

1 **JOINT RESOLUTION REGARDING ATTORNEY GENERAL**

2 2014 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Todd Weiler**

5 House Sponsor: Gregory H. Hughes

7 **LONG TITLE**

8 **General Description:**

9 This joint resolution of the Legislature proposes to amend the Utah Constitution to
10 modify provisions relating to the Attorney General.

11 **Highlighted Provisions:**

12 This resolution proposes to amend the Utah Constitution to:

- 13 ▶ change the office of Attorney General from an elected office to an appointed office;
- 14 ▶ provide for the Attorney General to be appointed to a single six-year term by the
15 Governor from a list of nominees provided by a nominating commission and with
16 the advice and consent of the Senate;
- 17 ▶ limit the Attorney General to serve a single six-year term, with an exception when
18 the Attorney General is appointed to fill part of an unexpired previous term;
- 19 ▶ authorize the Governor to remove the Attorney General from office with the consent
20 of a majority of all members of each house of the Legislature;
- 21 ▶ modify the process of filling a vacancy in the office of Attorney General; and
- 22 ▶ make conforming and technical changes.

23 **Special Clauses:**

24 This resolution directs the lieutenant governor to submit this proposal to voters.

25 This resolution provides contingent effective dates of January 1, 2015, and January 1,
26 2017, for this proposal.

27 **Utah Constitution Sections Affected:**



28 AMENDS:

29 **ARTICLE VII, SECTION 1**

30 **ARTICLE VII, SECTION 3**

31 **ARTICLE VII, SECTION 10**

32 **ARTICLE VII, SECTION 16**

33

34 *Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each*
35 *of the two houses voting in favor thereof:*

36 Section 1. It is proposed to amend Utah Constitution, Article VII, Section 1, to read:

37 **Article VII, Section 1. [Executive Department officers -- Terms, residence, and**
38 **duties.]**

39 (1) The elective constitutional officers of the Executive Department shall consist of
40 Governor, Lieutenant Governor, State Auditor, and State Treasurer~~[, and Attorney General]~~.

41 (2) Each officer shall:

42 (a) hold office for four years beginning on the first Monday of January next after their
43 election;

44 (b) during their terms of office reside within the state; and

45 (c) perform such duties as are prescribed by this Constitution and as provided by
46 statute.

47 Section 2. It is proposed to amend Utah Constitution, Article VII, Section 3, to read:

48 **Article VII, Section 3. [Qualifications of officers.]**

49 (1) To be eligible for the office of Governor or Lieutenant Governor a person shall be
50 30 years of age or older at the time of election.

51 (2) To be eligible for the office of Attorney General a person shall be, at the time of
52 appointment, 25 years of age or older, ~~[at the time of election,]~~ admitted to practice before the
53 Supreme Court of the State of Utah, and in good standing at the bar.

54 (3) To be eligible for the office of State Auditor or State Treasurer a person shall be 25
55 years of age or older at the time of election.

56 (4) No person is eligible to ~~[any of the offices provided for in Section 1]~~ the office of
57 Governor, Lieutenant Governor, State Auditor, State Treasurer, or Attorney General unless at
58 the time of election or appointment that person is a qualified voter and has been a resident

59 citizen of the state for five years next preceding the election.

60 Section 3. It is proposed to amend Utah Constitution, Article VII, Section 10, to read:

61 **Article VII, Section 10. [Governor's appointive power -- Governor to appoint to**
62 **fill vacancy in other state offices -- Vacancy in the office of the Lieutenant Governor.]**

63 (1) (a) The Governor shall nominate, and by and with consent of the Senate, appoint all
64 State and district officers whose offices are established by this Constitution, or which may be
65 created by law, and whose appointment or election is not otherwise provided for.

66 (b) If, during the recess of the Senate, a vacancy occurs in any State or district office,
67 the Governor shall appoint some qualified person to discharge the duties thereof until the next
68 meeting of the Senate, when the Governor shall nominate some person to fill such office.

69 (2) If the office of State Auditor[;] or State Treasurer[; ~~or Attorney General~~] be vacated
70 by death, resignation, or otherwise, it shall be the duty of the Governor to fill the same by
71 appointment, from the same political party as the removed person; and the appointee shall hold
72 office until a successor shall be elected and qualified, as provided by law.

73 (3) (a) A vacancy in the office of Lieutenant Governor occurs when:

74 (i) the Lieutenant Governor dies, resigns, is removed from office following
75 impeachment, becomes Governor under Article VII, Section 11, ceases to reside within the
76 State, or is determined, as provided in Subsection (3)(b), to have a disability that renders the
77 Lieutenant Governor unable to discharge the duties of office for the remainder of the
78 Lieutenant Governor's term of office; or

79 (ii) the Lieutenant Governor-elect fails to take office because of the Lieutenant
80 Governor-elect's death, failure to qualify for office, or disability, determined as provided in
81 Subsection (3)(b), that renders the Lieutenant Governor-elect unable to discharge the duties of
82 office for the Lieutenant Governor-elect's full term of office.

