

**Senator David L. Thomas** proposes the following substitute bill:

**LOCAL GOVERNMENT AMENDMENTS**

2005 GENERAL SESSION

STATE OF UTAH

**Sponsor: David L. Thomas**

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**LONG TITLE**

**General Description:**

This bill modifies provisions relating to counties.

**Highlighted Provisions:**

This bill:

- ▶ modifies provisions related to the removal from office of local government officers;
- ▶ modifies the authority of counties and municipalities to require compliance with a subdivision ordinance before a subdivision plat may be recorded;
- ▶ expands the duties of a county assessor that may be reassigned to the treasurer;
- ▶ provides that a county recorder does not violate the law by placing certain information on a document;
- ▶ modifies provisions related to county recorder fees;
- ▶ requires counties to receive fair and adequate consideration for services or assistance provided to or fees waived on behalf of a nonprofit entity, and defines what that consideration may consist of;
- ▶ clarifies that persons elected to fill a vacancy in a county office serve for the remainder of the unexpired term;
- ▶ modifies a notice requirement related to subdivision plats to prohibit municipal or county approval of a plat unless proof of notice to affected public utilities is provided;



- 26           ▶ requires a person's typed or printed name on a recorded document to appear just
- 27 beneath the person's signature;
- 28           ▶ modifies a provision related to termination of a joint tenancy, tenancy by the
- 29 entirety, life estate, or determinable or conditional interest; and
- 30           ▶ modifies provisions related to penalties assessed for a taxpayer's failure to take
- 31 certain required action.

32 **Monies Appropriated in this Bill:**

33           None

34 **Other Special Clauses:**

35           None

36 **Utah Code Sections Affected:**

37 AMENDS:

- 38           **17-16-5.5**, as enacted by Chapter 207, Laws of Utah 1999
- 39           **17-16-10.5**, as enacted by Chapter 206, Laws of Utah 1999
- 40           **17-21-17**, as last amended by Chapter 191, Laws of Utah 2002
- 41           **17-21-18.5**, as last amended by Chapter 211, Laws of Utah 2003
- 42           **17-21-25**, as last amended by Chapter 85, Laws of Utah 1999
- 43           **17-50-303**, as last amended by Chapter 96, Laws of Utah 2001
- 44           **20A-1-508**, as last amended by Chapter 139, Laws of Utah 1997
- 45           **41-1a-1320**, as enacted by Chapter 229, Laws of Utah 2003
- 46           **54-3-27**, as enacted by Chapter 64, Laws of Utah 2004
- 47           **57-1-5.1**, as enacted by Chapter 320, Laws of Utah 2000
- 48           **59-2-307**, as last amended by Chapter 86, Laws of Utah 2000



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

51           Section 1. Section **17-16-5.5** is amended to read:

52           **17-16-5.5. Reassignment of certain assessor duties to treasurer.**

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

55           Section 2. Section **17-16-10.5** is amended to read:

56           **17-16-10.5. Malfeasance in office -- Felony charges or incapacitation -- Paid**

57 **administrative leave -- Reassignment of duties.**

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

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

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

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

69 (b) A conviction, a plea nolo contendere, or a plea in abeyance relating to a felony  
70 charge described in Subsection (2)(a) shall be considered to be a determination that the officer  
71 has committed malfeasance in office.

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

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

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

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

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

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

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

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

88 Section 3. Section 17-21-17 is amended to read:

89 **17-21-17. Prohibited acts.**

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

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

92 or

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

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

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

96 (a) denying access to:

97 [~~(a)~~] (i) an instrument of record that has been classified as private under Section

98 63-2-302; or

99 [~~(b)~~] (ii) a portion of an instrument of record that has been classified as private under

100 Section 63-2-302[-]; or

101 (b) placing an endorsement, reference, or other note on a document in the course of the  
102 recorder's work.

103 Section 4. Section 17-21-18.5 is amended to read:

104 **17-21-18.5. Fees of county recorder.**

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

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

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

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

118 (d) for recording[~~, indexing, and abstracting~~] mining location notices[~~, and recording,~~

119 indexing,] and [abstracting] affidavits of labor affecting mining claims, \$10 for the first page  
120 [if that page is not larger than 8-1/2 inches by 14 inches in size,] and \$2 for each additional  
121 page; and

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

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

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

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

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

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

133 (c) for recording any plat [of a subdivision into lots and blocks, \$1 for each lot, and],  
134 \$30 for each sheet and \$1 for each lot or unit designation;

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

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

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

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

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

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

147 Section 5. Section 17-21-25 is amended to read:

148 **17-21-25. Names of persons signing to be typed or printed on instruments**  
149 **presented for recording.**

150 (1) ~~(a) [All instruments]~~ Each instrument presented to the county recorder for recording  
151 shall have typed or printed on ~~[them]~~ it the ~~[names]~~ name of ~~[all persons]~~ each person whose  
152 ~~[signatures appear]~~ signature appears on the instrument whose ~~[names are]~~ name is required to  
153 be indexed.

