

1 **LOCAL ELECTED OFFICER AMENDMENTS**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4

5 **LONG TITLE**

6 **General Description:**

7 This bill establishes a process to remove a county elected officer from office for mental
8 incapacity.

9 **Highlighted Provisions:**

10 This bill:

- 11 ▶ defines terms;
- 12 ▶ establishes a process to remove a county elected officer from office for mental
13 incapacity;
- 14 ▶ provides that the provisions of this bill apply only to a county, with at least five
15 members on the county legislative body, that opts into the provisions of this bill;
- 16 ▶ requires a county to determine whether the county elected officer has the mental
17 capacity to fulfill the essential functions of the applicable office, with or without
18 reasonable accommodations;
- 19 ▶ establishes a process for:
 - 20 • a voluntary mental capacity evaluation; or
 - 21 • if the county elected officer refuses to undergo a voluntary mental capacity
22 evaluation, a court order to undergo the evaluation;
- 23 ▶ provides certain exceptions to the Open and Public Meetings Act;
- 24 ▶ permits the county legislative body to remove a county elected officer from office if
25 the qualified medical professional that conducts the mental capacity evaluation
26 determines that the county elected officer lacks the mental capacity to fulfill the
27 essential functions of the applicable office, with or without reasonable
28 accommodations;
- 29 ▶ requires the county legislative body to provide reasonable accommodations under
30 certain circumstances; and
- 31 ▶ provides for the award of court costs, attorney fees, and sanctions under certain
32 circumstances.

33 **Money Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 None

37 **Utah Code Sections Affected:**

38 ENACTS:

39 **20A-1-901**, Utah Code Annotated 1953

40 **20A-1-902**, Utah Code Annotated 1953

41 **20A-1-903**, Utah Code Annotated 1953

42 **20A-1-904**, Utah Code Annotated 1953



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

45 Section 1. Section **20A-1-901** is enacted to read:

46 **Part 9. Removal of County Elected Officer**

47 **20A-1-901. Definitions.**

48 As used in this part:

49 (1) "Applicable office" means the office held by the subject officer.

50 (2) "Mental capacity evaluation" means an evaluation by a qualified medical
51 professional to determine whether the subject officer has the mental capacity to fulfill the
52 essential functions of the applicable office, with or without reasonable accommodations.

53 (3) "Officer" means a county officer.

54 (4) "Results of the mental capacity evaluation" means a statement by the qualified
55 medical professional who conducts the mental capacity evaluation that the subject officer:

56 (a) has the mental capacity to fulfill the essential functions of the applicable office,
57 without reasonable accommodations;

58 (b) has the mental capacity to fulfill the essential functions of the applicable office,
59 with specified reasonable accommodations; or

60 (c) lacks the mental capacity to fulfill the essential functions of the applicable office,
61 with or without reasonable accommodations.

62 (5) "Subject officer" means the officer who is subject to proceedings under this part to
63 determine whether the officer has the mental capacity to fulfill the essential functions of the

64 officer's office, with or without reasonable accommodations.

65 (6) "Unanimous" means a vote of all members of a county legislative body where all
66 members of the county legislative body, not including the subject officer, vote on the same side
67 of the motion.

68 Section 2. Section **20A-1-902** is enacted to read:

69 **20A-1-902. Removal of officer from office -- Initial determination.**

70 (1) (a) A county legislative body may remove an officer from office in accordance with
71 this part if:

72 (i) the county legislative body adopts the provisions of this part by ordinance, without
73 additions, deletions, or modifications;

74 (ii) the officer lacks the mental capacity to fulfill the essential functions of the
75 applicable office, with or without reasonable accommodations; and

76 (iii) the county legislative body consists of at least five members.

77 (b) This section does not apply to a county, unless the county:

78 (i) has adopted the ordinance described in Subsection (1)(a)(i); and

79 (ii) has at least five members on the county legislative body.

80 (2) Before removing the subject officer from office under Subsection (1), the county
81 legislative body shall hold a closed meeting, as authorized under Subsection 52-4-205(1)(a), to
82 discuss whether the subject officer has the mental capacity to fulfill the essential functions of
83 the officer's office, with or without reasonable accommodations.

84 (3) At the meeting described in Subsection (2):

85 (a) the county legislative body shall give the subject officer the opportunity to discuss
86 the subject officer's mental capacity to fulfill the essential functions of the applicable office and
87 any reasonable accommodations that would enable the subject officer to continue to function in
88 the applicable office; and

89 (b) the subject officer may bring one individual to the meeting to assist the subject
90 officer in the discussion.

91 (4) (a) After the discussion described in Subsection (3), the county legislative body
92 may exclude the subject officer and the individual described in Subsection (3)(b) from the
93 closed portion of the meeting to discuss whether the subject officer has the mental capacity to
94 fulfill the essential functions of the applicable office, with or without reasonable

95 accommodations.

96 (b) If the subject officer is a member of the county legislative body:

97 (i) the county legislative body may exclude the subject officer and the individual
98 described in Subsection (3)(b) from the portion of the closed meeting described in Subsection
99 (4)(a); and

100 (ii) the subject officer is recused from voting on any decision, described in this part, of
101 the county legislative body.

102 (c) Notwithstanding the provisions of Title 52, Chapter 4, Open and Public Meetings
103 Act, the county legislative body shall meet in a closed meeting to vote on whether the subject
104 officer has the ability to fulfill the essential functions of the applicable office, with or without
105 reasonable accommodations.

