

HB0171S01 compared with HB0171

~~text~~ shows text that was in HB0171 but was deleted in HB0171S01.

Inserted text shows text that was not in HB0171 but was inserted into HB0171S01.

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Senator Deidre M. Henderson proposes the following substitute bill:

TEMPORARY REPLACEMENTS FOR COUNTY OFFICES

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Val K. Potter

Senate Sponsor: ~~_____~~ Deidre M. Henderson

LONG TITLE

General Description:

This bill amends provisions related to the processes to fill a vacancy in a county office.

Highlighted Provisions:

This bill:

- ▶ exempts the offices of county legislative body member and a certain type of county executive from provisions that allow a temporary manager to fill the office in the event of a vacancy;
- ▶ establishes deadlines by which certain actions must be completed in the process to fill a vacancy in a county office;
- ▶ establishes provisions related to an unaffiliated or write-in candidate's access to the ballot to fill a vacancy in a county office; and
- ▶ makes technical changes.

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Money Appropriated in this Bill:

None

Other Special Clauses:

~~{ None }~~ This bill provides a coordination clause.

Utah Code Sections Affected:

AMENDS:

20A-1-508, as last amended by Laws of Utah 2018, Chapters 68 and 199

Utah Code Sections Affected by Coordination Clause:

20A-1-508, as last amended by Laws of Utah 2018, Chapters 68 and 199

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

Section 1. Section **20A-1-508** is amended to read:

20A-1-508. Midterm vacancies in county elected offices -- Temporary manager --

Interim replacement.

(1) As used in this section:

(a) (i) "County offices" includes the county executive, members of the county legislative body, the county treasurer, the county sheriff, the county clerk, the county auditor, the county recorder, the county surveyor, and the county assessor.

(ii) "County offices" does not include the office of county attorney, district attorney, or judge.

(b) "Party liaison" means the political party officer designated to serve as a liaison with each county legislative body on all matters relating to the political party's relationship with a county as required by Section 20A-8-401.

(2) (a) ~~[Until]~~ Except as provided in Subsection (2)(d), until a county legislative body appoints an interim replacement to fill a vacant county office under Subsection (3), the following shall temporarily ~~[fill]~~ discharge the duties of the county office as a temporary manager:

(i) for a county office with one chief deputy, the chief deputy;

(ii) for a county office with more than one chief deputy:

(A) the chief deputy with the most cumulative time served as a chief deputy for the county office; or

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(B) notwithstanding Subsection (2)(a)(ii)(A), if, before the vacating county officer vacates the office, the county officer files with the county clerk a written statement designating one of the county officer's chief deputies to discharge the duties of the county office in the event the county officer vacates the office, the designated chief deputy; or

(iii) for a county office without a chief deputy:

(A) if one management-level employee serving under the county office has a higher-seniority management level than any other employee serving under the county office, that management-level employee;

(B) if two or more management-level employees serving under the county office have the same and highest-seniority management level, the highest-seniority management-level employee with the most cumulative time served in the employee's current position; or

(C) notwithstanding Subsection (2)(a)(iii)(A) or (B), if, before the vacating county officer vacates the office, the county officer files with the county clerk a written statement designating one of the county officer's employees to discharge the county officer's duties in the event the county officer vacates the office, the designated employee.

(b) Except as provided in Subsection (2)(c), a temporary manager described in Subsection (2)(a) who temporarily [~~fills~~] discharges the duties of a county office holds the powers and duties of the county office until the county legislative body appoints an interim replacement under Subsection (3).

(c) The temporary manager described in Subsection (2)(a) who temporarily [~~fills~~] discharges the duties of a county office:

(i) may not take an oath of office for the county office as a temporary manager;

(ii) shall comply with Title 17, Chapter 36, Uniform Fiscal Procedures Act for Counties, and the county's budget ordinances and policies;

(iii) unless approved by the county legislative body, may not change the compensation of an employee;

(iv) unless approved by the county legislative body, may not promote or demote an employee or change an employee's job title;

(v) may terminate an employee only if the termination is conducted in accordance with:

(A) personnel rules described in Subsection 17-33-5(3) that are approved by the county legislative body; and

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(B) applicable law;

(vi) unless approved by the county legislative body, may not exceed by more than 5% an expenditure that was planned before the county office ~~[that]~~ for which the temporary manager ~~[fills]~~ discharges duties was vacated;

(vii) except as provided in Subsection (2)(c)(viii), may not receive a change in title or compensation; and

(viii) if approved by the county legislative body, may receive a performance award after:

(A) the county legislative body appoints an interim replacement under Subsection (3); and

(B) the interim replacement is sworn into office.

~~(d) This Subsection (2) does not apply to a vacancy in the office of:~~

~~— (i) county legislative body member; or~~

~~— (ii) county executive in a county that operates under the county executive-council form of government described in Section 17-52a-203.~~

(3) (a) Until a replacement is selected as provided in this section and has qualified, the county legislative body shall appoint an interim replacement to fill the vacant office by following the procedures and requirements of this Subsection (3).

(b) (i) To appoint an interim replacement, the county legislative body shall, within 10 days after the day on which the vacancy occurs, give notice of the vacancy to the party liaison of the same political party of the prior office holder and invite that party liaison to submit the name of ~~[a person]~~ an individual to fill the vacancy.

~~[(ii) That party liaison shall, within 30 days, submit the name of the person selected in accordance with the party constitution or bylaws as described in Section 20A-8-401 for the interim replacement to the county legislative body.]~~

(ii) That party liaison shall, within 30 days after the day on which the liaison receives the notice described in Subsection (3)(b)(i), or if the party liaison does not receive the notice, within 40 days after the day on which the vacancy occurs, submit to the county legislative body the name of an individual the party selects in accordance with the party's constitution or bylaws to serve as the interim replacement.

(iii) The county legislative body shall, no later than five days after the day on which a

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party liaison submits the name of the ~~[person for]~~ individual to serve as the interim replacement, appoint the ~~[person]~~ individual to serve out the unexpired term.

(c) (i) If the county legislative body fails to appoint an interim replacement to fill the vacancy in accordance with Subsection (3)(b)(iii), the county clerk shall, no later than five days after the day of the deadline described in Subsection (3)(b)(iii), send to the governor a letter that:

(A) informs the governor that the county legislative body has failed to appoint a replacement within the statutory time period; and

(B) contains the name of the ~~[person to fill the vacancy]~~ individual submitted by the party liaison to fill the vacancy.

(ii) The governor shall, within 10 days after the day on which the governor receives the letter described in Subsection (3)(c)(i), appoint the ~~[person]~~ individual named by the party liaison as an interim replacement to fill the vacancy [~~within 30 days after receipt of the letter~~].

(d) ~~[A person]~~ An individual appointed as interim replacement under this Subsection (3) shall hold office until ~~[their]~~ a successor is elected and has qualified.

(4) (a) The requirements of this Subsection (4) apply to all county offices that become vacant if:

(i) the vacant office has an unexpired term of two years or more; and

(ii) the vacancy occurs after the election at which the ~~[person]~~ officeholder was elected but before ~~[April 10]~~ the second Friday in March of the next even-numbered year.

(b) (i) When the conditions ~~[established]~~ described in Subsection (4)(a) are met, the county clerk shall as soon as practicable, but no later than 180 days before the next regular general election, notify the public and each registered political party that the vacancy exists.

(ii) An individual intending to become a party candidate for the vacant office shall file a declaration of candidacy in accordance with:

(A) Chapter 9, Part 2, Candidate Qualifications and Declarations of Candidacy; and

(B) for a county commission office, Subsection 17-52a-201(6) or 17-52a-202(6), if applicable.

(iii) An individual who is nominated as a party candidate ~~[for the vacant office or qualified as an independent or write-in candidate under Chapter 8, Political Party Formation and Procedures, for the vacant office]~~, who qualifies as an unaffiliated candidate for the vacant

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office under Chapter 9, Part 5, Candidates not Affiliated with a Party, or who qualifies as a write-in candidate for the vacant office under Chapter 9, Part 6, Write-in Candidates, shall run in the regular general election.

(5) (a) The requirements of this Subsection (5) apply to all county offices that become vacant if:

(i) the vacant office has an unexpired term of two years or more; and

(ii) the vacancy occurs ~~[after April 9]~~ on or after the second Friday in March of the next even-numbered year but more than 75 days before the regular primary election.

(b) ~~[(†)]~~ When the conditions ~~[established]~~ described in Subsection (5)(a) are met, the county clerk shall as soon as practicable, but no later than 70 days before the next regular primary election, notify the public and each registered political party ~~[that]~~:

~~[(A)]~~ (i) that the vacancy exists; and

~~[(B)]~~ ~~identifies the date and time by which a person interested in becoming a candidate shall file a declaration of candidacy.]~~

(ii) of the deadlines described in Subsection (5)(c)(i) and the deadlines established under Subsection (5)(d)(ii).

~~[(††)]~~ (c) (i) An individual intending to become a party candidate for a vacant office shall, within five days after the ~~[date that the notice is made]~~ day on which the notice is given, ending at the close of normal office hours on the fifth day, file a declaration of candidacy for the vacant office in accordance with:

(A) Chapter 9, Part 2, Candidate Qualifications and Declarations of Candidacy; and

(B) for a county commission office, Subsection 17-52a-201(6) or 17-52a-202(6), if applicable.

~~[(†††)]~~ (ii) The county central committee of each party shall:

(A) select a candidate or candidates from among those qualified candidates who have filed declarations of candidacy; and

(B) certify the name of the candidate or candidates to the county clerk ~~[at least]~~ as soon as practicable, but no later than 60 days before the regular primary election.

(d) (i) Except as provided in Subsection (5)(d)(ii), an individual intending to become a candidate for a vacant office who does not wish to affiliate with a registered political party shall file a verified certificate of nomination described in Section 20A-9-502 with the county

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clerk in accordance with Chapter 9, Part 5, Candidates not Affiliated with a Party.

(ii) (A) The county clerk shall establish, in the clerk's reasonable discretion, a deadline **that is not later than 65 days before the day of the next regular general election** by which an individual who is not affiliated with a registered political party is required to submit a certificate of nomination under Subsection (5)(d)(i).

(B) The county clerk shall establish the deadline described in Subsection (5)(d)(ii)(A) in a manner that gives an unaffiliated candidate an equal opportunity to access the regular general election ballot.

(e) An individual who is nominated as a party candidate for the vacant office, who qualifies as an unaffiliated candidate for the vacant office under Chapter 9, Part 5, Candidates not Affiliated with a Party, or who qualifies as a write-in candidate for the vacant office under Chapter 9, Part 6, Write-in Candidates, shall run in the regular general election.

(6) (a) The requirements of this Subsection (6) apply to all county offices that become vacant:

(i) if the vacant office has an unexpired term of two years or more; and

(ii) when 75 days or less remain before the regular primary election but more than 65 days remain before the regular general election.

(b) When the conditions [~~established~~] described in Subsection (6)(a) are met, the county [~~central committees~~] clerk shall, as soon as practicable, notify the public and each registered political party:

(i) that the vacancy exists; and

(ii) of the deadlines established under Subsection (6)(d).

(c) (i) Before the deadline that the county clerk establishes under Subsection (6)(d)(i)(A), the county central committee of each registered political party [~~registered under this title~~] that wishes to submit a candidate for the office shall [~~summarily~~] certify the name of one candidate to the county clerk for placement on the regular general election ballot.

(ii) Before the deadline that the county clerk establishes under Subsection (6)(d)(i)(B), a candidate who does not wish to affiliate with a registered political party shall file a verified certificate of nomination described in Section 20A-9-502 with the county clerk in accordance with Chapter 9, Part 5, Candidates not Affiliated with a Party.

(iii) Before the deadline that the county clerk establishes under Subsection (6)(d)(i)(C),

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a write-in candidate shall submit to the county clerk a declaration of candidacy described in Section 20A-9-601.

(d) (i) The county clerk shall establish, in the clerk's reasonable discretion, deadlines ~~that are not later than 65 days before the day of the next regular general election~~ by which:

(A) a registered political party is required to certify a name under Subsection (6)(c)(i);

(B) an individual who does not wish to affiliate with a registered political party is required to submit a certificate of nomination under Subsection (6)(c)(ii); and

(C) a write-in candidate is required to submit a declaration of candidacy under Subsection (6)(c)(iii).

(ii) The county clerk shall establish deadlines under Subsection (6)(d)(i) in a manner that gives an unaffiliated candidate or a write-in candidate an equal opportunity to access the regular general election ballot.

(e) An individual who is certified as a party candidate for the vacant office, who qualifies as an unaffiliated candidate for the vacant office under Chapter 9, Part 5, Candidates not Affiliated with a Party, or who qualifies as a write-in candidate for the vacant office under Chapter 9, Part 6, Write-in Candidates, shall run in the regular general election.

(7) (a) The requirements of this Subsection (7) apply to all county offices that become vacant:

(i) if the vacant office has an unexpired term of less than two years; or

(ii) if the vacant office has an unexpired term of two years or more but 65 days or less remain before the next regular general election.

(b) (i) When the conditions [~~established~~] described in Subsection (7)(a) are met, the county legislative body shall as soon as practicable, but no later than 10 days after the day on which the vacancy occurs, give notice of the vacancy to the party liaison of the same political party as the prior office holder and invite that party liaison to submit the name of [~~a person~~] an individual to fill the vacancy.

