

**GUBERNATORIAL TRANSFER OF POWER**

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Michael K. McKell**

House Sponsor: \_\_\_\_\_

**LONG TITLE**

**General Description:**

This bill provides for the transition between gubernatorial administrations.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ requires the Office of Executive Protection to provide security and protection to the lieutenant governor, the lieutenant governor's family, a governor-elect, a governor-elect's family, a lieutenant governor-elect, and a lieutenant governor-elect's family;
- ▶ permits the Office of Executive Protection, in certain circumstances and at certain times, to provide security and protection to candidates for the offices of governor and lieutenant governor, and to an outgoing governor or outgoing lieutenant governor;
- ▶ allows the Senate to waive the requirement that the governor provide nominee information at least 30 days before the day of an extraordinary session for certain gubernatorial nominees after a new governor's term begins;
- ▶ requires the executive branch and an incoming gubernatorial administration to work together to facilitate an efficient transition between gubernatorial administrations;
- ▶ provides an incoming gubernatorial administration with office space and equipment to be used during the transition period;



- 28           ▶ authorizes the executive branch to share information and documents with an
- 29 incoming gubernatorial administration;
- 30           ▶ permits a governor-elect and lieutenant governor-elect to hire staff to assist with the
- 31 transition into the offices of governor and lieutenant governor;
- 32           ▶ allows appropriations to be made to the executive branch for use after a general
- 33 election for the office of governor, and to an incoming gubernatorial administration
- 34 to use in making the transition into the offices of governor and lieutenant governor;
- 35           ▶ specifies how the governor's proposed budget is to be prepared in a year in which
- 36 there is a transition between gubernatorial administrations; and
- 37           ▶ makes technical and conforming changes.

38 **Money Appropriated in this Bill:**

39           None

40 **Other Special Clauses:**

41           None

42 **Utah Code Sections Affected:**

43 AMENDS:

44           **53-1-114**, as last amended by Laws of Utah 2000, Chapter 146

45           **67-1-2**, as last amended by Laws of Utah 2020, Chapters 352, 373 and last amended by  
46 Coordination Clause, Laws of Utah 2020, Chapters 352, 365, and 373

47 ENACTS:

48           **67-1b-101**, Utah Code Annotated 1953

49           **67-1b-102**, Utah Code Annotated 1953

50           **67-1b-103**, Utah Code Annotated 1953

51           **67-1b-104**, Utah Code Annotated 1953

52           **67-1b-105**, Utah Code Annotated 1953

53           **67-1b-106**, Utah Code Annotated 1953

54           **67-1b-107**, Utah Code Annotated 1953

55           **67-1b-108**, Utah Code Annotated 1953

56           **67-1b-109**, Utah Code Annotated 1953

57           **67-1b-110**, Utah Code Annotated 1953

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

60 Section 1. Section **53-1-114** is amended to read:

61 **53-1-114. Office of Executive Protection -- Security and protection for governor,**  
62 **lieutenant governor, and their families -- Protection for other officials.**

63 (1) The Office of Executive Protection shall provide all necessary security and  
64 protection for the governor [and], the governor's immediate family, the lieutenant governor,  
65 and the lieutenant governor's immediate family.

66 (2) (a) Subject to the direction of the commissioner, the Office of Executive Protection  
67 may provide protection to other public officials.

68 (b) That protection may not extend for more than 15 days without review and approval  
69 by majority vote of the president of the Senate, the speaker of the House, and the  
70 commissioner.

71 (c) Review and approval by the same majority vote shall be required at the end of each  
72 15-day period.

73 (3) The Office of Executive Protection shall provide security and protection in  
74 accordance with Section [67-1b-108](#).

