

**Senator Howard A. Stephenson** proposes the following substitute bill:

**VACANCIES IN COUNTY ELECTED OFFICES**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Howard A. Stephenson**

House Sponsor: Gregory H. Hughes

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**LONG TITLE**

**General Description:**

This bill modifies the Election Code by amending and enacting provisions to fill a vacancy in the membership of a county legislative body of a first ~~§~~ [5] ~~or~~ ~~§~~ second ~~§~~ [5] ~~or~~ ~~third~~ ~~§~~ class county.

**Highlighted Provisions:**

This bill:

- ▶ provides that in the case of a vacancy in a county legislative body in a county of the first ~~§~~ [5] ~~or~~ ~~§~~ second ~~§~~ [5] ~~or~~ ~~third~~ ~~§~~ class, 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:**



26 AMENDS:

27 17-35b-301, as last amended by Laws of Utah 2000, Chapter 133

28 17-35b-302, as last amended by Laws of Utah 2007, Chapter 329

29 17-52-401, as last amended by Laws of Utah 2003, Chapter 131

30 17-53-104, as renumbered and amended by Laws of Utah 2000, Chapter 133

31 20A-1-508, as last amended by Laws of Utah 2006, Chapter 39

32 ENACTS:

33 20A-1-508.1, Utah Code Annotated 1953



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

36 Section 1. Section 17-35b-301 is amended to read:

37 17-35b-301. "General county (modified)" structural form of county government.

38 (1) The structural form of county government known as the "general county  
39 (modified)" form retains, without change or modification, except to the extent that changes or  
40 modifications may be effectuated under other proceedings authorized by law, all existing  
41 incorporated cities and towns, special taxing districts, public authorities, county service areas,  
42 and other local public entities functioning within the boundaries of the county. Under this form  
43 of government, the county remains vested with all powers and duties vested in counties by  
44 general law, but the county legislative body, together with such other officers as may be  
45 specified in the optional plan, shall be elected or appointed in the manner authorized by this act  
46 and as provided in the optional plan.

47 (2) An optional plan for this form of county government shall provide for the election  
48 of a county council, composed of not less than three members, which shall be the county  
49 legislative body and shall exercise all legislative powers authorized by law. The plan shall  
50 specify:

51 (a) whether the members of the council are to be elected from districts, at large, or by a  
52 combination of district and at-large constituencies;

53 (b) their qualifications and terms of office, and whether such terms are concurrent or  
54 overlapping;

55 (c) grounds for and methods of removal of council members from office;

56 (d) procedures for filling vacancies on the council, provided that the procedures shall

57 conform with Section 20A-1-508 or 20A-1-508.1; and

58 (e) the compensation, if any, of council members together with procedures for  
59 prescribing and changing such compensation from time to time.

60 Section 2. Section **17-35b-302** is amended to read:

61 **17-35b-302. Urban county structural form of county government.**

62 (1) The structural form of county government known as the "urban county" form  
63 retains, without change or modification, except to the extent that changes or modifications may  
64 be effectuated under other proceedings authorized by law, all existing incorporated cities and  
65 towns, special taxing districts, public authorities, service areas, and other local public entities  
66 functioning within the boundaries of the county. Under this form of government, the county  
67 remains vested with all powers and duties vested in counties by general law, but in addition is  
68 vested with and empowered to exercise within the unincorporated territory of the county all  
69 powers and duties which, by general law, are conferred upon cities whose population is equal  
70 to that of the unincorporated territory of such county.

71 (2) The urban county is empowered to enter into contractual arrangements for the joint  
72 exercise of powers or for performance of services and, for that purpose, may employ and be  
73 subject to the provisions of Title 11, Chapter 13, Interlocal Cooperation Act. By contract, the  
74 urban county may perform for any city, town, special taxing district, public authority, service  
75 area, or other local public entity within the county any governmental service or function which  
76 such entity is lawfully empowered to perform for itself within its own territory, or which the  
77 county is lawfully empowered to perform anywhere within the county boundaries. No contract  
78 service or function shall be performed by the county except for a consideration which is at least  
79 substantially equal to the cost of performing it.

