

GUBERNATORIAL TRANSFER OF POWER

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Don L. Ipson

House Sponsor: Robert M. Spendlove

LONG TITLE

General Description:

This bill provides for the transition between gubernatorial administrations.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ clarifies the deadline for the Senate to consent to certain gubernatorial appointees;
- ▶ requires the executive branch and an incoming gubernatorial administration to work together to facilitate an efficient transition between gubernatorial administrations;
- ▶ allows appropriations to be made for an incoming gubernatorial administration to use in making the transition into the offices of governor and lieutenant governor;
- ▶ specifies how the governor's proposed budget is to be prepared in a year in which there is a transition between gubernatorial administrations; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

67-1-1.5, as last amended by Laws of Utah 2020, Chapter 352

ENACTS:

- 29 **67-1b-101**, Utah Code Annotated 1953
- 30 **67-1b-102**, Utah Code Annotated 1953
- 31 **67-1b-103**, Utah Code Annotated 1953
- 32 **67-1b-104**, Utah Code Annotated 1953
- 33 **67-1b-105**, Utah Code Annotated 1953
- 34 **67-1b-106**, Utah Code Annotated 1953

36 *Be it enacted by the Legislature of the state of Utah:*

37 Section 1. Section **67-1-1.5** is amended to read:

38 **67-1-1.5. Gubernatorial appointment powers.**

39 (1) As used in this section:

40 (a) "Board member" means each gubernatorial appointee to any state board, committee,
41 commission, council, or authority.

42 (b) "Executive branch management position" includes department executive directors,
43 division directors, and any other administrative position in state government where the person
44 filling the position:

45 (i) works full-time performing managerial and administrative functions;

46 (ii) is appointed by the governor with the advice and consent of the Senate.

47 (c) (i) "Executive branch policy position" means any person other than a person filling
48 an executive branch management position, who is appointed by the governor with the advice
49 and consent of the Senate.

50 (ii) "Executive branch policy position" includes each member of any state board and
51 commission appointed by the governor with the advice and consent of the Senate.

52 (2) (a) Whenever a vacancy occurs in any executive branch policy position or in any
53 executive branch management position, the governor shall submit the name of a nominee to the
54 Senate for advice and consent no later than three months after the day on which the vacancy
55 occurs.

56 (b) If the Senate fails to consent to that person within 90 days after the day on which
57 the governor submits the nominee's name to the Senate for consent:

58 (i) the nomination is considered rejected; and

59 (ii) the governor shall resubmit the name of the nominee described in Subsection (2)(a)
60 or submit the name of a different nominee to the Senate for consent no later than 60 days after
61 the date on which the nomination was rejected by the Senate.

62 (3) ~~(a)~~ Whenever a vacancy occurs in any executive branch management position, the
63 governor may either:

64 ~~(i)~~ (a) appoint an interim manager who meets the qualifications of the vacant position
65 to exercise the powers and duties of the vacant position for three months, pending consent of a
66 person to permanently fill that position by the Senate; or

67 ~~(ii)~~ (b) appoint an interim manager who does not meet the qualifications of the vacant
68 position and submit that person's name to the Senate for consent as interim manager within one
69 month of the appointment.

70 ~~(b) If~~ (4) Except for an interim manager appointed to a position described in
71 Subsection 67-1-2(3)(b)(i) through (vii), if the Senate fails to consent to the interim manager
72 appointed under Subsection ~~(3)(a)(ii)~~ (3)(b) within 30 days after the day on which the
73 governor submits the nominee's name to the Senate for consent:

74 ~~(i)~~ (a) the nomination is considered rejected; and

75 ~~(ii)~~ (b) the governor may:

76 (i) (A) ~~(i)~~ reappoint the interim manager to whom the Senate failed to consent within
77 30 days; and

78 ~~(ii)~~ (B) resubmit the name of the person described in Subsection ~~(3)(b)(ii)(A)(i)~~
79 (4)(b)(i)(A) to the Senate for consent as interim manager; or

80 ~~(iii)~~ (ii) appoint a different interim manager under Subsection (3)~~(a)~~.

