

REMOVAL OF LOCAL ELECTED OFFICIALS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rebecca Chavez-Houck

Senate Sponsor: _____

LONG TITLE

General Description:

This bill establishes a process for removing a local elected official from office due to mental incapacity.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ establishes a process for removing a local elected official from office due to mental incapacity, which requires all of the following:

- gathering signatures from a certain percentage of individuals who are eligible to vote for the elected official whose removal is sought;

- a public hearing and a unanimous vote of the local legislative body to seek removal of the elected official; and

- a proceeding in district court for removal of the elected official.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

20A-1-901, Utah Code Annotated 1953



59 (iii) the surname shown on the petition exactly matches the surname shown on the
60 official register, and the given names differ only because one of the given names shown is
61 accompanied by a first or middle initial or a middle name that is not shown on the other record;
62 or

63 (iv) the surname shown on the petition exactly matches the surname shown on the
64 official register, and the given names differ only because one of the given names shown is an
65 alphabetically corresponding initial that has been provided in the place of a given name shown
66 on the other record.

67 (b) "Substantially similar name" does not include a name with an initial or a middle
68 name shown on the petition that does not match a different initial or middle name shown on the
69 official register.

70 Section 2. Section **20A-1-902** is enacted to read:

71 **20A-1-902. Petition for removal of county or municipal officer -- Signature**
72 **requirements -- Petition contents.**

73 (1) An individual who believes that, due to mental incapacity, an officer is no longer
74 able to fulfill the duties of the officer's office may seek to have the officer removed from office
75 by filing a petition for removal of the officer with:

76 (a) the clerk of the county or municipality; or

77 (b) if the petition is for removal of the clerk, the legislative body of the county or
78 municipality.

79 (2) An individual described in Subsection (1) shall obtain signatures of registered
80 voters who are eligible to vote in a race for the applicable office equal to:

81 (a) 10% of all the votes cast in the last election for the applicable office if the total
82 number of votes exceeds 25,000;

83 (b) 12-1/2% of all the votes cast in the last election for the applicable office if the total
84 number of votes does not exceed 25,000 but is more than 10,000;

85 (c) 15% of all the votes cast in the last election for the applicable office if the total
86 number of votes does not exceed 10,000 but is more than 2,500;

87 (d) 20% of all the votes cast in the last election if the total number of votes does not
88 exceed 2,500 but is more than 500;

89 (e) 25% of all the votes cast in the last election if the total number of votes does not

90 exceed 500 but is more than 250; and

91 (f) 30% of all the votes cast in the last election if the total number of votes does not
92 exceed 250.

93 (3) A petition for removal shall contain:

94 (a) the name, office, and, if applicable, district of the challenged officer;

95 (b) the name and residential address of at least five sponsors of the petition;

96 (c) a statement indicating that each of the sponsors is a registered voter who has:

97 (i) if the petition seeks removal of a county officer, voted in a regular general election

98 in Utah within the last three years; or

99 (ii) if the petition seeks removal of a municipal officer:

100 (A) voted in a regular municipal election in Utah within the last three years; or

101 (B) if the sponsor's failure to vote within the last three years is due to the sponsor's
102 residing in a municipal district that participates in a municipal election every four years, voted
103 in a regular municipal election in Utah within the last five years;

104 (d) the signature of each of the sponsors, attested to by a notary public;

105 (e) a statement that, under penalty of perjury, the sponsors have a good faith belief that
106 the challenged officer is, due to mental incapacity, no longer able to fulfill the duties of the
107 challenged officer's office; and

108 (f) a description of the facts upon which the sponsors' belief is based.

109 Section 3. Section **20A-1-903** is enacted to read:

110 **20A-1-903. Form of signature sheets.**

111 (1) Each signature sheet for a petition for removal shall:

112 (a) be printed on sheets of paper 8-1/2 inches long and 11 inches wide;

113 (b) be ruled with a horizontal line three-fourths inch from the top, with the space above
114 the line blank for the purpose of binding;

115 (c) contain, printed below the horizontal line in not less than eight-point bold type, the
116 title "Petition for Removal of (name of challenged officer) from the Office of (name of office
117 and, if applicable, district) Due to Mental Incapacity";

118 (d) contain the word "Warning" printed or typed at the top of each signature sheet
119 under the title;

120 (e) contain, to the right of the word "Warning," the following statement printed or

121 typed in not less than eight-point type:

