

1 **OFFICEHOLDER VACANCY AMENDMENTS**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Brad M. Daw**

5 Senate Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill addresses a political party's authority to nominate a candidate to fill a midterm
10 vacancy.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ specifies that, when a political party is granted authority to nominate a candidate to
14 fill a midterm vacancy, the appointment shall be made by the political party with
15 which the prior officeholder affiliated when the prior officeholder was last
16 appointed or elected to the office being vacated.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **20A-1-502**, as enacted by Laws of Utah 1993, Chapter 1

24 **20A-1-503**, as last amended by Laws of Utah 2011, Chapters 327 and 340

25 **20A-1-504**, as last amended by Laws of Utah 2016, Chapter 28

26 **20A-1-508**, as last amended by Laws of Utah 2017, Chapter 54

27 **20A-1-509.1**, as last amended by Laws of Utah 2011, Chapters 297 and 327



28 **20A-1-509.2**, as last amended by Laws of Utah 2013, Chapter 237
29

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

31 Section 1. Section **20A-1-502** is amended to read:

32 **20A-1-502. Midterm vacancies in office of United States representative or**
33 **senator.**

34 (1) When a vacancy occurs for any reason in the office of a representative in Congress,
35 the governor shall issue a proclamation calling an election to fill the vacancy.

36 (2) (a) When a vacancy occurs in the office of [~~U.S. senator, it~~] United States senator,
37 the vacancy shall be filled for the unexpired term at the next regular general election.

38 (b) The governor shall appoint a person to serve as [~~U.S.~~] United States senator until
39 the vacancy is filled by election from one of three persons nominated by the state central
40 committee of the [~~same~~] political party [~~as~~] with which the prior officeholder affiliated when
41 the prior officeholder was last elected or appointed to the office of United States senator.

42 Section 2. Section **20A-1-503** is amended to read:

43 **20A-1-503. Midterm vacancies in the Legislature.**

44 (1) As used in this section:

45 (a) "Filing deadline" means the final date for filing:

46 (i) a declaration of candidacy as provided in Section **20A-9-202**; and

47 (ii) a certificate of nomination as provided in Section **20A-9-503**.

48 (b) "Party liaison" means the political party officer designated to serve as a liaison with
49 the lieutenant governor on all matters relating to the political party's relationship with the state
50 as required by Section **20A-8-401**.

51 (2) When a vacancy occurs for any reason in the office of representative in the
52 Legislature, the governor shall fill the vacancy by immediately appointing the person whose
53 name was submitted by the party liaison of the [~~same~~] political party [~~as~~] with which the prior
54 representative affiliated when the prior representative was last elected or appointed to the office
55 of representative in the Legislature.

56 (3) (a) Except as provided by Subsection (5), when a vacancy occurs for any reason in
57 the office of senator in the Legislature, [~~it~~] the vacancy shall be filled for the unexpired term at
58 the next regular general election.

59 (b) The governor shall fill the vacancy until the next regular general election by
60 immediately appointing the person whose name was submitted by the party liaison of the
61 [~~same~~] political party [~~as~~] with which the prior senator affiliated when the prior senator was
62 last elected or appointed to the office of senator in the Legislature.

63 (4) (a) If a vacancy described in Subsection (3)(a) occurs after the filing deadline but
64 before August 31 of an even-numbered year in which the term of office does not expire, the
65 lieutenant governor shall:

66 (i) establish a date, which is before the date for a candidate to be certified for the ballot
67 under Section 20A-9-701 and no later than 21 days after the day on which the vacancy
68 occurred, by which a person intending to obtain a position on the ballot for the vacant office
69 shall file:

70 (A) a declaration of candidacy; or

71 (B) a certificate of nomination; and

72 (ii) give notice of the vacancy and the date described in Subsection (4)(a)(i):

73 (A) on the lieutenant governor's website; and

74 (B) to each registered political party.