75 Section 2. Section **67-1-2** is amended to read:

76 **67-1-2. Senate confirmation of gubernatorial nominees -- Verification of**  
77 **nomination requirements -- Consultation on appointments -- Notification of anticipated**  
78 **vacancies.**

79 ~~[(1) Until October 1, 2020, unless waived by a majority of the president of the Senate,~~  
80 ~~the Senate majority leader, and the Senate minority leader, 15 days before any Senate session to~~  
81 ~~confirm any gubernatorial nominee, except a judicial appointment, the governor shall send to~~  
82 ~~each member of the Senate and to the Office of Legislative Research and General Counsel:]~~

83 ~~[(a) a list of each nominee for an office or position made by the governor in accordance~~  
84 ~~with the Utah Constitution and state law; and]~~

85 ~~[(b) any information that may support or provide biographical information about the~~  
86 ~~nominee, including resumes and curriculum vitae.]~~

87 ~~[(2)]~~ (1) Except as provided in [Subsection (3), beginning October 1, 2020]  
88 Subsections (2) and (3), at least 30 days before the day of an extraordinary session of the  
89 Senate to confirm a gubernatorial nominee, the governor shall send to each member of the

90 Senate and to the Office of Legislative Research and General Counsel the following  
91 information for each nominee:

92 (a) the nominee's name and biographical information, including a resume and  
93 curriculum vitae with personal contact information, including home address, email address, and  
94 telephone number, redacted, except that the governor shall send to the Office of Legislative  
95 Research and General Counsel the contact information for the nominee;

96 (b) a detailed list, with citations, of the legal requirements for the appointed position;

97 (c) a detailed list with supporting documents explaining how, and verifying that, the  
98 nominee meets each statutory and constitutional requirement for the appointed position;

99 (d) a written certification by the governor that the nominee satisfies all requirements  
100 for the appointment; and

101 (e) public comment information collected in accordance with Section 63G-24-204.

102 ~~[(3)]~~ (2) (a) Subsection ~~[(2)]~~ (1) does not apply to a judicial nominee.

103 (b) ~~[Beginning October 1, 2020, a]~~ A majority of the president of the Senate, the  
104 Senate majority leader, and the Senate minority leader may waive the 30-day requirement  
105 described in Subsection ~~[(2)]~~ (1) for a gubernatorial nominee other than a nominee for the  
106 following:

107 (i) the executive director of a department;

108 (ii) the executive director of the Governor's Office of Economic Development;

109 (iii) the executive director of the Labor Commission;

110 (iv) a member of the State Tax Commission;

111 (v) a member of the State Board of Education;

112 (vi) a member of the Utah Board of Higher Education; or

113 (vii) an individual:

114 (A) whose appointment requires the advice and consent of the Senate; and

115 (B) whom the governor designates as a member of the governor's cabinet.

116 (3) Notwithstanding Subsection (2)(b), within 45 days after the end of a transition  
117 period, as defined in Section 67-1b-102, a majority of the president of the Senate, the Senate  
118 majority leader, and the Senate minority leader may waive the 30-day requirement described in  
119 Subsection (1) for gubernatorial nominees to the positions described in Subsections (2)(b)(i)  
120 through (iii) and (2)(b)(vii).

121 (4) [~~Beginning October 1, 2020, the~~] The Senate shall hold a confirmation hearing for a  
122 nominee for an individual described in Subsection [~~(3)~~] (2)(b)(i) through (vii).

123 (5) [~~Beginning on October 1, 2020, the~~] The governor shall:

124 (a) if the governor is aware of an upcoming vacancy in a position that requires Senate  
125 confirmation, provide notice of the upcoming vacancy to the president of the Senate, the Senate  
126 minority leader, and the Office of Legislative Research and General Counsel at least 30 days  
127 before the day on which the vacancy occurs; and

128 (b) establish a process for government entities and other relevant organizations to  
129 provide input on gubernatorial appointments.

130 (6) When the governor makes a judicial appointment, the governor shall immediately  
131 provide to the president of the Senate and the Office of Legislative Research and General  
132 Counsel:

133 (a) the name of the judicial appointee; and

134 (b) the judicial appointee's:

135 (i) resume;

136 (ii) complete file of all the application materials the governor received from the  
137 Judicial Nominating Commission; and

138 (iii) any other related documents, including any letters received by the governor about  
139 the appointee, unless the letter specifically directs that it may not be shared.

140 (7) The governor shall inform the president of the Senate and the Office of Legislative  
141 Research and General Counsel of the number of letters withheld pursuant to Subsection  
142 (6)(b)(iii).

143 (8) (a) Letters of inquiry submitted by any judge at the request of any judicial  
144 nominating commission shall be classified as private in accordance with Section [63G-2-302](#).

