiled data on the depth of lines of succession in each state.³³ According to their data, the average depth of succession is five successors, which is how many successors are currently in the statutes in Vermont.³⁴ Three states stand out as having exceptionally long lines of succession—North Carolina, New York, and California—which strengthens their plans for continuity of governance, as it is less likely for their entire line of succession to be incapacitated at one time.³⁵

North Carolina

1. Lieutenant Governor
2. Senate President Pro Tempore
3. Speaker of the House
4. Secretary of State
5. Auditor of the State
6. Treasurer
7. Superintendent of Public Instruction
8. Attorney General
9. Commissioner of Agriculture
10. Commissioner of Labor
11. Commissioner of Insurance³⁶

New York

1. Lieutenant Governor
2. President of the Senate
3. Speaker of the Assembly
4. Attorney General
5. Comptroller
6. Commissioner of Transportation
7. Commissioner of Health
8. Commissioner of Commerce
9. Industrial Commissioner
10. Chairman of the Public Service Commission
11. Secretary of State³⁷

³³ Council of State Governments, "State Gubernatorial Succession Law."

³⁴ Council of State Governments, "State Gubernatorial Succession Law."

³⁵ Council of State Governments, "State Gubernatorial Succession Law."

³⁶ "States' Lines of Succession of Gubernatorial Powers," National Emergency Management Association, Accessed April 25, 2019, <https://www.nlga.us/wp-content/uploads/States-Lines-of-Gubernatorial-Succession-2.pdf>.

³⁷ National Emergency Management Association, "States' Lines of Succession of Gubernatorial Powers."

California

1. Lieutenant Governor
2. President Pro Tempore of the Senate
3. Speaker of the Assembly
4. Secretary of the State
5. Attorney General
6. Treasurer
7. Controller
8. Superintendent of Public Instruction
9. Insurance Commissioner
10. Chair of Board of Equalization³⁸

When the Governor Leaves the State

In Vermont, the Governor appoints the Lieutenant Governor as acting Governor when the Governor leaves the state.³⁹ If both the Governor and the Lieutenant Governor are out of the state, then the Speaker of the House takes on the role of acting Governor.⁴⁰ If all three officers are out of state, then the President Pro-Tempore of the Senate is acting Governor.⁴¹ The next two in line in this temporary transition of power are Secretary of State and State Treasurer.⁴²

Legislatures throughout the country have a similar procedure for appointing an acting Governor. All states currently appoint an acting governor in the instance in which the Governor leaves the state.⁴³ For example, Montana, Connecticut, Kansas, Mississippi, New York, Texas, and New Hampshire appoint the next available constitutional officer as acting Governor in any instance in which the Governor leaves the state.⁴⁴ In Montana, however, the Lieutenant Governor becomes acting Governor upon a written request by the Governor or if the Governor has been out of state for forty-five consecutive days.⁴⁵ Alternatively, the Connecticut Constitution does not specify when the Governor must appoint an acting Governor when they are out of state.⁴⁶ It only states that the Governor may, upon written request or during their absence from the state, appoint the next available constitutional officer as acting Governor.⁴⁷ The Kansas State Constitution, the Mississippi State Constitution, the New York State Constitution, the Texas State Constitution, and the New Hampshire State Constitution also do not explicitly state when the next available constitutional officer will become acting Governor in the instance in which the Governor leaves the state.⁴⁸

³⁸ National Emergency Management Association, "States' Lines of Succession of Gubernatorial Powers."

³⁹ Vermont Constitution, Ch. II, sec. 3.

⁴⁰ Vermont Constitution, Ch. II, sec. 3.

⁴¹ Vermont Constitution, Ch. II, sec. 3.

⁴² Vermont Constitution, Ch. II, sec. 3.

⁴³ Reza Zomorrodian (Policy Analyst for the NGA Center for Best Practices' Homeland Security and Public Safety Division), email with authors, April 15, 2019.

⁴⁴ Montana Constitution, Art. VI, Sec. 14, Cl. 3.; Connecticut Constitution, Art. XXII, Sec 18, Cl. c.; Kansas Constitution, Art. I, Sec. 11.; Mississippi Constitution, Art. V, Sec. 131.; New York Constitution, Art. IV, Sec. 5.; Texas Constitution, Art. XVI, Sec. c.; New Hampshire Constitution, Part 2, Art. 49.

⁴⁵ Montana Constitution, Art. VI, Sec. 14, Cl. 3.

⁴⁶ Connecticut Constitution, Art. XXII, Sec 18, Cl. b.

⁴⁷ Connecticut Constitution, Art. XXII, Sec 18, Cl. b.

⁴⁸ Kansas Constitution, Art. I, Sec. 11.; Mississippi Constitution, Art. V, Sec. 131.; New York Constitution, Art. IV, Sec. 5.; Texas Constitution, Art. XVI, Sec. c.; New Hampshire Constitution, Part 2, Art. 49.

Instead, they state that in any instance in which there is a vacancy in the Office of the Governor, the next available constitutional Governor becomes acting Governor.⁴⁹

Conclusion

In the event that a catastrophic incident were to befall the Vermont State Government, there are several safeguards currently in place. There are five constitutional officers in the gubernatorial line of succession should the governor be incapacitated or be absent from the state. There are also systems in place to appoint constitutional leadership, legislative leadership, and legislators. The state also has provisions for emergency interim successors, who could assume leadership in the event that a catastrophic incident incapacitates the entirety of the gubernatorial line of succession, as well as a critical number of state legislators. Other states vary in their level of preparedness for a catastrophic incident. Those that are more prepared have longer lines of succession or other provisions in place. The Chief of the Vermont Capitol Police and a policy specialist from the National Council of State Legislatures also proposed plans to address any remaining gaps in Vermont's emergency succession plan.

This report was completed on May 7, 2019, by Katherine McManus, Liam O'Sullivan, and Catie Michael under the supervision of VLRS Research Assistant Emily Klofft and VLRS Director, Professor Anthony "Jack" Gierzynski in response to a request from Representative James Harrison and Chief of Capitol Police, Matthew Romei.

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Disclaimer: The material contained in the report does not reflect the official policy of the University of Vermont.

⁴⁹ Kansas Constitution, Art. I, Sec. 11.; Mississippi Constitution, Art. V, Sec. 131.; New York Constitution, Art. IV, Sec. 5.; Texas Constitution, Art. XVI, Sec. c.; New Hampshire Constitution, Part 2, Art. 49.