

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1961

ENROLLED

HOUSE BILL No. 52

(By Mr. Speaker, Mr. Singleton & Mr. Seiber)

PASSED March 31, 1961

In Effect from Passage

Filed in Office of the Secretary of State
of West Virginia March 11, 1961
JOE F. BURDETT
SECRETARY OF STATE

• ENROLLED

House Bill No. 52

(By MR. SPEAKER, MR. SINGLETON, and MR. SEIBERT)

[Passed March 3, 1961; in effect from passage.]

AN ACT to amend the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new chapter, designated chapter six-a, relating to emergency interim executive and judicial succession.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by inserting a new chapter, designated chapter six-a, to read as follows:

CHAPTER 6-A. EXECUTIVE AND JUDICIAL SUCCESSION

Article 1. Executive and Judicial Succession.

Section 1. *Short Title.*—This act shall be known and may be cited as the “Emergency Interim Executive and Judicial Succession Act.”

Sec. 2. *Statement of Policy.*—Because of the existing possibility of attack upon the United States of unprece-

3 dented size and destructiveness, and in order, in the the
4 event of such an attack, to assure continuity of govern-
5 ment through legally constituted leadership, authority
6 and responsibility in offices of the government of the
7 state and its political subdivisions; to provide for the
8 effective operation of governments during such an emer-
9 gency; and to facilitate the early resumption of functions
10 temporarily suspended, it is found and declared to be
11 necessary to provide for additional officers who can exer-
12 cise the powers and discharge the duties of governor;
13 to provide for emergency interim succession to govern-
14 mental offices of this state and its political subdivisions in
15 the event of the incumbents thereof and their deputies,
16 assistants or other subordinate officers authorized, pur-
17 suant to law, to exercise all of the powers and discharge
18 the duties of such offices hereinafter referred to as depu-
19 ties, assistants, or otherwise, are unavailable to perform
20 the duties and functions of such offices; and to provide
21 for special emergency judges who can exercise the powers
22 and discharge the duties of judicial offices in the event
23 regular judges are unavailable.

Sec. 3. *Definitions.*—Unless otherwise clearly required
by the context, as used in this article:

(a) “Unavailable” means either that a vacancy in office exists and there is no deputy authorized to exercise all of the powers and discharge the duties of the office, or that the lawful incumbent of the office, including any deputy exercising the powers and discharging the duties of an office because of a vacancy and his duly authorized deputy, are absent or unable to exercise the powers and discharge the duties of the office.

(b) “Emergency interim successor” means a person designated pursuant to this article, 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.

(c) “Office” includes all state and local offices, the powers and duties of which are defined by the constitution, statutes, charters, and ordinances, except the office

22 of governor, and except those in the Legislature and the
23 judiciary.

24 (d) "Attack" means any attack or series of attacks
25 by an enemy of the United States causing, or which may
26 cause, substantial damage or injury to civilian property
27 or persons in the United States in any manner by sabotage
28 or by the use of bombs, missiles, shellfire, or atomic,
29 radiological, chemical, bacteriological, or biological means
30 or other weapons or processes.

31 (e) "Political subdivision" includes counties, cities,
32 towns, districts, authorities, and other public corporations
33 and entities, whether organized and existing under charter
34 or general law.

Sec. 4. Additional Successors to Office of Governor.—

2 In the event that the governor, for any of the reasons
3 specified in the constitution, is not able to exercise the
4 powers and discharge the duties of his office, or is un-
5 available, then the president of the senate shall act as
6 governor, and if the president of the senate, for any of the
7 reasons specified in the constitution, is not able to exercise
8 the powers and discharge the duties of the office of gov-

9 ernor, or is unavailable, then the speaker of the house of
10 delegates shall act as governor, and if the speaker of the
11 house of delegates, for any of the reasons specified in the
12 constitution, is not able to exercise the powers and dis-
13 charge the duties of the office of governor, or is unavail-
14 able, then the attorney general, the state auditor, and
15 resident ex-governors of this state, in inverse order of
16 service, shall, in the order named, if the preceding named
17 officers be unavailable, exercise the powers and discharge
18 the duties of the office of governor until a new governor
19 is elected and qualified, or until a preceding named officer
20 becomes available.

Sec. 5. *Emergency Interim Successors for State Officers.*

2 —All state officers, subject to such regulations as the
3 governor may issue, shall, upon approval of this article,
4 in addition to any deputy authorized pursuant to law to
5 exercise all of the powers and discharge the duties of the
6 office, designate by title emergency interim successors
7 and specify their order of succession. The officer shall
8 review and revise, as necessary, designations made pur-
9 suant to this article to insure their current status. The

10 officer will designate a sufficient number of such emer-
11 gency interim successors so that there will be not less
12 than three nor more than seven such deputies or emer-
13 gency interim successors or any combination thereof at
14 any time. In the event of an attack, and in the event
15 that any state officer or his deputy, if any, is unavailable
16 following such an attack, the said powers of his office
17 shall be exercised and said duties of his office shall be
18 discharged by his designated emergency interim suc-
19 cessors in the order specified. Such emergency interim
20 successors shall exercise said powers and discharge said
21 duties only until such time as the governor under the
22 constitution or authority other than this article or other
23 official authorized under the constitution or this article
24 to exercise the powers and discharge the duties of the
25 office of governor may, where a vacancy exists, appoint
26 a successor to fill the vacancy or until a successor is other-
27 wise appointed, or elected, and qualified as provided by
28 law; or an officer or his deputy or a preceding named
29 emergency interim successor becomes available to exer-
30 cise or resume the exercise of the powers and discharge
31 the duties of his office.

