

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; **§ REPEALING A PROVISION REQUIRING THE COUNTY ATTORNEY TO
 COMMENCE SUIT RESTRAINING PAYMENT BY THE COUNTY UNDER SPECIFIED CIRCUMSTANCES;**
 AND MAKING TECHNICAL CHANGES.

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

AMENDS:

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

§ REPEALS:

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

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

Section 1. 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;

28 (ii) contain a general description of the proposed optional plan;
29 (iii) indicate that a complete copy of the proposed optional plan is available for inspection
30 and copying at the county clerk's office;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

74 (ii) (A) if so:

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

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

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

81 (b) If a county clerk rejects a petition or an amended or supplemental petition under
82 Subsection (4)(a)(ii)(B), the petition may be amended or supplemented or an amended or
83 supplemental petition may be further amended or supplemented with additional signatures and
84 refiled within 20 days of the date of rejection.

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

89 (a) the petition notified signers in conspicuous language that the petition sponsors are

90 authorized to withdraw the petition; and

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

92 Section 2. Section **17-35a-203.5** is enacted to read:

93 **17-35a-203.5. Attorney general review of proposed optional plan -- Conflict with**
94 **statutory or constitutional provisions -- Processing of optional plan after attorney general**
95 **review.**

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

98 (a) for an optional plan proposed in a resolution adopted under Subsection
99 17-35a-202(2)(e), adoption of the resolution;

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

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

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

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

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

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

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

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

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

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

120 (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

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(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 17-35-202(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

152 constitutional provision, the proposed optional plan may be:

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

157 (b) the subject of a petition that is circulated for signatures under Subsection
158 17-35a-203(2), if the attorney general's statement results from a request under Subsection (6).

159 (6) The attorney general review required under this section for each proposed optional plan
160 may be obtained in conjunction with the filing of a proposed optional plan under Subsection
161 17-35a-203(1)(a) by filing a request for attorney general review signed by at least 100 registered
162 voters residing in the county.

163 Section 3. Section **17-35a-203.7** is enacted to read:

164 **17-35a-203.7. Voter information pamphlet.**

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

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

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

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

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

176 Section 4. Section **17-35a-204** is amended to read:

177 **17-35a-204. Election on proposed optional plan -- Procedure.**

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

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

181 (b) in a petition filed under Subsection 17-35a-203(2)(a) that is certified under Subsection
182 17-35a-203(4)(a)(ii)(A); or

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

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

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

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

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

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

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

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

194 (4) The county legislative body shall:

195 (a) cause the complete text of the proposed optional plan to be published in a newspaper
 196 of general circulation within the county at least once during two different calendar weeks within
 197 the 30-day period immediately before the date of the election under Subsection (1);

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

200 (c) if the optional plan is proposed by a study committee report filed under Subsection
 201 17-35a-303(3)(d), make a complete copy of the study committee's report available free of charge
 202 to any member of the public who requests a copy.

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

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

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

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

209a **§ Section 5. Repealer.**

209b **This act repeals:**

209c **Section 17-5-206, Moneys unlawfully paid – Recovery – Restraining payment.**

Legislative Review Note

as of 2-22-99 8:25 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel