

1 **LOCAL GOVERNMENT AMENDMENTS**

2 2005 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: David L. Thomas**

5

LONG TITLE

6 **General Description:**

7 This bill modifies provisions relating to counties.

8 **Highlighted Provisions:**

9 This bill:

- 10 ▶ eliminates the definition of "lot line adjustment" in municipal and county land use
11 and planning provisions;
12 ▶ modifies requirements that a county and municipality may impose on subdivision
13 plats;
14 ▶ provides that noncomplying subdivision plats are void;
15 ▶ modifies provisions related to the removal from office of local government officers;
16 ▶ modifies the authority of counties and municipalities to require compliance with a
17 subdivision ordinance before a subdivision plat may be recorded;
18 ▶ expands the duties of a county assessor that may be reassigned to the treasurer;
19 ▶ provides that a county recorder does not violate the law by placing certain
20 information on a document;
21 ▶ modifies provisions related to county recorder fees;
22 ▶ requires counties to receive fair and adequate consideration for services or
23 assistance provided to or fees waived on behalf of a nonprofit entity, and defines
24 what that consideration may consist of;
25 ▶ clarifies that persons elected to fill a vacancy in a county office serve for the
26 remainder of the unexpired term;
27



28 ▶ modifies a notice requirement related to subdivision plats to prohibit municipal or
29 county approval of a plat unless proof of notice to affected public utilities is
30 provided;

31 ▶ modifies a provision related to termination of a joint tenancy, tenancy by the
32 entirety, life estate, or determinable or conditional interest;

33 ▶ enacts a provision related to electronic transmission of documents to a county
34 recorder's office; and

35 ▶ modifies provisions related to penalties assessed for a taxpayer's failure to take
36 certain required action.

37 **Monies Appropriated in this Bill:**

38 None

39 **Other Special Clauses:**

40 None

41 **Utah Code Sections Affected:**

42 **AMENDS:**

43 **10-9-103**, as last amended by Chapters 34 and 209, Laws of Utah 2000

44 **10-9-801**, as last amended by Chapter 23, Laws of Utah 1992

45 **17-16-5.5**, as enacted by Chapter 207, Laws of Utah 1999

46 **17-16-10.5**, as enacted by Chapter 206, Laws of Utah 1999

47 **17-21-17**, as last amended by Chapter 191, Laws of Utah 2002

48 **17-21-18.5**, as last amended by Chapter 211, Laws of Utah 2003

49 **17-27-103**, as last amended by Chapters 66 and 241, Laws of Utah 2001

50 **17-27-801**, as enacted by Chapter 235, Laws of Utah 1991

51 **17-50-303**, as last amended by Chapter 96, Laws of Utah 2001

52 **20A-1-508**, as last amended by Chapter 139, Laws of Utah 1997

53 **41-1a-1320**, as enacted by Chapter 229, Laws of Utah 2003

54 **54-3-27**, as enacted by Chapter 64, Laws of Utah 2004

55 **57-1-5.1**, as enacted by Chapter 320, Laws of Utah 2000

56 **57-3-106**, as last amended by Chapters 241 and 370, Laws of Utah 2001

57 **59-2-307**, as last amended by Chapter 86, Laws of Utah 2000

58

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

60 Section 1. Section **10-9-103** is amended to read:

61 **10-9-103. Definitions -- Notice.**

62 (1) As used in this chapter:

63 (a) "Billboard" means a freestanding ground sign located on industrial, commercial, or
64 residential property if the sign is designed or intended to direct attention to a business, product,
65 or service that is not sold, offered, or existing on the property where the sign is located.

66 (b) "Chief executive officer" means:

67 (i) the mayor in municipalities operating under all forms of municipal government
68 except the council-manager form; or

69 (ii) the city manager in municipalities operating under the council-manager form of
70 municipal government.

71 (c) "Conditional use" means a land use that, because of its unique characteristics or
72 potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be
73 compatible in some areas or may be compatible only if certain conditions are required that
74 mitigate or eliminate the detrimental impacts.

75 (d) "Constitutional taking" has the meaning as defined in Section 63-34-13.

76 (e) "County" means the unincorporated area of the county.

77 (f) "Elderly person" means a person who is 60 years old or older, who desires or needs
78 to live with other elderly persons in a group setting, but who is capable of living independently.

79 (g) (i) "General plan" means a document that a municipality adopts that sets forth
80 general guidelines for proposed future development of the land within the municipality, as set
81 forth in Sections 10-9-301 and 10-9-302.

82 (ii) "General plan" includes what is also commonly referred to as a "master plan."

83 (h) "Legislative body" means the city council or city commission.

84 [~~(i) "Lot line adjustment" in a subdivision means the relocation of the property
85 boundary line between two adjoining lots with the consent of the owners of record.]~~

86 [(~~j~~) (i) "Municipality" means a city or town.

87 [(~~k~~) (j) "Nonconforming structure" means a structure that:

88 (i) legally existed before its current zoning designation; and

89 (ii) because of subsequent zoning changes, does not conform with the zoning

90 regulation's setback, height restrictions, or other regulations that govern the structure.