81 (5) For an interim manager appointed to a position described in Subsection
82 67-1-2(3)(b)(i) through (vii), if the Senate fails to consent to the interim manager appointed

83 under Subsection (3)(b) within 60 days after the day on which the governor submits the
84 nominee's name to the Senate for consent:

85 (a) the nomination is considered rejected; and

86 (b) the governor may:

87 (i) (A) reappoint the interim manager to whom the Senate failed to consent; and

88 (B) resubmit the name of the person described in Subsection (5)(b)(i)(A) to the Senate
89 for consent as interim manager; or

90 (ii) appoint a different interim manager under Subsection (3).

91 ~~[(c)]~~ (6) If, after an interim manager has served three months, no one has been
92 appointed and received Senate consent to permanently fill the position, the governor shall:

93 ~~[(i)]~~ (a) appoint a new interim manager who meets the qualifications of the vacant
94 position to exercise the powers and duties of the vacant position for three months; or

95 ~~[(ii)]~~ (b) submit the name of the first interim manager to the Senate for consent as an
96 interim manager for a three-month term.

97 ~~[(7)]~~ (7) If the Senate fails to consent to a nominee whose name is submitted under
98 Subsection ~~[(3)(c)(ii)]~~ (6)(b) within 30 days after the day on which the governor submits the
99 name to the Senate:

100 ~~[(i)]~~ (a) the nomination is considered rejected; and

101 ~~[(ii)]~~ (b) the governor shall:

102 (i) (A) [(i)] reappoint the person described in Subsection ~~[(3)(d)]~~ (6)(b); and

103 ~~[(ii)]~~ (B) resubmit the name of the person described in Subsection ~~[(3)(d)]~~ (6)(b) to the
104 Senate for consent as interim manager; or

105 ~~[(B)]~~ (ii) appoint a different interim manager in the manner required by Subsection
106 ~~(3)[(a)]~~.

107 ~~[(4)]~~ (8) The governor may not make a temporary appointment to fill a vacant
108 executive branch policy position.

109 ~~[(5)]~~ (9) (a) Before appointing any person to serve as a board member, the governor

110 shall ask the person whether [~~or not~~] the person wishes to receive per diem, expenses, or both
111 for serving as a board member.

112 (b) If the person declines to receive per diem, expenses, or both, the governor shall
113 notify the agency administering the board, commission, committee, council, or authority and
114 direct the agency to implement the board member's request.

115 [~~(6)~~] (10) A gubernatorial nomination upon which the Senate has not acted to give
116 consent or refuse to give consent is void when a vacancy in the office of governor occurs.

117 Section 2. Section **67-1b-101** is enacted to read:

118 **CHAPTER 1b. TRANSITION TO NEW GUBERNATORIAL ADMINISTRATION**

119 **67-1b-101. Title.**

120 This chapter is known as "Transition to New Gubernatorial Administration."

121 Section 3. Section **67-1b-102** is enacted to read:

122 **67-1b-102. Definitions.**

123 As used in this chapter:

124 (1) "Board of canvassers" means the state board of canvassers created in Section
125 [20A-4-306](#).

126 (2) (a) "Executive branch" means:

127 (i) the governor, the governor's staff, and the governor's appointed advisors;

128 (ii) the lieutenant governor and lieutenant governor's staff;

129 (iii) cabinet level officials;

130 (iv) except as provided in Subsection (2)(b), an agency, board, department, division,
131 committee, commission, council, office, or other administrative subunit of the executive branch
132 of state government;

133 (v) except as provided in Subsection (2)(b), a cabinet officer, elected official, executive
134 director, or board or commission vested with:

135 (A) policy making and oversight responsibility for a state executive branch agency; or

136 (B) authority to appoint and remove the director of a state executive branch agency;

