

Part 12 Political Activities of Public Entities Act

20A-11-1201 Title.

This part is known as the "Political Activities of Public Entities Act."

Amended by Chapter 21, 1999 General Session

20A-11-1202 Definitions.

As used in this part:

- (1) "Applicable election officer" means:
 - (a) a county clerk, if the email relates only to a local election; or
 - (b) the lieutenant governor, if the email relates to an election other than a local election.
- (2) "Ballot proposition" means constitutional amendments, initiatives, referenda, judicial retention questions, opinion questions, bond approvals, or other questions submitted to the voters for their approval or rejection.
- (3) "Campaign contribution" means any of the following when done for a political purpose or to advocate for or against a ballot proposition:
 - (a) a gift, subscription, donation, loan, advance, deposit of money, or anything of value given to a filing entity;
 - (b) an express, legally enforceable contract, promise, or agreement to make a gift, subscription, donation, unpaid or partially unpaid loan, advance, deposit of money, or anything of value to a filing entity;
 - (c) any transfer of funds from another reporting entity to a filing entity;
 - (d) compensation paid by any person or reporting entity other than the filing entity for personal services provided without charge to the filing entity;
 - (e) remuneration from:
 - (i) any organization or the organization's directly affiliated organization that has a registered lobbyist; or
 - (ii) any agency or subdivision of the state, including a school district; or
 - (f) an in-kind contribution.
- (4)
 - (a) "Commercial interlocal cooperation agency" means an interlocal cooperation agency that receives its revenues from conduct of its commercial operations.
 - (b) "Commercial interlocal cooperation agency" does not mean an interlocal cooperation agency that receives some or all of its revenues from:
 - (i) government appropriations;
 - (ii) taxes;
 - (iii) government fees imposed for regulatory or revenue raising purposes; or
 - (iv) interest earned on public funds or other returns on investment of public funds.
- (5) "Expenditure" means:
 - (a) a purchase, payment, donation, distribution, loan, advance, deposit, gift of money, or anything of value;
 - (b) an express, legally enforceable contract, promise, or agreement to make any purchase, payment, donation, distribution, loan, advance, deposit, gift of money, or anything of value;
 - (c) a transfer of funds between a public entity and a candidate's personal campaign committee;
 - (d) a transfer of funds between a public entity and a political issues committee; or

- (e) goods or services provided to or for the benefit of a candidate, a candidate's personal campaign committee, or a political issues committee for political purposes at less than fair market value.
- (6) "Filing entity" means the same as that term is defined in Section 20A-11-101.
- (7) "Governmental interlocal cooperation agency" means an interlocal cooperation agency that receives some or all of its revenues from:
 - (a) government appropriations;
 - (b) taxes;
 - (c) government fees imposed for regulatory or revenue raising purposes; or
 - (d) interest earned on public funds or other returns on investment of public funds.
- (8) "Influence" means to campaign or advocate for or against a ballot proposition.
- (9) "Interlocal cooperation agency" means an entity created by interlocal agreement under the authority of Title 11, Chapter 13, Interlocal Cooperation Act.
- (10) "Local district" means an entity under Title 17B, Limited Purpose Local Government Entities - Local Districts, and includes a special service district under Title 17D, Chapter 1, Special Service District Act.
- (11) "Political purposes" means an act done with the intent or in a way to influence or intend to influence, directly or indirectly, any person to refrain from voting or to vote for or against any:
 - (a) candidate for public office at any caucus, political convention, primary, or election; or
 - (b) judge standing for retention at any election.
- (12) "Proposed initiative" means an initiative proposed in an application filed under Section 20A-7-202 or 20A-7-502.
- (13) "Proposed referendum" means a referendum proposed in an application filed under Section 20A-7-302 or 20A-7-602.
- (14)
 - (a) "Public entity" includes the state, each state agency, each county, municipality, school district, local district, governmental interlocal cooperation agency, and each administrative subunit of each of them.
 - (b) "Public entity" does not include a commercial interlocal cooperation agency.
 - (c) "Public entity" includes local health departments created under Title 26, Chapter 1, Department of Health Organization.
- (15)
 - (a) "Public funds" means any money received by a public entity from appropriations, taxes, fees, interest, or other returns on investment.
 - (b) "Public funds" does not include money donated to a public entity by a person or entity.
- (16)
 - (a) "Public official" means an elected or appointed member of government with authority to make or determine public policy.
 - (b) "Public official" includes the person or group that:
 - (i) has supervisory authority over the personnel and affairs of a public entity; and
 - (ii) approves the expenditure of funds for the public entity.
- (17) "Reporting entity" means the same as that term is defined in Section 20A-11-101.
- (18)
 - (a) "State agency" means each department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the state.
 - (b) "State agency" includes the legislative branch, the Utah Board of Higher Education, each institution of higher education board of trustees, and each higher education institution.

