

HB0091S02 compared with HB0091

~~text~~ shows text that was in HB0091 but was deleted in HB0091S02.

Inserted text shows text that was not in HB0091 but was inserted into HB0091S02.

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Representative Norman K Thurston proposes the following substitute bill:

COUNTY COMMISSION ELECTION AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Norman K Thurston

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to county commissioner elections.

Highlighted Provisions:

This bill:

- ▶ ~~text~~allows a county to modify the process by which a candidate for county commission is elected when there is more than one vacant county commission position; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

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Utah Code Sections Affected:

AMENDS:

17-52-401, as last amended by Laws of Utah 2012, Chapter 17

17-52-501, as renumbered and amended by Laws of Utah 2000, Chapter 133

17-52-502, as last amended by Laws of Utah 2005, Chapter 42

20A-1-508, as last amended by Laws of Utah 2011, Chapters 35, 297, and 327

20A-9-409, as enacted by Laws of Utah 2014, Chapter 17

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

Section 1. Section **17-52-401** is amended to read:

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

(1) Each optional plan proposed under this chapter:

(a) shall propose the adoption of one of the forms of county government listed in

Subsection 17-52-402(1)(a);

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

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

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

(iii) continuity of existing ordinances and regulations;

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

(v) making of interim and temporary appointments; and

(vi) preparation, approval, and adjustment of necessary budget appropriations;

(c) shall specify the date it is to become effective if adopted, which may not be earlier than the first day of January next following the election of officers under the new plan; and

(d) notwithstanding any other provision of this title and except with respect to an optional plan that proposes the adoption of the county commission or expanded county commission form of government, with respect to the county budget shall provide that the

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county executive's role is to prepare and present a proposed budget to the county legislative body, and the county legislative body's role is to adopt a final budget.

(2) Subject to Subsection (3), an optional plan may include provisions that are considered necessary or advisable to the effective operation of the proposed optional plan.

(3) An optional plan may not include any provision that is inconsistent with or prohibited by the Utah Constitution or any statute.

(4) Each optional plan proposing to change the form of government to a form under Section 17-52-504 or 17-52-505 shall:

(a) provide for the same executive and legislative officers as are specified in the applicable section for the form of government being proposed by the optional plan;

(b) provide for the election of the county council;

(c) specify the number of county council members, which shall be an odd number from three to nine;

(d) specify whether the members of the county council are to be elected from districts, at large, or by a combination of at large and by district;

(e) specify county council members' qualifications and terms and whether the terms are to be staggered;

(f) contain procedures for filling vacancies on the county council, consistent with the provisions of Section 20A-1-508; and

(g) state the initial compensation, if any, of county council members and procedures for prescribing and changing compensation.

(5) Each optional plan proposing to change the form of government to the county commission form under Section 17-52-501 or the expanded county commission form under Section 17-52-502 shall specify:

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

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

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

(c) whether members of the county commission are to be elected from districts, at

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large, or by a combination of at large and from districts; ~~[and]~~

(d) if any members of the county commission are to be elected from districts, the district residency requirements for those commission members~~[-]; and~~

(e) if any members of the county commission are to be elected at large, ~~{that}~~whether the election of county commission members is subject to the provisions of ~~{Subsections}~~Subsection 17-52-501(~~{4}~~ and ~~{5}~~6) or ~~{Subsections}~~Subsection 17-52-502(~~{4}~~ and ~~{5}~~6).

Section 2. Section **17-52-501** is amended to read:

17-52-501. County commission form of government -- Commission member elections.

(1) As used in this section:

(a) "Midterm vacancy" means a county commission position that is being filled at an election for less than the position's full term ~~{described}~~as established in:

(i) Subsection (4)(a); or {in}

(ii) a county's optional plan under Subsection 17-52-401(5)(b).

(b) "Open position" means a county commission position that is being filled at a regular general election for the position's full term ~~{described}~~as established in:

(i) Subsection (4)(a); or {in}

(ii) a county's optional plan under Subsection 17-52-401(5)(b).

(c) "Opt-in county" means a county that has, in accordance with Subsection (6)(a), chosen to conduct county commissioner elections in accordance with Subsection (6).

~~{1}~~ (2) Each county operating under the county commission form of government shall be governed by a county commission consisting of three members.

~~{2}~~ (3) A county commission under a county commission form of government is both the county legislative body and the county executive and has the powers, duties, and functions of a county legislative body under Chapter 53, Part 2, County Legislative Body, and the powers, duties, and functions of a county executive under Chapter 53, Part 3, County Executive.

