

1                                   **COUNTY GOVERNMENT AMENDMENTS**

2   1999 GENERAL SESSION

3   STATE OF UTAH

4   **Sponsor: Greg J. Curtis**

5 AN ACT RELATING TO COUNTIES; MODIFYING THE PROCESS OF ADOPTING AN  
6 OPTIONAL PLAN OF COUNTY GOVERNMENT; REQUIRING ATTORNEY GENERAL  
7 REVIEW OF PROPOSED OPTIONAL PLANS; PROHIBITING FURTHER PROCESSING OF  
8 CERTAIN PLANS; AND MAKING TECHNICAL CHANGES.

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

10 AMENDS:

11           **17-35a-203**, as enacted by Chapter 369, Laws of Utah 1998

12           **17-35a-204**, as enacted by Chapter 369, Laws of Utah 1998

13 ENACTS:

14           **17-35a-203.5**, Utah Code Annotated 1953

15           **17-35a-203.7**, Utah Code Annotated 1953

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

17           Section 1. Section **17-35a-203** is amended to read:

18           **17-35a-203. Registered voter initiation of adoption of optional plan -- Procedure.**

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

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

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

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

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

26           (i) be signed by registered voters residing in the county equal in number to at least 15%  
27 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

121 standard of Subsection (3)(b)(iii), recommend how the proposed optional plan may be amended  
122 to avoid the statutory or constitutional violation.

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

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

130 (ii) for an optional plan proposed in a study committee report under Subsection  
131 17-35a-303(3)(d), the study committee may amend the optional plan to avoid the violation and  
132 then adopt a new report under Subsection 17-35a-303(3)(d) that will be treated as any other report  
133 under that subsection.

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

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

141 (B) the subject of a petition that is circulated for signatures under Subsection  
142 17-35a-203(2), if the attorney general's statement results from a request under Subsection (6).

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

144 (A) for an optional plan proposed in a resolution adopted under Subsection  
145 17-35a-202(2)(e), the county legislative body;

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

148 (C) for an optional plan proposed in a study committee report filed under Subsection  
149 17-35a-303(3)(d), the study committee.

150 (5) If the attorney general's statement under Subsection (3) does not identify any provisions  
151 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.

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**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**