

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

3 2007 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Stephen H. Urquhart**

6 Senate Sponsor: John W. Hickman

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

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, 2009 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 (6) because the Lieutenant Governor is acting as Governor under
64 Article VII, Section 11, Subsection (5), 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 the Senate, appoint a person as Lieutenant Governor, to serve:

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

88 (B) until the first Monday in January of the year following the next regular general
89 election after the vacancy occurs, if the vacancy occurs because the Lieutenant Governor

90 becomes Governor under Article VII, Section 11, Subsection (2).

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

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

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

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

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

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

113 (a) the Governor dies, resigns, is removed from office following impeachment, ceases
114 to reside within the state, or is determined, as provided in Subsection (6), to have a disability
115 that renders the Governor unable to discharge the duties of office for the remainder of the
116 Governor's term of office; or

117 (b) the Governor-elect fails to take office because of the Governor-elect's death, failure
118 to qualify for office, or disability, determined as provided in Subsection (6), that renders the
119 Governor-elect unable to discharge the duties of office for the Governor-elect's full term of
120 office.

121 (2) If a vacancy in the office of Governor occurs, the Lieutenant Governor shall
122 become Governor, to serve:

123 (a) until the first Monday in January of the year following the next regular general
124 election after the vacancy occurs, if the vacancy occurs 600 or fewer days after the beginning of
125 the term of office; or

126 (b) for the remainder of the unexpired term, if the vacancy occurs more than 600 days
127 after the beginning of the term of office.

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

130 (i) until the first Monday in January of the year following the next regular general
131 election after the vacancy occurs, if the vacancy occurs 600 or fewer days after the beginning of
132 the term of office; or

133 (ii) for the remainder of the unexpired term, if the vacancy occurs more than 600 days
134 after the beginning of the term of office.

135 (b) In the event of simultaneous vacancies in the offices of Governor, Lieutenant
136 Governor, and President of the Senate, the Speaker of the House of Representatives shall
137 become Governor, to serve:

138 (i) until the first Monday in January of the year following the next regular general
139 election after the vacancy occurs, if the vacancy occurs 600 or fewer days after the beginning of
140 the term of office; or

141 (ii) for the remainder of the unexpired term, if the vacancy occurs more than 600 days
142 after the beginning of the term of office.

143 (4) If a vacancy in the office of Governor occurs 600 or fewer days after the beginning
144 of the term of office, an election shall be held at the next regular general election after the
145 vacancy occurs to elect a Governor and Lieutenant Governor, as provided in Article VII,
146 Section 2.

147 (5) (a) If the Governor is temporarily unable to discharge the duties of the office
148 because of the Governor's temporary disability, as determined under Subsection (6), or if the
149 Governor-elect is temporarily unable to assume the office of Governor because of the
150 Governor-elect's temporary disability, as determined under Subsection (6), the powers and
151 duties of the Governor shall be discharged by the Lieutenant Governor who, in addition to

152 discharging the duties of the office of Lieutenant Governor, shall, without additional
153 compensation, act as Governor until the disability ceases.

154 (b) (i) If, during a temporary disability of the Governor or Governor-elect, as
155 determined under Subsection (6), a vacancy in the office of Lieutenant Governor occurs or the
156 Lieutenant Governor is temporarily unable to discharge the duties of the office of Governor
157 because of the Lieutenant Governor's temporary disability, as determined under Subsection (6),
158 the powers and duties of the Governor shall be discharged by the President of the Senate who
159 shall act as Governor until the Governor or Governor-elect's disability ceases or, in the case of
160 the Lieutenant Governor's temporary disability, the Lieutenant Governor's disability ceases,
161 whichever occurs first.

162 (ii) If, during a temporary disability of the Governor or Governor-elect, as determined
163 under Subsection (6), neither the Lieutenant Governor nor the President of the Senate is able to
164 discharge the duties of the office of Governor because of a vacancy in the office of Lieutenant
165 Governor or President of the Senate, or both, or because of a temporary disability of either or
166 both officers, as determined under Subsection (6), or a combination of vacancy and temporary
167 disability, the powers and duties of the Governor shall be discharged by the Speaker of the
168 House of Representatives who shall act as Governor until the Governor's disability ceases or
169 until the vacancy, if applicable, in the office of President of the Senate is filled or the
170 temporary disability, if applicable, of the Lieutenant Governor or President of the Senate
171 ceases, whichever occurs first.

172 (c) (i) During the time that the President of the Senate acts as Governor under this
173 Subsection (5), the President may not exercise the powers and duties of President of the Senate
174 or Senator. The powers and duties of President of the Senate may be exercised during that time
175 by an acting President, chosen by the Senate.

176 (ii) During the time that the Speaker of the House of Representatives acts as Governor
177 under this Subsection (5), the Speaker may not exercise the powers and duties of Speaker of the
178 House of Representatives or Representative. The powers and duties of Speaker of the House of
179 Representatives may be exercised during that time by an acting Speaker, chosen by the House
180 of Representatives.

181 (d) When acting as Governor under this Subsection (5), the President of the Senate or
182 Speaker of the House of Representatives, as the case may be, shall be entitled to receive the

183 salary and emoluments of the office of Governor.

184 (6) (a) A disability of the Governor, Governor-elect, or person acting as Governor shall
185 be determined by [either a]:

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

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

194 (b) The Governor or person acting as Governor shall resume or, in the case of a
195 Governor-elect, shall assume the powers and duties of the office following a temporary
196 disability upon the written declaration of the Governor, Governor-elect, or person acting as
197 Governor, transmitted to the Supreme Court, that no disability exists, unless the Supreme
198 Court, upon the joint request of the President or, if applicable, acting President of the Senate
199 and the Speaker or, if applicable, acting Speaker of the House of Representatives, or upon its
200 own initiative, determines that the temporary disability continues and that the Governor,
201 Governor-elect, or person acting as Governor is unable to discharge the powers and duties of
202 the office. [The Lieutenant Governor shall then continue to discharge these powers and duties
203 as acting Governor.]

204 (c) Each determination of a disability under Subsection (6)(a) shall be final and
205 conclusive.

206 (7) The Supreme Court has exclusive jurisdiction to determine all questions arising
207 under this section.

208 **Section 3. Submittal to voters.**

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

211 **Section 4. Effective date.**

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

214 2009.

Legislative Review Note
as of 11-16-06 5:01 PM

Office of Legislative Research and General Counsel

H.J.R. 4 - Resolution Revising Executive Officer Succession Provisions

Fiscal Note

2007 General Session
State of Utah

State Impact

It is estimated that publication and distribution costs to put this resolution on the ballot would require a one-time FY 2009 appropriation of \$14,700 from the General Fund.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>
General Fund, One-Time	\$0	\$0	\$14,700	\$0	\$0	\$0
Total	\$0	\$0	\$14,700	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