75 (b) A person intending to obtain a position on the ballot for the vacant office shall:

76 (i) by the date specified in Subsection (4)(a)(i), file a declaration of candidacy or
77 certificate of nomination according to the procedures and requirements of Chapter 9, Candidate
78 Qualifications and Nominating Procedures; and

79 (ii) run in the regular general election if:

80 (A) nominated as a party candidate; or

81 (B) qualified as an unaffiliated candidate as provided by Chapter 9, Candidate
82 Qualifications and Nominating Procedures.

83 (c) If a vacancy described in Subsection (3)(a) occurs on or after the first Monday after
84 the third Saturday in April and before August 31 of an even-numbered year in which the term
85 of office does not expire, a party liaison from each registered political party may submit a name
86 of a person described in Subsection (4)(b) to the lieutenant governor by August 30 for
87 placement on the regular general election ballot.

88 (5) If a vacancy described in Subsection (3)(a) occurs on or after August 31 of an
89 even-numbered year in which a term does not expire, the governor shall fill the vacancy for the

90 unexpired term by immediately appointing the person whose name was submitted by the party
91 liaison of the [same] political party [as] with which the prior senator affiliated when the prior
92 senator was last elected or appointed to the office of senator in the Legislature.

93 Section 3. Section **20A-1-504** is amended to read:

94 **20A-1-504. Midterm vacancies in the offices of attorney general, state treasurer,**
95 **state auditor, State Board of Education member, and lieutenant governor.**

96 (1) (a) When a vacancy occurs for any reason in the office of attorney general, state
97 treasurer, state auditor, or State Board of Education member, the vacancy shall be filled for the
98 unexpired term at the next regular general election.

99 (b) The governor shall fill the vacancy until the next regular general election by
100 appointing a person who meets the qualifications for the office from three persons nominated
101 by the state central committee of the [same] political party [as] with which the prior
102 officeholder affiliated when the prior officeholder was last elected or appointed to the office
103 being vacated.

104 (2) If a vacancy occurs in the office of lieutenant governor, the governor shall, with the
105 consent of the Senate, appoint a person to hold the office until the next regular general election
106 at which the governor stands for election.

107 (3) For a State Board of Education member vacancy, if the individual who is being
108 replaced is not a member of a political party, or if the member was elected at or before the 2016
109 regular general election, the governor shall fill the vacancy, with the consent of the Senate, by
110 selecting an individual who meets the qualifications and residency requirements for filling the
111 vacancy described in Section [20A-14-103](#).

112 Section 4. Section **20A-1-508** is amended to read:

113 **20A-1-508. Midterm vacancies in county elected offices.**

114 (1) As used in this section:

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

118 (ii) "County offices" does not mean the offices of president and vice president of the
119 United States, United States senators and representatives, members of the Utah Legislature,
120 state constitutional officers, county attorneys, district attorneys, and judges.

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

124 (2) (a) Until a replacement is selected as provided in this section and has qualified, the
125 county legislative body shall appoint an interim replacement to fill the vacant office by
126 following the procedures and requirements of this Subsection (2).

127 (b) (i) To appoint an interim replacement, the county legislative body shall give notice
128 of the vacancy to the party liaison of the [~~same~~] political party [~~of~~] with which the prior office
129 holder affiliated when the prior officeholder was last elected or appointed to the office being
130 vacated, and invite that party liaison to submit the name of a person to fill the vacancy.

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

134 (iii) The county legislative body shall no later than five days after the day on which a
135 party liaison submits the name of the person for the interim replacement appoint the person to
136 serve out the unexpired term.

137 (c) (i) If the county legislative body fails to appoint an interim replacement to fill the
138 vacancy in accordance with Subsection (2)(b)(iii), the county clerk shall send to the governor a
139 letter that:

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

142 (B) contains the name of the person to fill the vacancy submitted by the party liaison.

143 (ii) The governor shall appoint the person named by the party liaison as an interim
144 replacement to fill the vacancy within 30 days after receipt of the letter.

145 (d) A person appointed as interim replacement under this Subsection (2) shall hold
146 office until their successor is elected and has qualified.

147 (3) (a) The requirements of this Subsection (3) apply to all county offices that become
148 vacant if:

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

150 (ii) the vacancy occurs after the election at which the person was elected but before
151 April 10 of the next even-numbered year.

