

SB0062S03 compared with SB0062S02

~~text~~ shows text that was in SB0062S02 but was deleted in SB0062S03.

text shows text that was not in SB0062S02 but was inserted into SB0062S03.

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Senator Don L. Ipson proposes the following substitute bill:

GUBERNATORIAL TRANSFER OF POWER

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Don L. Ipson

House Sponsor: _____

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

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- ▶ 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:

67-1b-101, Utah Code Annotated 1953

67-1b-102, Utah Code Annotated 1953

67-1b-103, Utah Code Annotated 1953

67-1b-104, Utah Code Annotated 1953

67-1b-105, Utah Code Annotated 1953

67-1b-106, Utah Code Annotated 1953

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

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

67-1-1.5. Gubernatorial appointment powers.

(1) As used in this section:

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

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

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

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

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

(ii) "Executive branch policy position" includes each member of any state board and

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commission appointed by the governor with the advice and consent of the Senate.

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

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

(i) the nomination is considered rejected; and

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

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

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

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

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

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

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

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

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

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

(5) For an interim manager appointed to a position described in Subsection

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67-1-2(3)(b)(i) through (vii), if the Senate fails to consent to the interim manager appointed under Subsection (3)(b) within 60 days after the day on which the governor submits the nominee's name to the Senate for consent:

(a) the nomination is considered rejected; and

(b) the governor may:

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

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

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

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

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

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

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

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

~~(ii)~~ (b) the governor shall:

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

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

(B) appoint a different interim manager in the manner required by Subsection (3)~~(a)~~.

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

~~(5)~~ (9) (a) Before appointing any person to serve as a board member, the governor shall ask the person whether ~~or not~~ the person wishes to receive per diem, expenses, or both for serving as a board member.

(b) If the person declines to receive per diem, expenses, or both, the governor shall notify the agency administering the board, commission, committee, council, or authority and

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direct the agency to implement the board member's request.

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

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

CHAPTER 1b. TRANSITION TO NEW GUBERNATORIAL ADMINISTRATION

67-1b-101. Title.

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

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

67-1b-102. Definitions.

As used in this chapter:

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

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

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

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

(iii) cabinet level officials;

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

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

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

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

(vi) executive ministerial officers;

(vii) each gubernatorial appointee to a state board, committee, commission, council, or authority;

(viii) each executive branch management position, as defined in Section 67-1-1.5;

(ix) each executive branch policy position, as defined in Section 67-1-1.5; and

(x) the military forces of the state.

(b) "Executive branch" does not include:

(i) the legislative branch;

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(ii) the judicial branch;

(iii) the State Board of Education;

(iv) the Utah Board of Higher Education;

(v) institutions of higher education;

(vi) independent entities as defined in Section 63E-1-102;

(vii) elective constitutional offices of the executive department, including the state auditor, the state treasurer, and the attorney general;

(viii) a county, municipality, school district, local district, or special service district; or

(ix) an administrative subdivision of a county, municipality, school district, local district, or special service district.

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

(4) "Governor-elect's staff" means:

(a) an individual that a governor-elect intends to nominate as a department head;

(b) an individual that a governor-elect intends to appoint to a key position in the executive branch;

(c) an individual hired by a governor-elect under Subsection 67-1b-106(c); and

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

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

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

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

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

(a) an individual hired by a lieutenant governor-elect under Subsection 67-1b-106(c);

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and

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

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

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

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

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

67-1b-103. Applicability.

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

(2) Except as otherwise provided, this chapter does not apply:

(a) to a transition from the administration of one governor to the administration of another governor due to a vacancy in the office of governor under Utah Constitution, Article VII, Section 11; or

(b) if the successful candidate for governor is the incumbent governor.

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

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

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

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

(b) take reasonable steps to:

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

(ii) facilitate an efficient transition between gubernatorial administrations.

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

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

(b) facilitate an efficient transition between gubernatorial administrations.

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

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

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

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

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

67-1b-105. Appropriations.

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

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

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

(i) office space;

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

(ii) mobile computing devices, including mobile phones, tablet computers, or laptop

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computers used by the incoming gubernatorial administration; or

(iii) hiring employees to assist with transition efforts.

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

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

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

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

(1) During a transition period:

(a) the governor-elect is entitled to participate in all executive branch budget meetings;

(b) subject to Title 63G, Chapter 2, Government Records Access and Management Act, the executive branch shall make records and information related to the preparation of the governor's confidential draft proposed budget available to the governor-elect; and

(c) the incumbent governor shall consider any proposed additions or changes from the governor-elect in preparing the governor's confidential draft proposed budget recommendations to be submitted to the Office of Legislative Fiscal Analyst in accordance with Section 63J-1-201.

(2) (a) If the governor-elect proposes additions or changes to the governor that are not adopted by the governor in preparing the governor's confidential draft proposed budget recommendations, the governor-elect may prepare confidential proposed additions or changes and submit them to the Office of the Legislative Fiscal Analyst concurrent with the governor's confidential draft proposed budget recommendations.

(b) The Governor's Office of Management and Budget shall, at the request of the governor-elect, assist the governor-elect in preparing confidential proposed additions or changes to the incumbent governor's draft proposed budget recommendations for submission to the Office of the Legislative Fiscal Analyst.

(3) (a) After the incumbent governor's confidential draft proposed budget recommendations are submitted to the Office of the Legislative Fiscal Analyst, the governor-elect is responsible for preparing the proposed budget to be submitted to the presiding officers of each house of the Legislature in accordance with Section 63J-1-201, and shall submit the proposed budget to the presiding officers of each house of the Legislature after assuming the office of governor.

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(b) The executive branch shall provide the governor-elect with any assistance reasonably requested by the governor-elect to prepare the proposed budget to be submitted to the presiding officers of each house of the Legislature.

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