

COUNTY GOVERNMENT AMENDMENTS

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Greg J. Curtis

AN ACT RELATING TO COUNTIES; MODIFYING THE PROCESS OF ADOPTING AN OPTIONAL PLAN OF COUNTY GOVERNMENT; REQUIRING ATTORNEY GENERAL REVIEW OF PROPOSED OPTIONAL PLANS; PROHIBITING FURTHER PROCESSING OF CERTAIN PLANS; MODIFYING A PROVISION AUTHORIZING AN ACTION TO RESTRAIN THE UNAUTHORIZED PAYMENT OF MONEY OR TO RECOVER MONEY PAID WITHOUT AUTHORIZATION; AUTHORIZING THE COUNTY ATTORNEY TO DEPUTIZE THE COUNTY ATTORNEY OF ANOTHER COUNTY TO INVESTIGATE AND TO PURSUE AN ACTION ON THE UNAUTHORIZED PAYMENT; AND MAKING TECHNICAL CHANGES.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

17-5-206, as renumbered and amended by Chapter 147, Laws of Utah 1994

17-35a-203, as enacted by Chapter 369, Laws of Utah 1998

17-35a-204, as enacted by Chapter 369, Laws of Utah 1998

ENACTS:

17-35a-203.5, Utah Code Annotated 1953

17-35a-203.7, Utah Code Annotated 1953

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

Section 1. Section **17-5-206** is amended to read:

17-5-206. Unauthorized payment or warrant -- Investigation by another county attorney -- Action to enjoin or recover payment.

[Whenever any] (1) (a) If a county legislative body [shall], without authority of law [order], orders any money paid for any purpose [and such money shall have been actually paid], or [whenever] if any other county officer [has drawn any] draws a warrant in [his] the officer's own favor or in favor of any other person without being authorized [thereto] to do so by the county

legislative body or by law [~~and the same shall have been paid~~], the county attorney of [such] that county shall [~~institute suit in the name of the county against such person or such officer and his official bondsman to recover the money so paid, and when the money has not been paid on such order or warrants, the county attorney of such county upon receiving notice shall commence suit in the name of the county to restrain the payment of the same; no~~] request a county attorney from another county to investigate whether an unauthorized payment has been ordered or an unauthorized warrant drawn.

(b) If the county attorney requests a county attorney from another county to investigate under Subsection (1)(a), the county attorney shall deputize the investigating county attorney.

(2) If an investigating county attorney determines that an unauthorized payment has been ordered or that an unauthorized warrant has been drawn, that county attorney may commence and prosecute an action in the name of the county:

(a) if the payment has not been made or the warrant paid, to enjoin the payment of the unauthorized payment or of the unauthorized warrant; or

(b) if the payment has been made or the warrant paid, to recover from the payee or the county officer and the officer's official bondsman the amount paid.

(3) An order of the county legislative body [~~shall be~~] is not necessary in order to maintain [either of such actions] an action under Subsection (2).

Section 2. Section **17-35a-203** is amended to read:

17-35a-203. Registered voter initiation of adoption of optional plan -- Procedure.

(1) Registered voters of a county may initiate the process of adopting an optional plan by:

(a) filing copies of a proposed optional plan, as provided in Subsection (2)(c), in anticipation of filing a petition under Subsection (2)(a); or

(b) filing a petition under Subsection (3).

(2) (a) Registered voters of a county may file a petition requiring the county legislative body to submit a proposed optional plan to the registered voters of the county.

(b) Each petition under Subsection (2)(a) shall:

(i) be signed by registered voters residing in the county equal in number to at least 15% of

the total number of votes cast in the county at the most recent election for governor;

(ii) contain a general description of the proposed optional plan;

(iii) indicate that a complete copy of the proposed optional plan is available for inspection and copying at the county clerk's office;

(iv) designate up to five of the petition signers as sponsors, one of whom shall be designated as the contact sponsor, with the mailing address and telephone number of each; and

(v) be filed in the office of the clerk of the county in which the petition signers reside.

(c) Before circulating a petition under Subsection (2)(a) for signature, the petition sponsors shall file with the county clerk at least three complete copies of the proposed optional plan that is the subject of the petition.

(d) A county legislative body may not alter an optional plan proposed under this Subsection (2).

(e) Within 30 days after ~~[certification of]~~ the county clerk's receipt of the attorney general statement under Section 17-35a-203.5 with respect to a petition certified under Subsection (4)(a)(ii)(A), each county legislative body shall establish the date for an election to be held as provided under Section 17-35a-204.

(3) (a) Registered voters of a county may file a petition requiring the county legislative body to adopt a resolution for the establishment of a study committee.

(b) Each petition under Subsection (3)(a) shall:

(i) request the county legislative body to choose between:

(A) adopting a resolution that establishes a study committee with members appointed under Section 17-35a-301; or

(B) adopting a resolution submitting to the county's registered voters the question of whether a study committee should be established;

(ii) be signed by registered voters residing in the county equal in number to at least 10% of the total number of votes cast in the county at the most recent election for governor;

(iii) designate up to five of the petition signers as sponsors, one of whom shall be designated as the contact sponsor, with the mailing address and telephone number of each; and

(iv) be filed in the office of the clerk of the county in which the petition signers reside.