~~{3}~~ (4) Except as otherwise provided in an optional plan adopted under this chapter:

(a) the term of office of each county commission member is four years;

(b) the terms of county commission members shall be staggered so that two members

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are elected at a regular general election date that alternates with the regular general election date of the other member; and

(c) each county commission member shall be elected;

(i) at large, unless otherwise required by court order; and

(ii) subject to the provisions of this section, in accordance with Title 20A, Election

Code.

(5) Except as provided in Subsection (6):

~~(4)~~ (a) ~~If~~ if two county commission positions are vacant for an election, the positions shall be designated "county commission seat A" and "county commission seat B~~(A)~~:"

~~Each~~ each candidate who files a declaration of candidacy when two positions are vacant shall designate on the declaration of candidacy form whether the candidate is a candidate for seat A or seat B~~(A)~~; and

~~No~~ no person may file a declaration of candidacy for, be a candidate for, or be elected to two county commission positions in the same election. ~~Each~~

~~(5)6~~ (a) if there is more than one open position or more than one midterm vacancy, the candidates, in a number equal to the number of open positions or midterm vacancies, who receive the highest number of votes are:

~~(i) for the purposes of a regular primary election, nominated by the candidates' party for the open positions or midterm vacancies; and~~

~~(ii) for the purposes of a regular general election, elected to fill the open positions or midterm vacancies.~~

~~(b) If~~ A county of the first or second class may, through an alternate plan as described in Subsection 17-52-401(5) or by ordinance, choose to conduct county commissioner elections in accordance with this Subsection (6).

(b) When issuing the notice of election required by Subsection 20A-5-101(2), the clerk of an opt-in county shall, if there is at least one open position and at least one midterm vacancy:

~~(i) the county clerk shall~~, designate:

~~(A)~~ i each open position as "open position"; and

~~(B)~~ ii each midterm vacancy as "midterm vacancy" ~~(A)~~.

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~~(fii)c) ~~each~~~~ An individual who files a declaration of candidacy for the office of county commissioner in an opt-in county:

(i) if there is more than one open position, is not required to indicated which open position the individual is running for;

(ii) if there is at least one open position and at least one midterm vacancy, shall designate on the declaration of candidacy whether the individual is filing for an open position or a midterm vacancy; and

~~(iii) ~~the candidates, in a number equal to the number of open positions and midterm vacancies, who receive the highest number of votes, respectively, are:~~~~

~~—— (A) for the purposes of a regular primary election, nominated by the candidates' party for the open positions and midterm vacancies; and~~

~~—— (B) for the purposes of a regular general election, elected to fill the open positions and midterm vacancies.~~

~~—— (c) ~~An individual~~ may not file a declaration of candidacy for an open position and a midterm vacancy in the same election.~~

(d) If there is an open position and a midterm vacancy being voted upon in the same election in an opt-in county, the county clerk shall indicate on the ballot for the election which positions are open positions and which positions are midterm vacancies.

(e) In an opt-in county:

(i) the candidates for open positions, in a number equal to the number of open positions, who receive the highest number of votes are:

(A) for the purposes of a regular primary election, nominated by the candidates' party for the open positions; and

(B) for the purposes of a regular general election, elected to fill the open positions; and

(ii) the candidates for midterm vacancies, in a number equal to the number of midterm vacancies, who receive the highest number of votes are:

(A) for the purposes of a regular primary election, nominated by the candidates' party for the midterm vacancies; and

(B) for the purposes of a regular general election, elected to fill the midterm vacancies.

Section 3. Section 17-52-502 is amended to read:

17-52-502. Expanded county commission form of government -- Commission

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member elections.

(1) As used in this section:

(a) "Midterm vacancy" means the same as that term is defined in ~~Subsection~~ Section 17-52-501~~(1)~~.

(b) "Open position" means the same as that term is defined in ~~Subsection~~ Section 17-52-501~~(1)~~.

(c) "Opt-in county" means a county that has, in accordance with Subsection (6)(a), chosen to conduct county commissioner elections in accordance with Subsection (6).

~~(1)~~ (2) Each county operating under an expanded county commission form of government shall be governed by a county commission consisting of five or seven members.

~~(2)~~ (3) A county commission under the expanded county commission form of government is both the county legislative body and the county executive and has the powers, duties, and functions of a county legislative body under Chapter 53, Part 2, County Legislative Body, and the powers, duties, and functions of a county executive under Chapter 53, Part 3, County Executive.