122 "It is a class A misdemeanor for a person to sign a petition for removal with any other
123 name than the person's own name, to knowingly sign the person's name more than once for the
124 same petition for removal, or to sign a petition for removal when the person knows that the
125 person is not registered to vote or not eligible to vote in a race for the office to which the
126 petition for removal relates.";

127 (f) contain horizontally ruled lines three-eighths inch apart under the statement
128 described in Subsection (1)(e);

129 (g) be vertically divided into columns as follows:

130 (i) the first column shall appear at the extreme left of the sheet, be five-eighths inch
131 wide, be headed with "For Office Use Only" and be subdivided with a light vertical line down
132 the middle with the left subdivision entitled "Registered and Eligible" and the right subdivision
133 untitled;

134 (ii) the next column shall be 2-1/2 inches wide, headed "Registered, Eligible Voter's
135 Printed Name (must be legible to be counted)";

136 (iii) the next column shall be 2-1/2 inches wide, headed "Signature of Registered,
137 Eligible Voter";

138 (iv) the next column shall be one inch wide, headed "Birth Date or Age (Optional)";
139 and

140 (v) the final column shall be 4-3/8 inches wide, headed "Street Address, City, Zip
141 Code"; and

142 (h) at the bottom of the sheet, contain the following statement: "Birth date or age
143 information is not required, but may be used to verify your identity with voter registration
144 records. If you choose not to provide this information, it is possible that your signature will not
145 be verified as a valid signature if you change your address before petition signatures are
146 verified or if the information you provide does not match your voter registration records."

147 (2) The final page of each packet shall contain the following printed or typed
148 statement:

149 "Verification

150 State of Utah, County of _____

151 I, _____, of _____, hereby state that:

152 I am at least 18 years old.

153 All the names that appear in this packet were signed by individuals who professed to be
154 the individuals whose names appear in this packet, and each individual signed the individual's
155 name on this packet in my presence.

156 I believe that each individual has printed and signed the individual's name and written
157 the individual's post office address and residence correctly, and that each signer is a registered
158 voter and is eligible to vote in a race for the office to which the petition to remove relates.

159 _____ "

160 (3) The form described in this section, if substantially followed, is sufficient, regardless
161 of minor clerical or technical errors.

162 Section 4. Section **20A-1-904** is enacted to read:

163 **20A-1-904. Circulation requirements -- Filing entity to provide materials.**

164 (1) In order to obtain the necessary number of signatures required by this part, the
165 sponsors shall circulate packets that meet the form requirements of this part.

166 (2) Within five days after the day on which a filing entity receives a petition that
167 complies with Section [20A-1-902](#), the filing entity shall furnish to the sponsors:

168 (a) one copy of the petition; and

169 (b) one signature sheet.

170 (3) The sponsors of the petition shall:

171 (a) arrange and pay for the printing of all additional copies of the petition and signature
172 sheets; and

173 (b) ensure that the copies of the petition and signature sheets meet the form
174 requirements described in this section.

175 (4) (a) The sponsors may prepare the petition for circulation by creating multiple
176 petition packets.

177 (b) The sponsors shall prepare petition packets by binding a copy of the petition and no
178 more than 50 signature sheets together at the top in a manner that the packets may be
179 conveniently opened for signing.

180 (c) The sponsors are not required to attach a uniform number of signature sheets to
181 each packet.

182 (5) (a) After the sponsors have prepared a sufficient number of packets, the sponsors

183 shall deliver the packets to the filing entity.

184 (b) The filing entity shall:

185 (i) number each packet and return the packets to the sponsors within five working days
186 after the day on which the filing entity receives the packets; and

187 (ii) keep a record of the numbers assigned to each packet.

188 Section 5. Section **20A-1-905** is enacted to read:

189 **20A-1-905. Obtaining signatures -- Verification -- Removal of signature.**

190 (1) An individual who is a registered voter and is eligible to vote in a race for the
191 applicable office may sign a petition for removal.

192 (2) (a) The sponsors shall ensure that the individual in whose presence each signature
193 sheet is signed:

194 (i) is at least 18 years old; and

195 (ii) verifies each signature sheet by completing the verification printed on the last page
196 of each packet.

197 (b) An individual may not sign the verification printed on the last page of the packet if
198 the individual signed a signature sheet in the packet.

199 (3) (a) An individual who signs a petition may remove the individual's signature from
200 the petition by submitting a notarized statement to the filing entity requesting removal of the
201 individual's signature.

202 (b) The filing entity shall comply with a request described in Subsection (3)(a) if the
203 request is received by the filing entity before the filing entity delivers the packets to the
204 certifying entity for verification.

205 (c) A signature may not be removed from a petition after the filing entity delivers the
206 packets to the certifying entity for verification.

207 Section 6. Section **20A-1-906** is enacted to read:

208 **20A-1-906. Submitting the petition for removal -- Certification of signatures --**
209 **Transfer to filing entity.**

210 (1) (a) The sponsors shall deliver each signed and verified packet to the certifying
211 entity no later than 90 days after the day on which the filing entity returns the packets to the
212 sponsor under Subsection [20A-1-904\(5\)\(b\)](#).

213 (b) The certifying entity shall reject a packet that is delivered to the certifying entity

214 after the deadline described in Subsection (1)(a).

215 (2) The certifying entity shall, no later than two weeks after the day on which the
216 sponsors deliver the packets described in Subsection (1)(a) to the certifying entity:

217 (a) check the names of each individual who completed the verification on the last page
218 of each initiative packet to determine whether the individual is at least 18 years old;

219 (b) submit the name of each individual under the age of 18 who completed a
220 verification packet to the attorney general and county attorney;

221 (c) determine whether each individual who signed the petition is a registered voter and
222 eligible to sign the petition;

223 (d) certify on the petition whether each individual is a registered voter and eligible to
224 sign the petition; and

225 (e) deliver all of the verified packets to the filing entity.

226 (3) A certifying entity may not certify a signature on a packet that is not verified in
227 accordance with Section [20A-1-905](#).

228 Section 7. Section **20A-1-907** is enacted to read:

229 **20A-1-907. Verification of petition signatures.**

230 The certifying entity shall use the following procedures in determining whether a
231 signature is valid:

232 (1) when a signer's name and address shown on the petition exactly match a name and
233 address shown on the official register and the signer's signature appears substantially similar to
234 the signature on the statewide voter registration database, the certifying entity shall declare the
235 signature valid;

236 (2) when there is no exact match of an address and a name, the certifying entity shall
237 declare the signature valid if:

238 (a) the address on the petition matches the address of an individual on the official
239 register with a substantially similar name; and

240 (b) the signer's signature appears substantially similar to the signature on the statewide
241 voter registration database of the individual described in Subsection (2)(a);

242 (3) when there is no match of an address and a substantially similar name, the
243 certifying entity shall declare the signature valid if:

244 (a) the birth date or age on the petition matches the birth date or age of an individual on

245 the official register with a substantially similar name; and

246 (b) the signer's signature appears substantially similar to the signature on the statewide
247 voter registration database of the individual described in Subsection (3)(a); and

248 (4) if a signature is not declared valid under Subsection (1), (2), or (3), the certifying
249 entity shall declare the signature to be invalid.

250 Section 8. Section **20A-1-908** is enacted to read:

251 **20A-1-908. Evaluation by the filing entity.**

252 (1) When each packet is received from the certifying entity, the filing entity shall check
253 off from the filing entity's record the number of each packet filed.

254 (2) (a) After all of the packets are received by the filing entity, the filing entity shall
255 count the number of the names certified by the certifying entity that appear on each verified
256 signature sheet.

257 (b) If the total number of certified names from each verified signature sheet equals or
258 exceeds the number of names required by Section [20A-1-902](#) and the requirements of this part
259 are met, the filing entity shall mark upon the front of the petition the word "sufficient."

260 (c) If the total number of certified names from each verified signature sheet does not
261 equal or exceed the number of names required by Section [20A-1-902](#) or a requirement of this
262 part is not met, the filing entity shall mark upon the front of the petition the word "insufficient."

263 (d) The filing entity shall immediately notify any one of the sponsors of the filing
264 entity's finding.

265 (3) If the filing entity finds the total number of certified signatures from each verified
266 signature sheet to be insufficient, any sponsor may file a written demand with the filing entity
267 for a recount of the signatures appearing on the petition for removal in the presence of any
268 sponsor.

269 (4) The sponsors may not submit additional signatures for the petition after the petition
270 is declared insufficient.

271 (5) If the filing entity refuses to accept and file a petition for removal, a petition
272 sponsor may, within 10 days after the day on which the refusal occurs, apply to the Supreme
273 Court for an extraordinary writ to compel the filing entity to accept and file the petition for
274 removal.

