

VACANCIES IN COUNTY ELECTED OFFICES

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Howard A. Stephenson

House Sponsor: Gregory H. Hughes

LONG TITLE

General Description:

This bill modifies the Election Code by amending provisions to fill a vacancy in an elected county office or county or district attorney position.

Highlighted Provisions:

This bill:

- ▶ provides that in the case of a vacancy in a county elected office, including a county or district attorney **Ŝ→ with more than 15 attorneys ←Ŝ**, the county central committee of the party to which the vacating office holder belongs submits one nominee instead of three to the county legislative body;
- ▶ provides time frames for the county legislative body to fill the vacancy with the nominee submitted by the county central committee; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

20A-1-508, as last amended by Laws of Utah 2006, Chapter 39

20A-1-509.1, as last amended by Laws of Utah 2009, Chapter 119



28 ~~§~~ → [~~20A-1-509.2, as enacted by Laws of Utah 1997, Chapter 139~~] ← ~~§~~

29

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

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

32 **20A-1-508. Midterm vacancies in county elected offices.**

33 (1) As used in this section:

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

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

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

43 (b) (i) To appoint an interim replacement, the county legislative body shall give notice
44 of the vacancy to the county central committee of the same political party of the prior office
45 holder and invite that committee to submit the ~~[names of three nominees]~~ name of a nominee
46 to fill the vacancy.

47 (ii) That county central committee shall, within 30 days, submit the ~~[names of three~~
48 ~~nominees]~~ name of the nominee for the interim replacement to the county legislative body.

49 (iii) The county legislative body shall, ~~[within 45 days after the vacancy occurs,~~
50 ~~appoint one of those nominees]~~ at the next regular meeting of the county legislative body,
51 appoint the person whose name was submitted by the county central committee to serve out the
52 unexpired term.

53 (c) (i) If the county legislative body fails to appoint an interim replacement to fill the
54 vacancy ~~[within 45 days]~~ as provided under Subsection (2)(b), the county clerk shall send to
55 the governor a letter that:

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

58 (B) contains the ~~[list of nominees]~~ name of the nominee submitted by the ~~[party central~~

59 ~~committee]~~ county central committee.

60 (ii) The governor shall appoint the nominee as an interim replacement [~~from that list of~~
61 ~~nominees]~~ to fill the vacancy within 30 days after receipt of the letter.

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

64 (3) (a) The requirements of this Subsection (3) apply to all county offices that become
65 vacant if:

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

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

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

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

72 (A) file a declaration of candidacy according to the procedures and requirements of
73 Chapter 9, Part 2, Candidate Qualifications and Declarations of Candidacy; and

74 (B) if nominated as a party candidate or qualified as an independent or write-in
75 candidate under Chapter 8, Political Party Formation and Procedures, run in the regular general
76 election.

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

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

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

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

84 (A) the vacancy exists; and

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

87 (ii) All persons intending to become candidates for the vacant offices shall, within five
88 days after the date that the notice is made, ending at 5 p.m. on the fifth day, file a declaration of
89 candidacy for the vacant office as required by Chapter 9, Part 2, Candidate Qualifications and

90 Declarations of Candidacy.

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

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

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

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

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

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

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

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

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

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

110 (b) (i) When the conditions established in Subsection (6)(a) are met, the county
111 legislative body shall give notice of the vacancy to the county central committee of the same
112 political party as the prior office holder and invite that committee to submit the [~~names of three~~
113 ~~nominees~~] name of a nominee to fill the vacancy.

114 (ii) That county central committee shall, within 30 days, submit the [~~names of three~~
115 ~~nominees~~] name of the nominee to fill the vacancy to the county legislative body.

116 (iii) The county legislative body shall, [~~within 45 days after the vacancy occurs,~~
117 ~~appoint one of those nominees~~] at the next regular meeting of the county legislative body,
118 appoint the person whose name was submitted by the county central committee to serve out the
119 unexpired term.