80 (3) The plan for an urban county form of county government may provide for  
81 organization of the unincorporated territory of the county into one or more service areas and,  
82 for this purpose, may provide for special organizing or implementing procedures which differ  
83 from those provided in Title 17B, Chapter 2a, Part 9, Service Area Act. Except to the extent  
84 that the plan provides to the contrary, all noncontract services and functions lawfully performed  
85 by the county solely within unincorporated territory and not on a countywide basis shall, after  
86 the effective date of the plan, be considered performed and extended solely as services of, and  
87 financed by and through, the county service area. The plan may provide for, limit, or condition

88 the services and functions which the urban county is authorized to perform and extend within  
89 the territory of incorporated cities and towns within the county and may provide procedures by  
90 which such provisions, limits, or conditions may be established and changed from time to time.

91 (4) The plan for the urban county shall provide for the election of a county council,  
92 composed of not less than three members. The council shall be the county legislative body and  
93 shall exercise all legislative powers authorized by law. The plan shall specify:

94 (a) whether the members of the council are to be elected from districts, at large, or by a  
95 combination of district and at-large constituencies;

96 (b) their qualifications and terms of office, and whether such terms are concurrent or  
97 overlapping;

98 (c) grounds for and methods for removal of council members from office;

99 (d) procedures for filling vacancies on the council, provided that the procedures shall  
100 conform with Section 20A-1-508 or 20A-1-508.1; and

101 (e) the compensation, if any, of council members together with procedures for  
102 prescribing and changing such compensation from time to time.

103 Section 3. Section **17-52-401** is amended to read:

104 **17-52-401. Contents of proposed optional plan.**

105 (1) Each optional plan proposed under this chapter:

106 (a) shall propose the adoption of one of the forms of county government listed in  
107 Subsection 17-52-402(1)(a);

108 (b) shall contain detailed provisions relating to the transition from the existing form of  
109 county government to the form proposed in the optional plan, including provisions relating to  
110 the:

111 (i) election or appointment of officers specified in the optional plan for the new form of  
112 county government;

113 (ii) retention, elimination, or combining of existing offices and, if an office is  
114 eliminated, the division or department of county government responsible for performing the  
115 duties of the eliminated office;

116 (iii) continuity of existing ordinances and regulations;

117 (iv) continuation of pending legislative, administrative, or judicial proceedings;

118 (v) making of interim and temporary appointments; and

- 119 (vi) preparation, approval, and adjustment of necessary budget appropriations;
- 120 (c) shall specify the date it is to become effective if adopted, which shall not be earlier  
121 than the first day of January next following the election of officers under the new plan; and
- 122 (d) notwithstanding any other provision of this title and except with respect to an  
123 optional plan that proposes the adoption of the county commission or expanded county  
124 commission form of government, with respect to the county budget:
- 125 (i) may provide that the county auditor's role is to be the budget officer, to project  
126 county revenues, and to prepare a tentative budget to present to the county executive; and
- 127 (ii) shall provide that the county executive's role is to prepare and present a proposed  
128 budget to the county legislative body, and the county legislative body's role is to adopt a final  
129 budget.
- 130 (2) Subject to Subsection (3), an optional plan may include provisions that are  
131 considered necessary or advisable to the effective operation of the proposed optional plan.
- 132 (3) An optional plan may not include any provision that is inconsistent with or  
133 prohibited by the Utah Constitution or any statute.
- 134 (4) Each optional plan proposing to change the form of government to a form under  
135 Section 17-52-504 or 17-52-505 shall:
- 136 (a) provide for the same executive and legislative officers as are specified in the  
137 applicable section for the form of government being proposed by the optional plan;
- 138 (b) provide for the election of the county council;
- 139 (c) specify the number of county council members, which shall be an odd number from  
140 three to nine;
- 141 (d) specify whether the members of the county council are to be elected from districts,  
142 at large, or by a combination of at large and by district;
- 143 (e) specify county council members' qualifications and terms and whether the terms are  
144 to be staggered;
- 145 (f) contain procedures for filling vacancies on the county council, consistent with the  
146 provisions of Section 20A-1-508 or 20A-1-508.1; and
- 147 (g) state the initial compensation, if any, of county council members and procedures for  
148 prescribing and changing compensation.
- 149 (5) Each optional plan proposing to change the form of government to the county

150 commission form under Section 17-52-501 or the expanded county commission form under  
151 Section 17-52-502 shall specify:

152 (a) (i) for the county commission form of government, that the county commission  
153 shall have three members; or

154 (ii) for the expanded county commission form of government, whether the county  
155 commission shall have five or seven members;

156 (b) the terms of office for county commission members and whether the terms are to be  
157 staggered;

158 (c) whether members of the county commission are to be elected from districts, at  
159 large, or by a combination of at large and from districts; and

160 (d) if any members of the county commission are to be elected from districts, the  
161 district residency requirements for those commission members.