- 137 (vi) executive ministerial officers;
- 138 (vii) each gubernatorial appointee to a state board, committee, commission, council, or
- 139 authority;
- 140 (viii) each executive branch management position, as defined in Section [67-1-1.5](#);
- 141 (ix) each executive branch policy position, as defined in Section [67-1-1.5](#); and
- 142 (x) the military forces of the state.
- 143 (b) "Executive branch" does not include:
- 144 (i) the legislative branch;
- 145 (ii) the judicial branch;
- 146 (iii) the State Board of Education;
- 147 (iv) the Utah Board of Higher Education;
- 148 (v) institutions of higher education;
- 149 (vi) independent entities as defined in Section [63E-1-102](#);
- 150 (vii) elective constitutional offices of the executive department, including the state
- 151 auditor, the state treasurer, and the attorney general;
- 152 (viii) a county, municipality, school district, local district, or special service district; or
- 153 (ix) an administrative subdivision of a county, municipality, school district, local
- 154 district, or special service district.
- 155 (3) "Governor-elect" means, during a transition period, an individual whom the board
- 156 of canvassers determines to be the successful candidate for governor after a general election for
- 157 the office of governor, if that successful candidate is an individual other than the incumbent
- 158 governor.
- 159 (4) "Governor-elect's staff" means:
- 160 (a) an individual that a governor-elect intends to nominate as a department head;
- 161 (b) an individual that a governor-elect intends to appoint to a key position in the
- 162 executive branch;
- 163 (c) an individual hired by a governor-elect under Subsection [67-1b-105\(1\)\(c\)](#); and

164 (d) any other individual expressly engaged by the governor-elect to assist with the
165 governor-elect's transition into the office of governor.

166 (5) "Governor's Office of Management and Budget" means the office created in Section
167 63J-4-201.

168 (6) "Incoming gubernatorial administration" means a governor-elect, a governor-elect's
169 staff, a lieutenant governor-elect, and a lieutenant governor-elect's staff.

170 (7) "Lieutenant governor-elect" means, during a transition period, an individual whom
171 the board of canvassers determines to be the successful candidate for lieutenant governor after
172 a general election for the office of lieutenant governor, if that successful candidate is an
173 individual other than the incumbent lieutenant governor.

174 (8) "Lieutenant governor-elect's staff" means:

175 (a) an individual hired by a lieutenant governor-elect under Subsection
176 67-1b-105(1)(c); and

177 (b) any other individual expressly engaged by the lieutenant governor-elect to assist
178 with the lieutenant governor-elect's transition into the office of lieutenant governor.

179 (9) "Office of the Legislative Fiscal Analyst" means the office created in Section
180 36-12-13.

181 (10) "Record" means the same as that term is defined in Section 63G-2-103.

182 (11) "Transition period" means the period of time beginning the day after the meeting
183 of the board of canvassers under Section 20A-4-306 in a year in which the board of canvassers
184 determines that the successful candidate for governor is an individual other than the incumbent
185 governor, and ending on the first Monday of the next January.

186 Section 4. Section **67-1b-103** is enacted to read:

187 **67-1b-103. Applicability.**

188 (1) Except as otherwise provided, this chapter applies when there is a transition from
189 the administration of one governor to the administration of the next governor following a
190 regular general election at which a new governor is elected.

191 (2) Except as otherwise provided, this chapter does not apply:
192 (a) to a transition from the administration of one governor to the administration of
193 another governor due to a vacancy in the office of governor under Utah Constitution, Article
194 VII, Section 11; or
195 (b) if the successful candidate for governor is the incumbent governor.

196 Section 5. Section **67-1b-104** is enacted to read:

197 **67-1b-104. Duties during transition period.**

198 (1) During a transition period, the executive branch shall:

199 (a) provide any lawful assistance that the incoming gubernatorial administration may
200 reasonably request related to the transition between gubernatorial administrations; and

201 (b) take reasonable steps to:

202 (i) avoid or minimize disruptions that might be occasioned by a transition between
203 gubernatorial administrations; and

204 (ii) facilitate an efficient transition between gubernatorial administrations.

205 (2) During a transition period, the incoming gubernatorial administration shall take
206 reasonable steps to:

207 (a) avoid or minimize disruptions that might be occasioned by a transition between
208 gubernatorial administrations; and

209 (b) facilitate an efficient transition between gubernatorial administrations.