152 (b) (i) When the conditions established in Subsection (3)(a) are met, the county clerk
153 shall notify the public and each registered political party that the vacancy exists.

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

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

157 (B) for a county commission office, Subsection 17-52-501(6) or 17-52-502(6), if
158 applicable.

159 (iii) An individual who is nominated as a party candidate for the vacant office or
160 qualified as an independent or write-in candidate under Chapter 8, Political Party Formation
161 and Procedures, for the vacant office shall run in the regular general election.

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

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

165 (ii) the vacancy occurs after April 9 of the next even-numbered year but more than 75
166 days before the regular primary election.

167 (b) (i) When the conditions established in Subsection (4)(a) are met, the county clerk
168 shall notify the public and each registered political party that:

169 (A) the vacancy exists; and

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

172 (ii) An individual intending to become a candidate for a vacant office shall, within five
173 days after the date that the notice is made, ending at the close of normal office hours on the
174 fifth day, file a declaration of candidacy for the vacant office in accordance with:

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

176 (B) for a county commission office, Subsection 17-52-501(6) or 17-52-502(6), if
177 applicable.

178 (iii) The county central committee of each party shall:

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

181 (B) certify the name of the candidate or candidates to the county clerk at least 60 days
182 before the regular primary election.

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

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

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

188 (b) When the conditions established in Subsection (5)(a) are met, the county central
189 committees of each political party registered under this title that wishes to submit a candidate
190 for the office shall summarily certify the name of one candidate to the county clerk for
191 placement on the regular general election ballot.

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

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

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

197 (b) (i) When the conditions established in Subsection (6)(a) are met, the county
198 legislative body shall give notice of the vacancy to the party liaison of the [~~same~~] political party
199 [~~as~~] with which the prior officeholder affiliated when the prior officeholder was last elected or
200 appointed to the office being vacated, and invite that party liaison to submit the name of a
201 person to fill the vacancy.

202 (ii) That party liaison shall, within 30 days, submit the name of the person to fill the
203 vacancy to the county legislative body.

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

207 (c) (i) If the county legislative body fails to appoint a person to fill the vacancy in
208 accordance with Subsection (6)(b)(iii), the county clerk shall send to the governor a letter that:

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

211 (B) contains the name of the person to fill the vacancy submitted by the party liaison.

212 (ii) The governor shall appoint the person named by the party liaison to fill the vacancy
213 within 30 days after receipt of the letter.

214 (d) A person appointed to fill the vacancy under this Subsection (6) shall hold office
215 until their successor is elected and has qualified.

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

219 (8) Nothing in this section prevents or prohibits independent candidates from filing a
220 declaration of candidacy for the office within the same time limits.

221 (9) (a) Each person elected under Subsection (3), (4), or (5) to fill a vacancy in a
222 county office shall serve for the remainder of the unexpired term of the person who created the
223 vacancy and until a successor is elected and qualified.

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

226 Section 5. Section 20A-1-509.1 is amended to read:

227 **20A-1-509.1. Procedure for filling midterm vacancy in county or district with 15**
228 **or more attorneys.**

229 (1) When a vacancy occurs in the office of county or district attorney in a county or
230 district having 15 or more attorneys who are licensed active members in good standing with the
231 Utah State Bar and registered voters, the vacancy shall be filled as provided in this section.

232 (2) (a) The requirements of this Subsection (2) apply when the office of county
233 attorney or district attorney becomes vacant and:

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

235 (ii) the vacancy occurs before the third Thursday in March of the even-numbered year.

236 (b) When the conditions established in Subsection (2)(a) are met, the county clerk shall
237 notify the public and each registered political party that the vacancy exists.

238 (c) All persons intending to become candidates for the vacant office shall:

239 (i) file a declaration of candidacy according to the procedures and requirements of
240 Chapter 9, Part 2, Candidate Qualifications and Declarations of Candidacy;

241 (ii) if nominated as a party candidate or qualified as an independent or write-in
242 candidate under Chapter 9, Candidate Qualifications and Nominating Procedures, run in the
243 regular general election; and

244 (iii) if elected, complete the unexpired term of the person who created the vacancy.