120 (c) (i) If the county legislative body fails to appoint a person to fill the vacancy [~~within~~

121 ~~45 days~~ as provided under Subsection (6)(b), the county clerk shall send to the governor a
122 letter that:

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

125 (B) contains the ~~[list of nominees]~~ name of the nominee submitted by the ~~[party central~~
126 ~~committee]~~ county central committee.

127 (ii) The governor shall appoint ~~[a person]~~ the nominee to fill the vacancy ~~[from that list~~
128 ~~of nominees to fill the vacancy]~~ within 30 days after receipt of the letter.

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

131 (7) Except as otherwise provided by law, the county legislative body may appoint
132 ~~[replacements to fill all vacancies that occur in those offices]~~ a replacement to fill a vacancy
133 that occurs in a county office previously filled by appointment of the county legislative body.

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

136 (9) (a) ~~[Each]~~ A person elected under Subsection (3), (4), or (5) to fill a vacancy in a
137 county office shall serve for the remainder of the unexpired term of the person who created the
138 vacancy and until a successor is elected and qualified.

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

141 Section 2. Section **20A-1-509.1** is amended to read:

142 **20A-1-509.1. Procedure for filling midterm vacancy in county or district with 15**
143 **or more attorneys.**

144 (1) When a vacancy occurs in the office of county or district attorney in a county or
145 district having 15 or more attorneys who are licensed active members in good standing with the
146 Utah State Bar and registered voters, the vacancy shall be filled as provided in this section.

147 (2) (a) The requirements of this Subsection (2) apply when the office of county
148 attorney or district attorney becomes vacant and:

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

150 (ii) the vacancy occurs before the third Friday in March of the even-numbered year.

151 (b) When the conditions established in Subsection (2)(a) are met, the county clerk shall

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

153 (c) All persons intending to become candidates for the vacant office shall:

154 (i) file a declaration of candidacy according to the procedures and requirements of Title
155 20A, Chapter 9, Part 2, Candidate Qualifications and Declarations of Candidacy;

156 (ii) if nominated as a party candidate or qualified as an independent or write-in
157 candidate under Title 20A, Chapter 9, Candidate Qualifications and Nominating Procedures,
158 run in the regular general election; and

159 (iii) if elected, complete the unexpired term of the person who created the vacancy.

160 (d) If the vacancy occurs after the second Friday in March and before the third Friday
161 in March, the time for filing a declaration of candidacy under Section 20A-9-202 shall be
162 extended until seven days after the county clerk gives notice under Subsection (2)(b), but no
163 later than the fourth Friday in March.

164 (3) (a) The requirements of this Subsection (3) apply when the office of county
165 attorney or district attorney becomes vacant and:

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

167 (ii) the vacancy occurs after the third Friday in March of the even-numbered year but
168 more than 50 days before the regular primary election.

169 (b) When the conditions established in Subsection (3)(a) are met, the county clerk
170 shall:

171 (i) notify the public and each registered political party that the vacancy exists; and

172 (ii) identify the date and time by which a person interested in becoming a candidate
173 must file a declaration of candidacy.

174 (c) All persons intending to become candidates for the vacant office shall:

175 (i) within five days after the date that the notice is made, ending at 5 p.m. on the fifth
176 day, file a declaration of candidacy for the vacant office as required by Title 20A, Chapter 9,
177 Part 2, Candidate Qualifications and [~~Nominating Procedures~~] Declarations of Candidacy; and

178 (ii) if elected, complete the unexpired term of the person who created the vacancy.

179 (d) The county central committee of each party shall:

180 (i) select a candidate or candidates from among those qualified candidates who have
181 filed declarations of candidacy; and

182 (ii) certify the name of the candidate or candidates to the county clerk at least 35 days

183 before the regular primary election.

184 (4) (a) The requirements of this Subsection (4) apply when the office of county
185 attorney or district attorney becomes vacant and:

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

187 (ii) 50 days or less remain before the regular primary election but more than 50 days
188 remain before the regular general election.

