

MUNICIPAL OFFICE MODIFICATIONS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Douglas R. Welton

Senate Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill modifies provisions related to filling a vacancy in a municipal office

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 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

29 **20A-1-510**, as last amended by Laws of Utah 2017, Chapter 91



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

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

33 **10-3-507. Minimum vote required.**

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

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

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

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

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

46 **20A-1-510. Midterm vacancies in municipal offices.**

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

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

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

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

56 ~~[(b)]~~

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

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

60 (ii) identify, in the notice:

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

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

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

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

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

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

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

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

78 (ii) (A) If no candidate receives a majority vote of the municipal legislative body in the
79 initial vote described in Subsection (1)(d)(i), the two candidates that received the most votes in
80 the initial vote, as determined by the tie-breaking procedures described in Subsections
81 (1)(d)(ii)(B) through (D) if necessary, shall be placed before the municipal legislative body for
82 a second vote to fill the vacancy.

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

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

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

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

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

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

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

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

106 (g) If the municipality fails to timely comply with a directive described in Subsection
107 (1)(f):

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

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

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

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

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

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

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

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

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

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

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

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

137 (i) act as a council member; and

138 (ii) vote at council meetings.

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

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

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

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

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

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

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

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

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

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

160 (c) vote in the case of a tie.

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

163 (8) A municipal legislative body may, consistent with the provisions of state law, adopt

164 procedures governing the appointment, interview, and voting process for filling vacancies in
165 municipal offices.