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TO: Study Committee on Emergency
Management and Continuity of
Government

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RE: Legislative Line of Succession and
Emergency Seat of Government

This memorandum outlines the procedure that would apply in the event that a natural disaster or enemy attack incapacitates large segments of the Legislature and requires that the seat of government be moved from Madison. The notes that follow discuss issues that the committee may wish to consider.

Natural or Man-made Disaster (other than attack by enemy of the United States)

- Governor may declare state of emergency under s. 166.03 (1) (b), stats., which may be extended beyond 30 days by joint resolution of the Legislature.
- Governor may designate an emergency seat of government under s. 166.05 (1), stats., at which location the Legislature must meet.
- Vacancies in legislative office caused by the disaster must be filled by special election per s. 17.19 (1), stats., and Wis. Const. Art. IV, Sec. 14.

Attack by Enemy of the United States

- Governor may declare a state of emergency under s. 166.03 (1) (b), stats., which may be extended beyond 60 days by joint resolution of the Legislature.
- Governor may designate an emergency seat of government under s. 166.05 (1), stats., at which location the Legislature must meet.
- Vacancies in legislative office caused by the attack must be filled by special election per s. 17.19 (1), stats. and Wis. Const. Art. IV, Sec. 14. Note that non-judicial and non-legislative state offices, including the office of Governor, may be temporarily filled by emergency interim successors as provided in s. 166.08 (3) and (4), stats. This statute implements Wis. Const. Art. IV, Sec. 34. However, there is no similar provision of law allowing the legislature to use temporary interim successors.

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Note: Delay Caused by Special Election. Under Wisconsin law, a special election to fill legislative vacancies would take a minimum of approximately 9 weeks to organize and hold. See s. 8.50 (2) (a), Wis. Stats. In the case of a mass vacancy, this would leave the Legislature incapacitated for months.

Note: Temporary Interim Legislators. The committee may want to consider applying to the Legislature the procedure for temporary interim successors outlined in s. 166.08 (4), stats. That would enable the Legislature to temporarily repopulate in the event of a mass vacancy resulting from an enemy attack. Also, the committee may want to define “enemy attack” to better account for domestic and international terrorism, bio terrorism, isolated attack by an insane citizen, etc. Amending this definition may involve amending Wis. Const. Art. IV, Sec. 34.

Note: Does the Cause of Emergency Matter? Current law treats emergencies differently based upon their cause (enemy attack vs. other disaster). The committee may want to consider treating all emergencies the same for purposes of filling vacancies, relocating the seat of government and maintaining government operations. This may involve amending Wis. Const. Art. IV, Sec. 34.

Note: Planning to Meet at Emergency Seat of Government. Under current law, the Governor chooses the emergency seat of government. There is no requirement that the Governor consult with the Legislature in making this choice. This limits the ability of the Legislature to plan for meetings at locations outside of Madison. The committee may want to consider amending the statutes to require the appropriate executive branch administrators to inform legislative branch administrators of possible emergency seats of government so that Legislature can be prepared to meet at the emergency seat of government chosen by the Governor.

Note: Practicing the Legislature’s Continuity Plan. The committee may want to amend s. 1.09, stats., which defines the seat of government, to permit the Legislature to meet for up to 1 week per biennium at a location outside of Madison. Changes to ch. 13, stats., may also be necessary. This would allow the Legislature to practice its continuity of operations plan by actually holding session outside of Madison. It may also increase access to the Legislature by residents of other regions of the state.