

CANDIDATE REPLACEMENT AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Patrice M. Arent

Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:

This bill addresses candidate vacancies for certain local offices.

Highlighted Provisions:

This bill:

- ▶ provides for the certification of a replacement candidate to fill a vacancy in the candidacy for certain local offices;
- ▶ removes a provision prohibiting a municipal candidate from withdrawing from an election less than 23 days before an election; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

20A-9-203, as last amended by Laws of Utah 2014, Chapter 38

ENACTS:

20A-1-510.1, Utah Code Annotated 1953

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



28 Section 1. Section **20A-1-510.1** is enacted to read:

29 **20A-1-510.1. Candidate vacancies in local office.**

30 (1) A vacancy that occurs in a candidacy for an elected office in a local political
 31 subdivision may be filled in accordance with the requirements of this section if:

32 (a) a nonpartisan primary election is held for the office;

33 (b) the vacancy occurs after the date of the primary election but before:

34 (i) for a county office, August 31; or

35 (ii) for all other offices, 65 days before the day of the applicable general election; and

36 (c) after the vacancy occurs, the number of remaining candidates for the office is less
 37 than or equal to the number of open positions to be filled for that office in the applicable
 38 general election.

39 (2) An election officer shall ~~H~~→ :

39a (a) ~~H~~ fill a candidate vacancy described in Subsection (1) by
 40 certifying the next available candidate for the office for the general election ballot who
 41 received the highest number of votes in the primary election without receiving a sufficient
 42 number of votes to qualify for the general election ballot ~~H~~→ [:] ; and

42a (b) immediately notify the candidate described in Subsection (2)(a) that the candidate is
 42b certified for the general election ballot. ~~H~~

43 Section 2. Section **20A-9-203** is amended to read:

44 **20A-9-203. Declarations of candidacy -- Municipal general elections.**

45 (1) (a) (i) [~~A person~~] An individual may become a candidate for any municipal office
 46 if:

47 (A) the [~~person~~] individual is a registered voter; and

48 (B) (I) the [~~person~~] individual has resided within the municipality in which that
 49 [~~person~~] individual seeks to hold elective office for the 12 consecutive months immediately
 50 before the date of the election; or

51 (II) if the territory in which the [~~person~~] individual resides was annexed into the
 52 municipality, the [~~person~~] individual has resided within the annexed territory or the
 53 municipality the 12 consecutive months immediately before the date of the election.

54 (ii) For purposes of determining whether [~~a person~~] an individual meets the residency
 55 requirement of Subsection (1)(a)(i)(B)(I) in a municipality that was incorporated less than 12
 56 months before the election, the municipality shall be considered to have been incorporated 12
 57 months before the date of the election.

58 (b) In addition to the requirements of Subsection (1)(a), each candidate for a municipal

59 council position shall, if elected from a district, be a resident of the council district from which
60 elected.

61 (c) In accordance with Utah Constitution, Article IV, Section 6, [~~any mentally~~
62 ~~incompetent person, any person convicted of a felony, or any person~~] a mentally incompetent
63 individual, an individual convicted of a felony, or an individual convicted of treason or a crime
64 against the elective franchise may not hold office in this state until the right to hold elective
65 office is restored under Section 20A-2-101.3 or 20A-2-101.5.

66 (2) (a) [~~A person~~] An individual seeking to become a candidate for a municipal office
67 shall:

68 (i) file a declaration of candidacy, in person with the city recorder or town clerk, during
69 the office hours described in Section 10-3-301 and not later than the close of those office
70 hours, between June 1 and June 7 of any odd-numbered year; and

71 (ii) pay the filing fee, if one is required by municipal ordinance.

72 (b) Any resident of a municipality may nominate a candidate for a municipal office by:

73 (i) filing a nomination petition with the city recorder or town clerk during the office
74 hours described in Section 10-3-301 and not later than the close of those office hours, between
75 June 1 and June 7 of any odd-numbered year; and

76 (ii) paying the filing fee, if one is required by municipal ordinance.

77 (3) (a) Before the filing officer may accept any declaration of candidacy or nomination
78 petition, the filing officer shall:

79 (i) read to the prospective candidate or person filing the petition the constitutional and
80 statutory qualification requirements for the office that the candidate is seeking; and

81 (ii) require the candidate or person filing the petition to state whether the candidate
82 meets those requirements.

83 (b) If the prospective candidate does not meet the qualification requirements for the
84 office, the filing officer may not accept the declaration of candidacy or nomination petition.

85 (c) If it appears that the prospective candidate meets the requirements of candidacy, the
86 filing officer shall:

87 (i) inform the candidate that the candidate's name will appear on the ballot as it is
88 written on the declaration of candidacy;

89 (ii) provide the candidate with a copy of the current campaign financial disclosure laws

90 for the office the candidate is seeking and inform the candidate that failure to comply will
91 result in disqualification as a candidate and removal of the candidate's name from the ballot;

92 (iii) provide the candidate with a copy of Section 20A-7-801 regarding the Statewide
93 Electronic Voter Information Website Program and inform the candidate of the submission
94 deadline under Subsection 20A-7-801(4)(a);

95 (iv) provide the candidate with a copy of the pledge of fair campaign practices
96 described under Section 20A-9-206 and inform the candidate that:

97 (A) signing the pledge is voluntary; and

98 (B) signed pledges shall be filed with the filing officer; and

99 (v) accept the declaration of candidacy or nomination petition.

100 (d) If the candidate elects to sign the pledge of fair campaign practices, the filing
101 officer shall:

102 (i) accept the candidate's pledge; and

103 (ii) if the candidate has filed for a partisan office, provide a certified copy of the
104 candidate's pledge to the chair of the county or state political party of which the candidate is a
105 member.