91 [~~(h)~~] (k) "Nonconforming use" means a use of land that:

92 (i) legally existed before its current zoning designation;

93 (ii) has been maintained continuously since the time the zoning regulation governing
94 the land changed; and

95 (iii) because of subsequent zoning changes, does not conform with the zoning
96 regulations that now govern the land.

97 [~~(m)~~] (l) "Official map" has the same meaning as provided in Section 72-5-401.

98 [~~(n)~~] (m) "Plat" means a map or other graphical representation of lands being laid out
99 and prepared in accordance with Section 10-9-804.

100 [~~(o)~~] (n) "Record of survey map" means a map of a survey of land prepared in
101 accordance with Section 17-23-17.

102 [~~(p)~~] (o) (i) "Residential facility for elderly persons" means a single-family or
103 multiple-family dwelling unit that meets the requirements of Part 5 and any ordinance adopted
104 under authority of that part.

105 (ii) "Residential facility for elderly persons" does not include a health care facility as
106 defined by Section 26-21-2.

107 [~~(q)~~] (p) "Special district" means all entities established under the authority of Title
108 17A, Special Districts, and any other governmental or quasi-governmental entity that is not a
109 county, municipality, school district, or unit of the state.

110 [~~(r)~~] (q) "Street" means public rights-of-way, including highways, avenues, boulevards,
111 parkways, roads, lanes, walks, alleys, viaducts, subways, tunnels, bridges, public easements,
112 and other ways.

113 [~~(s)~~] (r) (i) "Subdivision" means any land that is divided, resubdivided or proposed to
114 be divided into two or more lots, parcels, sites, units, plots, or other division of land for the
115 purpose, whether immediate or future, for offer, sale, lease, or development either on the
116 installment plan or upon any and all other plans, terms, and conditions.

117 (ii) "Subdivision" includes:

118 (A) the division or development of land whether by deed, metes and bounds
119 description, devise and testacy, lease, map, plat, or other recorded instrument; and

120 (B) except as provided in Subsection (1)~~(s)~~(r)(iii), divisions of land for all residential

121 and nonresidential uses, including land used or to be used for commercial, agricultural, and
122 industrial purposes.

123 (iii) "Subdivision" does not include:

124 (A) a bona fide division or partition of agricultural land for the purpose of joining one
125 of the resulting separate parcels to a contiguous parcel of unsubdivided agricultural land, if
126 neither the resulting combined parcel nor the parcel remaining from the division or partition
127 violates an applicable zoning ordinance;

128 (B) a recorded agreement between owners of adjoining properties adjusting their
129 mutual boundary if:

130 (I) no new lot is created; and

131 (II) the adjustment does not result in a violation of applicable zoning ordinances; or

132 (C) a recorded document, executed by the owner of record, revising the legal
133 description of more than one contiguous parcel of property into one legal description
134 encompassing all such parcels of property.

135 (iv) The joining of a subdivided parcel of property to another parcel of property that
136 has not been subdivided does not constitute a "subdivision" under this Subsection (1)~~(s)~~(r) as
137 to the unsubdivided parcel of property or subject the unsubdivided parcel to the municipality's
138 subdivision ordinance.

139 ~~(t)~~ (s) "Unincorporated" means the area outside of the incorporated boundaries of
140 cities and towns.

141 (2) (a) A municipality meets the requirements of reasonable notice required by this
142 chapter if it:

143 (i) posts notice of the hearing or meeting in at least three public places within the
144 jurisdiction and publishes notice of the hearing or meeting in a newspaper of general
145 circulation in the jurisdiction, if one is available; or

146 (ii) gives actual notice of the hearing or meeting.

147 (b) A municipal legislative body may enact an ordinance establishing stricter notice
148 requirements than those required by this Subsection (2).

149 (c) (i) Proof that one of the two forms of notice authorized by this Subsection (2) was
150 given is prima facie evidence that notice was properly given.

151 (ii) If notice given under authority of this section is not challenged as provided in

152 Section 10-9-1001 within 30 days from the date of the meeting for which the notice was given,
153 the notice is considered adequate and proper.

154 Section 2. Section **10-9-801** is amended to read:

155 **10-9-801. Enactment of subdivision ordinance.**

156 (1) The legislative body of [any] a municipality may enact a subdivision ordinance
157 requiring that a subdivision plat comply with the provisions of the subdivision ordinance and
158 be approved as required by this part before[~~:(1) it may be filed or recorded in the county~~
159 ~~recorder's office; and (2)] lots may be sold.~~

160 (2) A subdivision plat that is recorded without complying with the applicable
161 provisions of the municipality's subdivision ordinance and without having been approved as
162 required by this part is void.

163 Section 3. Section **17-16-5.5** is amended to read:

164 **17-16-5.5. Reassignment of certain assessor duties to treasurer.**

165 A county legislative body may by ordinance reassign to the treasurer the duties of the
166 assessor under Sections 41-1a-1320, 59-2-407, 59-2-1302, 59-2-1303, and 59-2-1305.

167 Section 4. Section **17-16-10.5** is amended to read:

168 **17-16-10.5. Malfeasance in office -- Felony charges or incapacitation -- Paid**
169 **administrative leave -- Reassignment of duties.**

170 (1) The failure of an elected county or prosecution district officer substantially to
171 perform the officer's official duties constitutes malfeasance in office under Section 77-6-1.