~~(3)~~ (4) Except as otherwise provided in an optional plan adopted under this chapter:

(a) the term of office of each county commission member is four years;

(b) the terms of county commission members shall be staggered so that approximately half the members are elected at alternating regular general election dates; and

(c) each county commission member shall be elected~~[-]~~:

(i) at large, unless otherwise required by court order; and

(ii) subject to the provisions of this section, in accordance with Title 20A, Election

Code.

(5) Except as provided in Subsection (6):

~~(4)~~ (a) ~~if~~ if multiple at-large county commission positions are vacant for an election, the positions shall be designated "county commission seat A," "county commission seat B," and so on as necessary for the number of vacant positions~~[-]~~:

~~(b)~~ ~~Each~~ each candidate who files a declaration of candidacy when multiple positions are vacant shall designate the letter of the county commission seat for which the candidate is a candidate~~[-]~~; and

~~(c)~~ ~~No~~ no person may file a declaration of candidacy for, be a candidate for, or be

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elected to two county commission positions in the same election. ~~{}~~

~~{5}6~~ (a) ~~{If there is more than one open position or more than one midterm vacancy, the candidates, in a number equal to the number of open positions or midterm vacancies, who receive the highest number of votes are:~~

~~—— (i) for the purposes of a regular primary election, nominated by the candidates' party for the open positions or midterm vacancies; and~~

~~—— (ii) for the purposes of a regular general election, elected to fill the open positions or midterm vacancies.~~

~~—— (b) If~~ A county of the first or second class may, through an alternate plan as described in Subsection 17-52-401(5) or by ordinance, choose to conduct county commissioner elections in accordance with this Subsection (6).

(b) When issuing the notice of election required by Subsection 20A-5-101(2), the clerk of an opt-in county shall, if there is at least one open position and at least one midterm vacancy

~~—— (i) the county clerk shall~~, designate:

~~{A}i~~ each open position as "open position"; and

~~{B}ii~~ each midterm vacancy as "midterm vacancy" ~~{,}~~.

~~{iii}c~~ ~~{each}~~ An individual who files a declaration of candidacy for the office of county commissioner in an opt-in county:

(i) if there is more than one open position, is not required to indicated which open position the individual is running for;

(ii) if there is at least one open position and at least one midterm vacancy, shall designate on the declaration of candidacy whether the individual is filing for an open position or a midterm vacancy; and

(iii) ~~{ the candidates, in a number equal to the number of open positions and midterm vacancies, who receive the highest number of votes, respectively, are:~~

~~—— (A) for the purposes of a regular primary election, nominated by the candidates' party for the open positions and midterm vacancies; and~~

~~—— (B) for the purposes of a regular general election, elected to fill the open positions and midterm vacancies.~~

~~—— (c) An individual~~ may not file a declaration of candidacy for an open position and a

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midterm vacancy in the same election.

(d) If there is an open position and a midterm vacancy being voted upon in the same election in an opt-in county, the county clerk shall indicate on the ballot for the election which positions are open positions and which positions are midterm vacancies.

(e) In an opt-in county:

(i) the candidates for open positions, in a number equal to the number of open positions, who receive the highest number of votes are:

(A) for the purposes of a regular primary election, nominated by the candidates' party for the open positions; and

(B) for the purposes of a regular general election, elected to fill the open positions; and

(ii) the candidates for midterm vacancies, in a number equal to the number of midterm vacancies, who receive the highest number of votes are:

(A) for the purposes of a regular primary election, nominated by the candidates' party for the midterm vacancies; and

(B) for the purposes of a regular general election, elected to fill the midterm vacancies.

Section 4. Section **20A-1-508** is amended to read:

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

(1) As used in this section:

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

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

(b) "Party liaison" means the political party officer designated to serve as a liaison with each county legislative body on all matters relating to the political party's relationship with a county as required by Section 20A-8-401.

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

(b) (i) To appoint an interim replacement, the county legislative body shall give notice

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of the vacancy to the party liaison of the same political party of the prior office holder and invite that party liaison to submit the name of a person to fill the vacancy.

(ii) That party liaison shall, within 30 days, submit the name of the person selected in accordance with the party constitution or bylaws as described in Section 20A-8-401 for the interim replacement to the county legislative body.

(iii) The county legislative body shall no later than five days after the day on which a party liaison submits the name of the person for the interim replacement appoint the person to serve out the unexpired term.

(c) (i) If the county legislative body fails to appoint an interim replacement to fill the vacancy in accordance with Subsection (2)(b)(iii), the county clerk shall send to the governor a letter that:

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

(B) contains the name of the person to fill the vacancy submitted by the party liaison.

(ii) The governor shall appoint the person named by the party liaison as an interim replacement to fill the vacancy within 30 days after receipt of the letter.