106 (4) Notwithstanding the requirement in Subsection (2)(a)(i) to file a declaration of
107 candidacy in person, ~~a person~~ an individual may designate an agent to file the form described
108 in Subsection (5) in person with the city recorder or town clerk if:

109 (a) the ~~person~~ individual is located outside the state during the filing period because:

110 (i) of employment with the state or the United States; or

111 (ii) the ~~person~~ individual is a member of:

112 (A) the active or reserve components of the Army, Navy, Air Force, Marine Corps, or
113 Coast Guard of the United States who is on active duty;

114 (B) the Merchant Marine, the commissioned corps of the Public Health Service, or the
115 commissioned corps of the National Oceanic and Atmospheric Administration of the United
116 States; or

117 (C) the National Guard on activated status;

118 (b) the ~~person~~ individual makes the declaration of candidacy described in Subsection
119 (5) to a person qualified to administer an oath;

120 (c) the ~~person~~ individual communicates with the city recorder or town clerk using an

121 electronic device that allows the [person] individual and the city recorder or town clerk to see
122 and hear each other; and

123 (d) the [person] individual provides the city recorder or town clerk with an email
124 address to which the filing officer may send the copies described in Subsection (3).

125 (5) (a) The declaration of candidacy shall substantially comply with the following
126 form:

127 "I, (print name) _____, being first sworn, say that I reside at _____ Street, City of _____,
128 County of _____, state of Utah, Zip Code _____, Telephone Number (if any) _____; that I am a
129 registered voter; and that I am a candidate for the office of _____ (stating the term). I will meet
130 the legal qualifications required of candidates for this office. I will file all campaign financial
131 disclosure reports as required by law and I understand that failure to do so will result in my
132 disqualification as a candidate for this office and removal of my name from the ballot. I
133 request that my name be printed upon the applicable official ballots. (Signed)

134 _____

135 Subscribed and sworn to (or affirmed) before me by _____ on this
136 _____(month\day\year).

137 (Signed) _____ (Clerk or other officer qualified to administer oath)"

138 (b) An agent designated to file a declaration of candidacy under Subsection (4) may not
139 sign the form described in Subsection (5)(a).

140 (6) (a) A registered voter may be nominated for municipal office by submitting a
141 petition signed, with a holographic signature, by:

142 (i) 25 residents of the municipality who are at least 18 years old; or

143 (ii) 20% of the residents of the municipality who are at least 18 years old.

144 (b) (i) The petition shall substantially conform to the following form:

145 "NOMINATION PETITION

146 The undersigned residents of (name of municipality) being 18 years old or older
147 nominate (name of nominee) to the office of _____ for the (two or four-year term, whichever is
148 applicable)."

149 (ii) The remainder of the petition shall contain lines and columns for the signatures of
150 persons signing the petition and their addresses and telephone numbers.

151 (7) If the declaration of candidacy or nomination petition fails to state whether the

152 nomination is for the two or four-year term, the clerk shall consider the nomination to be for
153 the four-year term.

154 (8) (a) The clerk shall verify with the county clerk that all candidates are registered
155 voters.

156 (b) Any candidate who is not registered to vote is disqualified and the clerk may not
157 print the candidate's name on the ballot.

158 (9) Immediately after expiration of the period for filing a declaration of candidacy, the
159 clerk shall:

160 (a) cause the names of the candidates as they will appear on the ballot to be published:

161 (i) in at least two successive publications of a newspaper with general circulation in the
162 municipality; and

163 (ii) as required in Section 45-1-101; and

164 (b) notify the lieutenant governor of the names of the candidates as they will appear on
165 the ballot.

166 (10) ~~[(A)]~~ Except as provided in Subsection (11)(c), an individual may not amend a
167 declaration of candidacy or nomination petition filed under this section ~~[may not be amended~~
168 ~~after the expiration of the period for filing a declaration of candidacy]~~ after the candidate filing
169 period ends.

170 (11) (a) A declaration of candidacy or nomination petition ~~[filed]~~ that an individual
171 files under this section is valid unless a person files a written objection ~~[is filed]~~
172 within five days after the last day for filing.

173 (b) If ~~[an]~~ a person files an objection ~~[is made]~~, the clerk shall:

174 (i) mail or personally deliver notice of the objection to the affected candidate
175 immediately; and

176 (ii) decide any objection within 48 hours after ~~[it]~~ the objection is filed.

177 (c) If the clerk sustains the objection, the candidate may, within three days after the day
178 on which the clerk sustains the objection, correct the problem for which the objection is
179 sustained by amending the candidate's declaration of candidacy or nomination petition ~~[within~~
180 ~~three days after the objection is sustained],~~ or by filing a new declaration ~~[within three days~~
181 ~~after the objection is sustained]~~ of candidacy.

182 (d) (i) The clerk's decision upon objections to form is final.

183 (ii) The clerk's decision upon substantive matters is reviewable by a district court if
184 prompt application is made to the district court.

185 (iii) The decision of the district court is final unless the Supreme Court, in the exercise
186 of its discretion, agrees to review the lower court decision.

187 ~~[(12) Any person who filed a declaration of candidacy and was nominated, and any
188 person who was nominated by a nomination petition, may, any time up to 23 days before the
189 election, withdraw the nomination by filing a written affidavit with the clerk.]~~

190 (12) A candidate who qualifies for the ballot under this section may withdraw as a
191 candidate by filing a written affidavit with the municipal clerk.

Legislative Review Note
Office of Legislative Research and General Counsel