

MIDTERM VACANCY AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John Dougall

Senate Sponsor: John L. Valentine

LONG TITLE

General Description:

This bill amends provisions relating to filling a midterm vacancy in an elected office.

Highlighted Provisions:

This bill:

- ▶ requires a municipality and local school board to interview potential appointees in a public meeting;
- ▶ prohibits the discussion of filling a midterm vacancy or temporary absence in a closed meeting; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

20A-1-510, as last amended by Laws of Utah 2011, Chapter 176

20A-1-511, as last amended by Laws of Utah 1994, Chapter 108

52-4-205, as last amended by Laws of Utah 2011, Chapters 46 and 334

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

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

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

30 (1) (a) Except as otherwise provided in Subsection (2), if any vacancy occurs in the
31 office of municipal executive or member of a municipal legislative body, the municipal
32 legislative body shall appoint a registered voter in the municipality who meets the
33 qualifications for office established in Section 10-3-301 to fill the unexpired term of the office
34 vacated until the January following the next municipal election.

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

36 (i) give public notice of the vacancy at least two weeks before the municipal legislative
37 body meets to fill the vacancy; ~~and~~

38 (ii) identify, in the notice:

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

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

42 (C) the deadline for submitting an interested person's name[-]; and

43 (iii) in an open meeting, interview each person whose name was submitted for
44 consideration and meets the qualifications for office regarding the person's qualifications.

45 (c) (i) If, for any reason, the municipal legislative body does not fill the vacancy within
46 30 days after the vacancy occurs, the municipal legislative body shall fill the vacancy from
47 among the names that have been submitted.

48 (ii) The two persons having the highest number of votes of the municipal legislative
49 body after a first vote is taken shall appear before the municipal legislative body and the
50 municipal legislative body shall vote again.

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

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

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

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

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

61 (i) comply with the notice requirements of this section[-]; and

62 (ii) in an open meeting, interview each person whose name was submitted for
63 consideration and meets the qualifications for office regarding the person's qualifications.

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

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

69 (ii) if a vacancy in the office of mayor occurs before the effective date of an
70 appointment under Subsection (1) or (2) to fill the vacancy, the council chair shall serve as
71 acting mayor during the time between the creation of the vacancy and the effective date of the
72 appointment to fill the vacancy.

73 (b) While serving as acting mayor under Subsection (3)(a)(ii), the council chair
74 continues to:

75 (i) act as a council member; and

76 (ii) vote at council meetings.

77 Section 2. Section **20A-1-511** is amended to read:

78 **20A-1-511. Midterm vacancies on local school boards.**

79 (1) (a) A local school board shall fill vacancies on the board by appointment, except as
80 otherwise provided in Subsection (2).

81 (b) If the board fails to make an appointment within 30 days after a vacancy occurs, the
82 county legislative body, or municipal legislative body in a city district, shall fill the vacancy by
83 appointment.

84 (c) A member appointed and qualified under this subsection shall serve until a
85 successor is elected or appointed and qualified.

86 (2) (a) A vacancy on the board shall be filled by an interim appointment, followed by
87 an election to fill a two-year term if:

88 (i) the vacancy on the board occurs, or a letter of resignation is received by the board,
89 at least 14 days before the deadline for filing a declaration of candidacy; and

90 (ii) two years of the vacated term will remain after the first Monday of January
91 following the next school board election.

92 (b) Members elected under this subsection shall serve for the remaining two years of
93 the vacated term and until a successor is elected and qualified.

94 (3) Before appointing a person to fill a vacancy under this section, the local school
95 board shall:

96 (a) give public notice of the vacancy at least two weeks before the local school board
97 meets to fill the vacancy;

98 (b) identify, in the notice:

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

100 (ii) the person to whom a person interested in being appointed to fill the vacancy may
101 submit his name for consideration and any deadline for submitting it[-]; and

102 (c) in an open meeting, interview each person whose name was submitted for
103 consideration and meets the qualifications for office regarding the person's qualifications.