(c) (i) Within 90 days of the certification of the petition under Subsection (4)(a)(ii)(A), the county legislative body shall hold a public hearing or series of public hearings, as the county legislative body determines, on the petition.

(ii) The county legislative body shall give reasonable notice of the public hearing or series of public hearings under Subsection (3)(c)(i).

(d) (i) At the conclusion of the public hearing or series of public hearings required under Subsection (3)(c)(i), the county legislative body shall:

(A) adopt a resolution approving the establishment of a study committee with members appointed under Section 17-35a-301 and specifying the number of members to be appointed, subject to Subsection 17-35a-303(1)(a); or

(B) adopt a resolution submitting to the county's registered voters the question of whether a study committee under Section 17-35a-301 should be established.

(ii) Each resolution under Subsection (3)(d)(i)(B) shall comply with the requirements of Subsection 17-35a-202(3)(b).

(4) (a) Within 30 days of the filing of a petition under Subsection (2)(a) or (3)(a) or an amended or supplemental petition under Subsection (4)(b), the county clerk shall:

(i) determine whether the petition or amended or supplemental petition has been signed by the required number of registered voters; and

(ii) (A) if so:

(I) certify the petition or amended or supplemental petition and deliver it to the county legislative body; and

(II) notify in writing the contact sponsor of the certification; or

(B) if not, reject the petition or the amended or supplemental petition and notify in writing the county legislative body and the contact sponsor of the rejection and the reasons for the rejection.

(b) If a county clerk rejects a petition or an amended or supplemental petition under Subsection (4)(a)(ii)(B), the petition may be amended or supplemented or an amended or supplemental petition may be further amended or supplemented with additional signatures and

refiled within 20 days of the date of rejection.

(5) With the unanimous approval of petition sponsors, a petition filed under Subsection (2)(a) or (3) may be withdrawn at any time within 90 days after petition certification but no later than 45 days before an election under Section 17-35a-204 or Subsection [17-35a-203](3)(d)(i)(B) if:

(a) the petition notified signers in conspicuous language that the petition sponsors are authorized to withdraw the petition; and

(b) there are at least three sponsors of the petition.

Section 3. Section **17-35a-203.5** is enacted to read:

17-35a-203.5. Attorney general review of proposed optional plan -- Conflict with statutory or constitutional provisions -- Processing of optional plan after attorney general review.

(1) The county clerk shall send to the attorney general a copy of each proposed optional plan within ten days after:

(a) for an optional plan proposed in a resolution adopted under Subsection 17-35a-202(2)(e), adoption of the resolution;

(b) for an optional plan proposed by registered voters under Section 17-35a-203:

(i) the filing of a request for attorney general review under Subsection (6); or

(ii) if the optional plan has not already been reviewed by the attorney general pursuant to a request under Subsection (6), certification of a petition under Subsection 17-35a-203(4)(a)(ii)(A).

(2) Within 45 days after receipt of the proposed optional plan from the county clerk under Subsection (1), the attorney general shall send a written report to the county clerk containing the information required under Subsection (3).

(3) Each report from the attorney general under Subsection (2) shall:

(a) state the attorney general's opinion as to whether implementation of the optional plan as proposed would result in a violation of any applicable statutory or constitutional provision;

(b) if the attorney general concludes that a violation would result:

(i) identify specifically each statutory or constitutional provision that would be violated by implementation of the optional plan as proposed;

(ii) identify specifically each provision or feature of the proposed optional plan that would result in a statutory or constitutional violation if the plan is implemented as proposed;

(iii) state whether, in the attorney general's opinion, any of the provisions or features identified in Subsection (3)(b)(ii) are so integral to the proposed optional plan that having previously changed the specified provision or feature to avoid the violation would have affected the decision of a legislative body member or study committee member who favored the proposed optional plan or a reasonable petitioner who signed a petition proposing the optional plan; and

(iv) if all the provisions or features identified in Subsection (3)(b)(ii) do not meet the standard of Subsection (3)(b)(iii), recommend how the proposed optional plan may be amended to avoid the statutory or constitutional violation.

(4) (a) If the attorney general's statement under Subsection (3) identifies provisions or features under Subsection (3)(b)(ii) that meet the standard of Subsection (3)(b)(iii), the proposed optional plan may not be presented to the voters under Section 17-35a-204, except that:

(i) for an optional plan proposed by a resolution under Subsection 17-35a-202(2)(e), the county legislative body may amend the optional plan to avoid the violation and then adopt a new resolution under Subsection 17-35a-202(2)(e) that shall be treated as any other resolution under that subsection; and

(ii) for an optional plan proposed in a study committee report under Subsection 17-35a-303(3)(d), the study committee may amend the optional plan to avoid the violation and then adopt a new report under Subsection 17-35a-303(3)(d) that will be treated as any other report under that subsection.

