

1 **LOCAL ELECTED OFFICER AMENDMENTS**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Daniel W. Thatcher**

5 House Sponsor: Craig Hall

7 **LONG TITLE**

8 **General Description:**

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

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ establishes a process to remove a county elected officer from office for mental
15 incapacity;
- 16 ▶ provides that the provisions of this bill apply only to a county, with at least five
17 members on the county legislative body, that opts into the provisions of this bill;
- 18 ▶ requires a county to determine whether the county elected officer has the mental
19 capacity to fulfill the essential functions of the applicable office, with or without
20 reasonable accommodations;
- 21 ▶ establishes a process for:
 - 22 • a voluntary mental capacity evaluation; or
 - 23 • if the county elected officer refuses to undergo a voluntary mental capacity
24 evaluation, a court order to undergo the evaluation;
- 25 ▶ provides certain exceptions to the Open and Public Meetings Act;
- 26 ▶ permits the county legislative body to remove a county elected officer from office if
27 the qualified medical professional who conducts the mental capacity evaluation
28 determines that the county elected officer lacks the mental capacity to fulfill the
29 essential functions of the applicable office, with or without reasonable

30 accommodations;

31 ▶ requires the county legislative body to provide reasonable accommodations under
32 certain circumstances; and

33 ▶ provides for the award of court costs, attorney fees, and sanctions under certain
34 circumstances.

35 **Money Appropriated in this Bill:**

36 None

37 **Other Special Clauses:**

38 None

39 **Utah Code Sections Affected:**

40 ENACTS:

41 **20A-1-901**, Utah Code Annotated 1953

42 **20A-1-902**, Utah Code Annotated 1953

43 **20A-1-903**, Utah Code Annotated 1953

44 **20A-1-904**, Utah Code Annotated 1953



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

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

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

49 **20A-1-901. Definitions.**

50 As used in this part:

51 (1) "Applicable office" means the office held by the subject officer.

52 (2) "Mental capacity evaluation" means an evaluation by a qualified medical
53 professional to determine whether the subject officer has the mental capacity to fulfill the
54 essential functions of the applicable office, with or without reasonable accommodations.

55 (3) "Officer" means a county officer.

56 (4) "Results of the mental capacity evaluation" means a statement by the qualified
57 medical professional who conducts the mental capacity evaluation that the subject officer:

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

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

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

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

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

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

71 **20A-1-902. Removal of officer from office -- Initial determination.**

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

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

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

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

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

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

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

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

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

87 (a) the county legislative body shall give the subject officer the opportunity to discuss
88 the subject officer's mental capacity to fulfill the essential functions of the applicable office and
89 any reasonable accommodations that would enable the subject officer to continue to function in
90 the applicable office; and

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

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

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

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

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

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

108 (5) If the county legislative body reaches a unanimous preliminary conclusion that the
109 subject officer lacks the mental capacity to fulfill the essential functions of the applicable
110 office, with or without reasonable accommodations, the county legislative body shall:

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

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

- 114 (i) resign from the applicable office;
- 115 (ii) (A) voluntarily agree to undergo a mental capacity evaluation at the expense of the
- 116 county; and
- 117 (B) sign a waiver to disclose only the results of the mental capacity evaluation to the
- 118 county legislative body; or
- 119 (iii) refuse to take any action.

120 (6) If the county legislative body does not reach a unanimous preliminary conclusion
121 that the subject officer lacks the mental capacity to fulfill the essential functions of the
122 applicable office, with or without reasonable accommodations:

- 123 (a) the county legislative body shall:
- 124 (i) publicly announce that the vote failed, without disclosing the number of votes for or
- 125 against and without disclosing the vote of individual members of the county legislative body;
- 126 and
- 127 (ii) provide any necessary reasonable accommodations; and
- 128 (b) the subject officer may continue to function in the applicable office.

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

130 **20A-1-903. Voluntary evaluation.**

- 131 (1) This section does not apply to a county, unless the county:
- 132 (a) has adopted the ordinance described in Subsection [20A-1-902\(1\)\(a\)\(i\)](#); and
- 133 (b) has at least five members on the county legislative body.
- 134 (2) At the end of the five-day period described in Subsection [20A-1-902\(5\)\(b\)](#), if the
- 135 subject officer agrees to the voluntary mental capacity evaluation option described in
- 136 Subsection [20A-1-902\(5\)\(b\)\(ii\)](#):
- 137 (a) the county legislative body and the subject officer shall mutually agree on a
- 138 qualified medical professional to conduct the mental capacity evaluation; and
- 139 (b) the subject officer shall undergo the mental capacity evaluation within 15 calendar
- 140 days after the day on which the subject officer agrees to undergo the mental capacity
- 141 evaluation, or longer if the county legislative body and the subject officer agree to an extended

142 period.

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

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

149 (a) the county legislative body shall provide any necessary reasonable
150 accommodations; and

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

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

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

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

160 **20A-1-904. Court order for involuntary evaluation.**

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

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

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

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

166 (a) the county legislative body:

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

170 (ii) complies with the requirements of Subsections 20A-1-902(2) through (5); and
171 (b) (i) the subject officer does not, within the five-day period described in Subsection
172 20A-1-902(5)(b):

173 (A) resign from the applicable office; or
174 (B) agree to undergo a voluntary mental capacity evaluation and sign a waiver to
175 disclose only the results of the mental capacity evaluation to the county legislative body;

176 (ii) the subject officer does not complete the mental capacity evaluation within the
177 15-day period described in Subsection 20A-1-903(2)(b), or any longer period agreed to
178 between the subject officer and the county legislative body; or

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

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

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

190 (a) the county legislative body shall provide any necessary reasonable
191 accommodations;

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

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

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

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

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

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