Amended by Chapter 365, 2020 General Session

20A-11-1203 Public entity prohibited from expending public funds on certain electoral matters.

- (1) Unless specifically required by law, and except as provided in Section 20A-11-1206, a public entity may not:
 - (a) make an expenditure from public funds for political purposes, to influence a ballot proposition, or to influence a proposed initiative or proposed referendum; or
 - (b) publish on the public entity's website an argument for or against a ballot proposition, a proposed initiative, or a proposed referendum.
- (2) A violation of this section does not invalidate an otherwise valid election.
- (3) This section does not prohibit the reasonable expenditure of public funds to gather information for, and respond directly to, an individual who makes an inquiry regarding a ballot proposition, a proposed initiative, or a proposed referendum.
- (4) This section does not prohibit:
 - (a) a public entity from conducting research, or collecting and compiling information or arguments in relation to, a ballot proposition, a proposed initiative, or a proposed referendum;
 - (b) an elected or appointed official of the public entity described in Subsection (4)(a) from using the research, information, or arguments described in Subsection (4)(a) for the purpose of advocating for or against a ballot proposition, proposed initiative, or proposed referendum via a website, or another medium, not owned or controlled by the public entity;
 - (c) a public entity from posting on the public entity's website a link to another website, with a brief description, that is not owned or controlled by a public entity, or from publishing in any medium owned, controlled, or paid for by a public entity a website address, with a brief description, where an individual may view research, information, and arguments for or against a ballot proposition, proposed initiative, or proposed referendum if the public entity:
 - (i) before posting the link or publishing the address, provides at least seven days written notice to the sponsors of the ballot proposition, proposed initiative, or proposed referendum:
 - (A) of the public entity's intent to post the link or publish the address;
 - (B) a description of each medium in which the public entity intends to post the link or publish the address; and
 - (C) the dates of the publication or posting; and
 - (ii) posts, immediately adjacent to the link or address, and brief description described in Subsection (4)(c)(i), a link to, or an address for, a website, with a brief description, containing the sponsors' research, information, and arguments for or against the ballot proposition, proposed initiative, or proposed referendum, if the sponsors provide a link or address within seven days after the day on which the sponsors receive the notice described in Subsection (4)(c)(i); or
 - (d) a public entity from posting on the public entity's website, or any medium, a complete copy of a proposition information pamphlet described in Section 20A-7-401.5 or a voter information pamphlet.

Amended by Chapter 203, 2019 General Session

20A-11-1204 Criminal penalty.

Each public official who violates Section 20A-11-1203 is guilty of a class B misdemeanor.

Amended by Chapter 435, 2015 General Session

20A-11-1205 Use of public email for a political purpose.

