

CONTINUITY OF GOVERNMENTAL OPERATIONS
A REPORT OF THE
VIRGINIA ADVISORY LEGISLATIVE COUNCIL
TO
THE GOVERNOR
AND
THE GENERAL ASSEMBLY OF VIRGINIA



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COMMONWEALTH OF VIRGINIA
Division of Purchases and Supplies
Richmond
1959

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RICHMOND, VIRGINIA, June 25, 1959

To:

HONORABLE J. LINDSAY ALMOND, JR., *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

Unprecedented dangers exist because of the possible use of atomic or hydrogen bombs which could devastate large areas of the country and possibly obliterate, at one time, the normal machinery of government located in any given area. This has caused attention to be drawn to the desirability of making provision for the carrying on of necessary governmental activities in case of the emergency resulting from such a disaster.

The Governor of Virginia, therefore, in a letter dated July 3, 1958 requested a study by the Virginia Advisory Legislative Council of these matters. The Governor's letter was as follows:

COMMONWEALTH OF VIRGINIA
GOVERNOR'S OFFICE
RICHMOND

July 3, 1958

Hon. John H. Daniel, Chairman
Virginia Advisory Legislative Council
Charlotte Courthouse, Virginia

Dear Mr. Daniel:

On May 13, 1958, representatives of Virginia attended a continuity of Government Conference called by the Federal Civil Defense Administration in Washington, D. C. The Federal authorities dealing with civil defense are concerned with the maintenance of governmental operations in times of emergency and, of course, in these considerations the lines of succession to office at all levels of government constitute an important factor.

Both the Federal Civil Defense Administration and the office of the State Coordinator of Civil Defense have suggested an interim study of the problem. I believe the suggestion is meritorious and I therefore respectfully request the Virginia Advisory Legislative Council to undertake such a study and submit a report to the Governor and the General Assembly of 1960, the study to include any recommendations that may be deemed advisable to assure the ability of the State and local governments to function in an emergency through establishment of proper lines of succession, where these are not now clearly delineated, for the executive, judicial and legislative branches.

Sincerely yours,

J. Lindsay Almond, Jr.

Because of the gravity of the problems involved, the Council undertook this study itself. It conferred with civil defense authorities in Virginia and examined legislation which has been proposed for adoption and adopted in other states. After mature consideration of the subject, the Council makes the following recommendations:

SUMMARY OF RECOMMENDATIONS

1. Since the Governor of Virginia is given by the Constitution broad powers to deal with emergency situations, the principal end to be sought in legislation on the subject is to insure that under any conceivable circumstance there will always be a person who can lawfully assume the office of Governor.

2. Provision should be made by amendment of the Constitution for the unlikely contingency that it would be impossible to assemble sufficient members of the legislature to deal with an emergency situation or that normal election procedures cannot be followed. A constitutional amendment is required to relax, on a temporary basis, certain requirements as to quorums and majorities required for legislation and to provide the mechanics for the election of a legislature under all contingencies.

THE PROBLEM

Because of its proximity to the national capital and the concentration of defense installations there, and elsewhere in the State, especially in the Hampton Roads area, and because of the importance of the transportation facilities in certain parts of the Commonwealth, it is felt by civil defense authorities of the State and nation that there are several areas in Virginia which would be attractive target areas for enemy attack. Hence, an enemy attack using nuclear weapons would concentrate on such areas. Due to the devastating potential of such weapons it has been assumed for planning purposes that most personnel concentrated in such an area in case of a successful attack would be destroyed; there would then be no one left in such areas to initiate and carry forward the necessary measures to aid in the survival of the population remaining outside the devastated locality.

COURSES OF ACTION WHICH HAVE BEEN PROPOSED

To meet such emergency conditions those planning for civil defense in emergency situations have proposed action along the following four lines:

- (1) Establishment of lines of succession (applicable to executive, legislative and judicial offices).
- (2) Preservation of vital records.
- (3) Establishment of emergency locations.
- (4) Utilization of governmental personnel, facilities, and equipment.

The Office of Civil and Defense Mobilization, in its program of Suggested State Legislation for 1959, suggests the following legislative action in order to provide statutory authority which it deems necessary in connection with the four proposed courses of action set forth above:

- (1) A constitutional amendment providing for temporary succession to the powers and duties of public office when incumbents are not available;
 - (2) The emergency interim legislative succession act;
 - (3) The emergency interim executive and judicial succession act;
- and
- (4) The emergency relocation of government act.