172 (2) (a) If an elected county or prosecution district officer is charged with the
173 commission of a felony arising from conduct related to the officer's official duties, the officer
174 shall be placed on paid administrative leave by the county legislative body until [a court of
175 competent jurisdiction disposes of the charges.]:

176 (i) the charges are dismissed or the officer is acquitted, at which time the officer shall
177 be entitled to return to office, unless the officer's term of office has in the meantime expired; or

178 (ii) the officer is convicted or enters a plea nolo contendere or a plea in abeyance, at
179 which time the court presiding over the felony prosecution shall enter an order removing the
180 officer from office.

181 (b) A conviction, a plea nolo contendere, or a plea in abeyance relating to a felony
182 charge described in Subsection (2)(a) shall be considered to be a determination that the officer

183 has committed malfeasance in office.

184 (c) The provisions under this Subsection (2) for the removal of a county or prosecution
 185 district officer are in addition to and do not replace or supersede the removal provisions under
 186 Title 77, Chapter 6, Removal by Judicial Proceedings.

187 (3) (a) During the time that an elected county or prosecution district officer is on paid
 188 administrative leave under Subsection (2), the officer's duties may, except as provided in
 189 Subsection (3)(c), be temporarily:

190 (i) reassigned to another officer by the county legislative body; or

191 (ii) performed by a person employed for that purpose[~~under the supervision of the~~
 192 ~~county legislative body~~].

193 (b) For purposes of Subsection (3)(a) with respect to a prosecution district officer in a
 194 multi-county prosecution district, "county legislative body" means the legislative bodies of all
 195 counties included in the prosecution district.

196 (c) A reassignment under Subsection (3)(a) may not result in the same person
 197 exercising the duties of:

198 (i) both a county legislative body member or county treasurer and county auditor; or

199 (ii) both a county executive and county auditor.

200 Section 5. Section **17-21-17** is amended to read:

201 **17-21-17. Prohibited acts.**

202 (1) Upon acceptance of an instrument entitled to be recorded, the recorder may not:

203 (a) record the instrument in any manner other than the manner required by this chapter;

204 or

205 (b) alter, change, obliterate, or insert any new matter in any instrument of record.

206 [~~(2) It is not a prohibited act under this section when a recorder denies access to:~~]

207 (2) A recorder does not violate this section by:

208 (a) denying access to:

209 [~~(a)~~] (i) an instrument of record that has been classified as private under Section
 210 63-2-302; or

211 [~~(b)~~] (ii) a portion of an instrument of record that has been classified as private under
 212 Section 63-2-302[:]; or

213 (b) placing an endorsement, reference, or other note on a document in the course of the

214 recorder's work.

215 Section 6. Section **17-21-18.5** is amended to read:

216 **17-21-18.5. Fees of county recorder.**

217 (1) The county recorder shall receive the following fees:

218 (a) for ~~[receiving, entering, and filing]~~ recording any instrument, ~~[paper, or notice,]~~ not
219 otherwise provided for, other than bonds of public officers, \$10;

220 (b) for recording any instrument, ~~[paper, or notice,]~~ including those provided for under
221 Title 70A, Uniform Commercial Code, other than bonds of public officers, and not otherwise
222 provided for, \$10 for the first page~~[-, if the page is not larger than 8-1/2 inches x 14 inches in~~
223 ~~size,]~~ and \$2 for each additional page, and if ~~[any] an~~ instrument~~[-, paper, or notice]~~ contains
224 more than one description, \$1 for each additional description;

225 (c) for recording ~~[any instrument in which]~~ a right-of-way ~~[is described, which is]~~
226 connected with or ~~[is]~~ appurtenant to any tract of land described in the instrument, \$1, but if the
227 instrument contains a description of more than one right-of-way, \$1 for each additional
228 right-of-way, and if ~~[any] an~~ instrument contains more than two names for either the first or
229 second party, or the plaintiffs or defendants, \$1 for each additional name~~[-, \$1];~~

230 (d) for recording~~[-, indexing, and abstracting]~~ mining location notices~~[-, and recording,~~
231 ~~indexing,]~~ and ~~[abstracting]~~ affidavits of labor affecting mining claims, \$10 for the first page
232 ~~[if that page is not larger than 8-1/2 inches by 14 inches in size,]~~ and \$2 for each additional
233 page; and

234 (e) for a location notice, affidavit, or proof of labor which contains names of more than
235 two signers, \$1 for each additional name, and for an affidavit or proof of labor which contains
236 more than one mining claim, \$1 for each additional mining claim.

237 (2) (a) Each county recorder shall record the mining rules of the several mining
238 districts in each county without fee.

239 (b) Certified copies of these records shall be received in all tribunals and before all
240 officers of this state as prima facie evidence of the rules.

