

**CANDIDATE REPLACEMENT AMENDMENTS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Patrice M. Arent**

Senate Sponsor: Margaret Dayton

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**LONG TITLE**

**Committee Note:**

The Government Operations Interim Committee recommended this bill.

**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.**

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

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

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

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

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

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

(2) An election officer shall:

(a) fill a candidate vacancy described in Subsection (1) by certifying the next available candidate for the office for the general election ballot who received the highest number of votes in the primary election without receiving a sufficient number of votes to qualify for the general election ballot; and

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

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

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

(1) An individual may become a candidate for any municipal office if:

(a) the individual is a registered voter; and

(b) (i) the individual has resided within the municipality in which the individual seeks to hold elective office for the 12 consecutive months immediately before the date of the election; or

(ii) the territory in which the individual resides was annexed into the municipality, the individual has resided within the annexed territory or the municipality the 12 consecutive months immediately before the date of the election.

(2) (a) For purposes of determining whether an individual meets the residency

59 requirement of Subsection (1)(b)(i) in a municipality that was incorporated less than 12 months  
60 before the election, the municipality is considered to have been incorporated 12 months before  
61 the date of the election.

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

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

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

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

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

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

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

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

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

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

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

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

89 (c) If it appears that the prospective candidate meets the requirements of candidacy, the

90 filing officer shall:

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

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

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

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

101 (A) signing the pledge is voluntary; and

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

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

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

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

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

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

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

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

115 (ii) the individual is a member of:

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

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

121 (C) the National Guard on activated status;

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

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

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

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

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

138 \_\_\_\_\_

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

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

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

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

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

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

149 "NOMINATION PETITION

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

152 applicable)."

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

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

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

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

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

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

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

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

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

170 (11) ~~[A] Except as provided in Subsection (12)(c), an individual may not amend a~~  
171 ~~declaration of candidacy or nomination petition filed under this section [may not be amended~~  
172 ~~after the expiration of the period for filing a declaration of candidacy] after the candidate filing~~  
173 ~~period ends.~~

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

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

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

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

181 (c) If the clerk sustains the objection, the candidate may, within three days after the day  
182 on which the clerk sustains the objection, correct the problem for which the objection is

183 sustained by amending the candidate's declaration of candidacy or nomination petition [~~within~~  
184 ~~three days after the objection is sustained~~], or by filing a new declaration [~~within three days~~  
185 ~~after the objection is sustained~~] of candidacy.

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

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

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

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

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

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**