For reasons which will be discussed more fully below we do not recommend the enactment *in toto* of any of the suggested measures in Virginia. We believe that the same ends can be accomplished for Virginia by other means and with greater flexibility than would be the case were the General Assembly to adopt all of the recommended legislative program.

PERTINENT PROVISIONS OF THE CONSTITUTION AND STATUTES OF VIRGINIA

Succession to the elective offices of the State government is dealt with in several sections of the Constitution of Virginia. As to the Governor, Section 78 provides that the office, in the event of the removal of the Governor or his death, failure to qualify or resignation, removal from the State or inability to discharge the duties of his office, shall devolve upon the Lieutenant Governor. The section further empowers the General Assembly to provide by law for the discharge of the executive functions in other necessary cases.

In the case of the other State official elected by the voters of the State at large, Section 107 of the Constitution, which provides for the election of the Attorney General, makes no reference to the filling of a vacancy. However, in Section 56 the General Assembly is directed to prescribe by law the manner of "filling vacancies in office, in cases not specially provided for by this Constitution".

With respect to judges of courts of record, Section 102 provides that vacancies are filled by election for the unexpired term, and Section 87 authorizes the provision by statute for the appointment by the Governor of judges *pro tempore*.

The question of vacancies in the General Assembly is dealt with in Section 47 of the Constitution. This section provides that "Each House shall . . . direct writs of election for supplying vacancies which may occur during the session of the General Assembly". For vacancies occurring other than during the session, the Legislature is authorized to make statutory provision for the issuance of writs of election by the Governor.

There are two other sections of the Constitution which are pertinent to the problem under study. Section 46 states that a majority of the members elected to each House of the General Assembly constitute a quorum to do business and inferentially limits a smaller number to mere adjournment from day to day unless the attendance of a sufficient number of absent members to make up a quorum is compelled. Section 50, which deals with the manner of enactment of laws, requires that for the passage of any bill the vote of a majority of those voting, which shall include at least two-fifths of the members elected to each House, shall be recorded in the affirmative. For bills levying taxes, appropriating public funds, creating or establishing new offices, and dealing with certain other specified matters, the required affirmative vote is a majority of all the members elected to each House.

The constitutional provisions dealing with succession and the filling of vacancies have been amplified by statute. Section 24-150 provides for the discharge of the duties of the office of Governor in the event of vacancies in the offices of both Governor and Lieutenant Governor. The person first in line is the President pro tempore of the Senate. The Speaker of the House of Delegates is next in line and in the event of vacancies or ineligibility of both of these officers, the Secretary of the Commonwealth is authorized to carry on the duties of the office until election and qualification of a new Governor. Section 24-151 requires the acting Governor to issue writs of election for the unexpired term of Governor and Lieutenant Governor within five days after the vacancy and provides that the election shall be held within sixty days thereafter. He is also required to convene the General Assembly to canvass the vote for Governor.

The statute dealing with the office of Attorney General, Section 24-153, provides for election in case of a vacancy by the joint vote of the two Houses of the General Assembly, if in session when the vacancy occurs. If a vacancy occurs during a recess, the Governor fills the attorney generalship by appointment, subject to election by the General Assembly within thirty days after the commencement of its next session.

The constitutional provisions relating to filling vacancies in the offices of judges of courts of record are paralleled by Section 17-120 of the Code, which provides for election for the unexpired term but authorizes the Governor to fill vacancies pro tempore.

The matter of location of governmental operations is dealt with very sparsely in our Constitution and statutes. Section 93 of the Constitution requires the Supreme Court of Appeals to hold its sessions at two or more places in the State to be fixed by law. A statute, Section 17-99, provides for an annual term for the Supreme Court of Appeals with sessions at Richmond and Staunton, but Section 17-17 permits the Governor by proclamation to appoint a place for the Court to be held in certain emergency situations. Similarly, Section 30-1, which fixes the time and place of meeting of the General Assembly, requires it to sit in the Capitol in Richmond unless adjourned to another place but Section 30-2 permits the legislature in like emergencies to meet at such other place as the Governor shall appoint and proclaim.

Finally, brief mention should be made of the broad powers given the Governor by the Constitution and statutes. By Section 73 of the Constitution the Governor is charged with the duty to "take care that the laws be faithfully executed". He is made Commander in Chief of the land and naval forces of the State and given "power to embody the militia to repel invasion, suppress insurrection and enforce the execution of the laws".