241 (3) The county recorder shall receive the following fees:

242 (a) for copies of any record or document, a reasonable fee as determined by the county
243 legislative body;

244 (b) for each certificate under seal, \$5;

245 (c) for recording any plat [~~of a subdivision into lots and blocks, \$1 for each lot, and],~~
 246 \$30 for each sheet and \$1 for each lot or unit designation;

247 [~~(d) for recording any other plat or map, \$30 for each sheet and \$1 for each lot or unit~~
 248 ~~designation;~~]

249 [~~(e)~~] (d) for taking and certifying acknowledgments, including seal, \$5 for one name
 250 and \$2 for each additional name;

251 [~~(f)~~] (e) for recording any license issued by the Division of Occupational and
 252 Professional Licensing, \$10; and

253 [~~(g)~~] (f) for [~~filing of~~] recording a federal tax lien, \$10, and for the discharge of the
 254 lien, \$10.

255 (4) The county recorder may determine and collect a fee for all services not enumerated
 256 in this section.

257 (5) A county recorder may not be required to collect a fee for services that are
 258 unrelated to the county recorder's office.

259 Section 7. Section **17-27-103** is amended to read:

260 **17-27-103. Definitions -- Notice.**

261 (1) As used in this chapter:

262 (a) "Billboard" means a freestanding ground sign located on industrial, commercial, or
 263 residential property if the sign is designed or intended to direct attention to a business, product,
 264 or service that is not sold, offered, or existing on the property where the sign is located.

265 (b) "Chief executive officer" means the person or body that exercises the executive
 266 powers of the county.

267 (c) "Conditional use" means a land use that, because of its unique characteristics or
 268 potential impact on the county, surrounding neighbors, or adjacent land uses, may not be
 269 compatible in some areas or may be compatible only if certain conditions are required that
 270 mitigate or eliminate the detrimental impacts.

271 (d) "Constitutional taking" has the meaning as defined in Section 63-34-13.

272 (e) "County" means the unincorporated area of the county.

273 (f) "Elderly person" means a person who is 60 years old or older, who desires or needs
 274 to live with other elderly persons in a group setting, but who is capable of living independently.

275 (g) "Gas corporation" has the same meaning as defined in Section 54-2-1.

276 (h) (i) "General plan" means a document that a county adopts that sets forth general
277 guidelines for proposed future development of the land within the county, as set forth in
278 Sections 17-27-301 and 17-27-302.

279 (ii) "General plan" includes what is also commonly referred to as a "master plan."

280 (i) "Interstate pipeline company" means a person or entity engaged in natural gas
281 transportation subject to the jurisdiction of the Federal Energy Regulatory Commission under
282 the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

283 (j) "Intrastate pipeline company" means a person or entity engaged in natural gas
284 transportation that is not subject to the jurisdiction of the Federal Energy Regulatory
285 Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

286 (k) "Legislative body" means the county legislative body, or for a county that has
287 adopted an alternative form of government, the body exercising legislative powers.

288 [~~(l)~~] "~~Lot line adjustment~~" means the relocation of the property boundary line between
289 two adjoining lots with the consent of the owners of record.]

290 [~~(m)~~] (l) "Municipality" means a city or town.

291 [~~(n)~~] (m) "Nonconforming structure" means a structure that:

292 (i) legally existed before its current zoning designation; and

293 (ii) because of subsequent zoning changes, does not conform with the zoning
294 regulation's setback, height restrictions, or other regulations that govern the structure.

295 [~~(o)~~] (n) "Nonconforming use" means a use of land that:

296 (i) legally existed before its current zoning designation;

297 (ii) has been maintained continuously since the time the zoning regulation governing
298 the land changed; and

299 (iii) because of subsequent zoning changes, does not conform with the zoning
300 regulations that now govern the land.

301 [~~(p)~~] (o) "Official map" has the same meaning as provided in Section 72-5-401.

302 [~~(q)~~] (p) "Person" means an individual, corporation, partnership, organization,
303 association, trust, governmental agency, or any other legal entity.

304 [~~(r)~~] (q) "Plat" means a map or other graphical representation of lands being laid out
305 and prepared in accordance with Section 17-27-804.

306 [~~(s)~~] (r) "Record of survey map" means a map of a survey of land prepared in

307 accordance with Section 17-23-17.

308 ~~[(t)]~~ (s) (i) "Residential facility for elderly persons" means a single-family or
309 multiple-family dwelling unit that meets the requirements of Part 5 and any ordinance adopted
310 under authority of that part.

311 (ii) "Residential facility for elderly persons" does not include a health care facility as
312 defined by Section 26-21-2.

313 ~~[(t)]~~ (t) "Special district" means all entities established under the authority of Title
314 17A, Special Districts, and any other governmental or quasi-governmental entity that is not a
315 county, municipality, school district, or unit of the state.

316 ~~[(v)]~~ (u) "Street" means public rights-of-way, including highways, avenues, boulevards,
317 parkways, roads, lanes, walks, alleys, viaducts, subways, tunnels, bridges, public easements,
318 and other ways.

319 ~~[(w)]~~ (v) (i) "Subdivision" means any land that is divided, resubdivided or proposed to
320 be divided into two or more lots, parcels, sites, units, plots, or other division of land for the
321 purpose, whether immediate or future, for offer, sale, lease, or development either on the
322 installment plan or upon any and all other plans, terms, and conditions.

323 (ii) "Subdivision" includes the division or development of land whether by deed, metes
324 and bounds description, devise and testacy, lease, map, plat, or other recorded instrument.