Sec. 6. *Enabling Authority for Emergency Interim Successors for Local Offices.*—With respect to local offices for which the governing bodies of cities, towns, and counties may enact resolutions or ordinances relative to the manner in which vacancies will be filled or temporary appointments to office made, such governing bodies are hereby authorized to enact resolutions or ordinances providing for emergency interim successors to offices of the aforementioned governmental units. Such resolutions and ordinances shall not be inconsistent with the provisions of this article or any other statute of this state.

Sec. 7. *Emergency Interim Successors for Local Officers.*
—The provisions of this section shall be applicable to officers of political subdivisions, including, but not limited to, cities, towns, and counties, as well as fire, power and drainage and other types of districts not included in section six. Such officers, subject to such regulations as the governing body may issue, shall, upon approval of this article, designate by title, if feasible, or by named person, emergency interim successors and specify their order of succession. The officer shall review and revise, as neces-

11 sary, designations made pursuant to this article to insure
12 their current status. The officer will designate a sufficient
13 number of persons so that there will be not less than three,
14 nor more than seven, deputies or emergency interim suc-
15 cessors or any combination thereof at any time. In the
16 event of an attack, and in the event that any officer of any
17 political subdivision or his deputy provided for pursuant
18 to law is unavailable, the powers of the office shall be
19 exercised and duties shall be discharged by his designated
20 emergency interim successors in the order specified. The
21 emergency interim successor shall exercise the powers
22 and discharge the duties of the office to which designated
23 until such time as a vacancy which may exist shall be
24 filled in accordance with the constitution or statutes; or
25 until the officer or his deputy or a preceding emergency
26 interim successor again becomes available to exercise the
27 powers and discharge the duties of his office.

Sec. 8. *Special Emergency Judges.*—In the event of an
2 attack and in the event that any judge of any court of
3 record is unavailable to exercise the powers and discharge
4 the duties of his office, and in the event no other judge

5 authorized to act in the event of absence, disability or
6 vacancy or no special judge appointed in accordance with
7 the provisions of the constitution or statutes is available to
8 exercise the powers and discharge the duties of such
9 office, the duties of the office shall be discharged and the
10 powers exercised by the special emergency judges herein-
11 after provided for:

12 (a) Each member of the state supreme court of appeals
13 shall designate special emergency judges in the number
14 of not less than three nor more than seven to serve in
15 the event that he becomes unavailable, and shall specify
16 the order of their succession by order duly entered in the
17 supreme court of appeals.

18 (b) The special emergency interim judges of all other
19 courts of record shall be elected by the attorneys practic-
20 ing within the jurisdiction of said courts.

21 Such special emergency judges of the supreme court of
22 appeals shall, in the order specified, exercise the powers
23 and discharge the duties of such office in case of the un-
24 availability of the regular judge or judges or persons
25 immediately preceding them in the designation. The des-

26 ignating authority shall review and revise, as necessary,
27 designations made pursuant to this article to insure their
28 current status.

29 Said special emergency judges shall discharge the duties
30 and exercise the powers of such office until such time as
31 a vacancy which may exist shall be filled in accordance
32 with the constitution and statutes or until the regular
33 judge or one preceding the designee in the order of suc-
34 cession becomes available to exercise the powers and dis-
35 charge the duties of the office.

Sec. 9. *Formalities of Taking Office.*—At the time of
2 their designation, emergency interim successors and spe-
3 cial emergency judges shall take such oath as may be re-
4 quired for them to exercise the powers and discharge the
5 duties of the office to which they may succeed. Notwith-
6 standing any other provision of law, no person, as a pre-
7 requisite to the exercise of the powers or discharge of the
8 duties of an office to which he succeeds, shall be required
9 to comply with any other provision of law relative to
10 taking office.

Sec. 10. *Period in Which Authority May Be Exercised.*

2 —Officials authorized to act as governor pursuant to this
3 article, emergency interim successors and special emer-
4 gency judges are empowered to exercise the powers and
5 discharge the duties of an office as herein authorizd only
6 after an attack upon the United States, as defined herein,
7 has occurred. The Legislature, by concurrent resolution,
8 may at any time terminate the authority of said emer-
9 gency interim successors and special emergency judges to
10 exercise the powers and discharge the duties of office as
11 herein provided.

Sec. 11. *Removal of Designees.*—Until such time as the
2 persons designated as emergency interim successors or
3 special emergency judges are authorized to exercise the
4 powers and discharge the duties of an office in accordance
5 with this article, including section ten hereof, said persons
6 shall serve in their designated capacities at the pleasure
7 of the designating authority and may be removed or re-
8 placed by said designating authority at any time, with or
9 without cause.

Sec. 12. *Disputes.*—Any dispute concerning a question
2 of fact arising under this article with respect to an office

3 in the executive branch of the state government except
4 a dispute of fact relative to the office of governor shall be
5 adjudicated by the governor or other official authorized
6 under the constitution and this article to exercise the
7 powers and discharge the duties of the office of governor
8 and his decision shall be final.

Sec. 13. *Separability.*—The various provisions of this
2 article shall be construed as separable and severable, and
3 should any of the provisions or parts thereof be construed
4 or held unconstitutional or for any reason be invalid, the
5 remaining provisions of this article shall not be thereby
6 affected.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James Davis, Jr.
Chairman Senate Committee

Mrs. M. M. Withrow
Chairman House Committee

Originated in the House.

Takes effect from passage.

Thomas Myers
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Howard W. Barron
President of the Senate

Julius W. Singleton
Speaker House of Delegates

The within approved this the eleventh
day of March, 1961.

Howard W. Barron
Governor