145 (b) All other records received from the governor pursuant to this Subsection (8) may be  
146 classified as private in accordance with Section [63G-2-302](#).

147 (9) The Senate shall consent or refuse to give its consent to the nomination or judicial  
148 appointment.

149 (10) A judicial nominating commission shall, at the time the judicial nominating  
150 commission certifies a list of the most qualified judicial applicants to the governor under  
151 Section [78A-10-104](#), submit the same list to the president of the Senate, the Senate minority

152 leader, and the Office of Legislative Research and General Counsel.

153 Section 3. Section **67-1b-101** is enacted to read:

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

155 **67-1b-101. Title.**

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

157 Section 4. Section **67-1b-102** is enacted to read:

158 **67-1b-102. Definitions.**

159 As used in this chapter:

160 (1) "Board of canvassers" means the state board of canvassers created in Section  
161 20A-4-306.

162 (2) "Capitol hill complex" means the same as that term is defined in Section  
163 63C-9-102.

164 (3) "Department of Administrative Services" means the department created in Section  
165 63A-1-104.

166 (4) "Department of Technology Services" means the department created in Section  
167 63F-1-103.

168 (5) "Division of Facilities Construction and Management" means the division created  
169 in Section 63A-5b-301.

170 (6) (a) "Executive branch" means:

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

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

173 (iii) cabinet level officials;

174 (iv) except as provided in Subsection (6)(b), an agency, board, department, division,  
175 committee, commission, council, office, or other administrative subunit of the executive branch  
176 of state government;

177 (v) except as provided in Subsection (6)(b), a cabinet officer, elected official, executive  
178 director, or board or commission vested with:

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

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

181 (vi) executive ministerial officers;

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

- 183 authority;
- 184 (viii) each executive branch management position, as defined in Section 67-1-1.5;
- 185 (ix) each executive branch policy position, as defined in Section 67-1-1.5; and
- 186 (x) the military forces of the state.
- 187 (b) "Executive branch" does not include:
- 188 (i) the legislative branch;
- 189 (ii) the judicial branch;
- 190 (iii) the State Board of Education;
- 191 (iv) the Utah Board of Higher Education;
- 192 (v) institutions of higher education;
- 193 (vi) independent entities as defined in Section 63E-1-102;
- 194 (vii) elective constitutional offices of the executive department, including the state
- 195 auditor, the state treasurer, and the attorney general;
- 196 (viii) a county, municipality, school district, local district, or special service district; or
- 197 (ix) an administrative subdivision of a county, municipality, school district, local
- 198 district, or special service district.
- 199 (7) "Executive director of the Capitol Preservation Board" means the executive director
- 200 appointed under Section 63C-9-401.
- 201 (8) "Executive residence" means the same as that term is defined in Section 67-1-8.1.
- 202 (9) "Governor-elect" means, during a transition period, an individual whom the board
- 203 of canvassers determines to be the successful candidate for governor after a general election for
- 204 the office of governor, if that successful candidate is an individual other than the incumbent
- 205 governor.
- 206 (10) "Governor-elect's staff" means:
- 207 (a) an individual that a governor-elect intends to nominate as a department head;
- 208 (b) an individual that a governor-elect intends to appoint to a key position in the
- 209 executive branch;
- 210 (c) an individual hired by a governor-elect under Section 67-1b-107; and
- 211 (d) any other individual expressly engaged by the governor-elect to assist with the
- 212 governor-elect's transition into the office of governor.
- 213 (11) "Governor's Office of Management and Budget" means the office created in

214 Section 63J-4-201.

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

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

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

222 (a) an individual hired by a lieutenant governor-elect under Section 67-1b-107; and

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

225 (15) "Office of Executive Protection" means the office created in Section 53-1-112.

226 (16) "Office of the Legislative Fiscal Analyst" means the office created in Section  
227 36-12-13.

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

229 (18) "State Building Board" means the board created in Section 63A-5b-201.

230 (19) "State Capitol Preservation Board" means the board created in Section 63C-9-201.