104 Section 3. Section **52-4-205** is amended to read:

105 **52-4-205. Purposes of closed meetings -- Certain issues prohibited in closed**
106 **meetings.**

107 (1) A closed meeting described under Section 52-4-204 may only be held for:

108 (a) except as provided in Subsection (3), discussion of the character, professional
109 competence, or physical or mental health of an individual;

110 (b) strategy sessions to discuss collective bargaining;

111 (c) strategy sessions to discuss pending or reasonably imminent litigation;

112 (d) strategy sessions to discuss the purchase, exchange, or lease of real property,
113 including any form of a water right or water shares, if public discussion of the transaction

114 would:

115 (i) disclose the appraisal or estimated value of the property under consideration; or

116 (ii) prevent the public body from completing the transaction on the best possible terms;

117 (e) strategy sessions to discuss the sale of real property, including any form of a water

118 right or water shares, if:

119 (i) public discussion of the transaction would:

120 (A) disclose the appraisal or estimated value of the property under consideration; or

121 (B) prevent the public body from completing the transaction on the best possible terms;

122 (ii) the public body previously gave public notice that the property would be offered for

123 sale; and

124 (iii) the terms of the sale are publicly disclosed before the public body approves the

125 sale;

126 (f) discussion regarding deployment of security personnel, devices, or systems;

127 (g) investigative proceedings regarding allegations of criminal misconduct;

128 (h) as relates to the Independent Legislative Ethics Commission, conducting business

129 relating to the receipt or review of ethics complaints;

130 (i) as relates to an ethics committee of the Legislature, a purpose permitted under

131 Subsection 52-4-204(1)(a)(iii)(B);

132 (j) as relates to a county legislative body, discussing commercial information as

133 defined in Section 59-1-404;

134 (k) as relates to the Alcoholic Beverage Control Commission issuing a retail license

135 under Title 32B, Alcoholic Beverage Control Act, after receiving public input in a public

136 meeting in support or opposition to the commission issuing the retail license, discussing one or

137 more of the following factors in a closed meeting:

138 (i) a factor the commission is required to consider under Section 32B-5-203 or that is

139 specified in the relevant part under Title 32B, Chapter 6, Specific Retail License Act, for the

140 type of retail license at issue;

141 (ii) the availability of a retail license under a quota;

- 142 (iii) the length of time the applicant has waited for a retail license;
- 143 (iv) an opening date for the applicant;
- 144 (v) whether the applicant is a seasonal business;
- 145 (vi) whether the location of the applicant has been previously licensed or is a new
- 146 location;
- 147 (vii) whether the application involves a change of ownership of an existing location;
- 148 (viii) whether the applicant holds other alcohol licenses at any location;
- 149 (ix) whether the applicant has a violation history or a pending violation;
- 150 (x) projected alcohol sales for the applicant as it relates to the extent to which the retail
- 151 license will be used;
- 152 (xi) whether the applicant is a small or entrepreneurial business that would benefit the
- 153 community in which it would be located;
- 154 (xii) the nature of entertainment the applicant proposes; or
- 155 (xiii) public input in support or opposition to granting the retail license;
- 156 (l) as relates to the Utah Higher Education Assistance Authority and its appointed
- 157 board of directors, discussing fiduciary or commercial information as defined in Section
- 158 53B-12-102; or
- 159 (m) a purpose for which a meeting is required to be closed under Subsection (2).
- 160 (2) The following meetings shall be closed:
- 161 (a) a meeting of the Health and Human Services Interim Committee to review a fatality
- 162 review report described in Subsection 62A-16-301(1)(a), and the responses to the report
- 163 described in Subsections 62A-16-301(2) and (4); and
- 164 (b) a meeting of the Child Welfare Legislative Oversight Panel to:
- 165 (i) review a fatality review report described in Subsection 62A-16-301(1)(a), and the
- 166 responses to the report described in Subsections 62A-16-301(2) and (4); or
- 167 (ii) review and discuss an individual case, as described in Subsection 62A-4a-207(5).
- 168 (3) ~~[A]~~ In a closed meeting, a public body may not:
- 169 (a) interview a person applying to fill an elected position [~~in a closed meeting~~];

170 (b) discuss filling a midterm vacancy or temporary absence governed by Title 20A,
171 Chapter 1, Part 5, Candidate Vacancy and Vacancy and Temporary Absence in Elected Office;
172 or
173 (c) discuss the character, professional competence, or physical or mental health of the
174 person whose name was submitted for consideration to fill a midterm vacancy or temporary
175 absence governed by Title 20A, Chapter 1, Part 5, Candidate Vacancy and Vacancy and
176 Temporary Absence in Elected Office.