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

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

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

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

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

(ii) ~~[All persons]~~ An individual intending to become ~~[candidates]~~ a candidate for the vacant office shall ~~;~~

~~— (A) (i)]~~ file a declaration of candidacy ~~[according to the procedures and requirements of]~~ in accordance with:

(A) Chapter 9, Part 2, Candidate Qualifications and Declarations of Candidacy ~~(i)~~ and ~~(i)~~

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(B) for a county commission office, Subsection 17-52-501(~~(5)(6)~~) or 17-52-502(~~(5)(6)~~), if applicable; and

~~[(B) if]~~ (iii) An individual who is nominated as a party candidate for the vacant office or qualified as an independent or write-in candidate under Chapter 8, Political Party Formation and Procedures for the vacant office, shall run in the regular general election.

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

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

(ii) the vacancy occurs after April 9 of the next even-numbered year but more than 75 days before the regular primary election.

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

(A) the vacancy exists; and

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

(ii) ~~[All persons]~~ An individual intending to become ~~[candidates for the vacant offices]~~ a candidate for a vacant office shall, within five days after the date that the notice is made, ending at the close of normal office hours on the fifth day, file a declaration of candidacy for the vacant office ~~[as required by]~~ in accordance with:

(A) Chapter 9, Part 2, Candidate Qualifications and Declarations of Candidacy~~[(1)(1); and (1)(1)~~

(B) for a county commission office, Subsection 17-52-501(~~(5)(6)~~) or 17-52-502(~~(5)(6)~~), if applicable.

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

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

(B) certify the name of the candidate or candidates to the county clerk at least 60 days before the regular primary election.

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

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

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(ii) when 75 days or less remain before the regular primary election but more than 65 days remain before the regular general election.

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

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

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

(ii) if the vacant office has an unexpired term of two years or more but 65 days or less remain before the next regular general election.

(b) (i) When the conditions established in Subsection (6)(a) are met, the county legislative body shall give notice of the vacancy to the party liaison of the same political party as the prior office holder and invite that party liaison to submit the name of a person to fill the vacancy.

(ii) That party liaison shall, within 30 days, submit the name of the person to fill the vacancy to the county legislative body.

(iii) The county legislative body shall no later than five days after the day on which a party liaison submits the name of the person to fill the vacancy appoint the person to serve out the unexpired term.

(c) (i) If the county legislative body fails to appoint a person to fill the vacancy in accordance with Subsection (6)(b)(iii), the county clerk shall send to the governor a letter that:

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

(B) contains the name of the person to fill the vacancy submitted by the party liaison.

(ii) The governor shall appoint the person named by the party liaison to fill the vacancy within 30 days after receipt of the letter.

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

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

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legislative body.

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

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

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

Section 5. Section **20A-9-409** is amended to read:

20A-9-409. Primary election provisions relating to qualified political party.

(1) The fourth Tuesday of June of each even-numbered year is designated as a regular primary election day.

(2) (a) A qualified political party that nominates one or more candidates for an elective office under Section 20A-9-407 and does not have a candidate qualify as a candidate for that office under Section 20A-9-408, may, but is not required to, participate in the primary election for that office.

~~[(3)]~~ (b) A qualified political party that has only one candidate qualify as a candidate for an elective office under Section 20A-9-408 and does not nominate a candidate for that office under Section 20A-9-407, may, but is not required to, participate in the primary election for that office.

~~[(4)]~~ (c) A qualified political party that nominates one or more candidates for an elective office under Section 20A-9-407 and has one or more candidates qualify as a candidate for that office under Section 20A-9-408 shall participate in the primary election for that office.

~~[(5)]~~ (d) A qualified political party that has two or more candidates qualify as candidates for an elective office under Section 20A-9-408 and does not nominate a candidate for that office under Section 20A-9-407 shall participate in the primary election for that office.

(3) Notwithstanding Subsection (2), [in an opt-in county, as defined in Section 17-52-501 or Section 17-52-502](#), a qualified political party shall participate in the primary election for a county commission office if:

(a) there is more than one:

(i) open position as defined in Section 17-52-501; or

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(ii) midterm vacancy as defined in Section 17-52-501; and

(b) the number of candidates ~~{for the open positions or the number of candidates for the midterm vacancies }~~ nominated under Section 20A-9-407 or qualified under Section 20A-9-408 ~~{exceeds}~~ for the ~~{number of}~~ respective open positions or midterm vacancies ~~{respectively}~~ exceeds the number of respective open positions or midterm vacancies.
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Legislative Review Note

Office of Legislative Research and General Counsel