245 (d) If the vacancy occurs after the second Friday in March and before the third
246 Thursday in March, the time for filing a declaration of candidacy under Section 20A-9-202
247 shall be extended until seven days after the county clerk gives notice under Subsection (2)(b),
248 but no later than the fourth Thursday in March.

249 (3) (a) The requirements of this Subsection (3) apply when the office of county
250 attorney or district attorney becomes vacant and:

- 251 (i) the vacant office has an unexpired term of two years or more; and
- 252 (ii) the vacancy occurs after the third Thursday in March of the even-numbered year
253 but more than 75 days before the regular primary election.

254 (b) When the conditions established in Subsection (3)(a) are met, the county clerk
255 shall:

- 256 (i) notify the public and each registered political party that the vacancy exists; and
- 257 (ii) identify the date and time by which a person interested in becoming a candidate
258 shall file a declaration of candidacy.

259 (c) All persons intending to become candidates for the vacant office shall:

- 260 (i) within five days after the date that the notice is made, ending at the close of normal
261 office hours on the fifth day, file a declaration of candidacy for the vacant office as required by
262 Chapter 9, Part 2, Candidate Qualifications and Declaration of Candidacy; and

- 263 (ii) if elected, complete the unexpired term of the person who created the vacancy.

264 (d) The county central committee of each party shall:

- 265 (i) select a candidate or candidates from among those qualified candidates who have
266 filed declarations of candidacy; and
- 267 (ii) certify the name of the candidate or candidates to the county clerk at least 60 days
268 before the regular primary election.

269 (4) (a) The requirements of this Subsection (4) apply when the office of county
270 attorney or district attorney becomes vacant and:

- 271 (i) the vacant office has an unexpired term of two years or more; and
- 272 (ii) 75 days or less remain before the regular primary election but more than 65 days
273 remain before the regular general election.

274 (b) When the conditions established in Subsection (4)(a) are met, the county central
275 committees of each registered political party that wish to submit a candidate for the office shall

276 summarily certify the name of one candidate to the county clerk for placement on the regular
277 general election ballot.

278 (c) The candidate elected shall complete the unexpired term of the person who created
279 the vacancy.

280 (5) (a) The requirements of this Subsection (5) apply when the office of county
281 attorney or district attorney becomes vacant and:

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

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

285 (b) When the conditions established in Subsection (5)(a) are met, the county legislative
286 body shall give notice of the vacancy to the county central committee of the ~~[same]~~ political
287 party ~~[of]~~ with which the prior [officeholder] county or district attorney affiliated when the
288 prior county or district attorney was last elected or appointed to the office of county or district
289 attorney, and invite that committee to submit the names of three nominees to fill the vacancy.

290 (c) That county central committee shall, within 30 days of receiving notice from the
291 county legislative body, submit to the county legislative body the names of three nominees to
292 fill the vacancy.

293 (d) The county legislative body shall, within 45 days after the vacancy occurs, appoint
294 one of those nominees to serve out the unexpired term.

295 (e) If the county legislative body fails to appoint a person to fill the vacancy within 45
296 days, the county clerk shall send to the governor a letter that:

297 (i) informs the governor that the county legislative body has failed to appoint a person
298 to fill the vacancy within the statutory time period; and

299 (ii) contains the list of nominees submitted by the party central committee.

300 (f) The governor shall appoint a person to fill the vacancy from that list of nominees
301 within 30 days after receipt of the letter.

302 (g) A person appointed to fill the vacancy under Subsection (5) shall complete the
303 unexpired term of the person who created the vacancy.

304 (6) Nothing in this section prevents or prohibits independent candidates from filing a
305 declaration of candidacy for the office within the required time limits.