325 (iii) "Subdivision" does not include:

326 (A) a bona fide division or partition of agricultural land for agricultural purposes;

327 (B) a recorded agreement between owners of adjoining properties adjusting their
328 mutual boundary if:

329 (I) no new lot is created; and

330 (II) the adjustment does not result in a violation of applicable zoning ordinances;

331 (C) a recorded document, executed by the owner of record, revising the legal
332 description of more than one contiguous parcel of property into one legal description
333 encompassing all such parcels of property; or

334 (D) a bona fide division or partition of land in a county other than a first class county
335 for the purpose of siting, on one or more of the resulting separate parcels:

336 (I) an unmanned facility appurtenant to a pipeline owned or operated by a gas
337 corporation, interstate pipeline company, or intrastate pipeline company; or

338 (II) an unmanned telecommunications, microwave, fiber optic, electrical, or other
339 utility service regeneration, transformation, retransmission, or amplification facility.

340 (iv) The joining of a subdivided parcel of property to another parcel of property that
341 has not been subdivided does not constitute a "subdivision" under this Subsection (1)~~(w)~~(v)
342 as to the unsubdivided parcel of property or subject the unsubdivided parcel to the county's
343 subdivision ordinance.

344 ~~(x)~~ (w) "Unincorporated" means the area outside of the incorporated boundaries of
345 cities and towns.

346 (2) (a) A county meets the requirements of reasonable notice required by this chapter if
347 it:

348 (i) posts notice of the hearing or meeting in at least three public places within the
349 jurisdiction and publishes notice of the hearing or meeting in a newspaper of general
350 circulation in the jurisdiction, if one is available; or

351 (ii) gives actual notice of the hearing or meeting.

352 (b) A county legislative body may enact an ordinance establishing stricter notice
353 requirements than those required by this Subsection (2).

354 (c) (i) Proof that one of the two forms of notice authorized by this Subsection (2) was
355 given is prima facie evidence that notice was properly given.

356 (ii) If notice given under authority of this section is not challenged as provided in
357 Section 17-27-1001 within 30 days from the date of the meeting for which the notice was
358 given, the notice is considered adequate and proper.

359 Section 8. Section **17-27-801** is amended to read:

360 **17-27-801. Enactment of subdivision ordinance.**

361 (1) The legislative body of ~~any~~ a county may enact a subdivision ordinance requiring
362 that a subdivision plat comply with the provisions of the subdivision ordinance and be
363 approved as required by this part before~~[: (1) it may be filed or recorded in the county~~
364 ~~recorder's office; and (2)]~~ lots may be sold.

365 (2) A subdivision plat that is recorded without complying with the applicable
366 provisions of the municipality's subdivision ordinance and without having been approved as
367 required by this part is void.

368 Section 9. Section **17-50-303** is amended to read:

369 **17-50-303. County may not give or lend credit -- County may borrow in**
370 **anticipation of revenues -- Assistance to nonprofit entities.**

371 (1) A county may not give or lend its credit to or in aid of any person or corporation,
372 or, except as provided in Subsection (3), appropriate money in aid of any private enterprise.

373 (2) (a) A county may borrow money in anticipation of the collection of taxes and other
374 county revenues in the manner and subject to the conditions of Title 11, Chapter 14, Utah
375 Municipal Bond Act.

376 (b) A county may incur indebtedness under Subsection (2)(a) for any purpose for which
377 funds of the county may be expended.

378 ~~[(3) After first holding a public hearing, a county may provide services or give other~~
379 ~~nonmonetary property or assistance to or waive fees required to be paid by a nonprofit entity,~~
380 ~~whether or not the county receives consideration in return.]~~

381 (3) (a) A county may not provide services or monetary or nonmonetary assistance to or
382 wave fees required to be paid by a nonprofit entity unless the county receives fair and adequate
383 consideration in return.

384 (b) Consideration paid to a county under Subsection (3)(a) may:

385 (i) be nonmonetary; and

386 (ii) include anything that in the judgment of the county legislative body contributes to
387 the safety, health, prosperity, moral well-being, peace, order, comfort, or convenience of county
388 inhabitants.

389 Section 10. Section **20A-1-508** is amended to read:

390 **20A-1-508. Midterm vacancies in county elected offices.**

391 (1) As used in this section:

392 (a) "County offices" includes the county executive, members of the county legislative
393 body, the county treasurer, the county sheriff, the county clerk, the county auditor, the county
394 recorder, the county surveyor, and the county assessor.

395 (b) "County offices" does not mean the offices of president and vice president of the
396 United States, United States senators and representatives, members of the Utah Legislature,
397 state constitutional officers, county attorneys, district attorneys, and judges.

398 (2) (a) Until a replacement is selected as provided in this section and has qualified, the
399 county legislative body shall appoint an interim replacement to fill the vacant office by

400 following the procedures and requirements of this Subsection (2).

401 (b) (i) To appoint an interim replacement, the county legislative body shall give notice
402 of the vacancy to the county central committee of the same political party of the prior office
403 holder and invite that committee to submit the names of three nominees to fill the vacancy.

404 (ii) That county central committee shall, within 30 days, submit the names of three
405 nominees for the interim replacement to the county legislative body.

406 (iii) The county legislative body shall, within 45 days after the vacancy occurs, appoint
407 one of those nominees to serve out the unexpired term.