- (1) Except as provided in Subsection (5), a person may not send an email using the email of a public entity:
 - (a) for a political purpose;
 - (b) to advocate for or against a proposed initiative, initiative, proposed referendum, referendum, a proposed bond, a bond, or any ballot proposition; or
 - (c) to solicit a campaign contribution.
- (2)
 - (a) The lieutenant governor shall, after giving the person and the complainant notice and an opportunity to be heard, impose a civil fine against a person who violates Subsection (1) as follows:
 - (i) up to \$250 for a first violation; and
 - (ii) except as provided in Subsection (3), for each subsequent violation committed after the lieutenant governor imposes a fine against the person for a first violation, \$1,000 multiplied by the number of violations committed by the person.
 - (b) A person may, within 30 days after the day on which the lieutenant governor imposes a fine against the person under this Subsection (2), appeal the fine to a district court.
- (3) The lieutenant governor shall consider a violation of this section as a first violation if the violation is committed more than seven years after the day on which the person last committed a violation of this section.
- (4) For purposes of this section, one violation means one act of sending an email, regardless of the number of recipients of the email.
- (5) A person does not violate this section if:
 - (a) the lieutenant governor finds that the email described in Subsection (1) was inadvertently sent by the person using the email of a public entity;
 - (b) the person is directly providing information solely to another person or a group of people in response to a question asked by the other person or group of people;
 - (c) the information the person emails is an argument or rebuttal argument prepared under Section 20A-7-401.5 or 20A-7-402, and the email includes each opposing argument and rebuttal argument that:
 - (i) relates to the same proposed initiative, initiative, proposed referendum, or referendum; and
 - (ii) complies with the requirements of Section 20A-7-401.5 or 20A-7-402; or
 - (d) the person is engaging in:
 - (i) an internal communication solely within the public entity;
 - (ii) a communication solely with another public entity;
 - (iii) a communication solely with legal counsel;
 - (iv) a communication solely with the sponsors of an initiative or referendum;
 - (v) a communication solely with a land developer for a project permitted by a local land use law that is challenged by a proposed referendum or a referendum; or
 - (vi) a communication solely with a person involved in a business transaction directly relating to a project described in Subsection (5)(d)(v).
- (6) A violation of this section does not invalidate an otherwise valid election.
- (7) An email sent in violation of Subsection (1), as determined by the records officer, constitutes a record, as defined in Section 63G-2-103, that is subject to the provisions of Title 63G, Chapter 2, Government Records Access and Management Act, notwithstanding any applicability of Subsection 63G-2-103(22)(b)(i).

Amended by Chapter 22, 2020 General Session

20A-11-1206 Exclusions.

- (1) Nothing in this chapter prohibits a public official from speaking, campaigning, contributing personal money, or otherwise exercising the public official's individual First Amendment rights for political purposes.
- (2)
 - (a) Subject to Subsection (2)(b), nothing in this chapter prohibits a public entity from providing factual information about a ballot proposition to the public, so long as the information grants equal access to both the opponents and proponents of the ballot proposition.
 - (b) A county or municipality may not provide any information to the public about a proposed initiative, initiative, proposed referendum, or referendum unless the county or municipality:
 - (i) provides the information in a manner required, or expressly permitted, by law; or
 - (ii) is directly providing information solely to a person or a group of people in response to a question asked by the person or group of people.
- (3) Nothing in this chapter prohibits a public entity from the neutral encouragement of voters to vote.
- (4) Nothing in this chapter prohibits an elected official from campaigning or advocating for or against a ballot proposition.
- (5) Subject to Subsection (6), a county or municipality may expend a reasonable amount of public funds to:
 - (a) prepare and publish a written argument or written rebuttal argument in accordance with Section 20A-7-401.5, 20A-7-402, or 59-1-1604; or
 - (b) prepare an argument for, and present an argument at, a public meeting under Section 20A-7-405 or 59-1-1605.
- (6) A county or municipality may not:
 - (a) publish an argument or rebuttal argument prepared under Section 20A-7-401.5 or 20A-7-402, unless, at the same time and in the same manner, the county or municipality publishes each opposing argument and rebuttal argument that:
 - (i) relates to the same proposed initiative, initiative, proposed referendum, or referendum; and
 - (ii) complies with the requirements of Section 20A-7-401.5 or 20A-7-402;
 - (b) publish an argument or rebuttal argument for or against a proposed initiative, initiative, proposed referendum, or referendum that was not prepared and submitted in accordance with Section 20A-7-401.5 or 20A-7-402; or
 - (c) present an argument or rebuttal argument for or against a proposed initiative, initiative, proposed referendum, or referendum at a public meeting, unless the county or municipality provides equal opportunity for persons to present opposing arguments and rebuttal arguments at the public meeting.

Amended by Chapter 203, 2019 General Session