162 Section 4. Section **17-53-104** is amended to read:

163 **17-53-104. Vacancy in a county office -- Vacancies in the office of county attorney**  
164 **or district attorney.**

165 (1) Except as provided in Subsection (2), a vacancy in a county office shall be filled as  
166 provided in Section 20A-1-508 or 20A-1-508.1.

167 (2) A vacancy in the office of county attorney or district attorney shall be filled as  
168 provided in Sections 20A-1-509.1, 20A-1-509.2, and 20A-1-509.3.

169 Section 5. Section **20A-1-508** is amended to read:

170 **20A-1-508. Midterm vacancies in county elected offices.**

171 (1) As used in this section:

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

175 (b) "County offices" does not mean:

176 (i) a position as a member of the county legislative body of a county of the first ~~§~~ → [;] **or** ~~←~~ ~~§~~  
177 second ~~§~~ → [; **or third**] ~~←~~ ~~§~~ class; or

178 (ii) the offices of president and vice president of the United States, United States  
179 senators and representatives, members of the Utah Legislature, state constitutional officers,  
180 county attorneys, district attorneys, and judges.

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

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

187 (ii) ~~That~~ The county central committee described in Subsection (2)(b)(i) shall, within  
188 30 days, submit the names of three nominees for the interim replacement to the county  
189 legislative body.

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

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

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

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

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

199 (d) A person appointed as interim replacement under this Subsection (2) shall hold  
200 office until ~~their~~ the person's successor is elected and has qualified.

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

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

204 (ii) the vacancy occurs after the election at which the ~~person~~ office holder was elected  
205 but before April 10 of the next even-numbered year.

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

208 (ii) ~~All persons~~ A person intending to become ~~candidates~~ a candidate for the vacant  
209 office shall:

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

212 (B) if nominated as a party candidate under Chapter 8, Political Party Formation and  
213 Procedures or qualified as an [~~independent~~] unaffiliated candidate or write-in candidate under  
214 ~~Chapter [8, Political Party Formation and Procedures]~~ 9, Candidate Qualifications and  
215 Nominating Procedures, run in the regular general election.

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

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

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

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

223 (A) the vacancy exists; and

224 (B) identifies the date and time by which a person interested in becoming a candidate  
225 [~~must~~] shall file a declaration of candidacy.

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

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

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

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

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

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

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

240 (b) When the conditions established in Subsection (5)(a) are met, the county central  
241 committees of each political party registered under this title that wishes to submit a candidate  
242 for the vacant office shall summarily certify the name of one candidate to the county clerk for

243 placement on the regular general election ballot.

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

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

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

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

253 (ii) ~~[That]~~ The county central committee described in Subsection (6)(b)(i) shall, within  
254 30 days, submit the names of three nominees to fill the vacancy to the county legislative body.

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

257 (c) (i) If the county legislative body fails to appoint a person to fill the vacancy within  
258 45 days, the county clerk shall send to the governor a letter that:

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

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

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

264 (d) A person appointed to fill the vacancy under this Subsection (6) shall hold office  
265 until ~~[their]~~ the person's successor is elected and has qualified.

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

269 (8) Nothing in this section prevents or prohibits ~~[independent candidates]~~ an  
270 unaffiliated candidate from filing a declaration of candidacy for the office within the same time  
271 limits.

272 (9) (a) Each person elected under Subsection (3), (4), or (5) to fill a vacancy in a  
273 county office shall serve for the remainder of the unexpired term of the ~~[person who created the~~

274 ~~vacancy]~~ office holder who vacated the office and until a successor is elected and qualified.

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

277 Section 6. Section **20A-1-508.1** is enacted to read:

278 **20A-1-508.1. Midterm vacancies in county legislative bodies in counties of the**  
279 **first ~~§~~ [;] or ~~←~~§ second ~~§~~ [; and third] ~~←~~§ class.**

280 (1) As used in this section "vacant office" means a position that is vacated by an office  
281 holder of a county legislative body of a county of the first ~~§~~ [;] or ~~←~~§ second ~~§~~ [; or third] ~~←~~§  
281a class.

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

285 (b) (i) To appoint an interim replacement, the county legislative body shall give notice  
286 of the vacant office to the county central committee of the same political party of the prior  
287 office holder and invite that committee to submit the name of a nominee to fill the vacant  
288 office.

289 (ii) The county central committee described in Subsection (2)(b)(i) shall, within 30  
290 days, submit the name of the nominee for the interim replacement to the county legislative  
291 body.

292 (iii) The county legislative body shall, at the next regular meeting of the county  
293 legislative body, appoint the person whose name was submitted by the county central  
294 committee to serve out the unexpired term.

295 (c) (i) If the county legislative body fails to appoint an interim replacement to fill the  
296 vacant office as provided under Subsection (2)(b), the county clerk shall send to the governor a  
297 letter that:

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

300 (B) contains the name of the nominee submitted by the county central committee.

301 (ii) The governor shall appoint the nominee as an interim replacement to fill the vacant  
302 office within 30 days after receipt of the letter.

303 (d) A person appointed as interim replacement under this Subsection (2) shall hold  
304 office until the person's successor is elected and has qualified.

305 (3) (a) The requirements of this Subsection (3) apply to a vacant office that becomes  
306 vacant if:

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

308 (ii) the vacant office occurs after the election at which the office holder was elected but  
309 before April 10 of the next even-numbered year.

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

312 (ii) A person intending to become a candidate for the vacant office shall:

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

315 (B) if nominated as a party candidate under Chapter 8, Political Party Formation and  
316 Procedures, or qualified as an unaffiliated candidate or write-in candidate under Chapter 9,  
317 Candidate Qualifications and Nominating Procedures, run in the regular general election.

318 (4) (a) The requirements of this Subsection (4) apply to a vacant office that becomes  
319 vacant if:

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

321 (ii) the vacant office occurs after April 9 of the next even-numbered year but more than  
322 50 days before the regular primary election.

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

325 (A) the vacant office exists; and

326 (B) identifies the date and time by which a person interested in becoming a candidate  
327 shall file a declaration of candidacy.

328 (ii) A person intending to become a candidate for the vacant office shall, within five  
329 days after the date that the notice is made, ending at 5 p.m. on the fifth day, file a declaration of  
330 candidacy for the vacant office as required by Chapter 9, Part 2, Candidate Qualifications and  
331 Declarations of Candidacy.

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

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

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

336 before the regular primary election.

337 (5) (a) The requirements of this Subsection (5) apply to a vacant office that becomes  
338 vacant:

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

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

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

346 (6) (a) The requirements of this Subsection (6) apply to a vacant office that becomes  
347 vacant:

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

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

351 (b) (i) When the conditions established in Subsection (6)(a) are met, the county  
352 legislative body shall give notice of the vacant office to the county central committee of the  
353 same political party as the prior office holder and invite that committee to submit the name of a  
354 nominee to fill the vacant office.

355 (ii) The county central committee described in Subsection (6)(b)(i) shall, within 30  
356 days, submit the name of the nominee to fill the vacant office to the county legislative body.

357 (iii) The county legislative body shall, at the next regular meeting of the county  
358 legislative body, appoint the person whose name was submitted by the county central  
359 committee to serve out the unexpired term.

360 (c) (i) If the county legislative body fails to appoint a person to fill the vacant office as  
361 provided under Subsection (6)(b), the county clerk shall send to the governor a letter that:

362 (A) informs the governor that the county legislative body has failed to appoint a person  
363 to fill the vacant office within the statutory time period; and

364 (B) contains the name of the nominee submitted by the county central committee.

365 (ii) The governor shall appoint the nominee to fill the vacant office within 30 days after  
366 receipt of the letter.

367 (d) A person appointed to fill the vacant office under this Subsection (6) shall hold  
368 office until the person's successor is elected and has qualified.

369 (7) Except as otherwise provided by law, the county legislative body may appoint a  
370 replacement to fill a vacant office that occurs in a vacant office previously filled by  
371 appointment of the county legislative body.

372 (8) Nothing in this section prevents or prohibits an unaffiliated candidate from filing a  
373 declaration of candidacy for the vacant office within the same time limits as provided in this  
374 section.

375 (9) (a) A person elected under Subsection (3), (4), or (5) to fill a vacant office shall  
376 serve for the remainder of the unexpired term of the office holder who vacated the office and  
377 until a successor is elected and qualified.

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

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**S.B. 203 2nd Sub. (Salmon) - Vacancies in County Elected Offices**

**Fiscal Note**

2010 General Session  
State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**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.

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