

STATE GUBERNATORIAL SUCCESSION LAW

Despite the increasing rate of gubernatorial succession and federal directives to develop proven succession plans, states are not readily addressing known gaps and conflicts in gubernatorial succession laws.

- ▶ National and homeland security directives and federal preparedness circulars state continuity of government planning, which includes succession, is an essential objective.
- ▶ Every state constitution names an official who is first in line for gubernatorial succession. It is a lieutenant governor in 43 states and another official in seven states. Gubernatorial succession may be caused by death, resignation, incapacitation (short-term or permanent), recall or impeachment (permitted in every state but Oregon).
- ▶ The rate of gubernatorial succession this decade shows an increase since 1900. Twenty gubernatorial successions occurred since 2000 and 12 current governors first served as first in line of succession. Of those now first in line of succession, six were appointed, one is serving a dual senate leadership/acting lieutenant governor role, and one state has a vacant office of lieutenant governor.
- ▶ The efficiency of succession may be impacted by whether the new governor retains his or her power as senate leader (as in the past in New Jersey), whether the subsequent vacancy in the office of lieutenant governor or first in line of succession is filled and how (the 2009 constitutional crisis in New York), whether the successor becomes the “acting” or “actual” governor, and whether transition resources are made available as they often are after an election.



Legal gaps and statutory conflicts exist in various states’ gubernatorial succession laws.

- ▶ Several constitutions direct legislatures to write statute on further depth of succession or incapacitation, but some states have not developed the statutes.
- ▶ Every state has constitutional language on incapacity, but a 2005 study found a third of states have unclear legal provisions on determining gubernatorial incapacitation.²
- ▶ Eighteen states allow gubernatorial recall, but vary on how succession occurs. This sometimes means the states define a succession process within a recall that conflicts with the otherwise defined gubernatorial succession plan.

Developing essential gubernatorial succession plans may require review of five key provisions.

- ▶ Review of gubernatorial succession provisions should ensure a sufficiently deep and clearly delineated line of succession; clarity on transition resources for successors; a thorough definition of incapacity covering location, physicality, functionality and temporary incapacitation; and congruous succession plans in cases of impeachment and recall.
- ▶ Transfer of power due to incapacity may occur when a governor leaves the state, leaves the country, is in a war zone, is unconscious, is too physically ill to perform duties, or is unwilling, unable or ill-advised to perform certain required duties. For example, the state attorney general queried if former Illinois Gov. Rod Blagojevich should have been ruled temporarily incapacitated so he could not appoint a U.S. senator after he was arrested and under investigation for corruption.

PROVISIONS IMPACTING STATE GUBERNATORIAL SUCCESSION LAW

State	Successor	Formal provisions exist which provide transition resources after an election ¹	Depth of succession ²	Has a clear incapacity statute ²	Allows recall ³
Alabama	LG	N	7 officials (C)	Y	N
Alaska	LG	N	2 officials (C) (S)	N	Y
Arizona	SOS	N	2 officials (C)	N	Y
Arkansas	LG	N	6 officials (C) (S) ⁴	N	N
California	LG	Y	7 officials (C) (S)	Y	Y
Colorado	LG	Y	5 officials (C)	Y	Y
Connecticut	LG	Y	2 officials (C) (S)	Y	N
Delaware	LG	Y	5 officials (C)	Y	N
Florida	LG	Y	7 officials (C) (S)	Y	N
Georgia	LG	Y	2 officials (C) ⁴	Y	Y
Hawaii	LG	Y	8 officials (C) (S)	N	N
Idaho	LG	Y	3 officials (C)	N	Y
Illinois	LG	N	7 officials (C) (S)	N	N
Indiana	LG	Y	8 officials (C) ⁴	Y	N
Iowa	LG	N	4 officials (C)	Y	N
Kansas	LG	Y	3 officials (C) (S)	N	Y
Kentucky	LG	Y	2 officials (C)	Y	N
Louisiana	LG	Y	6 officials (C)	Y	Y
Maine	SP	N	2 officials	Y	N
Maryland	LG	Y	3 officials (C)	Y	N
Massachusetts	LG	N	5 officials (C)	Y	N
Michigan	LG	N	3 officials (C)	Y	Y
Minnesota	LG	Y	6 officials (C) (S)	Y	Y
Mississippi	LG	N	3 officials (C)	Y	N
Missouri	LG	Y	7 officials (C)	Y	N
Montana	LG	Y	3 officials (C)	Y	Y
Nebraska	LG	Y	2 officials (C)	Y	N
Nevada	LG	Y	4 officials (C) (S)	N	Y
New Hampshire	SP	Y	4 officials (C) ⁴	Y	N
New Jersey	LG ⁵	Y	4 officials (C) (S)	Y	Y
New Mexico	LG	Y	8 officials (C) (S)	N	N
New York	LG	N	3 officials (C)	N	N
North Carolina	LG	Y	11 officials (C) (S)	Y	N
North Dakota	LG	N	5 officials (C) (S)	N	Y
Ohio	LG	Y	7 officials (C) (S)	Y	N
Oklahoma	LG	N	3 officials (C) (S)	Y	N
Oregon	SOS	Y	4 officials (C)	Y	Y
Pennsylvania	LG	Y	3 officials (C) (S)	Y	N
Rhode Island	LG	Y	5 officials (C) (S)	Y	Y
South Carolina	LG	N	6 officials (C) (S)	Y	N
South Dakota	LG	Y	11 officials (C) (S)	Y	N
Tennessee	LG ⁶	Y	5 officials (C) (S)	N	N
Texas	LG	N	4 officials+ (C) (S)	N	N
Utah	LG	Y	6 officials (C) (S)	Y	N
Vermont	LG	N	5 officials (C) (S)	N	N
Virginia	LG	Y	7 officials (C) (S)	Y	N
Washington	LG	Y	7 officials (C)	N	Y
West Virginia	LG ⁶	N	4 officials	N	N
Wisconsin	LG	Y	6 officials (C) (S)	Y	Y
Wyoming	SOS	N	8 officials	N	N

Sources: Information not otherwise noted is from the National Lieutenant Governors Association. For more, contact NLGA Director Julia Hurst through www.nlga.us.

Key: (C) Constitutional provision, (S) Statute. When listed together it indicates a combination of the two. (LG) Lieutenant Governor, (SOS) Secretary of State, (SP) Senate President.

¹Table 4.7, "The Governors: Provisions for Transition," *The Book of the States 2009*, (Lexington, Ky.: The Council of State Governments). This column indicates if resources are specifically available after an election. This may indicate whether resources may be available after succession when need is also great.

²Drs. Brian Gaines and Brian Roberts, Table A, p. 213–214, "Provisions for Disability-Based Gubernatorial Succession in the 50 States," *The Book of the States 2005*, (Lexington, Ky.: The Council of State Governments).

³"Recall of State Officials," National Conference of State Legislatures, March 21, 2006, www.ncsl.org.

⁴Successor takes power on interim, acting basis only pending a special election.

⁵New Jersey elected its first lieutenant governor in November of 2009.

⁶Statute gives the Senate President the title "Lieutenant Governor."