154 (b) The person's typed or printed name shall appear just beneath that person's signature.

155 (2) The requirements of Subsection (1) do not affect the legality of the instrument to be  
156 recorded.

157 Section 6. Section **17-50-303** is amended to read:

158 **17-50-303. County may not give or lend credit -- County may borrow in**  
159 **anticipation of revenues -- Assistance to nonprofit entities.**

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

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

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

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

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

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

174 (i) be nonmonetary; and

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

178 Section 7. Section **20A-1-508** is amended to read:

179 **20A-1-508. Midterm vacancies in county elected offices.**

180 (1) As used in this section:

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

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

187 (2) (a) Until a replacement is selected as provided in this section and has qualified, the  
188 county legislative body shall appoint an interim replacement to fill the vacant office by  
189 following the procedures and requirements of this Subsection (2).

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

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

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

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

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

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

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

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

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

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

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

211 (b) (i) When the conditions established in Subsection (3)(a) are met, the county clerk

212 shall notify the public and each registered political party that the vacancy exists.

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

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

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

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

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

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

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

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

227 (A) the vacancy exists; and

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

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

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

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

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

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

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

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

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

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

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

250 (ii) if the vacant office has an unexpired term of two years or more but 50 days or less  
251 remain before the next regular general election.

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

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

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

260 (c) (i) If the county legislative body fails to appoint a person to fill the vacancy within  
261 45 days, the county clerk shall send to the governor a letter that:

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

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

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

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

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

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

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

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

279 Section 8. Section **41-1a-1320** is amended to read:

280 **41-1a-1320. Tax clearance required to move manufactured home or mobile home.**

281 (1) A manufactured home or mobile home may not be transported by any person,  
282 including its owner, unless a tax clearance has been obtained from the assessor or, if the  
283 responsibility to provide a tax clearance has been reassigned under Section 17-16-5.5, the  
284 treasurer of the county in which the real property upon which the manufactured home or mobile  
285 home was last located showing that all property taxes, including any interest and penalties,  
286 have been paid.

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

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

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

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

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

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

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

298 Section 9. Section **54-3-27** is amended to read:

299 **54-3-27. Public utility easement.**

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

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

304 (i) the right to install, maintain, operate, repair, remove, replace, or relocate public

305 utility facilities; and

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

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

312 (3) Except as provided in Subsection (2)(b), if a property owner places improvements  
313 to land that interfere with the easement rights described in Subsection (2)(a), the property  
314 owner shall bear the risk of loss or damage to those improvements resulting from the exercise  
315 of the easement rights described in Subsection (2)(a).

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

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

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

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

323 (5) A subdivision plat that includes a public utility easement may not be ~~[recorded]~~  
324 approved by a municipal or county legislative body or its designate unless the subdivider has  
325 provided the municipality or county with proof that each public utility ~~[as identified by the~~  
326 ~~municipality or county as holding an interest in the public utility easement]~~ that will provide  
327 service to the subdivision has, as a courtesy, been notified ~~[at least 14 calendar days]~~ by the  
328 owner or the owner's agent prior to ~~[recording]~~ approval.

329 Section 10. Section **57-1-5.1** is amended to read:

330 **57-1-5.1. Termination of an interest in real estate -- Affidavit.**

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

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

- 336 (a) cite the interest which is being terminated;
- 337 (b) contain a legal description of the real property that is affected;
- 338 (c) reference the entry number and the book and page of the instrument creating the
- 339 interest to be terminated; and
- 340 (d) if the termination is the result of a death, have attached as an exhibit, a copy of the
- 341 death certificate or other document witnessing the death.

342 Section 11. Section **59-2-307** is amended to read:

343 **59-2-307. Refusal by taxpayer to file signed statement -- Penalty -- Assessor to**  
344 **estimate value -- Reporting information to other counties.**

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

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

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

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

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

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

365 (i) make:

366 ~~[(i)]~~ (A) a subsequent request by certified mail for the signed statement~~[-The~~

367 ~~subsequent request shall also inform], informing the owner of the consequences of not filing a~~  
368 signed statement; and

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

371 ~~(ii) impose a fee for the actual and necessary expenses of the certified mailing under~~  
372 Subsection (3)(a)(i)(A).

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

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