By the Civil Defense Act (Ch. 3 of Title 44 of the Code) the Governor is made director of civil defense for the Commonwealth and the duty is imposed upon him to take such action as in his judgment is best calculated to promote and coordinate civil defense in time of war, grave national peril, or serious natural disaster, when the safety of the Commonwealth so requires.

To this end he is given, by Section 44-142 power "to proclaim and publish such rules and regulations and to issue such executive orders, as may in his judgment be necessary" for civil defense purposes, "which

shall have the force and effect of law". The Civil Defense Act goes ahead to set out in some detail the means whereby the Governor may carry out these very broad powers.

With this review of the constitutional and statutory provisions of existing Virginia law, we now set forth in detail our recommendations and the reasons therefor.

THE COUNCIL'S RECOMMENDATIONS

1. In formulating its recommendations, the Council has been guided by two basic principles. First, we have sought to insure, in so far as deemed possible, to provide that in the case of such an emergency as might arise in the event of a thermo-nuclear attack, there would be someone who could succeed to and exercise the broad powers given to the Governor of Virginia by the Constitution and statutes; thus civil government in the Commonwealth could be continued during such an emergency. Second, we have tried to accomplish this result without introducing any more complications or complexities into our statutes than are absolutely necessary so that in such an emergency situation the public would not be confused by there being brought into operation a different set of laws than those which govern under more normal conditions.

Accordingly, the Council proposes, first, an extension of the line of succession to the Governorship now provided for. The statute now carries the line through the presiding officers of the houses of the General Assembly, and to the appointive office of Secretary of the Commonwealth. It is readily conceivable that in the event of a major disaster occurring during a session of the General Assembly, these officers could all be concentrated in Richmond or wherever the General Assembly was in session and the offices of Lieutenant Governor, President pro tempore of the Senate, and Speaker of the House of Delegates, as well as the office of Secretary of the Commonwealth might become simultaneously vacant.

We suggest the addition to the line of succession, first, of the former Governors of the Commonwealth then living and able to discharge the duties of the office in inverse order as they held the office of Governor. If there were several former Governors living it would appear unlikely that they would all be concentrated at the place where the legislature is sitting. The proposal at the present time would extend the line of succession by five persons whose places of residence are geographically widely distributed throughout the State and would provide, to guide the destinies of the State during such difficult days, a man who would know from experience the powers and duties which he would be expected to exercise and perform.

It is of course not certain that at any given time the Commonwealth would be so fortunate as to have several or even one former Governor who would be outside of a possible danger zone. Some persons can recall when there was only one living former Governor of Virginia.

For this reason we recommend that the line of succession go farther than the former Governors and embrace a group which is large enough to insure that there will be a person who can take over as Governor in such an emergency as is above contemplated. We propose that, after the former Governors, there be inserted in the line of succession the entire judiciary, first the justices of the Supreme Court of Appeals, and then the judges of

the other courts of record of the State, in order of seniority in point of service on the bench. This would give a large number of persons, widely distributed throughout the State, who could take over the duties of Governor in the event of an emergency, and the person who would be called upon to discharge the duties of the office could be readily determined from records which are available in widely separated depositories. We are aware that under the present statute the person who would be acting Governor would be thereby barred from performing his usual duties; but this would be only for a temporary period, and in the case of the judges, there is ample law for designating persons to sit for a judge when he cannot for some reason hold his own court.

With regard to the proposals which have been made and adopted in some states for designating alternates for judges, members of the legislature, and other officials, we do not feel these are necessary for the reasons hereinafter set forth. As to the judges and appointive State officials, existing provisions in the Constitution and statutes are sufficient to permit the filling of any vacancies in a minimum of time. With regard to the filling of vacancies in the legislature, we feel that alternates for these elected representatives of the people should be chosen, if at all, by the people. But to provide this would be a tremendously complicated matter and would hopelessly confuse the electoral process. In view of the emergency powers of the executive, we believe that under emergency conditions executive decrees can be depended on to maintain the civil government, even for a considerable period of time, until more normal governmental processes can be restored.