210 (3) (a) During a transition period, the executive branch shall timely provide a
211 governor-elect, upon the governor-elect's request, with all records and information from the
212 executive branch upon any subject relating to the executive branch's condition, expenditures,
213 expenses, management, operations, personnel, and receipts.

214 (b) For a record requested by a governor-elect under Subsection (3)(a) that is classified
215 as private or protected under Title 63G, Chapter 2, Government Records Access and
216 Management Act, there is a rebuttable presumption that disclosure of the record to the
217 governor-elect meets the conditions for disclosure under Subsection [63G-2-201\(5\)](#).

218 (c) A governor-elect who receives records under this Subsection (3) is subject to the
219 provisions of Title 63G, Chapter 2, Government Records Access and Management Act,
220 governing the use and disclosure of records.

221 (d) The disclosure of a record that is classified as private or protected to a
222 governor-elect does not affect the classification of that record under Title 63G, Chapter 2,
223 Government Records Access and Management Act.

224 Section 6. Section **67-1b-105** is enacted to read:

225 **67-1b-105. Appropriations.**

226 (1) (a) There is created a restricted account in the General Fund known as the
227 "Gubernatorial Transition Account."

228 (b) The account created in Subsection (1)(a) shall be funded by appropriations made to
229 the account by the Legislature.

230 (c) The Department of Administrative Services shall administer the Gubernatorial
231 Transition Account and shall make money in the Gubernatorial Transition Account available to
232 an incoming gubernatorial administration to use for expenses reasonably related to fulfilling
233 the incoming gubernatorial administration's duties under Subsection [67-1b-104\(2\)](#), including:

234 (i) office space;

235 (ii) fixtures, furniture, office supplies, office machines, equipment, or information and
236 communication systems used in the office space described in Subsection (2)(c)(i);

237 (iii) mobile computing devices, including mobile phones, tablet computers, or laptop
238 computers used by the incoming gubernatorial administration; or

239 (iv) hiring employees to assist with transition efforts.

240 (d) Interest or other earnings derived from the Gubernatorial Transition Account shall
241 be deposited in the General Fund.

242 (2) Any unexpended balance of an appropriation made under this section is nonlapsing.

243 Section 7. Section **67-1b-106** is enacted to read:

244 **67-1b-106. Governor's budget.**

245 (1) During a transition period:
246 (a) the governor-elect is entitled to participate in all executive branch budget meetings;
247 (b) subject to Title 63G, Chapter 2, Government Records Access and Management Act,
248 the executive branch shall make records and information related to the preparation of the
249 governor's confidential draft proposed budget available to the governor-elect; and
250 (c) the incumbent governor shall consider any proposed additions or changes from the
251 governor-elect in preparing the governor's confidential draft proposed budget recommendations
252 to be submitted to the Office of Legislative Fiscal Analyst in accordance with Section
253 [63J-1-201](#).
254 (2) (a) If the governor-elect proposes additions or changes to the governor that are not
255 adopted by the governor in preparing the governor's confidential draft proposed budget
256 recommendations, the governor-elect may prepare confidential proposed additions or changes
257 and submit them to the Office of the Legislative Fiscal Analyst concurrent with the governor's
258 confidential draft proposed budget recommendations.
259 (b) The Governor's Office of Management and Budget shall, at the request of the
260 governor-elect, assist the governor-elect in preparing confidential proposed additions or
261 changes to the incumbent governor's draft proposed budget recommendations for submission to
262 the Office of the Legislative Fiscal Analyst.
263 (3) (a) After the incumbent governor's confidential draft proposed budget
264 recommendations are submitted to the Office of the Legislative Fiscal Analyst, the
265 governor-elect is responsible for preparing the proposed budget to be submitted to the presiding
266 officers of each house of the Legislature in accordance with Section [63J-1-201](#), and shall
267 submit the proposed budget to the presiding officers of each house of the Legislature after
268 assuming the office of governor.
269 (b) The executive branch shall provide the governor-elect with any assistance
270 reasonably requested by the governor-elect to prepare the proposed budget to be submitted to
271 the presiding officers of each house of the Legislature.

272 (c) A governor whose term ends following a transition period may not submit a
273 proposed budget to the presiding officers of each house of the Legislature.