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

235 Section 5. Section **67-1b-103** is enacted to read:

236 **67-1b-103. Applicability.**

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

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

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

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



245 Section 6. Section **67-1b-104** is enacted to read:

246 **67-1b-104. Duties during transition period.**

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

248 (a) provide any lawful assistance that the incoming gubernatorial administration may

249 reasonably request related to the transition between gubernatorial administrations; and

250 (b) take reasonable steps to:

251 (i) avoid or minimize disruptions that might be occasioned by a transition between

252 gubernatorial administrations; and

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

254 (2) During a transition period, the incoming gubernatorial administration shall take

255 reasonable steps to:

256 (a) avoid or minimize disruptions that might be occasioned by a transition between

257 gubernatorial administrations; and

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

259 Section 7. Section **67-1b-105** is enacted to read:

260 **67-1b-105. Office space -- Supplies and equipment -- Technology services --**

261 **Executive residence.**

262 (1) During a transition period, the Division of Facilities Construction and Management

263 shall make suitable office space reasonably proximate to the governor's office available to the

264 incoming gubernatorial administration.

265 (2) The Division of Facilities Construction and Management shall coordinate with the

266 executive director of the Capitol Preservation Board to determine whether space at the capitol

267 hill complex may be made available under Subsection (1).

268 (3) If space at the capitol hill complex is available to be used under Subsection (1), the

269 Division of Facilities Construction and Management and the executive director of the Capitol

270 Preservation Board shall coordinate to make that space available to the incoming gubernatorial

271 administration.

272 (4) The Department of Administrative Services shall furnish the office space provided

273 to the incoming gubernatorial administration under Subsection (1) with appropriate and

274 reasonable fixtures, furniture, office supplies, and office machines and equipment.

275 (5) The Department of Technology Services shall:

276 (a) provide suitable information and communication systems, products, and resources  
277 for the office space made available to the incoming gubernatorial administration under  
278 Subsection (1); and

279 (b) provide the members of the incoming gubernatorial administration, upon the  
280 incoming gubernatorial administration's request, with reasonable mobile computing devices,  
281 including mobile phones, tablet computers, or laptop computers.

282 (6) (a) In a year in which the board of canvassers determines that the successful  
283 candidate for governor is the incumbent governor, the Division of Facilities Construction and  
284 Management and the Capitol Preservation Board shall coordinate to make reasonable space  
285 available, at the incumbent governor's request, for the incumbent governor's office to use to  
286 prepare for the incumbent governor's next term.

287 (b) If the incumbent governor requests space under Subsection (6)(a), the Division of  
288 Facilities Construction and Management and the Capitol Preservation Board shall make  
289 available space that is reasonably proximate to the governor's office during the period of time  
290 beginning the day after the meeting of the board of canvassers under Section [20A-4-306](#) and  
291 ending on the first Monday of the next January.

292 (7) During a transition period, the Division of Facilities Construction and Management  
293 shall coordinate with the incumbent governor, the governor-elect, and the State Building Board  
294 to facilitate the transition of occupancy of the executive residence between the incumbent  
295 governor and the governor-elect, including the completion of any maintenance, repair,  
296 rehabilitation, alteration, or restoration projects that are scheduled to take place or which may  
297 reasonably be accomplished during a transition period.

298 Section 8. Section **67-1b-106** is enacted to read:

299 **67-1b-106. Access to records and information.**

300 (1) During a transition period, the incoming gubernatorial administration shall be  
301 timely provided, upon the incoming gubernatorial administration's request, with all records and  
302 information from the executive branch upon any subject relating to the executive branch's  
303 condition, expenditures, expenses, management, operations, personnel, and receipts.

304 (2) For a record requested by the incoming gubernatorial administration under  
305 Subsection (1) that is classified as private or protected under Title 63G, Chapter 2, Government  
306 Records Access and Management Act, there is a rebuttable presumption that disclosure of the

307 record to the incoming gubernatorial administration meets the conditions for disclosure under  
308 Subsection 63G-2-201(5).

309 (3) Members of an incoming gubernatorial administration who receive records under  
310 this section are subject to the provisions of Title 63G, Chapter 2, Government Records Access  
311 and Management Act, governing the use and disclosure of records.

312 (4) The disclosure of a record that is classified as private or protected to an incoming  
313 gubernatorial administration does not affect the classification of that record under Title 63G,  
314 Chapter 2, Government Records Access and Management Act.