408 (c) (i) If the county legislative body fails to appoint an interim replacement to fill the
409 vacancy within 45 days, the county clerk shall send to the governor a letter that:

410 (A) informs the governor that the county legislative body has failed to appoint a
411 replacement within the statutory time period; and

412 (B) contains the list of nominees submitted by the party central committee.

413 (ii) The governor shall appoint an interim replacement from that list of nominees to fill
414 the vacancy within 30 days after receipt of the letter.

415 (d) A person appointed as interim replacement under this Subsection (2) shall hold
416 office until their successor is elected and has qualified.

417 (3) (a) The requirements of this subsection apply to all county offices that become
418 vacant if:

419 (i) the vacant office has an unexpired term of two years or more; and

420 (ii) the vacancy occurs after the election at which the person was elected but before
421 April 10 of the next even-numbered year.

422 (b) (i) When the conditions established in Subsection (3)(a) are met, the county clerk
423 shall notify the public and each registered political party that the vacancy exists.

424 (ii) All persons intending to become candidates for the vacant office shall:

425 (A) file a declaration of candidacy according to the procedures and requirements of
426 [~~Title 20A,~~] Chapter 9, Part 2[;], Candidate Qualifications and Declaration of Candidacy; and

427 (B) if nominated as a party candidate or qualified as an independent or write-in
428 candidate under Title 20A, Chapter 8, Political Party Formation and [~~Procedure~~] Procedures,
429 run in the regular general election[; and].

430 [~~(C) if elected, complete the unexpired term of the person who created the vacancy.~~]

431 (4) (a) The requirements of this Subsection (4) apply to all county offices that become
432 vacant if:

433 (i) the vacant office has an unexpired term of two years or more; and

434 (ii) the vacancy occurs after April 9 of the next even-numbered year but more than 50
435 days before the regular primary election.

436 (b) (i) When the conditions established in Subsection (4)(a) are met, the county clerk
437 shall notify the public and each registered political party that:

438 (A) the vacancy exists; and

439 (B) identifies the date and time by which a person interested in becoming a candidate
440 must file a declaration of candidacy.

441 (ii) All persons intending to become candidates for the vacant offices shall, within five
442 days after the date that the notice is made, ending at 5 p.m. on the fifth day, file a declaration
443 of candidacy for the vacant office as required by Title 20A, Chapter 9, Part 2.

444 (iii) The county central committee of each party shall:

445 (A) select a candidate or candidates from among those qualified candidates who have
446 filed declarations of candidacy; and

447 (B) certify the name of the candidate or candidates to the county clerk at least 35 days
448 before the regular primary election.

449 (5) (a) The requirements of this Subsection (5) apply to all county offices that become
450 vacant:

451 (i) if the vacant office has an unexpired term of two years or more; and

452 (ii) when 50 days or less remain before the regular primary election but more than 50
453 days remain before the regular general election.

454 (b) When the conditions established in Subsection (5)(a) are met, the county central
455 committees of each political party registered under this title that wishes to submit a candidate
456 for the office shall summarily certify the name of one candidate to the county clerk for
457 placement on the regular general election ballot.

458 (6) (a) The requirements of this Subsection (6) apply to all county offices that become
459 vacant:

460 (i) if the vacant office has an unexpired term of less than two years; or

461 (ii) if the vacant office has an unexpired term of two years or more but 50 days or less

462 remain before the next regular general election.

463 (b) (i) When the conditions established in Subsection (6)(a) are met, the county
464 legislative body shall give notice of the vacancy to the county central committee of the same
465 political party as the prior office holder and invite that committee to submit the names of three
466 nominees to fill the vacancy.

467 (ii) That county central committee shall, within 30 days, submit the names of three
468 nominees to fill the vacancy to the county legislative body.

469 (iii) The county legislative body shall, within 45 days after the vacancy occurs, appoint
470 one of those nominees to serve out the unexpired term.

471 (c) (i) If the county legislative body fails to appoint a person to fill the vacancy within
472 45 days, the county clerk shall send to the governor a letter that:

473 (A) informs the governor that the county legislative body has failed to appoint a person
474 to fill the vacancy within the statutory time period; and

475 (B) contains the list of nominees submitted by the party central committee.

476 (ii) The governor shall appoint a person to fill the vacancy from that list of nominees to
477 fill the vacancy within 30 days after receipt of the letter.

478 (d) A person appointed to fill the vacancy under this Subsection (6) shall hold office
479 until their successor is elected and has qualified.

480 (7) Except as otherwise provided by law, the county legislative body may appoint
481 replacements to fill all vacancies that occur in those offices filled by appointment of the county
482 legislative body.

483 (8) Nothing in this section prevents or prohibits independent candidates from filing a
484 declaration of candidacy for the office within the same time limits.

485 (9) (a) Each person elected under Subsection (3), (4), or (5) to fill a vacancy in a
486 county office shall serve for the remainder of the unexpired term of the person who created the
487 vacancy and until a successor is elected and qualified.

488 (b) Nothing in this section may be construed to contradict or alter the provisions of
489 Section 17-16-6.