275 (6) If the filing entity declares a petition sufficient under Subsection (2)(b), the filing

276 entity shall deliver the petition to the legislative body for the applicable county or municipality.

277 Section 9. Section **20A-1-909** is enacted to read:

278 **20A-1-909. Misconduct -- Penalty.**

279 (1) An individual is guilty of a class A misdemeanor if the individual:

280 (a) signs any name other than the individual's own name to any petition for removal;

281 (b) knowingly signs the individual's name more than once for the same petition for
282 removal; or

283 (c) signs a petition for removal knowing that the individual is not a registered voter or
284 is not eligible to sign the petition.

285 (2) It is unlawful for any individual to sign the verification for a petition packet
286 knowing that:

287 (a) the individual is not at least 18 years of age;

288 (b) the individual did not witness the signatures of the individuals whose names appear
289 in the petition packet; or

290 (c) one or more individuals whose signatures appear in the petition packet is not
291 registered to vote or is not eligible to sign the petition.

292 Section 10. Section **20A-1-910** is enacted to read:

293 **20A-1-910. Action by local legislative body.**

294 (1) (a) Within 30 days after the day on which a local legislative body receives a petition
295 for removal under Subsection [20A-1-908\(6\)](#), the local legislative body shall hold a public
296 hearing on the petition.

297 (b) The local legislative body shall serve notice of the public hearing and a copy of the
298 petition on the challenged officer at least 14 days before the day of the public hearing.

299 (2) At the public hearing, the local legislative body shall:

300 (a) review the petition; and

301 (b) consider any testimony or other evidence on the issue of the alleged mental
302 incapacity of the challenged officer.

303 (3) If the challenged officer is a member of the local legislative body, the challenged
304 officer is recused from voting or otherwise acting in the challenged officer's capacity as a
305 member of the local legislative body with respect to the hearing.

306 (4) The challenged officer:

307 (a) has a right to be present at the hearing and to present testimony and evidence; and

308 (b) may not be compelled to be present at the hearing or to give any testimony or
309 evidence.

310 (5) (a) Except as provided in Subsection (5)(b), if, after the presentation of testimony
311 and evidence at the hearing, the local legislative body unanimously determines that the
312 challenged officer lacks mental capacity to continue to serve in office, the local legislative body
313 shall file an action against the challenged officer in district court to have the challenged officer
314 removed from office.

315 (b) If the challenged officer is a member of the local legislative body, the vote is
316 unanimous if all members of the local legislative body, other than the challenged officer,
317 determine that the challenged officer lacks mental capacity to continue to serve in office.

318 (6) If, after the presentation of testimony and evidence at the hearing, the local
319 legislative body does not unanimously determine that the challenged officer lacks mental
320 capacity to continue to serve in office, the local legislative body shall dismiss the petition.

321 Section 11. Section **20A-1-911** is enacted to read:

322 **20A-1-911. Court action for removal.**

323 (1) A petition filed in district court for removal of a challenged officer shall be entitled
324 "Petition for removal from office due to mental incapacity" and shall be captioned "In re: the
325 alleged incapacity of (name of challenged officer)."

326 (2) The petition shall include:

327 (a) the office held by the challenged officer and, if applicable, the district;

328 (b) a statement that the local legislative body has unanimously determined that the
329 challenged officer lacks the mental capacity to continue serving in office;

330 (c) a description of the facts and evidence upon which the statement described in
331 Subsection (2)(b) are based; and

332 (d) a recitation of facts showing that the requirements of this part that are prerequisites
333 to filing a petition have been complied with.

334 (3) The district court may order the challenged officer to submit to an evaluation, at the
335 expense of the county or municipality where the challenged officer serves, by a qualified
336 medical professional to determine the mental capacity of the challenged officer.

337 (4) (a) If, after a de novo hearing on the matter, the district court finds, by clear and

338 convincing evidence, that, due to mental incapacity, the challenged officer lacks the ability to
339 continue to serve in office, the district court shall remove the challenged officer from office
340 and declare the office vacant.

341 (b) If, after a de novo hearing on the matter, the district court does not find, by clear
342 and convincing evidence, that, due to mental incapacity, the challenged officer lacks the ability
343 to continue to serve in office, the district court shall dismiss the action.

344 (5) The district court shall order the local legislative body to pay the costs and attorney
345 fees of the challenged officer if the court finds that the action of the local legislative body was
346 frivolous or in bad faith.

Legislative Review Note
Office of Legislative Research and General Counsel