106 (5) If the county legislative body unanimously concludes that the subject officer lacks
107 the mental capacity to fulfill the essential functions of the applicable office, with or without
108 reasonable accommodations, the county legislative body shall:

109 (a) confidentially inform the subject officer of the vote; and

110 (b) allow the subject officer five calendar days, after the day on which the county
111 legislative body makes the conclusion, to:

112 (i) resign from the applicable office;

113 (ii) (A) voluntarily agree to undergo a mental capacity evaluation at the expense of the
114 county; and

115 (B) sign a waiver to disclose only the results of the mental capacity evaluation to the
116 county legislative body; or

117 (iii) refuse to take any action.

118 (6) If the county legislative body does not unanimously conclude that the subject
119 officer lacks the mental capacity to fulfill the essential functions of the applicable office, with
120 or without reasonable accommodations:

121 (a) the county legislative body shall:

122 (i) publicly announce that the vote failed, without disclosing the number of votes for or
123 against and without disclosing the vote of individual members of the county legislative body;
124 and

125 (ii) provide any necessary reasonable accommodations; and

126 (b) the subject officer may continue to function in the applicable office.

127 Section 3. Section **20A-1-903** is enacted to read:

128 **20A-1-903. Voluntary evaluation.**

129 (1) This section does not apply to a county, unless the county:

130 (a) has adopted the ordinance described in Subsection 20A-1-902(1)(a)(i); and

131 (b) has at least five members on the county legislative body.

132 (2) At the end of the five-day period described in Subsection 20A-1-902(5)(b), if the

133 subject officer agrees to the voluntary mental capacity evaluation option described in

134 Subsection 20A-1-902(5)(b)(ii):

135 (a) the county legislative body and the subject officer shall mutually agree on a

136 qualified medical professional to conduct the mental capacity evaluation; and

137 (b) the subject officer shall undergo the mental capacity evaluation within 15 calendar

138 days after the day on which the subject officer agrees to undergo the mental capacity

139 evaluation, or longer if the county legislative body and the subject officer agree to an extended

140 period.

141 (3) Notwithstanding the provisions of Title 52, Chapter 4, Open and Public Meetings

142 Act, any action taken by the county legislative body under Subsection (2) shall occur in a

143 closed meeting.

144 (4) If the qualified medical professional concludes that the subject officer has the

145 mental capacity to fulfill the essential functions of the applicable office, with or without

146 reasonable accommodations:

147 (a) the county legislative body shall provide any necessary reasonable

148 accommodations; and

149 (b) the subject officer may continue to function in the applicable office.

150 (5) (a) If the qualified medical professional concludes that the subject officer lacks the

151 mental capacity to fulfill the essential functions of the applicable office, with or without

152 reasonable accommodations, the subject officer may resign from office.

153 (b) If the subject officer does not resign from office within five calendar days after the

154 day on which the qualified medical professional makes the conclusion described in Subsection

155 (5)(a), the county legislative body may, in an open meeting by unanimous vote, remove the

156 subject officer from the applicable office.

157 Section 4. Section **20A-1-904** is enacted to read:

158 **20A-1-904. Court order for involuntary evaluation.**

159 (1) This section does not apply to a county, unless the county:

160 (a) has adopted the ordinance described in Subsection 20A-1-902(1)(a)(i); and

161 (b) has at least five members on the county legislative body.

162 (2) The county legislative body may file an action against the subject officer in district
163 court for an order to undergo a mental capacity evaluation if:

164 (a) the county legislative body:

165 (i) unanimously concludes that the subject officer lacks the mental capacity to fulfill
166 the essential functions of the applicable office, with or without reasonable accommodations, in
167 accordance with the requirements of Section 20A-1-902; and

168 (ii) complies with the requirements of Subsections 20A-1-902(2) through (5); and

169 (b) (i) the subject officer does not, within the five-day period described in Subsection
170 20A-1-902(5)(b):

171 (A) resign from the applicable office; or

172 (B) agree to undergo a voluntary mental capacity evaluation and sign a waiver to
173 disclose only the results of the mental capacity evaluation to the county legislative body;

174 (ii) the subject officer does not complete the mental capacity evaluation within the
175 15-day period described in Subsection 20A-1-903(2)(b), or any longer period agreed to
176 between the subject officer and the county legislative body; or

177 (iii) the qualified officer and the county legislative body cannot mutually agree on a
178 qualified medical professional to conduct the mental capacity evaluation.

179 (3) The district court shall order the subject officer to undergo a mental capacity
180 evaluation by a qualified medical professional appointed by the court, and shall provide only
181 the results of the mental capacity evaluation to the county legislative body, if the court finds
182 that there is reasonable cause to believe that the subject officer may lack the mental capacity to
183 fulfill the essential functions of the applicable office, with or without reasonable
184 accommodations.

185 (4) If the qualified medical professional concludes that the subject officer has the
186 mental capacity to fulfill the essential functions of the applicable office, with or without
187 reasonable accommodations:

188 (a) the county legislative body shall provide any necessary reasonable
189 accommodations;

190 (b) the subject officer may continue to function in the applicable office; and

191 (c) the court shall order the county legislative body to pay the court costs and
192 reasonable attorney fees of the subject officer.

193 (5) (a) If the qualified medical professional concludes that the subject officer lacks the
194 mental capacity to fulfill the essential functions of the applicable office, with or without
195 reasonable accommodations, the subject officer may resign from office.

196 (b) If the subject officer does not resign from office within five calendar days after the
197 day on which the qualified medical professional makes the conclusion described in Subsection
198 (5)(a), the county legislative body may, in an open meeting by unanimous vote, remove the
199 subject officer from the applicable office.

200 (6) The court shall dismiss an action filed under this section, and rescind any order to
201 undergo a mental capacity evaluation, if the subject officer resigns from the applicable office.

202 (7) The court may order sanctions against the county legislative body if the court finds,
203 by clear and convincing evidence, that the county legislative body filed or pursued an action
204 described in this section in bad faith.