490 Section 11. Section **41-1a-1320** is amended to read:

491 **41-1a-1320. Tax clearance required to move manufactured home or mobile home.**

492 (1) A manufactured home or mobile home may not be transported by any person,

493 including its owner, unless a tax clearance has been obtained from the assessor or, if the
494 responsibility to provide a tax clearance has been reassigned under Section 17-16-5.5, the
495 treasurer of the county in which the real property upon which the manufactured home or mobile
496 home was last located showing that all property taxes, including any interest and penalties,
497 have been paid.

498 (2) The tax clearance described in Subsection (1):

499 (a) is proof of having paid all property taxes, interest, and penalties; and

500 (b) shall be displayed in a conspicuous place on the rear of the manufactured home or
501 mobile home so as to be plainly visible while in transit.

502 (3) (a) Any person, including the owner, who transports a manufactured home or
503 mobile home without a valid tax clearance is:

504 (i) in violation of Section 59-2-309; and

505 (ii) subject to the penalty provisions of Section 59-2-309.

506 (b) In addition to the penalty provided in Subsection (3)(a), any commercial mover
507 who transports any manufactured home or mobile home without a valid tax clearance is guilty
508 of a class B misdemeanor.

509 Section 12. Section **54-3-27** is amended to read:

510 **54-3-27. Public utility easement.**

511 (1) As used in this section, "public utility easement" means the area on a recorded plat
512 map or other recorded document that is dedicated to the use and installation of public utility
513 facilities.

514 (2) (a) A public utility easement provides a public utility with:

515 (i) the right to install, maintain, operate, repair, remove, replace, or relocate public
516 utility facilities; and

517 (ii) the rights of ingress and egress within the public utility easement for public utility
518 employees, contractors, and agents.

519 (b) Notwithstanding Subsection (3), a public utility shall restore or repair, at the
520 expense of the public utility, any fence, grass, soil, shrubbery, bushes, flowers, other low level
521 vegetation, sprinkler system, irrigation system, gravel, flat concrete, or asphalt damaged or
522 displaced from the exercise of the easement rights described in Subsection (2)(a).

523 (3) Except as provided in Subsection (2)(b), if a property owner places improvements

524 to land that interfere with the easement rights described in Subsection (2)(a), the property
 525 owner shall bear the risk of loss or damage to those improvements resulting from the exercise
 526 of the easement rights described in Subsection (2)(a).

527 (4) (a) Except as provided in Subsection (4)(b), a public utility easement is
 528 nonexclusive and may be used by more than one public utility.

529 (b) Notwithstanding Subsection (4)(a), a public utility may not:

530 (i) interfere with any facility of another public utility within the public utility easement;
 531 or

532 (ii) infringe on the legally required distances of separation between public utility
 533 facilities required by federal, state, or local law.

534 (5) A subdivision plat that includes a public utility easement may not be ~~recorded~~
 535 approved by a municipal or county legislative body or its designate unless the subdivider has
 536 provided the municipality or county with proof that each public utility ~~as identified by the~~
 537 ~~municipality or county as holding an interest in the public utility easement~~ that will provide
 538 service to the subdivision has, as a courtesy, been notified by the owner at least 14 calendar
 539 days prior to ~~recording~~ approval.

540 Section 13. Section **57-1-5.1** is amended to read:

541 **57-1-5.1. Termination of an interest in real estate -- Affidavit.**

542 (1) ~~[A document evidencing the termination of]~~ To terminate joint tenancy, tenancy by
 543 the entirety, life estate, or determinable or conditional interest in real estate ~~[may not be~~
 544 ~~recorded unless it is]~~, an affidavit that meets the requirements of Subsection (2) shall be
 545 recorded in the office of the recorder of the county in which the affected property is located.

546 (2) ~~[The]~~ Each affidavit required by Subsection (1) shall:

547 (a) cite the interest which is being terminated;

548 (b) contain a legal description of the real property that is affected;

549 (c) reference the entry number and the book and page of the instrument creating the
 550 interest to be terminated; and

551 (d) if the termination is the result of a death, have attached as an exhibit, a copy of the
 552 death certificate or other document witnessing the death.

553 Section 14. Section **57-3-106** is amended to read:

554 **57-3-106. Original documents required -- Captions -- Legibility.**

555 (1) (a) Unless otherwise provided, documents presented for recording in the office of
556 the county recorder shall:

557 (i) be originals; and

558 (ii) contain a brief caption stating the nature of the document.

559 (b) If a document is a master form, as defined in Section 57-3-201, the caption required
560 by Subsection (1)(a)(ii) shall state that the document is a master form.

561 (2) A court judgment or an abstract of a court judgment presented for recording in the
562 office of the county recorder in compliance with Section 78-22-1 shall:

563 (a) be an original or certified copy; and

564 (b) include the information identifying the judgment debtor as referred to in Subsection
565 78-22-1.5(4) either:

566 (i) in the judgment or abstract of judgment; or

567 (ii) as a separate information statement of the judgment creditor as referred to in
568 Subsection 78-22-1.5(5).

569 (3) Judgments, abstracts of judgments, and separate information statements of the
570 judgment creditor do not require an acknowledgment or a legal description to be recorded.

571 (4) A foreign judgment or an abstract of a foreign judgment recorded in the office of a
572 county recorder shall include the affidavit as required in Section 78-22a-3.

