

# HB0073S01 compared with HB0073

~~{deleted text}~~ shows text that was in HB0073 but was deleted in HB0073S01.

inserted text shows text that was not in HB0073 but was inserted into HB0073S01.

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Representative Douglas R. Welton proposes the following substitute bill:

## MUNICIPAL OFFICE MODIFICATIONS

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Douglas R. Welton**

Senate Sponsor: \_\_\_\_\_

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### LONG TITLE

~~{Committee Note:~~

~~\_\_\_\_\_The Political Subdivisions Interim Committee recommended this bill.~~

~~\_\_\_\_\_Legislative Vote: 12 voting for 0 voting against \_\_\_\_\_ 4 absent~~

~~{General Description:~~

This bill modifies provisions related to filling a vacancy in a municipal ~~{office.}~~off

### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies notice requirements;
- ▶ modifies the procedure for filling vacancies in certain circumstances;
- ▶ authorizes a member of a municipal legislative body whose resignation creates a vacancy in the municipal legislative body to, with certain exceptions, vote for the

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member's replacement;

- ▶ prohibits a member of a legislative body from rescinding a resignation;
- ▶ prohibits a member of a legislative body from voting for oneself to fill a vacancy in the municipal legislative body; and
- ▶ makes conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

**10-3-507**, as last amended by Laws of Utah 2014, Chapter 338

**20A-1-510**, as last amended by Laws of Utah 2017, Chapter 91

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

Section 1. Section **10-3-507** is amended to read:

**10-3-507. Minimum vote required.**

(1) The minimum number of yes votes required to pass any ordinance or resolution, or to take any action by the council, unless otherwise prescribed by law, is a majority of the voting members of the council, regardless of absence or vacancy.

(2) (a) Any ordinance, resolution, or motion of the council having fewer favorable votes than required in this section is defeated and invalid.

(b) Notwithstanding Subsection (2)(a), a council meeting may be adjourned to a specific time by a majority vote of the council even though the majority vote is less than that required in this section.

(3) If a vacancy exists in one or more council seats, a majority of the council members [~~presently occupying council seats, regardless of number,~~] may vote to fill the vacancy as provided under Section 20A-1-510.

Section 2. Section **20A-1-510** is amended to read:

**20A-1-510. Midterm vacancies in municipal offices.**

(1) (a) As used in this section:

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(i) "Vacancy," subject to Subsection (1)(a)(ii), means the same as that term is defined in Section 20A-1-102.

(ii) "Vacancy," if due to resignation, occurs on the effective date of the resignation.

~~[(a)]~~ (b) Except as otherwise provided in ~~[Subsection (2)]~~ this section, if any vacancy occurs in the office of municipal executive or member of a municipal legislative body, the municipal legislative body shall, within 30 calendar days after the day on which the vacancy occurs, appoint a registered voter in the municipality who meets the qualifications for office described in Section 10-3-301 to fill the unexpired term of the vacated office.

~~[(b)]~~ ~~{}~~

(c) Before acting to fill the vacancy, the municipal legislative body shall:

(i) give public notice of the vacancy at least ~~[two weeks]~~ 14 calendar days before the ~~{}~~ day on which the municipal legislative body meets to fill the vacancy;

(ii) identify, in the notice:

(A) the date, time, and place of the meeting where the vacancy will be filled;

(B) the person to whom an individual interested in being appointed to fill the vacancy may submit the interested individual's name for consideration; and

(C) the deadline for submitting an interested individual's name; and

(iii) in an open meeting, interview each individual whose name is submitted for consideration, and who meets the qualifications for office, regarding the individual's qualifications.

~~[(c) (i) If, for any reason, the municipal legislative body does not fill the vacancy within 30 days after the day on which the vacancy occurs, the municipal legislative body shall fill the vacancy from among the names that have been submitted.]~~

~~[(ii) The two individuals having the highest number of votes of the municipal legislative body after a first vote is taken shall appear before the municipal legislative body and the municipal legislative body shall vote again.]~~

~~[(iii) If neither candidate receives a majority vote of the municipal legislative body at that time, the vacancy shall be filled by lot in the presence of the municipal legislative body.]~~

(d) (i) The municipal legislative body shall take an initial vote to fill the vacancy from among the names of the candidates interviewed under Subsection (1)(c)(iii).

(ii) (A) If no candidate receives a majority vote of the municipal legislative body ~~{}~~ in

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the ~~names of~~ initial vote described in Subsection (1)(d)(i), the two candidates ~~having the highest number of votes after the first vote~~ that received the most votes in the initial vote, as determined by the tie-breaking procedures described in Subsections (1)(d)(ii)(B) through (D) if necessary, shall be placed before the municipal legislative body for ~~another vote.~~

~~(ii) If neither candidate receives a majority vote under~~ a second vote to fill the vacancy.