2. However, there is a possibility, even though a remote one, that an anomalous situation could develop. There are limiting factors in the Constitution relating to the votes by which some types of action can be taken by the General Assembly and due to the concentration of representation in the General Assembly from the populous areas which are probable target areas it might be found that although a considerable number of the members of the General Assembly, who had been duly elected, might be available to be called into session, it would still not be possible to assemble the requisite number to take action on bills relating to money matters, or indeed on any measures whatsoever. For this reason we propose a constitutional amendment to release, on a temporary basis and only in stated emergency conditions, these requirements as to the number of members for a quorum and the number of votes necessary to enact certain measures. The proposal calls for a proclamation by the Governor specifically stating that it is not possible to convene a quorum of the General Assembly. And as a further safeguard, it limits the effect of any action taken by less than the constitutionally required number of votes to a period of one year with a prohibition on any extension.

CONCLUSION

The members of the Council hope that the time will never come when any of the proposals made in this report will be needed. Yet if such a time does arrive, the avoidance of chaos in government and a speedy return to normal conditions are essential aims which justify the adoption of precautionary measures. At the same time we reiterate that we do not feel that anyone can foresee all the contingencies and draw a blueprint which would take care of every need. We prefer the flexibility which is inherent in our present Constitution and statutes to the rigidity of more

detailed legislation which might in time of crisis prove more hampering than helpful. We therefore believe that the proposed plan, which envisions no radical departure from our present laws, will suffice to see us through.

The Council expresses its appreciation to the staff of the Virginia Civil Defense office for their assistance in the conduct of this study.

Respectfully submitted,

JOHN H. DANIEL, Chairman

ROBERT Y. BUTTON, Vice-Chairman

C. W. CLEATON

JOHN WARREN COOKE

HARRY B. DAVIS

CHARLES R. FENWICK

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HOUSE JOINT RESOLUTION NO.

Proposing an amendment to the Constitution of Virginia.

Resolved by the House of Delegates of Virginia, the Senate concurring, a majority of the members elected to both houses agreeing, that the following amendment to the Constitution of Virginia be, and it hereby is, proposed and referred to the General Assembly at its next regular session held after the next general election of members of the House of Delegates for its concurrence, in conformity with the provisions of section one hundred ninety-six of the Constitution, namely:

Insert in the Constitution of Virginia a new section numbered § 50-a, as follows:

§ 50-a. In any case of enemy attack upon the soil of Virginia by nuclear fusion or fission bombs or devices, if the Governor by proclamation declares that due to the emergency created thereby a quorum of the General Assembly cannot be assembled, a lesser number, but not less than two-fifths of the members elected to each house, may meet, and may enact legislation without regard to the limitations on required affirmative votes set forth in § 50; provided, (a) that any such law may be enacted only by the recorded affirmative vote of four-fifths of the members of each house present and voting; (b) that no such law shall remain in effect longer than one year from the date of approval by the Governor and may not be again adopted except in compliance with § 50 hereof; and (c) that each bill passed under this section shall set forth therein the proclamation of the Governor together with the text of such bill and the entire bill, including such proclamation, shall be subject to judicial inquiry as to the matters set forth therein.

A BILL to amend and reenact § 24-150 of the Code of Virginia, relating to discharge of the duties of the office of Governor in the event of a vacancy therein.

Be it enacted by the General Assembly of Virginia:

1. That § 24-150 of the Code of Virginia be amended and reenacted as follows:

§ 24-150. When vacancies occur in the offices of Governor and Lieutenant Governor, the duties of the office of Governor shall be discharged by the President pro tempore of the Senate, or if the Senate be not in session, then by the person who was President pro tempore at the close of the last preceding session, or if such office be vacant or the President, or President pro tempore, of the Senate be ineligible, then by the Speaker of the House of Delegates, or if the office of Speaker of the House of Delegates be vacant or such Speaker be ineligible, then by the Secretary of the Commonwealth, until a Governor is elected and qualified. *In the event of vacancies in all of the offices mentioned in the preceding sentence, the office of acting Governor shall devolve upon the living persons who have held the office of Governor, who are at the time of such vacancy physically and mentally able to discharge the duties of the office, and who are not prohibited by law from holding a State office; the office of acting Governor shall be filled from such group in inverse order as they held the office of Governor; and in the event there is no such person, then the Chief*

Justice of the Supreme Court of Appeals, or if there be none, the judge longest in continuous service as judge of a court of record in the Commonwealth, shall become acting Governor. While so discharging the duties of the office of Governor, such person shall not act as President pro tempore of the Senate, or as Speaker of the House of Delegates, as the case may be, nor vote as a member thereof, *nor act as justice or judge of a court or record*, but his office shall not be vacated except for the period during which he acts as Governor.