189 (b) When the conditions established in Subsection (4)(a) are met, the county central
190 committees of each registered political party that wish to submit a candidate for the office shall
191 summarily certify the name of one candidate to the county clerk for placement on the regular
192 general election ballot.

193 (c) The candidate elected shall complete the unexpired term of the person who created
194 the vacancy.

195 (5) (a) The requirements of this Subsection (5) apply when the office of county
196 attorney or district attorney becomes vacant and:

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

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

200 (b) When the conditions established in Subsection (5)(a) are met, the county legislative
201 body shall give notice of the vacancy to the county central committee of the same political
202 party of the prior officeholder and invite that committee to submit the ~~[names of three~~
203 ~~nominees]~~ name of a nominee to fill the vacancy.

204 (c) ~~[That]~~ The county central committee shall, within 30 days of receiving notice [from
205 ~~the county legislative body, submit to the county legislative body the names of three nominees~~
206 ~~to fill the vacancy]~~ in Subsection (5)(b), submit the name of the nominee to fill the vacancy to
207 the county legislative body.

208 (d) The county legislative body shall, ~~[within 45 days after the vacancy occurs, appoint~~
209 ~~one of those nominees]~~ at the next regular meeting of the county legislative body, appoint the
210 person whose name was submitted by the county central committee to serve out the unexpired
211 term.

212 (e) If the county legislative body fails to appoint a person to fill the vacancy ~~[within 45~~
213 ~~days]~~ as provided under Subsection (5)(d), the county clerk shall send to the governor a letter

214 that:

215 (i) informs the governor that the county legislative body has failed to appoint a person
216 to fill the vacancy within the statutory time period; and

217 (ii) contains the ~~[list of nominees]~~ name of the nominee submitted by the ~~[party central~~
218 ~~committee]~~ county central committee.

219 (f) The governor shall appoint ~~[a person]~~ the nominee to fill the vacancy ~~[from that list~~
220 ~~of nominees]~~ within 30 days after receipt of the letter.

221 (g) A person appointed to fill the vacancy under this Subsection (5) shall complete the
222 unexpired term of the person who created the vacancy.

223 (6) Nothing in this section prevents or prohibits independent candidates from filing a
224 declaration of candidacy for the office within the required time limits under this section.

225 **§→ [Section 3. ~~Section 20A-1-509.2 is amended to read:~~**

226 ~~———— 20A-1-509.2. Procedure for filling vacancy in county or district with fewer than~~
227 ~~15 attorneys.~~

228 ~~———— (1) When a vacancy occurs in the office of county or district attorney in a county or~~
229 ~~district having fewer than 15 attorneys who are licensed, active members in good standing with~~
230 ~~the Utah State Bar and registered voters, the vacancy shall be filled as provided in this section.~~

231 ~~———— (2) The county clerk shall send a letter to each attorney residing in the county or district~~
232 ~~who is a licensed, active member in good standing with the Utah State Bar and a registered~~
233 ~~voter that:~~

234 ~~———— (a) informs the attorney of the vacancy;~~

235 ~~———— (b) invites the attorney to apply for the vacancy; and~~

236 ~~———— (c) informs the attorney that if the attorney has not responded within 10 calendar days~~
237 ~~from the date that the letter was mailed, [his candidacy to fill the vacancy] the attorney will not~~
238 ~~be considered to fill the vacancy.~~

239 ~~———— (3) (a) (i) [If, after 10 calendar days from the date the letter was mailed, more than~~
240 ~~three attorneys who are licensed, active members in good standing with the Utah State Bar and~~
241 ~~registered voters in the county or district have applied for the vacancy, the county clerk shall,~~

242 ~~except as provided in Subsection (3)(a)(ii), submit the applications] Upon the expiration of the~~
243 ~~time period under Subsection (2)(c), the county clerk shall submit the applications that meet~~

244 ~~the requirements of Subsection (2) to the county central committee of the same political party]~~ ←§

245 ~~§~~→ [of the prior officeholder.

