

This section provides a procedure by which a disabled governor may be removed from office. The disability must be established by a two-stage process. First, the General Assembly must establish by resolution concurred in by a three-fifths vote of the combined membership of both houses in joint session that the governor is unable to carry out the duties of his office by reason of a physical or mental disability. This resolution is then delivered to the Court of Appeals which then must decide, using whatever rules the Court may decide upon, whether or not it concurs in the decision of the General Assembly. If the Court of Appeals agrees with the fact-finding of the General Assembly, the office of governor becomes vacant.

It will be noted that section 3.12 of the proposed legislative branch article already agreed to in the Committee of the Whole provides a technique through which the General Assembly can call itself into session. Hence, if the need arises, there will always be a technique through which the General Assembly can initiate the removal procedure.

It is felt that enough safeguards have been written into the process so that it cannot be abused. The General Assembly can only act by a three-fifths vote of all members. The Court of Appeals must ratify the General Assembly's finding of fact.

This removal procedure is intended to coexist with the impeachment procedure that will presumably be found elsewhere in the Constitution. It is intended to differ from impeachment in that it will not require any finding of misconduct, but merely a determination that the governor is disabled and therefore unable to carry out the duties of his office. The term "disability" is intended to mean any condition that renders the governor unable to discharge the duties of his office.

Section 4.09: Succession to Office of Governor and Lieutenant Governor:

This section deals with the order of the succession when a vacancy occurs in the office of governor or lieutenant governor. It deals with a series of contingencies ranging from the not unlikely to the remote.

The first sentence provides that the lieutenant governor shall fill a vacancy in the office of governor. The second sentence provides that the governor shall fill a vacancy in the office of lieutenant governor by nominating a successor to the General

Assembly. He shall take office if appointed by a majority vote of all members in joint session.

The third and fourth sentences deal with the less likely possibility of a coexistent vacancy in the office of governor and lieutenant governor. The third sentence provides that if such vacancies coexist during the first year of their terms, a new governor and lieutenant governor shall be elected at the next general election with the president of the Senate acting as governor during the interim. This guarantees to the people the right to elect their top elective officials if time permits.

The fourth sentence provides that if such vacancies coexist after the first year of their terms, the president of the Senate succeeds to the office of governor.

Some concern was expressed about having a legislative official in the line of succession. The Committee feels, however, that this is the best solution. This section is so structured that it is very unlikely that the president of the Senate will ever have to so serve. The president of the Senate is likely to have extensive familiarity with the affairs of the State and hence will be qualified to serve. Finally, the designation of the president of the Senate creates an open-ended line, since the Senate will always have a president or a means of selecting one.

The fifth sentence provides that the president of the Senate shall serve as acting governor if the lieutenant governor is supposed to serve but the office of lieutenant governor is vacant. For example, this sentence would apply to the following situation: the governor and lieutenant governor take office; the lieutenant governor dies; before the governor can appoint his successor, the governor has a stroke and lapses into a coma. At this point, the president of the Senate would serve as acting governor.

The sixth sentence of this section provides a technique through which the Senate can meet to elect a new president of the Senate if the office is vacant when the holder is to serve as governor or acting governor.

Section 4.10: Powers and Duties of Successor:

This section clarifies the distinction between succession to the office of governor and service as acting governor. The last sentence of the section makes clear that when the president of the Senate serves as