

MAINE STATE LEGISLATURE

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ONE - HUNDREDTH LEGISLATURE

Legislative Document

No. 692

H. P. 492

House of Representatives, January 24, 1961

Referred to the Committee on Judiciary, sent up for concurrence and ordered printed.

HARVEY R. PEASE, Clerk

Presented by Mr. Berman of Auburn.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-ONE

AN ACT Providing for Emergency Interim Executive and Judicial Succession.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., c. 1, §§ 21-A - 21-L, additional. Chapter 1 of the Revised Statutes, as amended, is further amended by adding 12 new sections to be numbered 21-A to 21-L, to read as follows:

‘Emergency Interim Executive and Judicial Succession.

Sec. 21-A. Short title. Sections 21-A to 21-L shall be known and may be cited as the “Emergency Interim Executive and Judicial Succession Act.”

Sec. 21-B. Statement of policy. Because of the existing possibility of attack upon the United States of unprecedented size and destructiveness, and in order, in the event of such an attack, to assure continuity of government through legally constituted leadership, authority and responsibility in offices of the government of the State and its political subdivisions; to provide for the effective operation of government during an emergency; and to facilitate the early resumption of functions temporarily suspended, it is found and declared to be necessary to provide for additional officers who can exercise the powers and discharge the duties of governor; to provide for emergency interim succession to governmental offices of this State and its political subdivisions in the event the incumbents thereof, and their deputies, assistants or other subordinate officers authorized, pursuant to law, to exercise all of the powers and discharge the duties of such offices, hereinafter in sections 21-A to 21-L referred to as deputies, are unavailable to perform the duties and functions of such offices; and to provide for special emergency judges who can exercise the powers and discharge the duties of judicial offices in the event regular judges are unavailable.

Sec. 21-C. Definitions. Unless otherwise clearly required by the context, as used in sections 21-A to 21-L:

I. Attack. "Attack" means any attack or series of attacks by an enemy of the United States causing, or which may cause, substantial damage or injury to civilian property or persons in the United States in any manner by sabotage or by the use of bombs, missiles, shellfire, or atomic, radiological, chemical, bacteriological, or biological means or other weapons or processes.

II. Emergency interim successor. "Emergency interim successor" means a person designated pursuant to sections 21-A to 21-L, 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.

III. Office. "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 of Governor, and except those in the Legislature and the judiciary.

IV. Political subdivision. "Political subdivision" includes counties, cities, towns, villages, townships, districts, authorities and other public corporations and entities whether organized and existing under charter or general law.

V. Unavailable. "Unavailable" means either that a vacancy in office exists and there is no deputy authorized to exercise all 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.

Sec. 21-D. Additional successors to office of Governor. In the event that the Governor, for any of the reasons specified in the Constitution, is not able to exercise the powers and discharge the duties of his office, or is unavailable, and in the event the President of the Senate, the Speaker of the House of Representatives and the Secretary of State be for any of the reasons specified in the Constitution not able to exercise the powers and discharge the duties of the office of Governor, or be unavailable, the Attorney General, State Auditor and Treasurer of State shall, in the order named, if the preceding named officers be unavailable, exercise the powers and discharge the duties of the office of Governor until a new Governor is elected and qualified, or until a preceding named officer, becomes available. No emergency interim successor to the aforementioned offices may serve as Governor.

Sec. 21-E. Emergency interim successors for state officers. All state officers, subject to such regulations as the Governor or other officials authorized under the Constitution and under sections 21-A to 21-L to exercise the powers and discharge the duties of the office of Governor may issue, shall, upon approval of sections 21-A to 21-L, in addition to any deputy authorized pursuant to law to exercise all of the powers and discharge the duties of the office, designate by title emergency interim successors and specify their order of succession. The

officers shall review and revise, as necessary, designations made pursuant to sections 21-A to 21-L to insure their current status. The officer shall designate a sufficient number of such emergency interim successors so that there will be not less than 3 nor more than 7 such deputies or emergency interim successors or any combination thereof, at any time. In the event that any state officer is unavailable following an attack, and in the event his deputy, if any, is also unavailable, the said powers of his office shall be exercised and said duties of his office shall be discharged by his designated emergency interim successors in the order specified. Such emergency interim successors shall exercise said powers and discharge said duties only until such time as the Governor under the Constitution or authority other than sections 21-A to 21-L, or other official authorized under the Constitution or sections 21-A to 21-L to exercise the powers and discharge the duties of the office of Governor, may, where a vacancy exists, appoint a successor to fill the vacancy or until a successor is otherwise appointed, or elected and qualified as provided by law; or an officer, or his deputy or a preceding named emergency interim successor, becomes available to exercise or resume the exercise of the powers and discharge the duties of his office.