246 ~~———— (ii) In multicounty prosecution districts, the clerk shall submit the applications to the~~
 247 ~~county central committee of each county within the prosecution district.~~

248 ~~———— (b) The county central committee shall [nominate three of the applicants and forward~~
 249 ~~their names], within 20 days of receiving the applications under Subsection (3)(a), submit the~~
 250 ~~name of the nominee to the county legislative body [within 20 days after the date the county~~
 251 ~~clerk submitted the applicants' names].~~

252 ~~———— (c) The county legislative body shall [appoint one of the nominees], at the next regular~~
 253 ~~meeting of the county legislative body, appoint the person whose name was submitted by the~~
 254 ~~county central committee to fill the vacant position.~~

255 ~~———— (d) If the central committee of the political party fails to submit [at least three names] a~~
 256 ~~nominee to the county legislative body [within 20 days after the date the county clerk submitted~~
 257 ~~the applicants' names] as provided under Subsection (3)(b), the county legislative body shall~~
 258 ~~appoint one of the applicants to fill the vacant position.~~

259 ~~———— (e) If the county legislative body fails to appoint a person to fill the vacancy within 120~~
 260 ~~days after the vacancy occurs, the county clerk shall mail to the governor:~~

261 ~~———— (i) a letter informing [him] the governor that the county legislative body has failed to~~
 262 ~~appoint a person to fill the vacancy; and~~

263 ~~———— (ii) (A) the [list of nominees, if any,] name of the nominee submitted by the county~~
 264 ~~central committee [of the political party]; or~~

265 ~~———— (B) if the [party] county central committee has not submitted a [list of at least three~~
 266 ~~nominees] nominee within the required time, the names of the persons who submitted~~
 267 ~~applications for the vacant position to the county clerk.~~

268 ~~———— (f) The governor shall appoint a person to fill the vacancy from the list within 30 days~~
 269 ~~after receipt of the letter.~~

270 ~~———— (4) (a) If, after 10 calendar days from the date the letter was mailed under Subsection~~
 271 ~~(2), three or fewer attorneys [who are licensed, active members in good standing with the Utah~~
 272 ~~State Bar and registered voters in the county or district] who meet the requirements of~~
 273 ~~Subsection (2) have applied for the vacancy, the county legislative body may:~~

274 ~~———— (i) appoint one of [them] the applicants to be county or district attorney; or~~

275 ~~———— (ii) solicit additional applicants and appoint a county or district attorney as provided in] ←§~~

276 Subsection (4)(b).

277 (b) (i) If three or fewer attorneys who [~~are licensed members in good standing of the~~
278 ~~Utah State Bar and registered voters in the county or district submit applications~~] meet the
279 requirements of Subsection (2) submit an application, the county legislative body may publicly
280 solicit and accept additional applications for the position from licensed, active members in
281 good standing of the Utah State Bar who are not residents of the county or prosecution district.

282 (ii) The county legislative body shall consider the applications submitted by the
283 attorneys who are residents of and registered voters in the county or prosecution district and the
284 applications submitted by the attorneys who are not residents of the county or prosecution
285 district and shall appoint one of the applicants to be county attorney or district attorney.

286 (c) If the county legislative body fails to appoint a person to fill the vacancy within 120
287 days after the vacancy occurs, the county clerk shall:

288 (i) notify the governor that the legislative body has failed to fill the vacancy within the
289 required time period; and

290 (ii) provide the governor with a list of all the applicants.

291 (d) The governor shall appoint a person to fill the vacancy within 30 days after he
292 receives the notification.

293 (5) The person appointed to fill the vacancy shall serve for the unexpired term of the
294 person who created the vacancy.

Legislative Review Note
as of 2-16-10 5:58 PM

Office of Legislative Research and General Counsel

S.B. 203 - Vacancies in County Elected Offices

Fiscal Note

2010 General Session
State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