315 Section 9. Section **67-1b-107** is enacted to read:

316 **67-1b-107. Employees of governor-elect and lieutenant governor-elect.**

317 (1) During a transition period, a governor-elect may hire employees of the  
318 governor-elect's choosing to assist the governor-elect with the governor-elect's preparations to  
319 assume the office of governor.

320 (2) During a transition period, a lieutenant governor-elect may hire employees of the  
321 lieutenant governor-elect's choosing to assist the lieutenant governor-elect with the lieutenant  
322 governor-elect's preparations to assume the office of lieutenant governor.

323 (3) A governor-elect or lieutenant governor-elect may use funds appropriated under  
324 Subsection 67-1b-109(1)(b) to provide reasonable compensation for employees hired under this  
325 section.

326 (4) During a transition period, employees hired by a governor-elect or lieutenant  
327 governor-elect under this section are not state employees and are not subject to the provisions  
328 of Title 67, State Officers and Employees.

329 Section 10. Section **67-1b-108** is enacted to read:

330 **67-1b-108. Security and protection.**

331 (1) As used in this section, "commissioner" means the commissioner of public safety  
332 appointed under Section 53-1-107.

333 (2) The Office of Executive Protection shall provide all necessary security and  
334 protection for the governor-elect, the governor-elect's immediate family, the lieutenant  
335 governor-elect, and the lieutenant governor-elect's immediate family during a transition period.

336 (3) The Office of Executive Protection may provide protection to a candidate for  
337 governor, a candidate for governor's immediate family, a candidate for lieutenant governor, or a

338 candidate for lieutenant governor's immediate family during the time beginning on the date of  
339 the general election and ending on the date of the meeting of the board of canvassers under  
340 Section [20A-4-306](#), if:

341 (a) the candidate requests protection under this section; and

342 (b) the candidate's request for protection is approved by a majority vote of the president  
343 of the Senate, the speaker of the House of Representatives, and the commissioner.

344 (4) (a) If requested by an outgoing governor and approved by a majority vote of the  
345 president of the Senate, the speaker of the House of Representative, and the commissioner, the  
346 Office of Executive Protection may provide protection to an outgoing governor, an outgoing  
347 governor's immediate family, an outgoing lieutenant governor, or an outgoing lieutenant  
348 governor's immediate family beginning on the day that the outgoing governor's term expires.

349 (b) Protection provided under Subsection (4)(a) shall be subject to the provisions of  
350 Subsections [53-1-114\(2\)\(b\)](#) and (c).

351 Section 11. Section **67-1b-109** is enacted to read:

352 **67-1b-109. Appropriations.**

353 (1) At the annual general session in each year in which there is a general election to  
354 elect a new governor, the Legislature may:

355 (a) appropriate funds to be used by the executive branch to:

356 (i) fulfill the executive branch's responsibilities in relation to a transition between  
357 gubernatorial administrations, including the duties described in Sections [67-1b-104](#) through  
358 [67-1b-106](#), [67-1b-108](#), and [67-1b-110](#); or

359 (ii) prepare for the incumbent governor's next term, in a year in which the board of  
360 canvassers determines that the successful candidate for governor is the incumbent governor;  
361 and

362 (b) appropriate funds to be used by a governor-elect and lieutenant governor-elect in  
363 fulfilling the incoming gubernatorial administration's duties under Subsection [67-1b-104\(2\)](#).

364 (2) A governor-elect may request supplemental appropriations from the Legislature.

365 (3) Any unexpended balance of an appropriation made under this section shall lapse to  
366 the General Fund at the end of the fiscal year.

367 Section 12. Section **67-1b-110** is enacted to read:

368 **67-1b-110. Governor's budget.**

369 (1) During a transition period:

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

371 (b) the executive branch shall make all records and information related to the  
372 preparation of the governor's confidential draft proposed budget available to the governor-elect  
373 in accordance with Section [67-1b-106](#); and

374 (c) the incumbent governor shall consider any proposed additions or changes from the  
375 governor-elect in preparing the governor's confidential draft proposed budget recommendations  
376 to be submitted to the Office of Legislative Fiscal Analyst in accordance with Section  
377 [63J-1-201](#).

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

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

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

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

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