573 (5) Any document recorded in the office of the county recorder to release or assign a
574 judgment lien shall include:

575 (a) the name of any judgment creditor, debtor, assignor, or assignee;

576 (b) the date of recording; and

577 (c) the entry number of the instrument creating the judgment lien.

578 (6) Documents presented for recording shall also be sufficiently legible for the recorder
579 to make certified copies.

580 (7) (a) A document which is of record in the office of the appropriate county recorder
581 in compliance with this chapter may not be recorded again in that same county recorder's office
582 unless the original document has been reexecuted by all parties who executed the document.

583 Unless exempt by statute, original documents which are reexecuted must also contain the
584 appropriate acknowledgment, proof of execution, jurat or other notarial certification for all
585 parties who are reexecuting the document as required by Title 46, Chapter 1, Notaries Public

586 Reform Act, and Title 57, Chapter 2, Acknowledgments. Documents submitted for rerecording
587 shall contain a brief statement explaining the reason for rerecording.

588 (b) A county recorder may refuse to accept a document for rerecording if that
589 document does not conform to the requirements of this section.

590 (c) This Subsection (7) applies only to documents executed after July 1, 1998.

591 (8) Minor typographical or clerical errors in a document of record may be corrected by
592 the recording of an affidavit or other appropriate instrument.

593 (9) A document that otherwise complies with the provisions of this section does not
594 fail to comply because it is transmitted electronically to a county recorder's office as provided
595 in Title 46, Chapter 4, Uniform Electronic Transactions Act.

596 (10) (a) Each document transmitted electronically to a county recorder's office for
597 recording shall include a notarized certificate of authentication attached to it.

598 (b) (i) Each certificate of authentication required under Subsection (10)(a) shall be in
599 substantially the following form:

600 Certificate of Authentication

601 For _____ (insert name of vendor)

602 Document file number _____

603 On this _____ day of _____, 2____, I,

604 _____ (insert name of notary public), Notary Public, hereby certify that

605 the original _____ (insert name of document), executed by

606 _____ (insert signer's name), was presented to me by the

607 custodian, _____ (insert name of custodian of document), and that

608 a true, exact, complete, and unaltered copy of the document was electronically transmitted to

609 the _____ (insert name of county) County Recorder's Office.

610 Notary name

611 State of _____)

612 _____) ss.

613 County of _____)

614 My commission expires _____

615 Residing at: _____

616 (ii) The phrases "my commission expires" and "residing at" may be omitted in a

617 certificate under this Subsection (10) if the information is included in the notarial seal.

618 Section 15. Section **59-2-307** is amended to read:

619 **59-2-307. Refusal by taxpayer to file signed statement -- Penalty -- Assessor to**
 620 **estimate value -- Reporting information to other counties.**

621 (1) (a) [~~Any~~] Each person who [~~does not: (a)~~] fails to file the signed statement required
 622 by Section 59-2-306[~~;~~(b)], fails to file the signed statement with respect to name and place of
 623 residence[~~;~~], or [~~(c)~~] fails to appear and testify when requested by the assessor, shall pay a
 624 penalty equal to 10% of the estimated tax due[~~;~~], but not less than \$100 for each failure to file a
 625 signed and completed statement[~~;~~to].

626 (b) Each penalty under Subsection (1)(a) shall be collected in the manner provided by
 627 Sections 59-2-1302 and 59-2-1303, except as otherwise provided for in this section, or by a
 628 judicial proceeding brought in the name of the assessor.

629 (c) All money recovered by any assessor under this section shall be paid into the county
 630 treasury.

631 (2) (a) The penalty imposed by Subsection (1)(a) may not be waived or reduced by the
 632 assessor, county, county Board of Equalization, or commission except pursuant to a procedure
 633 for the review and approval of reductions and waivers adopted by county ordinance, or by
 634 administrative rule adopted in accordance with Title 63, Chapter 46a, Utah Administrative
 635 Rulemaking Act.

636 (b) The penalty under Subsection (1)[~~(c)~~](a) for failure to appear and testify when
 637 requested by the assessor may not be imposed until 30 days after the [~~taxpayer's receipt~~]
 638 mailing of a subsequent certified notice.

639 (3) (a) If any owner neglects or refuses to file the signed statement within 30 days of
 640 the date the first county request was sent as required under Section 59-2-306, the assessor shall:

641 (i) make:

642 [~~(i)~~] (A) a subsequent request by certified mail for the signed statement[~~;~~~~The~~
 643 ~~subsequent request shall also inform~~], informing the owner of the consequences of not filing a
 644 signed statement; and

645 [~~(ii)~~] (B) a record of the failure to file and an estimate of the value of the property of
 646 the owner based on known facts and circumstances[~~;~~]; and

647 (ii) impose a fee for the actual and necessary expenses of the certified mailing under

648 Subsection (3)(a)(i)(A).

649 (b) The value fixed by the assessor may not be reduced by the county board of
650 equalization or by the commission.

651 (4) If the signed statement discloses property in any other county, the assessor shall file
652 the signed statement and send a certified copy to the assessor of each county in which the
653 property is located.

Legislative Review Note
as of 11-30-04 12:12 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0031

Local Government Amendments

12-Jan-05

3:49 PM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst