

1 **RESOLUTION REVISING EXECUTIVE**
2 **OFFICER SUCCESSION PROVISIONS**

3 2006 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Sheryl L. Allen**

6 Senate Sponsor: Mike Dmitrich

7
8 **LONG TITLE**

9 **General Description:**

10 This joint resolution of the Legislature proposes to amend the Utah Constitution to
11 modify provisions relating to succession in the offices of Governor and Lieutenant
12 Governor.

13 **Highlighted Provisions:**

14 This resolution proposes to amend the Utah Constitution to:

- 15 ▶ provide that the Lieutenant Governor becomes Governor upon a vacancy in the
16 office of Governor, that the President of the Senate becomes Governor upon
17 simultaneous vacancies in the offices of Governor and Lieutenant Governor, and
18 that the Speaker of the House of Representatives becomes Governor upon
19 simultaneous vacancies in the offices of Governor, Lieutenant Governor, and
20 President of the Senate;
- 21 ▶ provide what constitutes a vacancy in the offices of Governor and Lieutenant
22 Governor;
- 23 ▶ provide for succession to the duties of the office of Governor during a temporary
24 disability of the Governor;
- 25 ▶ modify provisions relating to determining the disability of the Governor or person
26 acting as Governor;
- 27 ▶ modify the process for appointing a person to fill a vacancy in the office of



28 Lieutenant Governor by requiring the consent of the Senate ~~§→ [and House of Representatives] ←§~~ ;
 28a and

29 ▶ provide a process for determining the disability of the Lieutenant Governor.

30 **Special Clauses:**

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

32 This resolution provides a contingent effective date of January 1, 2007 for this proposal.

33 **Utah Constitution Sections Affected:**

34 AMENDS:

35 **ARTICLE VII, SECTION 10**

36 **ARTICLE VII, SECTION 11**

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

40 Section 1. It is proposed to amend Utah Constitution Article VII, Section 10, to read:

41 **Article VII, Section 10. [Governor's appointive power -- Vacancies.]**

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

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

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

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

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

58 (ii) the Lieutenant Governor-elect fails to take office because of the Lieutenant

59 Governor-elect's death, failure to qualify for office, or disability, determined as provided in
 60 Subsection (3)(b), that renders the Lieutenant Governor-elect unable to discharge the duties of
 61 office for the Lieutenant Governor-elect's full term of office.

62 (b) (i) Except when the disability of a Lieutenant Governor is determined under Article
 63 VII, Section 11, Subsection (5) because the Lieutenant Governor is acting as Governor under
 64 Article VII, Section 11, Subsection (4), the disability of a Lieutenant Governor or Lieutenant
 65 Governor-elect shall be determined by a written declaration stating that the Lieutenant
 66 Governor or Lieutenant Governor-elect is unable to discharge the powers and duties of the
 67 office.

68 (ii) The written declaration under Subsection (3)(b)(i) shall be transmitted to the
 69 Supreme Court and shall be signed by:

70 (A) the Governor; or

71 (B) (I) the Lieutenant Governor, if the Lieutenant Governor is the subject of the
 72 declaration; or

73 (II) the Lieutenant Governor-elect, if the Lieutenant Governor-elect is the subject of the
 74 declaration.

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

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

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

84 (c) (i) If a vacancy in the office of Lieutenant Governor occurs, the Governor shall,
 85 with the consent of \$→ [both] ←\$ the Senate \$→ [and the House of Representatives] ←\$, appoint
 85a a person as

86 Lieutenant Governor, to serve the remainder of the unexpired term.

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

89 (iii) Neither the President of the Senate nor the Speaker of the House of

90 Representatives may, while acting as Governor under Article VII, Section 11, Subsection (4),
91 appoint a person as Lieutenant Governor to fill a vacancy in that office.

92 Section 2. It is proposed to amend Utah Constitution Article VII, Section 11, to read:

93 **Article VII, Section 11. [Vacancy in office of Governor -- Determination of**
94 **disability.]**

95 ~~[In case of the death of the Governor, impeachment, removal from office, resignation,~~
96 ~~or disability to discharge the duties of the office, or in case of a Governor-elect who fails to~~
97 ~~take office, the powers and duties of the Governor shall devolve upon the Lieutenant Governor~~
98 ~~until the disability ceases or until the next general election, when the vacancy shall be filled by~~
99 ~~election. If, during a vacancy in the office of Governor, the Lieutenant Governor resigns, dies,~~
100 ~~is removed, or becomes incapable of performing the duties of the office, the President of the~~
101 ~~Senate shall act as Governor until the vacancy is filled or disability ceases. If in this case the~~
102 ~~President of the Senate resigns, dies, is removed, or becomes incapable of performing the~~
103 ~~duties of the office, the Speaker of the House shall act as Governor until the vacancy is filled or~~
104 ~~disability ceases. While performing the duties of the Governor as provided in this section, the~~
105 ~~Lieutenant Governor, the President of the Senate, or the Speaker of the House, as the case may~~
106 ~~be, shall be entitled to the salary and emoluments of the Governor, except in cases of temporary~~
107 ~~disability. The]~~

108 (1) A vacancy in the office of Governor occurs when:

109 (a) the Governor dies, resigns, is removed from office following impeachment, ceases
110 to reside within the state, or is determined, as provided in Subsection (5), to have a disability
111 that renders the Governor unable to discharge the duties of office for the remainder of the
112 Governor's term of office; or

113 (b) the Governor-elect fails to take office because of the Governor-elect's death, failure
114 to qualify for office, or disability, determined as provided in Subsection (5), that renders the
115 Governor-elect unable to discharge the duties of office for the Governor-elect's full term of
116 office.

117 (2) If a vacancy in the office of Governor occurs, the Lieutenant Governor shall
118 become Governor, to serve the remainder of the unexpired term.

119 (3) (a) In the event of simultaneous vacancies in the offices of Governor and
120 Lieutenant Governor, the President of the Senate shall become Governor, to serve the

121 remainder of the unexpired term.

122 (b) In the event of simultaneous vacancies in the offices of Governor, Lieutenant
123 Governor, and President of the Senate, the Speaker of the House of Representatives shall
124 become Governor, to serve the remainder of the unexpired term.

125 (4) (a) If the Governor is temporarily unable to discharge the duties of the office
126 because of the Governor's temporary disability, as determined under Subsection (5), or if the
127 Governor-elect is temporarily unable to assume the office of Governor because of the
128 Governor-elect's temporary disability, as determined under Subsection (5), the powers and
129 duties of the Governor shall be discharged by the Lieutenant Governor who, in addition to
130 discharging the duties of the office of Lieutenant Governor, shall, without additional
131 compensation, act as Governor until the disability ceases.

132 (b) (i) If, during a temporary disability of the Governor or Governor-elect, as
133 determined under Subsection (5), a vacancy in the office of Lieutenant Governor occurs or the
134 Lieutenant Governor is temporarily unable to discharge the duties of the office of Governor
135 because of the Lieutenant Governor's temporary disability, as determined under Subsection (5),
136 the powers and duties of the Governor shall be discharged by the President of the Senate who
137 shall act as Governor until the Governor or Governor-elect's disability ceases or, in the case of
138 the Lieutenant Governor's temporary disability, the Lieutenant Governor's disability ceases,
139 whichever occurs first.

140 (ii) If, during a temporary disability of the Governor or Governor-elect, as determined
141 under Subsection (5), neither the Lieutenant Governor nor the President of the Senate is able to
142 discharge the duties of the office of Governor because of a vacancy in the office of Lieutenant
143 Governor or President of the Senate, or both, or because of a temporary disability of either or
144 both officers, as determined under Subsection (5), or a combination of vacancy and temporary
145 disability, the powers and duties of the Governor shall be discharged by the Speaker of the
146 House of Representatives who shall act as Governor until the Governor's disability ceases or
147 until the vacancy, if applicable, in the office of President of the Senate is filled or the
148 temporary disability, if applicable, of the Lieutenant Governor or President of the Senate
149 ceases, whichever occurs first.

150 (c) (i) During the time that the President of the Senate acts as Governor under this
151 Subsection (4), the President may not exercise the powers and duties of President of the Senate

152 or Senator. The powers and duties of President of the Senate may be exercised during that time
153 by an acting President, chosen by the Senate.

154 (ii) During the time that the Speaker of the House of Representatives acts as Governor
155 under this Subsection (4), the Speaker may not exercise the powers and duties of Speaker of the
156 House of Representatives or Representative. The powers and duties of Speaker of the House of
157 Representatives may be exercised during that time by an acting Speaker, chosen by the House
158 of Representatives.

159 (d) When acting as Governor under this Subsection (4), the President of the Senate or
160 Speaker of the House of Representatives, as the case may be, shall be entitled to receive the
161 salary and emoluments of the office of Governor.

162 (5) (a) A disability of the Governor, Governor-elect, or person acting as Governor shall
163 be determined by [either a]:

164 (i) the written declaration of the Governor, Governor-elect, or person acting as
165 Governor, transmitted to the Supreme Court [by the Governor], stating an inability to discharge
166 the powers and duties of the office; or [by]

167 (ii) a majority of the Supreme Court [on] upon the joint request of the President or, if
168 applicable, acting President of the Senate and the Speaker or, if applicable, acting Speaker of
169 the House of Representatives. [Such determination shall be final and conclusive. Thereafter,
170 when the Governor transmits to the Supreme Court a written declaration that no disability
171 exists, the]

172 (b) The Governor or person acting as Governor shall resume or, in the case of a
173 Governor-elect, shall assume the powers and duties of the office following a temporary
174 disability upon the written declaration of the Governor, Governor-elect, or person acting as
175 Governor, transmitted to the Supreme Court, that no disability exists, unless the Supreme
176 Court, upon the joint request of the President or, if applicable, acting President of the Senate
177 and the Speaker or, if applicable, acting Speaker of the House of Representatives, or upon its
178 own initiative, determines that the temporary disability continues and that the Governor,
179 Governor-elect, or person acting as Governor is unable to discharge the powers and duties of
180 the office. [The Lieutenant Governor shall then continue to discharge these powers and duties
181 as acting Governor.]

182 (c) Each determination of a disability under Subsection (5)(a) shall be final and

183 conclusive.

184 (6) The Supreme Court has exclusive jurisdiction to determine all questions arising
185 under this section.

186 Section 3. **Submittal to voters.**

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

189 Section 4. **Effective date.**

190 If the amendment proposed by this joint resolution is approved by a majority of those
191 voting on it at the next regular general election, the amendment shall take effect on January 1,
192 2007.

Legislative Review Note
as of 12-9-05 1:18 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel