

LOCAL ELECTED OFFICER AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel W. Thatcher

House Sponsor: Craig Hall

LONG TITLE

Committee Note:

The Political Subdivisions Interim Committee recommended this bill.

General Description:

This bill establishes a process to remove a county elected officer from office for mental incapacity.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ establishes a process to remove a county elected officer from office for mental incapacity;
- ▶ provides that the provisions of this bill apply only to a county, with at least five members on the county legislative body, that opts into the provisions of this bill;
- ▶ requires a county to determine whether the county elected officer has the mental capacity to fulfill the essential functions of the applicable office, with or without reasonable accommodations;
- ▶ establishes a process for:
 - a voluntary mental capacity evaluation; or
 - if the county elected officer refuses to undergo a voluntary mental capacity evaluation, a court order to undergo the evaluation;
- ▶ provides certain exceptions to the Open and Public Meetings Act;



- 28 ▶ permits the county legislative body to remove a county elected officer from office if
- 29 the qualified medical professional who conducts the mental capacity evaluation
- 30 determines that the county elected officer lacks the mental capacity to fulfill the
- 31 essential functions of the applicable office, with or without reasonable
- 32 accommodations;
- 33 ▶ requires the county legislative body to provide reasonable accommodations under
- 34 certain circumstances; and
- 35 ▶ provides for the award of court costs, attorney fees, and sanctions under certain
- 36 circumstances.

37 **Money Appropriated in this Bill:**

38 None

39 **Other Special Clauses:**

40 None

41 **Utah Code Sections Affected:**

42 ENACTS:

- 43 **20A-1-901**, Utah Code Annotated 1953
- 44 **20A-1-902**, Utah Code Annotated 1953
- 45 **20A-1-903**, Utah Code Annotated 1953
- 46 **20A-1-904**, Utah Code Annotated 1953



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

49 Section 1. Section **20A-1-901** is enacted to read:

50 **Part 9. Removal of County Elected Officer**

51 **20A-1-901. Definitions.**

52 As used in this part:

- 53 (1) "Applicable office" means the office held by the subject officer.
- 54 (2) "Mental capacity evaluation" means an evaluation by a qualified medical
- 55 professional to determine whether the subject officer has the mental capacity to fulfill the
- 56 essential functions of the applicable office, with or without reasonable accommodations.
- 57 (3) "Officer" means a county officer.
- 58 (4) "Results of the mental capacity evaluation" means a statement by the qualified

59 medical professional who conducts the mental capacity evaluation that the subject officer:

60 (a) has the mental capacity to fulfill the essential functions of the applicable office,
61 without reasonable accommodations;

62 (b) has the mental capacity to fulfill the essential functions of the applicable office,
63 with specified reasonable accommodations; or

64 (c) lacks the mental capacity to fulfill the essential functions of the applicable office,
65 with or without reasonable accommodations.

66 (5) "Subject officer" means the officer who is subject to proceedings under this part to
67 determine whether the officer has the mental capacity to fulfill the essential functions of the
68 officer's office, with or without reasonable accommodations.

69 (6) "Unanimous" means a vote of all members of a county legislative body where all
70 members of the county legislative body, not including the subject officer, vote on the same side
71 of the motion.

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

73 **20A-1-902. Removal of officer from office -- Initial determination.**

74 (1) (a) A county legislative body may remove an officer from office in accordance with
75 this part if:

76 (i) the county legislative body adopts the provisions of this part by ordinance, without
77 additions, deletions, or modifications;

78 (ii) the officer lacks the mental capacity to fulfill the essential functions of the
79 applicable office, with or without reasonable accommodations; and

80 (iii) the county legislative body consists of at least five members.

81 (b) This section does not apply to a county, unless the county:

82 (i) has adopted the ordinance described in Subsection (1)(a)(i); and

83 (ii) has at least five members on the county legislative body.

84 (2) Before removing the subject officer from office under Subsection (1), the county
85 legislative body shall hold a closed meeting, as authorized under Subsection [52-4-205](#)(1)(a), to
86 discuss whether the subject officer has the mental capacity to fulfill the essential functions of
87 the officer's office, with or without reasonable accommodations.

88 (3) At the meeting described in Subsection (2):

89 (a) the county legislative body shall give the subject officer the opportunity to discuss

90 the subject officer's mental capacity to fulfill the essential functions of the applicable office and
 91 any reasonable accommodations that would enable the subject officer to continue to function in
 92 the applicable office; and

93 (b) the subject officer may bring one individual to the meeting to assist the subject
 94 officer in the discussion.

95 (4) (a) After the discussion described in Subsection (3), the county legislative body
 96 may exclude the subject officer and the individual described in Subsection (3)(b) from the
 97 closed portion of the meeting to discuss whether the subject officer has the mental capacity to
 98 fulfill the essential functions of the applicable office, with or without reasonable
 99 accommodations.

100 (b) If the subject officer is a member of the county legislative body:

101 (i) the county legislative body may exclude the subject officer and the individual
 102 described in Subsection (3)(b) from the portion of the closed meeting described in Subsection
 103 (4)(a); and

104 (ii) the subject officer is recused from voting on any decision, described in this part, of
 105 the county legislative body.

106 (c) Notwithstanding the provisions of Title 52, Chapter 4, Open and Public Meetings
 107 Act, the county legislative body shall meet in a closed meeting to vote on whether the subject
 108 officer has the ability to fulfill the essential functions of the applicable office, with or without
 109 reasonable accommodations.

110 (5) If the county legislative body ~~H~~→ **[unanimously concludes]** reaches a unanimous
 110a **preliminary conclusion** ←~~H~~ that the subject officer lacks
 111 the mental capacity to fulfill the essential functions of the applicable office, with or without
 112 reasonable accommodations, the county legislative body shall:

113 (a) confidentially inform the subject officer of the vote; and

114 (b) allow the subject officer five calendar days, after the day on which the county
 115 legislative body makes the conclusion, to:

116 (i) resign from the applicable office;

117 (ii) (A) voluntarily agree to undergo a mental capacity evaluation at the expense of the
 118 county; and

119 (B) sign a waiver to disclose only the results of the mental capacity evaluation to the
 120 county legislative body; or

121 (iii) refuse to take any action.

122 (6) If the county legislative body does not ~~H~~→ ~~[unanimously conclude]~~ reach a unanimous
 122a preliminary conclusion ←H that the subject
 123 officer lacks the mental capacity to fulfill the essential functions of the applicable office, with
 124 or without reasonable accommodations:

125 (a) the county legislative body shall:

126 (i) publicly announce that the vote failed, without disclosing the number of votes for or
 127 against and without disclosing the vote of individual members of the county legislative body;
 128 and

129 (ii) provide any necessary reasonable accommodations; and

130 (b) the subject officer may continue to function in the applicable office.

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

132 **20A-1-903. Voluntary evaluation.**

133 (1) This section does not apply to a county, unless the county:

134 (a) has adopted the ordinance described in Subsection [20A-1-902\(1\)\(a\)\(i\)](#); and

135 (b) has at least five members on the county legislative body.

136 (2) At the end of the five-day period described in Subsection [20A-1-902\(5\)\(b\)](#), if the
 137 subject officer agrees to the voluntary mental capacity evaluation option described in
 138 Subsection [20A-1-902\(5\)\(b\)\(ii\)](#):

139 (a) the county legislative body and the subject officer shall mutually agree on a
 140 qualified medical professional to conduct the mental capacity evaluation; and

141 (b) the subject officer shall undergo the mental capacity evaluation within 15 calendar
 142 days after the day on which the subject officer agrees to undergo the mental capacity
 143 evaluation, or longer if the county legislative body and the subject officer agree to an extended
 144 period.

145 (3) Notwithstanding the provisions of Title 52, Chapter 4, Open and Public Meetings
 146 Act, any action taken by the county legislative body under Subsection (2) shall occur in a
 147 closed meeting.

148 (4) If the qualified medical professional concludes that the subject officer has the
 149 mental capacity to fulfill the essential functions of the applicable office, with or without
 150 reasonable accommodations:

151 (a) the county legislative body shall provide any necessary reasonable

152 accommodations; and

153 (b) the subject officer may continue to function in the applicable office.

154 (5) (a) If the qualified medical professional concludes that the subject officer lacks the
155 mental capacity to fulfill the essential functions of the applicable office, with or without
156 reasonable accommodations, the subject officer may resign from office.

157 (b) If the subject officer does not resign from office within five calendar days after the
158 day on which the qualified medical professional makes the conclusion described in Subsection
159 (5)(a), the county legislative body may, in an open meeting by unanimous vote, remove the
160 subject officer from the applicable office.

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

162 **20A-1-904. Court order for involuntary evaluation.**

163 (1) This section does not apply to a county, unless the county:

164 (a) has adopted the ordinance described in Subsection [20A-1-902\(1\)\(a\)\(i\)](#); and

165 (b) has at least five members on the county legislative body.

166 (2) The county legislative body may file an action against the subject officer in district
167 court for an order to undergo a mental capacity evaluation if:

168 (a) the county legislative body:

169 (i) unanimously concludes that the subject officer lacks the mental capacity to fulfill
170 the essential functions of the applicable office, with or without reasonable accommodations, in
171 accordance with the requirements of Section [20A-1-902](#); and

172 (ii) complies with the requirements of Subsections [20A-1-902\(2\)](#) through (5); and

173 (b) (i) the subject officer does not, within the five-day period described in Subsection
174 [20A-1-902\(5\)\(b\)](#):

175 (A) resign from the applicable office; or

176 (B) agree to undergo a voluntary mental capacity evaluation and sign a waiver to
177 disclose only the results of the mental capacity evaluation to the county legislative body;

178 (ii) the subject officer does not complete the mental capacity evaluation within the
179 15-day period described in Subsection [20A-1-903\(2\)\(b\)](#), or any longer period agreed to
180 between the subject officer and the county legislative body; or

181 (iii) the subject officer and the county legislative body cannot mutually agree on a
182 qualified medical professional to conduct the mental capacity evaluation.

183 (3) The district court shall order the subject officer to undergo a mental capacity
184 evaluation by a qualified medical professional appointed by the court, and shall provide only
185 the results of the mental capacity evaluation to the county legislative body, if the court finds
186 that there is reasonable cause to believe that the subject officer may lack the mental capacity to
187 fulfill the essential functions of the applicable office, with or without reasonable
188 accommodations.

189 (4) If the qualified medical professional concludes that the subject officer has the
190 mental capacity to fulfill the essential functions of the applicable office, with or without
191 reasonable accommodations:

192 (a) the county legislative body shall provide any necessary reasonable
193 accommodations;

194 (b) the subject officer may continue to function in the applicable office; and

195 (c) the court shall order the county legislative body to pay the court costs and
196 reasonable attorney fees of the subject officer.

197 (5) (a) If the qualified medical professional concludes that the subject officer lacks the
198 mental capacity to fulfill the essential functions of the applicable office, with or without
199 reasonable accommodations, the subject officer may resign from office.

200 (b) If the subject officer does not resign from office within five calendar days after the
201 day on which the qualified medical professional makes the conclusion described in Subsection
202 (5)(a), the county legislative body may, in an open meeting by unanimous vote, remove the
203 subject officer from the applicable office.

204 (6) The court shall dismiss an action filed under this section, and rescind any order to
205 undergo a mental capacity evaluation, if the subject officer resigns from the applicable office.

206 (7) The court may order sanctions against the county legislative body if the court finds,
207 by clear and convincing evidence, that the county legislative body filed or pursued an action
208 described in this section in bad faith.

Legislative Review Note
Office of Legislative Research and General Counsel