83 (b) (i) Except when the disability of a Lieutenant Governor is determined under Article
84 VII, Section 11, Subsection (6) because the Lieutenant Governor is acting as Governor under
85 Article VII, Section 11, Subsection (5), the disability of a Lieutenant Governor or Lieutenant
86 Governor-elect shall be determined by a written declaration stating that the Lieutenant
87 Governor or Lieutenant Governor-elect is unable to discharge the powers and duties of the
88 office.

89 (ii) The written declaration under Subsection (3)(b)(i) shall be transmitted to the

90 Supreme Court and shall be signed by:

91 (A) the Governor; or

92 (B) (I) the Lieutenant Governor, if the Lieutenant Governor is the subject of the
93 declaration; or

94 (II) the Lieutenant Governor-elect, if the Lieutenant Governor-elect is the subject of the
95 declaration.

96 (iii) If the Lieutenant Governor or Lieutenant Governor-elect, as the case may be,
97 disputes a declaration transmitted by the Governor under Subsection (3)(b)(i), the Lieutenant
98 Governor or Lieutenant Governor-elect may, within ten days after the declaration is transmitted
99 to the Supreme Court, file a petition requesting the Supreme Court to determine whether a
100 disability exists as stated in the Governor's declaration.

101 (iv) In determining whether a disability exists, the Supreme Court shall follow
102 procedures that the Court establishes, unless the Legislature by statute establishes procedures
103 for the Supreme Court to follow in determining whether a disability exists.

104 (v) A determination of disability under this Subsection (3)(b) is final and conclusive.

105 (c) (i) If a vacancy in the office of Lieutenant Governor occurs, the Governor shall,
106 with the consent of the Senate, appoint a person as Lieutenant Governor, to serve:

107 (A) except as provided in Subsection (3)(c)(i)(B), the remainder of the unexpired term;

108 or

109 (B) until the first Monday in January of the year following the next regular general
110 election after the vacancy occurs, if the vacancy occurs because the Lieutenant Governor
111 becomes Governor under Article VII, Section 11, Subsection (2).

112 (ii) The person appointed as Lieutenant Governor under Subsection (3)(c)(i) shall be
113 from the same political party as the Governor.

114 (iii) Neither the President of the Senate nor the Speaker of the House of
115 Representatives may, while acting as Governor under Article VII, Section 11, Subsection (4),
116 appoint a person as Lieutenant Governor to fill a vacancy in that office.

117 Section 4. It is proposed to amend Utah Constitution, Article VII, Section 16, to read:

118 **Article VII, Section 16. [Attorney General.]**

119 (1) The Attorney General is an appointive constitutional officer of the Executive

120 Department, shall be the legal adviser of the State officers, except as otherwise provided by this

121 Constitution, and shall perform such other duties as provided by law.

122 (2) The Governor shall, with the advice and consent of the Senate, appoint a person to
123 serve as Attorney General from a list of five nominees certified to the Governor by a
124 nominating commission established and functioning as provided by statute.

125 (3) The Attorney General shall:

126 (a) subject to Subsection (5), hold office for a single six-year term beginning on the
127 first Monday of January at the expiration of the term of office of the previously serving
128 Attorney General;

129 (b) reside within the State during the Attorney General's term of office; and

130 (c) perform the duties prescribed by this Constitution and those provided by statute.

131 (4) (a) A person may not be appointed to serve as Attorney General for consecutive
132 terms.

133 (b) For purposes of Subsection (4)(a), a person is considered not to have served a prior
134 term as Attorney General if the person's service is pursuant to an appointment to fill a vacancy
135 in the office of Attorney General when there was less than three years remaining in the term of
136 office.

137 (5) The Attorney General appointed under Subsection (2) may be removed from office
138 by the Governor, with the consent of a ~~§~~→ **constitutional** ←~~§~~ majority of all members of each
138a house of the
139 Legislature.

140 (6) (a) A vacancy in the office of Attorney General shall be filled as provided in
141 Subsection (2).

142 (b) A person appointed to fill a vacancy in the office of Attorney General shall serve
143 the remainder of the unexpired term, subject to Subsection (5).

144 **Section 5. Submittal to voters.**

145 The lieutenant governor is directed to submit this proposed amendment to the voters of
146 the state at the next regular general election in the manner provided by law.

147 **Section 6. Effective dates.**

148 If the amendments proposed by this joint resolution are approved by a majority of those
149 voting on them at the next regular general election:

150 (1) except as provided in Subsection (2), the amendments take effect on January 1,
151 2015; and

152 (2) (a) the amendments to Article VII, Section 10 take effect on January 1, 2017; and
153 (b) Article VII, Section 16, Subsection (6) takes effect on January 1, 2017.

Legislative Review Note
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Office of Legislative Research and General Counsel