(b) (i) If the attorney general's statement under Subsection (3) identifies provisions or features under Subsection (3)(b)(ii) that do not meet the standard of Subsection (3)(b)(iii), the optional plan may be amended to avoid the statutory or constitutional violations and then:

(A) submitted to the voters at an election under Section 17-35a-204, if the optional plan is proposed in a resolution adopted under Subsection 17-35a-202(2)(e), a petition that has been certified under Subsection 17-35a-203(4)(a)(ii)(A), or a study committee report filed under Subsection 17-35a-303(3)(d); or

(B) the subject of a petition that is circulated for signatures under Subsection 17-35a-203(2), if the attorney general's statement results from a request under Subsection (6).

(ii) Each amendment to an optional plan under Subsection (4)(b)(i) shall be made by:

(A) for an optional plan proposed in a resolution adopted under Subsection 17-35a-202(2)(e), the county legislative body;

(B) for an optional plan proposed in a petition under Section 17-35a-203, the petition sponsors; and

(C) for an optional plan proposed in a study committee report filed under Subsection 17-35a-303(3)(d), the study committee.

(5) If the attorney general's statement under Subsection (3) does not identify any provisions or features of the proposed optional plan that, if implemented, would violate a statutory or constitutional provision, the proposed optional plan may be:

(a) submitted to the voters at an election under Section 17-35a-204, if the optional plan is proposed in a resolution adopted under Subsection 17-35a-202(2)(e), a petition that has been certified under Subsection 17-35a-203(4)(a)(ii)(A), or a study committee report filed under Subsection 17-35a-303(3)(d); or

(b) the subject of a petition that is circulated for signatures under Subsection 17-35a-203(2), if the attorney general's statement results from a request under Subsection (6).

(6) The attorney general review required under this section for each proposed optional plan may be obtained in conjunction with the filing of a proposed optional plan under Subsection 17-35a-203(1)(a) by filing a request for attorney general review signed by at least 100 registered voters residing in the county.

Section 4. Section **17-35a-203.7** is enacted to read:

17-35a-203.7. Voter information pamphlet.

(1) In anticipation of an election under Section 17-35a-204, the county legislative body may prepare a voter information pamphlet to inform the public of the proposed optional plan.

(2) In preparing a voter information pamphlet under this section, the county legislative body may:

(a) allow proponents and opponents of the proposed optional plan to provide written statements to be included in the pamphlet; and

(b) use as a guideline the provisions of Title 20A, Chapter 7, Part 7, Voter Information Pamphlet.

(3) Each county legislative body preparing a voter information pamphlet under this section shall cause the publication and distribution of the pamphlet in a manner determined by the county legislative body to be adequate.

Section 5. Section **17-35a-204** is amended to read:

17-35a-204. Election on proposed optional plan -- Procedure.

(1) ~~[The]~~ Subject to Section 17-35a-203.5, the county legislative body shall hold an election if an optional plan is proposed:

(a) by a resolution adopted under Subsection 17-35a-202(2)(e);

(b) in a petition filed under Subsection 17-35a-203(2)(a) that is certified under Subsection 17-35a-203(4)(a)(ii)(A); or

(c) in a study committee report filed under Subsection 17-35a-303(3)(d).

(2) Each election under Subsection (1) shall be held at the next regular general or municipal general election no less than two months after ~~[, as the case may be:]~~ the county clerk's receipt of the attorney general statement under Section 17-35a-203.5.

~~[(a) adoption of a resolution under Subsection 17-35a-202(2)(e);]~~

~~[(b) certification of a petition filed under Subsection 17-35a-203(2)(a); or]~~

~~[(c) the filing of a study committee report under Subsection 17-35a-303(3)(d).]~~

(3) The county legislative body shall prepare the ballot for each election under Subsection (1) so that the question on the ballot:

(a) clearly, accurately, and impartially presents the proposition to be voted on; and

(b) does not constitute an argument or create prejudice for or against the proposition.

(4) The county legislative body shall:

(a) cause the complete text of the proposed optional plan to be published in a newspaper of general circulation within the county at least once during two different calendar weeks within the

30-day period immediately before the date of the election under Subsection (1);

(b) make a complete copy of the optional plan available free of charge to any member of the public who requests a copy; and

(c) if the optional plan is proposed by a study committee report filed under Subsection 17-35a-303(3)(d), make a complete copy of the study committee's report available free of charge to any member of the public who requests a copy.

(5) If an optional plan proposed as a result of a process initiated by the county legislative body and an optional plan proposed as a result of a process initiated by registered voters are both scheduled for the same election:

(a) both proposals shall appear on the same ballot;

(b) a voter may vote for or against each proposal; and

(c) if both proposals receive a majority vote of those voting, the proposal with more votes shall prevail and the other shall be considered rejected.