

**CANDIDATE REPLACEMENT AMENDMENTS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Patrice M. Arent**

Senate Sponsor: Margaret Dayton

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**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 2017, Chapter 91

ENACTS:

**20A-1-510.1**, Utah Code Annotated 1953

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

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

**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:  
40           (a) fill a candidate vacancy described in Subsection (1) by certifying the next available  
41 candidate for the office for the general election ballot who received the highest number of votes  
42 in the primary election without receiving a sufficient number of votes to qualify for the general  
43 election ballot; and  
44           (b) immediately notify the candidate described in Subsection (2)(a) that the candidate  
45 is certified for the general election ballot.

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

47           **20A-9-203. Declarations of candidacy -- Municipal general elections.**

48           (1) An individual may become a candidate for any municipal office if:  
49           (a) the individual is a registered voter; and  
50           (b) (i) the individual has resided within the municipality in which the individual seeks  
51 to hold elective office for the 12 consecutive months immediately before the date of the  
52 election; or  
53           (ii) the territory in which the individual resides was annexed into the municipality, the  
54 individual has resided within the annexed territory or the municipality the 12 consecutive  
55 months immediately before the date of the election.

56           (2) (a) For purposes of determining whether an individual meets the residency  
57 requirement of Subsection (1)(b)(i) in a municipality that was incorporated less than 12 months

58 before the election, the municipality is considered to have been incorporated 12 months before  
59 the date of the election.

60 (b) In addition to the requirements of Subsection (1), each candidate for a municipal  
61 council position shall, if elected from a district, be a resident of the council district from which  
62 the candidate is elected.

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

68 (3) (a) An individual seeking to become a candidate for a municipal office shall,  
69 regardless of the nomination method by which the individual is seeking to become a candidate:

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

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

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

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

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

79 (4) (a) Before the filing officer may accept any declaration of candidacy or nomination  
80 petition, the filing officer shall:

81 (i) read to the prospective candidate or individual filing the petition the constitutional  
82 and statutory qualification requirements for the office that the candidate is seeking; and

83 (ii) require the candidate or individual filing the petition to state whether the candidate  
84 meets those requirements.

85 (b) If the prospective candidate does not meet the qualification requirements for the

86 office, the filing officer may not accept the declaration of candidacy or nomination petition.

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

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

91 (ii) provide the candidate with a copy of the current campaign financial disclosure laws  
92 for the office the candidate is seeking and inform the candidate that failure to comply will  
93 result in disqualification as a candidate and removal of the candidate's name from the ballot;

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

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

99 (A) signing the pledge is voluntary; and

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

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

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

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

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

108 (5) Notwithstanding the requirement in Subsection (3)(a)(i) to file a declaration of  
109 candidacy in person, an individual may designate an agent to file the form described in  
110 Subsection (6) in person with the city recorder or town clerk if:

111 (a) the individual is located outside the state during the filing period because:

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

113 (ii) the individual is a member of:

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

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

119 (C) the National Guard on activated status;

120 (b) the individual makes the declaration of candidacy described in Subsection (6) to an  
121 individual qualified to administer an oath;

122 (c) the individual communicates with the city recorder or town clerk using an  
123 electronic device that allows the individual and the city recorder or town clerk to see and hear  
124 each other; and

125 (d) the individual provides the city recorder or town clerk with an email address to  
126 which the filing officer may send the copies described in Subsection (4).

127 (6) (a) The declaration of candidacy shall substantially comply with the following  
128 form:

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

136 \_\_\_\_\_

137 Subscribed and sworn to (or affirmed) before me by \_\_\_\_ on this  
138 \_\_\_\_\_(month\day\year).

139 (Signed) \_\_\_\_\_ (Clerk or other officer qualified to administer oath)".

140 (b) An agent designated to file a declaration of candidacy under Subsection (5) may not  
141 sign the form described in Subsection (6)(a).

142 (7) (a) A registered voter may be nominated for municipal office by submitting a  
143 petition signed, with a holographic signature, by:

- 144 (i) 25 residents of the municipality who are at least 18 years old; or
- 145 (ii) 20% of the residents of the municipality who are at least 18 years old.

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

147 "NOMINATION PETITION

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

151 (ii) The remainder of the petition shall contain lines and columns for the signatures of  
152 individuals signing the petition and the individuals' addresses and telephone numbers.

153 (8) If the declaration of candidacy or nomination petition fails to state whether the  
154 nomination is for the two-year or four-year term, the clerk shall consider the nomination to be  
155 for the four-year term.

156 (9) (a) The clerk shall verify with the county clerk that all candidates are registered  
157 voters.

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

160 (10) Immediately after expiration of the period for filing a declaration of candidacy, the  
161 clerk shall:

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

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

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

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

168 (11) [A] Except as provided in Subsection (12)(c), an individual may not amend a  
169 declaration of candidacy or nomination petition filed under this section [may not be amended

170 ~~after the expiration of the period for filing a declaration of candidacy]~~ after the candidate filing  
171 period ends.

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

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

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

178 (ii) decide any objection within 48 hours after the objection is filed.

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

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

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

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

189 [~~(13) An individual who files a declaration of candidacy and is nominated, and an~~  
190 ~~individual who is nominated by a nomination petition, may, any time up to 23 days before the~~  
191 ~~election, withdraw the nomination by filing a written affidavit with the clerk.]~~

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