Sec. 21-F. Enabling authority for emergency interim successors for local offices. With respect to local offices for which the legislative bodies of cities, towns, plantations and counties may enact resolutions or ordinances relative to the manner in which vacancies will be filled or temporary appointments to office made, such legislative bodies are 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 sections 21-A to 21-L.

Sec. 21-G. Emergency interim successors for local officers. This section shall be applicable to officers of political subdivisions including, but not limited to, cities, towns, plantations and counties, as well as school, water, power and sewer districts not included in section 21-F. Such officers, subject to such regulations as the executive head of the political subdivision may issue, shall upon approval of sections 21-A to 21-L, 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 necessary, designations made pursuant to sections 21-A to 21-L to insure their current status. The officer shall designate a sufficient number of persons so that there will be not less than 3, nor more than 7, deputies or emergency interim successors or any combination thereof, at any time. In the event that any officer of any political subdivision, or his deputy provided for pursuant to law, is unavailable, the powers of the office shall be exercised and duties shall be discharged by his designated emergency interim successors in the order specified. The emergency interim successor shall exercise the powers and discharge the duties of the office to which designated until such time as a vacancy which may exist shall be filled in accordance with the Constitution or statutes; or until the officer, or his deputy or a preceding emergency interim successor, again becomes available to exercise the powers and discharge the duties of his office.

Sec. 21-H. Special emergency judges. In the event that any judge of any court is unavailable to exercise the powers and discharge the duties of his office,

and in the event no other judge authorized to act in the event of absence, disability or vacancy or no special judge appointed in accordance with the Constitution or statutes is available to exercise the powers and discharge the duties of such office, the duties of the office shall be discharged and the powers exercised by the special emergency judges hereinafter provided for:

I. Supreme Judicial Court. The Governor, upon approval of sections 21-A to 21-L, shall designate for each member of the Supreme Judicial Court special emergency judges in the number of not less than 3 nor more than 7 for each member of said court, and shall specify the order of their succession.

II. Courts of record. The Chief Justice of the Supreme Judicial Court in consultation with the other members of said court, upon approval of sections 21-A to 21-L, shall designate for each court of record, except the Supreme Judicial Court, special emergency judges in the number of not less than 3 nor more than 7 for each judge of said courts, and shall specify the order of their succession.

Such special emergency judges shall, in the order specified, exercise the powers and discharge the duties of such office in case of the unavailability of the regular judge or judges or persons immediately preceding them in the designation. The designating authority shall review and revise, as necessary, designations made pursuant to sections 21-A to 21-L to insure their current status.

Said special emergency judges shall discharge the duties and exercise the powers of such office until such time as a vacancy which may exist shall be filled in accordance with the Constitution and statutes or until the regular judge or one preceding the designee in the order of succession becomes available to exercise the powers and discharge the duties of the office.

Sec. 21-I. Formalities of taking office. At the time of their designation, emergency interim successors and special emergency judges shall take such oath as may be required for them to exercise the powers and discharge the duties of the office to which they may succeed. Notwithstanding any other provision of law, no person, as a prerequisite to the exercise of the powers or discharge of the duties of an office to which he succeeds, shall be required to comply with any other provision of law relative to taking office.

Sec. 21-J. Period in which authority may be exercised. Officials authorized to act as Governor pursuant to sections 21-A to 21-L, emergency interim successors and special emergency judges are empowered to exercise the powers and discharge the duties of an office as authorized only after an attack upon the United States, as defined, has occurred. The Legislature may at any time terminate the authority of said emergency interim successors and special emergency judges to exercise the powers and discharge the duties of office as provided.

Sec. 21-K. Removal of designees. Until such time as the persons designated as emergency interim successors or special emergency judges are authorized to exercise the powers and discharge the duties of an office in accordance with sections 21-A to 21-L, including section 21-J, said persons shall serve in their designated capacities at the pleasure of the designating authority and may be removed or replaced by said designating authority at any time, with or without cause.

Sec. 21-L. Disputes. Any dispute concerning a question of fact arising under sections 21-A to 21-L with respect to an office in the executive branch of the State Government, except a dispute of fact relative to the office of Governor, shall be adjudicated by the Governor, or other official authorized under the Constitution and sections 21-A to 21-L to exercise the powers and discharge the duties of the office of Governor, and his decision shall be final.'

Sec. 2. R. S., c. 12, § 3, amended. The last paragraph of section 3 of chapter 12 of the Revised Statutes is repealed and the following enacted in place thereof:

'"Political subdivision" includes counties, cities, towns, villages, townships, districts, authorities and other public corporations and entities whether organized and existing under charter or general law.'