

ELECTION LAW PROCEDURES

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: D. Edgar Allen

This act modifies election provisions governing adjudication of election violations by authorizing the lieutenant governor to appoint an administrative law judge to adjudicate election complaints.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

20A-1-703, as last amended by Chapter 296, Laws of Utah 1997

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

Section 1. Section **20A-1-703** is amended to read:

20A-1-703. Proceedings by registered voter.

(1) Any registered voter who has information that any provisions of this title have been violated by any candidate for whom the registered voter had the right to vote, by any personal campaign committee of that candidate, by any member of that committee, or by any election official, may file a verified petition with the lieutenant governor.

(2) (a) The lieutenant governor shall ~~[gather information and determine if a special investigation is necessary]~~ investigate the allegations contained in the complaint.

~~[(b) If the lieutenant governor determines that a special investigation is necessary, the lieutenant governor shall refer the information to the attorney general, who shall:]~~

~~[(i) bring a special proceeding to investigate and determine whether or not there has been a violation; and]~~

~~[(ii) appoint special counsel to conduct that proceeding on behalf of the state:]~~

~~[(3) If it appears from the petition or otherwise that sufficient evidence is obtainable to show that there is probable cause to believe that a violation has occurred, the attorney general shall:]~~



- 28 ~~[(a) grant leave to bring the proceeding; and]~~
29 ~~[(b) appoint special counsel to conduct the proceeding.]~~
30 ~~[(4) (a) If leave is granted, the registered voter may, by a special proceeding brought in the~~
31 ~~district court in the name of the state upon the relation of the registered voter, investigate and~~
32 ~~determine whether or not the candidate, candidate's personal campaign committee, any member~~
33 ~~of the candidate's personal campaign committee, or any election officer has violated any provision~~
34 ~~of this title.]~~
35 ~~[(b) (i) In the proceeding, the complaint shall:]~~
36 ~~[(A) be served with the summons; and]~~
37 ~~[(B) set forth the name of the person or persons who have allegedly violated this title and~~
38 ~~the grounds of those violations in detail.]~~
39 ~~[(ii) The complaint may not be amended except by leave of the court.]~~
40 ~~[(iii) The summons and complaint in the proceeding shall be filed with the court no later~~
41 ~~than five days after they are served.]~~
42 ~~[(c) (i) The answer to the complaint shall be served and filed within ten days after the~~
43 ~~service of the summons and complaint.]~~
44 ~~[(ii) Any allegation of new matters in the answer shall be considered controverted by the~~
45 ~~adverse party without reply, and the proceeding shall be considered at issue and stand ready for~~
46 ~~trial upon five days' notice of trial.]~~
47 (b) If, as a result of the investigation, the lieutenant governor determines that the
48 allegations contained in the complaint are without merit, the lieutenant governor shall transmit a
49 notice of agency action to the complainant detailing that finding.
50 (c) If the lieutenant governor determines that the allegations contained in the complaint
51 have merit, the lieutenant governor shall refer the verified petition to an administrative law judge
52 for adjudication as a request for agency action.
53 (d) The lieutenant governor shall, by September 15, 2001:
54 (i) make rules establishing procedures for addressing complaints filed under this section
55 as authorized by Title 63, Chapter 46b, Administrative Procedures Act;
56 (ii) make rules identifying the process the lieutenant governor will use to select a neutral
57 person to serve as administrative law judge; and
58 (iii) submit those rules to the Administrative Rules Review Committee created in Section

59 63-46a-11 for its review.

60 (e) As authorized by Title 63, Chapter 46b, Administrative Procedures Act, the lieutenant
61 governor may, by rule, designate that verified petitions received under this section be adjudicated
62 as formal or informal adjudicative proceedings.

63 (3) Notwithstanding any requirements contained in Title 63, Chapter 46b, Administrative
64 Procedures Act, in conducting the adjudicative proceeding, the administrative law judge may, by
65 order, modify any time limits contained in the act in order to expedite a timely and conclusive
66 decision on the matter raised in the verified petition.

67 ~~[(d)(i)]~~ (4) All proceedings initiated under this section, including any de novo review or
68 appeals, have precedence over any other civil actions.

69 ~~[(ii) The court shall always be considered open for the trial of the issues raised in this~~
70 ~~proceeding.]~~

71 ~~[(iii) The proceeding shall be tried and determined as a civil action without a jury, with~~
72 ~~the court determining all issues of fact and issues of law.]~~

73 ~~[(iv) If more than one proceeding is pending or the election of more than one person is~~
74 ~~investigated and contested, the court may:]~~

75 ~~[(A) order the proceedings consolidated and heard together; and]~~

76 ~~[(B) equitably apportion costs and disbursements.]~~

77 ~~[(e) (i) Either party may request a change of venue as provided by law in civil actions, but~~
78 ~~application for a change of venue must be made within five days after service of summons and~~
79 ~~complaint.]~~

80 ~~[(ii) The judge shall decide the request for a change of venue and issue any necessary~~
81 ~~orders within three days after the application is made.]~~

82 ~~[(iii) If a party fails to request a change of venue within five days of service, he has waived~~
83 ~~his right to a change of venue.]~~

84 ~~[(f)(i) If]~~ (5) (a) In an administrative proceeding, de novo proceeding, or appellate
85 proceeding arising from a verified petition, if judgment is in favor of the plaintiff, the [relator]
86 plaintiff may petition the administrative law judge or judge to recover his [taxable] attorney's fees
87 and costs [and disbursements against] from the person whose right to the office is contested.

88 ~~[(ii)]~~ (b) The administrative law judge or judge may not award costs to the defendant
89 unless it appears that the proceeding was brought in bad faith.

90 [~~(iii)~~] (c) Subject to the limitations contained in this Subsection [~~(f)~~] (5), the judge may
91 decide whether or not to award attorney's fees and costs [~~and disbursements~~].

92 [~~(5)~~] (6) Nothing in this section may be construed to prohibit any other civil or criminal
93 actions or remedies against alleged violators.

94 [~~(6) In the event~~] (7) If a witness asserts a privilege against self-incrimination, testimony
95 and evidence from the witness may be compelled pursuant to Title 77, Chapter 22b, Grants of
96 Immunity.

Legislative Review Note
as of 2-8-01 2:44 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel