

1 **FORM OF COUNTY GOVERNMENT AMENDMENTS**

2 2019 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Phil Lyman**

5 Senate Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions related to forms of county government.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ limits the county executive and council form of government and the
13 council-manager form of government to counties of the first, second, or third class;
14 ▶ requires a county of the fourth, fifth, or sixth class operating under the county
15 executive and council form of government or the council-manager form of
16 government to initiate the process to change the county's form of government;
17 ▶ directs a county clerk to include a certain question on the ballot in certain elections;
18 ▶ amends the role of the study committee in certain circumstances; and
19 ▶ makes technical and conforming changes.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **17-52a-103**, as renumbered and amended by Laws of Utah 2018, Chapter 68

27 **17-52a-203**, as renumbered and amended by Laws of Utah 2018, Chapter 68



28 [17-52a-204](#), as renumbered and amended by Laws of Utah 2018, Chapter 68
29 [17-52a-304](#), as renumbered and amended by Laws of Utah 2018, Chapter 68
30 [17-52a-403](#), as renumbered and amended by Laws of Utah 2018, Chapter 68
31 [17-52a-405](#), as renumbered and amended by Laws of Utah 2018, Chapter 68
32 [17-52a-501](#), as renumbered and amended by Laws of Utah 2018, Chapter 68
33 [17-52a-505](#), as renumbered and amended by Laws of Utah 2018, Chapter 68

34

35 *Be it enacted by the Legislature of the state of Utah:*36 Section 1. Section [17-52a-103](#) is amended to read:37 **[17-52a-103. Forms of county government -- County commission form required](#)**
38 **[unless another is adopted -- Restrictions on form of county government.](#)**39 (1) Subject to Subsection (2), each county shall operate under one of the following
40 forms of county government:41 (a) for a county of any class:42 [~~(a)~~] (i) the county commission form under Section [17-52a-201](#); or43 [~~(b)~~] (ii) the expanded county commission form under Section [17-52a-202](#); or44 (b) for counties of the first, second, or third class:45 [~~(c)~~] (i) the county executive and council form under Section [17-52a-203](#); or46 [~~(d)~~] (ii) the council-manager form under Section [17-52a-204](#).47 (2) Unless a county adopts another form of government as provided in this chapter, the
48 county shall operate under the county commission form of government under Section
49 [17-52a-201](#).50 (3) (a) In a county that operates under a form of government that is not described in
51 Subsection (2):52 (i) the county's legislative body shall, before July 1, 2018, initiate the process under
53 Section [17-52a-302](#) of changing the county's form of government;54 (ii) the county shall hold a special election described in Section [17-52a-304](#) on
55 November 6, 2018;56 (iii) if the voters approve the appointment of a study committee at the special election
57 described in Subsection (3)(a)(ii):58 (A) the study committee may not recommend under Section [17-52a-403](#) that the county

59 retain the county's current form of government; and

60 (B) the county shall hold an election described in Section [17-52a-501](#) before December
61 31, 2020, on an optional plan that the study committee creates; and

62 (iv) the registered voters of the county may not repeal an optional plan under Section
63 [17-52a-505](#) that is adopted at an election described in Subsection (3)(a)(iii)(B).

64 (b) If the voters of a county described in Subsection (3)(a) do not approve a change in
65 the county's form of government at an election described in Subsection (3)(a)(iii)(B) before
66 December 31, 2020:

67 (i) the county shall operate under the county commission form of government under
68 Section [17-52a-201](#) in the same manner that a county is required under Subsection
69 [~~17-52a-102~~] (2) to operate under that form of government if the county does not adopt another
70 form of government; and

71 (ii) the county shall transition to the form of government described in Subsection
72 (3)(b)(i) in the same manner as if the voters of the county had approved the change in the form
73 of government described in Subsection (3)(b)(i) in the applicable election described in
74 Subsection (3)(b).

75 (4) (a) In a county of the fourth, fifth, or sixth class that operates under the county
76 executive and council form under Section [17-52a-203](#) or under the council-manager form
77 under Section [17-52a-204](#):

78 (i) before July 1, 2019, the county's legislative body shall initiate the process under
79 Section [17-52a-302](#) of changing the county's form of government;

80 (ii) the county shall hold a special election described in Section [17-52a-304](#) on
81 November 5, 2019, to:

82 (A) approve the appointment of a study committee under the process the county
83 legislative body initiates in accordance with Subsection (4)(a); or

84 (B) reject the appointment of a study committee and transition directly to the county
85 commission form of government under Section [17-52a-201](#).

86 (b) If the voters in the special election described in Subsection (4)(a)(ii) approve the
87 appointment of a study committee:

88 (i) the study committee may not recommend under Section [17-52a-403](#) that the county
89 retain the county's current form of government;

90 (ii) the county shall hold an election described in Section 17-52a-501 before December
91 31, 2021, to:

92 (A) approve the optional plan that the study committee creates; or

93 (B) reject the optional plan and transition directly to the county commission form of
94 government under Section 17-52a-201 without any tailored provisions in the optional plan.

95 (c) If the voters in the election described in Subsection (4)(a)(ii) or (4)(b)(ii) vote to
96 transition to the county commission form of government under Section 17-52a-201 rather than
97 approving the appointment of a study committee or an optional plan, the county shall operate
98 under the county commission form of government under Section 17-52a-201 in the same
99 manner that a county is required, under Subsection (2), to operate under that form of
100 government if the county does not adopt another form of government.

101 Section 2. Section 17-52a-203 is amended to read:

102 **17-52a-203. County executive-council form of county government.**

103 (1) (a) The following shall govern a county of the first, second, or third class operating
104 under the form of government known as the "county executive-council" form:

105 (i) an elected county council;

106 (ii) an elected county executive; and

107 (iii) other officers and employees authorized by law.

108 (b) The optional plan shall provide for the qualifications, time, and manner of election,
109 term of office and compensation of the county executive.

110 (2) The county executive is the chief executive officer or body of the county.

111 (3) In the county executive-council form of county government:

112 (a) the county council is the county legislative body and has the powers, duties, and
113 functions of a county legislative body under Chapter 53, Part 2, County Legislative Body; and

114 (b) the county executive has the powers, duties, and functions of a county executive
115 under Chapter 53, Part 3, County Executive.

116 (4) References in any statute or state rule to the "governing body" or the "board of
117 county commissioners" of the county, in the county executive-council form of county
118 government, means:

119 (a) the county council, with respect to legislative functions, duties, and powers; and

120 (b) the county executive, with respect to executive functions, duties, and powers.

121 Section 3. Section **17-52a-204** is amended to read:

122 **17-52a-204. Council-manager form of county government.**

123 (1) (a) The following shall govern a county of the first, second, or third class operating
124 under the form of government known as the "council-manager" form:

125 (i) an elected county council;

126 (ii) a county manager appointed by the council; and

127 (iii) other officers and employees authorized by law.

128 (b) The optional plan shall provide for the qualifications, time and manner of
129 appointment subject to Subsections (6) and (7), term of office, compensation, and removal of
130 the county manager.

131 (2) The county manager is the administrative head of the county government and has
132 the powers, functions, and duties of a county executive, except:

133 (a) as the county legislative body otherwise provides by ordinance; and

134 (b) that the county manager may not veto any ordinances enacted by the council.

135 (3) (a) A member of the council may not directly or indirectly, by suggestion or
136 otherwise:

137 (i) attempt to influence or coerce the manager in:

138 (A) making any appointment;

139 (B) removing any officer or employee; or

140 (C) purchasing supplies;

141 (ii) attempt to exact any promise relative to any appointment from any candidate for
142 manager; or

143 (iii) discuss directly or indirectly with the manager the matter of specific appointments
144 to any county office or employment.

145 (b) (i) A person who violates the provisions of this Subsection (3) shall forfeit the
146 office of the offending member of the council.

147 (ii) Nothing in this section shall be construed, however, as prohibiting the council
148 while in open session from fully and freely discussing with or suggesting to the manager
149 anything pertaining to county affairs or the interests of the county.

150 (iii) Neither manager nor any person in the employ of the county shall take part in
151 securing, or contributing any money toward, the nomination or election of any candidate for a

152 county office.

153 (iv) The optional plan may provide procedures for implementing this Subsection (3).

154 (4) In the council-manager form of county government:

155 (a) the legislative powers of the county are vested in the county council; and

156 (b) the executive powers of the county are vested in the county manager.

157 (5) A reference in statute or state rule to the "governing body" or the "board of county
158 commissioners" of the county, in the council-manager form of county government, means:

159 (a) the county council, with respect to legislative functions, duties, and powers; and

160 (b) the county manager, with respect to executive functions, duties, and powers.

161 (6) (a) As used in this Subsection (6), "interim vacancy period" means the period of
162 time that:

163 (i) begins on the day on which a general election described in Section 17-16-6 is held
164 to elect a council member; and

165 (ii) ends on the day on which the council member-elect begins the council member's
166 term.

167 (b) (i) The county council may not appoint a county manager during an interim vacancy
168 period.

169 (ii) Notwithstanding Subsection (6)(b)(i):

170 (A) the county council may appoint an interim county manager during an interim
171 vacancy period; and

172 (B) the interim county manager's term shall expire once a new county manager is
173 appointed by the new administration after the interim vacancy period has ended.

174 (c) Subsection (6)(b) does not apply if all the county council members who held office
175 on the day of the county general election whose term of office was vacant for the election are
176 re-elected to the council for the following term.

177 (7) A county council that appoints a county manager in accordance with this section
178 may not, on or after May 10, 2011, enter into an employment contract that contains an
179 automatic renewal provision with the county manager.

180 Section 4. Section 17-52a-304 is amended to read:

181 **17-52a-304. Election to determine whether study committee should be**
182 **established.**

183 (1) The county legislative body shall hold an election under this section if:
184 (a) the county legislative body adopts a resolution under Subsection 17-52a-302(1)(a);

185 or

186 (b) the county clerk certifies, in accordance with Subsection 17-52a-303(3), a petition
187 described in Subsection 17-52a-303(1)(a)(i).

188 (2) An election described in Subsection (1) shall be a special election, called and held
189 in accordance with Sections 20A-1-203 and 20A-1-204.

190 (3) (a) [The] Except as provided in Subsection (3)(b), the county clerk shall prepare the
191 ballot for an election described in Subsection (1) with a question that asks substantially the
192 following:

193 "Shall a study committee be appointed to consider and possibly recommend a change in
194 _____ County's form of government?";

195 (b) The county clerk shall prepare the ballot for a special election described in
196 Subsection 17-52a-103(4)(a)(ii) with:

197 (i) a question that asks substantially the following:

198 "Shall a study committee be appointed to consider and recommend a change in
199 _____ County's form of government, or shall _____ County transition
200 directly to the three-member county commission form of government?"; and

201 (ii) available responses for the voters to select that contain only the options described
202 in the question in Subsection (3)(b)(i).

203 Section 5. Section 17-52a-403 is amended to read:

204 **17-52a-403. Study committee -- Members -- Powers and duties -- Report --**
205 **Services provided by county.**

206 (1) (a) A study committee consists of seven members.

207 (b) A member of a study committee may not receive compensation for service on the
208 committee.

209 (c) The county legislative body shall reimburse each member of a study committee for
210 necessary expenses incurred in performing the member's duties on the study committee.

211 (2) A study committee may:

212 (a) adopt rules for the study committee's own organization and procedure and to fill a
213 vacancy in its membership;

214 (b) establish advisory boards or committees and include on the advisory boards or
215 committees persons who are not members of the study committee; and

216 (c) request the assistance and advice of any officers or employees of any agency of
217 state or local government.

218 (3) (a) A study committee shall:

219 (i) study the form of government within the county and compare it with other forms
220 available under this chapter;

221 (ii) (A) except as provided in Subsection (3)(a)(ii)(B), determine whether the
222 administration of local government in the county could be strengthened, made more clearly
223 responsive or accountable to the people, or significantly improved in the interest of economy
224 and efficiency by a change in the form of county government; or

225 (B) if the county is required to change forms of government under Section 17-52a-103,
226 determine which of the available forms of county government would best strengthen the
227 administration of local government in the county, make the county government more clearly
228 responsive or accountable to the people, or significantly improve the county government in the
229 interest of economy and efficiency;

230 (iii) hold public hearings and community forums and other means the committee
231 considers appropriate to disseminate information and stimulate public discussion of the
232 committee's purposes, progress, and conclusions; and

233 (iv) file a written report of the study committee's findings and recommendations with
234 the county executive, the county legislative body, and the county clerk no later than one year
235 after the convening of the study committee's first meeting under Section 17-52a-402.

236 (b) Within 10 days after the day on which the study committee submits the study
237 committee's report under Subsection (3)(a)(iv) to the county legislative body, if the report
238 recommends a change in the form of county government, the county clerk shall send to the
239 county attorney or, if the county does not have a county attorney, to the district attorney, a copy
240 of each optional plan recommended in the report for review in accordance with Section
241 17-52a-406.

242 (4) Each study committee report under Subsection (3)~~(d)~~(a)(iv) shall include:

243 (a) the study committee's recommendation as to whether the form of county
244 government should be changed to another form authorized under this chapter;

245 (b) if the study committee recommends changing the form of government, a complete
246 detailed draft of a proposed plan to change the form of county government, including all
247 necessary implementing provisions; and

248 (c) any additional recommendations the study committee considers appropriate to
249 improve the efficiency and economy of the administration of local government within the
250 county.

251 (5) (a) If the study committee's report recommends a change in the form of county
252 government, the study committee may conduct additional public hearings after filing the report
253 under Subsection (3)~~(d)~~(a)(iv) and, following the hearings and subject to Subsection (5)(b),
254 alter the report.

255 (b) Notwithstanding Subsection (5)(a), the study committee may not make an alteration
256 to the report:

257 (i) that would recommend the adoption of an optional form different from that
258 recommended in the original report; or

259 (ii) within the 120-day period before the election under Section 17-52a-501.

260 (6) Each meeting that the study committee holds shall be open to the public.

261 (7) If the study committee's report does not recommend a change in the form of county
262 government, the report is final, the study committee is dissolved, and the process to change the
263 county's form of government is concluded.

264 (8) The county legislative body shall provide for the study committee:

265 (a) suitable meeting facilities;

266 (b) necessary secretarial services;

267 (c) necessary printing and photocopying services;

268 (d) necessary clerical and staff assistance; and

269 (e) adequate funds for the employment of independent legal counsel and professional
270 consultants that the study committee reasonably determines to be necessary to help the study
271 committee fulfill its duties.

272 Section 6. Section 17-52a-405 is amended to read:

273 **17-52a-405. Plan may propose changing forms of county government -- Plan may**
274 **propose change of structural form -- Partisan elections.**

275 (1) (a) The optional plan proponent described in Subsection 17-52a-404(1) shall ensure

276 that each optional plan proposes changing the form of county government to:

277 (i) for a county of any class:

278 [(i)] (A) the county commission form under Section 17-52a-201; or

279 [(ii)] (B) the expanded county commission form under Section 17-52a-202; or

280 (ii) for a county of the first, second, or third class:

281 [(iii)] (A) the county executive and council form under Section 17-52a-203; or

282 [(iv)] (B) the council-manager form under Section 17-52a-204.

283 (b) The optional plan proponent described in Subsection 17-52a-404(1) may not

284 recommend an optional plan that:

285 (i) proposes changing the form of government to a form not included in Subsection

286 (1)(a);

287 (ii) provides for the nonpartisan election of elected officers;

288 (iii) imposes a limit on the number of terms or years that an elected officer may serve;

289 (iv) provides for elected officers to be subject to a recall election; or

290 (v) provides, in a county with a population of 225,000 or more, for a full-time county

291 commission in an expanded county commission form of government under Section

292 17-52a-202.

293 (2) In addition to proposing the adoption of any one of the optional forms of county

294 government under Subsection (1)(a), an optional plan may also propose the adoption of any

295 one of the structural forms of county government provided under Chapter 35b, Part 3,

296 Structural Forms of County Government.

297 (3) A county that provides for the election of the county's elected officers through a

298 partisan election may not change to a process that provides for the election of the county's

299 elected officers through a nonpartisan election.

300 Section 7. Section 17-52a-501 is amended to read:

301 **17-52a-501. Election on recommended optional plan -- Resolution or petition to**

302 **submit plan to voters in certain counties.**

303 (1) If the county or district attorney finds that a proposed optional plan does not violate

304 a statutory or constitutional provision under Section 17-52a-406 or, for a county under a

305 pending process described in Section 17-52a-104, under Section 17-52-204 as that section was

306 in effect on March 14, 2018:

307 (a) in a county with a population of 225,000 or more or in a county in which voters
308 approved the appointment of a study committee by a vote of at least 60%, the county legislative
309 body shall hold an election on the optional plan under Subsection (3); or

310 (b) in a county with a population of less than 225,000 in which voters did not approve
311 the appointment of a study committee by a vote of at least 60%, an election may not be held for
312 the optional plan under Subsection (3) until:

313 (i) the county legislative body adopts a resolution to submit the optional plan to voters;
314 or

315 (ii) the county clerk certifies a petition under Subsection (2).

316 (2) (a) In a county with a population of less than 225,000 in which voters did not
317 approve the appointment of a study committee by a vote of at least 60%, to qualify the
318 proposed optional plan described in Subsection (1) for an election described in Subsection (3),
319 registered voters may file a petition with the county clerk that:

320 (i) requests that the proposed optional plan be submitted to voters; and

321 (ii) is signed by registered voters residing in the county equal in number to at least 5%
322 of the total number of votes cast in the county for all candidates for president of the United
323 States at the most recent election at which a president of the United States was elected.

324 (b) Registered voters who file a petition under Subsection (2)(a) shall, at the time the
325 registered voters file the petition:

326 (i) designate up to five of the petition signers as sponsors;

327 (ii) provide the county clerk with the mailing address and telephone number of each
328 petition sponsor; and

329 (iii) designate one of the petition sponsors as the contact sponsor.

330 (c) The county clerk shall certify or reject a petition filed under this Subsection (2) in
331 the same manner as the county clerk certifies or rejects a petition under Subsection
332 [17-52a-303\(3\)](#).

333 (3) When the conditions described in Subsection (1) are met, a county shall hold an
334 election on the optional plan at the next regular general or municipal general election that is not
335 less than 60 days after:

336 (a) for a county with a population of 225,000 or more or for a county in which voters
337 approved the appointment of a study committee by a vote of at least 60%, the day on which the

338 county or district attorney submits to the county clerk the attorney's report described in
339 Subsection 17-52a-406(4) or, for a county under a pending process described in Section
340 17-52a-104, the attorney's report that is described in Section 17-52-204 as that section was in
341 effect on March 14, 2018 and that contains a statement described in Subsection 17-52-204(5)
342 as that subsection was in effect on March 14, 2018; or

343 (b) for a county with a population of less than 225,000 in which voters did not approve
344 the appointment of a study committee by a vote of at least 60%, the day on which:

345 (i) the county legislative body adopts a resolution under Subsection (1)(b)(i); or

346 (ii) the county clerk certifies a petition under Subsection (2)(b).

347 (4) (a) ~~[The]~~ Except as provided in Subsection (4)(b), the county clerk shall prepare the
348 ballot for an election under this section so that the question on the ballot states substantially the
349 following:

350 "Shall _____ County adopt the alternate form of government known
351 as the(insert the proposed form of government) that the study committee has recommended?"

352 (b) The county clerk shall prepare the ballot for an election described in Subsection
353 17-52a-103(4)(b)(ii) with:

354 (i) a question that asks substantially the following:

355 "Shall _____ County adopt the alternate form of government known as the
356 (insert the proposed form of government that the study committee has recommended), or shall
357 _____ County transition directly to the three-member county commission form of
358 government?"; and

359 (ii) available responses for the voters to select that contain only the options described
360 in the question in Subsection (4)(b)(i).

361 (5) The county clerk shall:

362 (a) publish the complete text of the proposed optional plan in a newspaper of general
363 circulation within the county at least once during two different calendar weeks within the
364 30-day period immediately before the date of the election described in Subsection (1);

365 (b) post the complete text of the proposed optional plan in a conspicuous place on the
366 county's website during the 45-day period that immediately precedes the election on the
367 optional plan; and

368 (c) make a complete copy of the optional plan and the study committee report available

369 free of charge to any member of the public who requests a copy.

370 (6) A county clerk shall declare an optional plan as adopted by the voters if a majority
371 of voters voting on the optional plan vote in favor of the optional plan.

372 Section 8. Section **17-52a-505** is amended to read:

373 **17-52a-505. Repeal of optional plan.**

374 (1) ~~[An]~~ Except as provided in Section 17-52a-103, optional plan that the voters in an
375 election adopt under this chapter may be repealed as provided in this section.

376 (2) Registered voters of a county that has adopted an optional plan may initiate the
377 process of repealing an optional plan by filing a petition for the repeal of the optional plan.

378 (3) (a) Registered voters of a county may not file a petition to repeal an optional plan
379 sooner than four years or more than five years after the election of county officers under
380 Section 17-52a-503.

381 (b) (i) If the registered voters file a petition to repeal an optional plan under this
382 section, the petition is certified, and the optional plan is not repealed at an election described in
383 Subsection (8), the voters may not circulate or file a subsequent petition to repeal until at least
384 four, and not more than five, years after the certification of the original petition.

385 (ii) If, after four years, the voters file a subsequent petition under Subsection (3)(b)(i),
386 the voters:

387 (A) may not circulate or file another petition to repeal until at least four, and not more
388 than five, years after certification of the subsequent petition; and

389 (B) shall wait an additional four, and not more than five, years after the date of
390 certification of the previous petition for each petition filed thereafter.

391 (4) A petition described in Subsection (2) shall:

392 (a) be signed by registered voters residing in the county:

393 (i) equal in number to at least 15% of the total number of votes cast in each precinct
394 described in Subsection (4)(a)(ii) for all candidates for president of the United States at the
395 most recent election in which a president of the United States was elected; and

396 (ii) who represent at least 85% of the voting precincts located within the county;

397 (b) designate up to five of the petition signers as sponsors, designating one petition
398 signer as the contact sponsor, with the mailing address and telephone number of each; and

399 (c) be filed in the office of the clerk of the county in which the petition signers reside.

400 (5) Within 30 days after the filing of a petition under Subsection (2) or an amended
401 petition under Subsection (6), the county clerk shall:

402 (a) determine whether the required number of voters have signed the petition or
403 amended petition has been signed by the required number of registered voters; and

404 (b) (i) if a sufficient number of voters have signed the petition, certify the petition or
405 amended petition and deliver it to the county legislative body, and notify in writing the contact
406 sponsor of the certification; or

407 (ii) if a sufficient number of voters have not signed the petition, reject the petition or
408 the amended petition and notify the county legislative body and the contact sponsor in writing
409 of the rejection and the reasons for the rejection.

410 (6) If a county clerk rejects a petition or an amended petition under Subsection
411 (5)(b)(ii), the petition may be amended or an amended petition may be further amended with
412 additional signatures and refiled within 20 days of the date of rejection.

413 (7) If a county clerk certifies a petition under Subsection (2), the county legislative
414 body shall hold an election on the proposal to repeal the optional plan at the next regular
415 general election that is at least 60 days after the day on which the county clerk certifies the
416 petition.

417 (8) If, at an election held under Subsection (7), a majority of voters voting on the
418 proposal to repeal the optional plan vote in favor of repealing:

419 (a) the optional plan is repealed, effective January 1 of the year following the election
420 of county officers under Subsection (8)(c);

421 (b) upon the effective date of the repeal under Subsection (8)(a), the form of
422 government under which the county operates reverts to the form it had before the optional plan
423 was adopted; and

424 (c) the county officers under the form of government to which the county reverts, who
425 are different than the county officers under the repealed optional plan, shall be elected at the
426 next regular general election following the election under Subsection (7).