306 Section 6. Section **20A-1-509.2** is amended to read:

307 **20A-1-509.2. Procedure for filling vacancy in county or district with fewer than**
308 **15 attorneys.**

309 (1) When a vacancy occurs in the office of county or district attorney, including a
310 vacancy created by the failure of a person to file as a candidate for the office of county or
311 district attorney in an election, in a county or district having fewer than 15 attorneys who are
312 licensed, active members in good standing with the Utah State Bar and registered voters, the
313 vacancy shall be filled as provided in this section.

314 (2) The county clerk shall send a letter to each attorney residing in the county or district
315 who is a licensed, active member in good standing with the Utah State Bar and a registered
316 voter that:

317 (a) informs the attorney of the vacancy;

318 (b) invites the attorney to apply for the vacancy; and

319 (c) informs the attorney that if the attorney has not responded within 10 calendar days
320 from the date that the letter was mailed, the attorney's candidacy to fill the vacancy will not be
321 considered.

322 (3) (a) (i) If, after 10 calendar days from the date the letter was mailed, more than three
323 attorneys who are licensed, active members in good standing with the Utah State Bar and
324 registered voters in the county or district have applied for the vacancy, the county clerk shall,
325 except as provided in Subsection (3)(a)(ii), submit the applications to the county central
326 committee of the ~~[same]~~ political party ~~[of]~~ with which the prior ~~[officeholder]~~ county or
327 district attorney affiliated when the prior county or district attorney was last elected or
328 appointed to the office of county or district attorney.

329 (ii) In multicounty prosecution districts, the clerk shall submit the applications to the
330 county central committee of each county within the prosecution district.

331 (b) The central committee shall nominate three of the applicants and forward the
332 applicants' names to the county legislative body within 20 days after the date the county clerk
333 submitted the applicants' names.

334 (c) The county legislative body shall appoint one of the nominees to fill the vacant
335 position.

336 (d) If the central committee of the political party fails to submit at least three names to
337 the county legislative body within 20 days after the date the county clerk submitted the

338 applicants' names, the county legislative body shall appoint one of the applicants to fill the
339 vacant position.

340 (e) If the county legislative body fails to appoint a person to fill the vacancy within 120
341 days after the vacancy occurs, the county clerk shall mail to the governor:

342 (i) a letter informing the governor that the county legislative body has failed to appoint
343 a person to fill the vacancy; and

344 (ii) (A) the list of nominees, if any, submitted by the central committee of the political
345 party; or

346 (B) if the party central committee has not submitted a list of at least three nominees
347 within the required time, the names of the persons who submitted applications for the vacant
348 position to the county clerk.

349 (f) The governor shall appoint, within 30 days after receipt of the letter, a person from
350 the list to fill the vacancy.

351 (4) (a) If, after 10 calendar days from the date the letter was mailed, three or fewer
352 attorneys who are licensed, active members in good standing with the Utah State Bar and
353 registered voters in the county or district have applied for the vacancy, the county legislative
354 body may:

355 (i) appoint one of them to be county or district attorney; or

356 (ii) solicit additional applicants and appoint a county or district attorney as provided in
357 Subsection (4)(b).

358 (b) (i) If three or fewer attorneys who are licensed members in good standing of the
359 Utah State Bar and registered voters in the county or district submit applications, the county
360 legislative body may publicly solicit and accept additional applications for the position from
361 licensed, active members in good standing of the Utah State Bar who are not residents of the
362 county or prosecution district.

363 (ii) The county legislative body shall consider the applications submitted by the
364 attorneys who are residents of and registered voters in the county or prosecution district and the
365 applications submitted by the attorneys who are not residents of the county or prosecution
366 district and shall appoint one of the applicants to be county attorney or district attorney.

367 (c) If the legislative body fails to appoint a person to fill the vacancy within 120 days
368 after the vacancy occurs, the county clerk shall:

369 (i) notify the governor that the legislative body has failed to fill the vacancy within the
370 required time period; and

371 (ii) provide the governor with a list of all the applicants.

372 (d) The governor shall appoint a person to fill the vacancy within 30 days after the
373 governor receives the notification.

374 (5) The person appointed to fill the vacancy shall serve for the unexpired term of the
375 person who created the vacancy.

Legislative Review Note
Office of Legislative Research and General Counsel