(ii) That party liaison shall, within 30 days [~~submit the name of the person to fill the vacancy to the county legislative body~~] after the day on which the party liaison receives the notice described in Subsection (7)(b)(i), or if the party liaison does not receive the notice, no later than 40 days after the day on which the vacancy occurs, submit to the county legislative body the name of an individual to fill the vacancy.

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(iii) The county legislative body shall, no later than five days after the day on which a party liaison submits the name of the [person] individual to fill the vacancy, appoint the [person] individual to serve out the unexpired term.

(c) (i) If the county legislative body fails to appoint [a person] an individual to fill the vacancy in accordance with Subsection (7)(b)(iii), the county clerk shall send to the governor a letter that:

(A) informs the governor that the county legislative body has failed to appoint [a person] an individual to fill the vacancy within the statutory time period; and

(B) contains the name of the [person] individual submitted by the party liaison to fill the vacancy [~~submitted by the party liaison~~].

(ii) The governor shall, within 10 days after the day on which the governor receives the letter described in Subsection (7)(c)(i), appoint the [person] individual named by the party liaison to fill the vacancy [~~within 30 days after receipt of the letter~~].

(d) [~~A person~~] An individual appointed to fill the vacancy under this Subsection (7) shall hold office until [~~their~~] a successor is elected and has qualified.

(8) Except as otherwise provided by law, the county legislative body may appoint replacements to fill all vacancies that occur in those offices filled by appointment of the county legislative body.

~~[(9) Nothing in this section prevents or prohibits independent candidates from filing a declaration of candidacy for the office within the same time limits.]~~

(9) Nothing in this section prohibits a candidate that does not wish to affiliate with a political party from filing a certificate of nomination for a vacant office within the same time limits as a candidate that is affiliated with a political party.

(10) (a) Each [person] individual elected under Subsection (4), (5), or (6) to fill a vacancy in a county office shall serve for the remainder of the unexpired term of the [person] individual who created the vacancy and until a successor is elected and qualified.

(b) Nothing in this section may be construed to contradict or alter the provisions of Section 17-16-6.

Section 2. Coordinating H.B. 171 with S.B. 33 -- Substantive and technical amendments.

If this H.B. 171 and S.B. 33, Political Procedures Amendments, both pass and become

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law, it is the intent of the Legislature that the Office of Legislative Research and General Counsel shall prepare the Utah Code database for publication, as follows:

(1) Subsection 20A-1-508(3)(b)(ii) in this H.B. 171 is amended to read:

"(ii) That party liaison shall, before 5 p.m. within 30 days after the day on which the liaison receives the notice described in Subsection (3)(b)(i), or if the party liaison does not receive the notice, before 5 p.m. within 40 days after the day on which the vacancy occurs, submit to the county legislative body the name of an individual the party selects in accordance with the party's constitution or bylaws to serve as the interim replacement.";

(2) Subsection 20A-1-508(5)(c)(ii)(B) in this H.B. 171 is amended to read:

"(B) certify the name of the candidate or candidates to the county clerk [at least] as soon as practicable, but before 5 p.m. no later than 60 days before the day of the regular primary election.";

(3) Subsection 20A-1-508(5)(d)(ii)(A) in this H.B. 171 is amended to read:

"(ii) (A) The county clerk shall establish, in the clerk's reasonable discretion, a deadline that is before 5 p.m. no later than 65 days before the day of the next regular general election by which an individual who is not affiliated with a registered political party is required to submit a certificate of nomination under Subsection (5)(d)(i).";

(4) Subsection 20A-1-508(6)(d)(i) in this H.B. 171 is amended to read:

"(d) (i) The county clerk shall establish, in the clerk's reasonable discretion, deadlines that are before 5 p.m. no later than 65 days before the day of the next regular general election by which:

(A) a registered political party is required to certify a name under Subsection (6)(c)(i);

(B) an individual who does not wish to affiliate with a registered political party is required to submit a certificate of nomination under Subsection (6)(c)(ii); and

(C) a write-in candidate is required to submit a declaration of candidacy under Subsection (6)(c)(iii)."; and

(5) Subsection 20A-1-508(7)(b)(ii) in this H.B. 171 is amended to read:

"(ii) That party liaison shall, before 5 p.m. within 30 days[~~, submit the name of the person to fill the vacancy to the county legislative body~~] after the day on which the party liaison receives the notice described in Subsection (7)(b)(i), or if the party liaison does not receive the notice, before 5 p.m. no later than 40 days after the day on which the vacancy occurs, submit to

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the county legislative body the name of an individual to fill the vacancy."