

1 **MIDTERM VACANCY AMENDMENTS**

2 2012 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: John Dougall**

5 Senate Sponsor: John L. Valentine

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7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions relating to filling a midterm vacancy in an elected office in  
10 a municipality or on a local school board.

11 **Highlighted Provisions:**

12 This bill:

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

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **20A-1-510**, as last amended by Laws of Utah 2011, Chapter 176

24 **20A-1-511**, as last amended by Laws of Utah 1994, Chapter 108

25 **52-4-205**, as last amended by Laws of Utah 2011, Chapters 46 and 334

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



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

29 **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.**

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

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

109 (b) strategy sessions to discuss collective bargaining;

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

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

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

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

116 (e) strategy sessions to discuss the sale of real property, including any form of a water  
117 right or water shares, if:

118 (i) public discussion of the transaction would:

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

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

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

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

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

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

127 (h) as relates to the Independent Legislative Ethics Commission, conducting business  
128 relating to the receipt or review of ethics complaints;

129 (i) as relates to an ethics committee of the Legislature, a purpose permitted under  
130 Subsection 52-4-204(1)(a)(iii)(B);

131 (j) as relates to a county legislative body, discussing commercial information as  
132 defined in Section 59-1-404;

133 (k) as relates to the Alcoholic Beverage Control Commission issuing a retail license  
134 under Title 32B, Alcoholic Beverage Control Act, after receiving public input in a public  
135 meeting in support or opposition to the commission issuing the retail license, discussing one or  
136 more of the following factors in a closed meeting:

137 (i) a factor the commission is required to consider under Section 32B-5-203 or that is  
138 specified in the relevant part under Title 32B, Chapter 6, Specific Retail License Act, for the  
139 type of retail license at issue;

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

141 (iii) the length of time the applicant has waited for a retail license;

142 (iv) an opening date for the applicant;

143 (v) whether the applicant is a seasonal business;

144 (vi) whether the location of the applicant has been previously licensed or is a new  
145 location;

146 (vii) whether the application involves a change of ownership of an existing location;

147 (viii) whether the applicant holds other alcohol licenses at any location;

148 (ix) whether the applicant has a violation history or a pending violation;

149 (x) projected alcohol sales for the applicant as it relates to the extent to which the retail  
150 license will be used;

151 (xi) whether the applicant is a small or entrepreneurial business that would benefit the

152 community in which it would be located;

153 (xii) the nature of entertainment the applicant proposes; or

154 (xiii) public input in support or opposition to granting the retail license;

155 (l) as relates to the Utah Higher Education Assistance Authority and its appointed

156 board of directors, discussing fiduciary or commercial information as defined in Section

157 53B-12-102; or

158 (m) a purpose for which a meeting is required to be closed under Subsection (2).

159 (2) The following meetings shall be closed:

160 (a) a meeting of the Health and Human Services Interim Committee to review a fatality

161 review report described in Subsection 62A-16-301(1)(a), and the responses to the report

162 described in Subsections 62A-16-301(2) and (4); and

163 (b) a meeting of the Child Welfare Legislative Oversight Panel to:

164 (i) review a fatality review report described in Subsection 62A-16-301(1)(a), and the

165 responses to the report described in Subsections 62A-16-301(2) and (4); or

166 (ii) review and discuss an individual case, as described in Subsection 62A-4a-207(5).

167 (3) ~~[A] In a closed meeting, a public body may not:~~

168 (a) interview a person applying to fill an elected position [in a closed meeting];

169 (b) discuss filling a midterm vacancy or temporary absence governed by Title 20A,

170 Chapter 1, Part 5, Candidate Vacancy and Vacancy and Temporary Absence in Elected Office;

171 or

172 (c) discuss the character, professional competence, or physical or mental health of the

173 person whose name was submitted for consideration to fill a midterm vacancy or temporary

174 absence governed by Title 20A, Chapter 1, Part 5, Candidate Vacancy and Vacancy and

175 Temporary Absence in Elected Office.

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**Legislative Review Note**  
**as of 2-15-12 6:17 AM**

**Office of Legislative Research and General Counsel**