(B) If the initial vote results in a tie for second place, the candidates tied for second place shall be reduced to one by a coin toss conducted in accordance with Subsection (1)(d)(~~ii~~)(D), ~~the vacancy shall be filled by one of the remaining candidates, by lot,~~ and the second vote described in Subsection (2)(d)(ii)(A) shall be between the candidate that received the most votes in the initial vote and the candidate that wins the coin toss described in this Subsection (1)(d)(ii)(B).

(C) If the initial vote results in a tie among three or more candidates for first place, the candidates tied for first place shall be reduced to two by a coin toss conducted in accordance with Subsection (1)(d)(ii)(D), and the second vote described in Subsection (1)(d)(ii)(A) shall be between the two candidates that remain after the coin toss described in this Subsection (1)(d)(ii)(C).

(D) A coin toss required under this Subsection (1)(d) shall be conducted by the municipal clerk or recorder in the presence of the municipal legislative body.

(iii) If, in the second vote described in Subsection (1)(d)(ii)(A), neither candidate receives a majority vote of the municipal legislative body, the vacancy shall be determined by a coin toss between the two candidates in accordance with Subsection (1)(d)(ii)(D).

(e) If the municipal legislative body does not timely comply with Subsections (1)(b) through (d), the municipal clerk or recorder shall immediately notify the lieutenant governor.

(f) After receiving notice that a municipal legislative body has failed to timely comply with Subsections (1)(b) through (d), the lieutenant governor shall:

(i) notify the municipal legislative body of the violation; and

(ii) direct the municipal legislative body to, within 30 calendar days after the day on which the lieutenant governor provides the notice described in this Subsection (1)(f), appoint an eligible individual to fill the vacancy in accordance with Subsections (1)(c) and (d).

(g) If the municipality fails to timely comply with a directive described in Subsection

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(1)(f):

(i) the lieutenant governor shall notify the governor of the municipality's failure to fill the vacancy; and

(ii) the governor shall, within 45 days after the day on which the governor receives the notice described in Subsection (1)(g)(i), provide public notice soliciting candidates to fill the vacancy in accordance with Subsection (1)(c) and appoint an individual to fill the vacancy.

(2) (a) A vacancy in the office of municipal executive or member of a municipal legislative body shall be filled by an interim appointment, followed by an election to fill a two-year term, if:

(i) the vacancy occurs, or a letter of resignation is received, by the municipal executive at least 14 days before the deadline for filing for election in an odd-numbered year; and

(ii) two years of the vacated term will remain after the first Monday of January following the next municipal election.

(b) In appointing an interim replacement, the municipal legislative body shall:

(i) comply with the notice requirements of this section; and

(ii) in an open meeting, interview each individual whose name is submitted for consideration, and who meets the qualifications for office, regarding the individual's qualifications.

(3) (a) In a municipality operating under the council-mayor form of government, as defined in Section 10-3b-102:

(i) the council may appoint an individual to fill a vacancy in the office of mayor before the effective date of the mayor's resignation by making the effective date of the appointment the same as the effective date of the mayor's resignation; and

(ii) if a vacancy in the office of mayor occurs before the effective date of an appointment under Subsection (1) or (2) to fill the vacancy, the ~~[council chair]~~ remaining council members, by majority vote, shall appoint a council member to serve as acting mayor during the time between the creation of the vacancy and the effective date of the appointment to fill the vacancy.

(b) ~~[White]~~ A council member serving as acting mayor under Subsection (3)(a)(ii)~~[, the council chair]~~ continues to:

(i) act as a council member; and

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(ii) vote at council meetings.

(4) (a) (i) For a vacancy of a member of a municipal legislative body as described in this section, the municipal legislative body member whose resignation creates the vacancy on the municipal legislative body may:

(A) interview an individual whose name is submitted for consideration under Subsection (1)(c)(iii) or (2)(b)(ii); and

(B) vote on the appointment of an individual to fill the vacancy.

(ii) Notwithstanding Subsection (4)(a)(i), a member of a legislative body who is removed from office in accordance with state law may not cast a vote under Subsection (4)(a)(i).

(b) A member of a municipal legislative body who submits his or her resignation to the municipal legislative body may not rescind the resignation.

(c) A member of a municipal legislative body may not vote on an appointment under this section for himself or herself to fill a vacancy in the municipal legislative body.

(5) In a municipality operating under the six-member council form of government or the council-manager form of government, defined in Subsection 10-3b-103(7), if the voting members of the city council reach a tie vote on a matter of filling a vacancy, the mayor may vote to break the tie.

(6) In a municipality operating under the council-mayor form of government, the mayor may not:

(a) participate in the vote to fill a vacancy;

(b) veto a decision of the council to fill a vacancy; or

(c) vote in the case of a tie.

(7) A mayor whose resignation from the municipal legislative body is due to election or appointment as mayor may, in the case of a tie, participate in the vote under this section.

(8) A municipal legislative body may, consistent with the provisions of state law, adopt procedures governing the appointment, interview, and voting process for filling vacancies in municipal offices.