

MUNICIPAL ELECTION AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: John Dougall

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LONG TITLE

General Description:

This bill authorizes certain third, fourth, and fifth class cities and towns to impose alternative requirements to be a candidate for municipal office and modifies provisions of the Utah Municipal Code relating to campaign finance disclosure requirements.

Highlighted Provisions:

This bill:

- ▶ allows certain third, fourth, and fifth class cities and certain towns to require that candidates for municipal office file a nominating petition in addition to their declaration of candidacy in lieu of using the convention system;
- ▶ caps the number of signatures that those municipalities may require on the petition at 5% of registered voters;
- ▶ changes the signature requirements for nominating petitions in those third, fourth, and fifth class cities that have adopted that ordinance and in towns that have adopted that ordinance;
- ▶ repeals, reenacts, and modifies a provision relating to municipal campaign finance disclosure;
- ▶ eliminates certain exemptions from campaign finance disclosure provisions and makes the requirements applicable to candidates in all municipalities;
- ▶ modifies reporting requirements;
- ▶ requires the municipal clerk to notify candidates of disclosure requirements and that the candidate's name will be removed from the ballot if the candidate does not file the required report; and

- makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

20A-9-203, as last amended by Chapter 127, Laws of Utah 2003

REPEALS AND REENACTS:

10-3-208, as last amended by Chapters 215 and 292, Laws of Utah 2003

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

Section 1. Section **10-3-208** is repealed and reenacted to read:

10-3-208. Campaign finance statement in municipal election.

(1) As used in this section:

(a) "Reporting date" means:

(i) ten days before a municipal general election, for a campaign finance statement required to be filed no later than seven days before a municipal general election; and

(ii) the day of filing, for a campaign finance statement required to be filed no later than 30 days after a municipal primary or general election.

(b) "Reporting limit" means:

(i) \$50; or

(ii) an amount lower than \$50 that is specified in an ordinance of the municipality.

(2) (a) (i) Each candidate for municipal office who is not eliminated at a municipal primary election shall file with the municipal clerk or recorder a campaign finance statement:

(A) no later than seven days before the municipal general election; and

(B) no later than 30 days after the municipal general election.

(ii) Each candidate for municipal office who is eliminated at a municipal primary election

shall file with the municipal clerk or recorder a campaign finance statement no later than 30 days after the municipal primary election.

(b) Each campaign finance statement under Subsection (2)(a) shall:

(i) except as provided in Subsection (2)(b)(ii):

(A) report all of the candidate's itemized and total:

(I) campaign contributions, including in-kind and other nonmonetary contributions, as of the reporting date; and

(II) campaign expenditures as of the reporting date; and

(B) identify:

(I) for each contribution that exceeds the reporting limit, the amount of the contribution and the name of the donor;

(II) the aggregate total of all contributions that individually do not exceed the reporting limit; and

(III) for each campaign expenditure, the amount of the expenditure and the name of the recipient of the expenditure; or

(ii) report the total amount of all campaign contributions and expenditures if the candidate receives \$500 or less in campaign contributions and spends \$500 or less on the candidate's campaign.

(3) (a) A municipality may, by ordinance:

(i) provide a reporting limit lower than \$50;

(ii) require greater disclosure of campaign contributions and expenditures than is required in this section; and

(iii) impose additional penalties on candidates who fail to comply with the applicable requirements beyond those imposed by this section.

(b) A candidate for municipal office is subject to the provisions of this section and not the provisions of an ordinance adopted by the municipality under Subsection (3)(a) if:

(i) the municipal ordinance establishes requirements or penalties that differ from those established in this section; and

(ii) the municipal clerk or recorder fails to notify the candidate of the provisions of the ordinance as required in Subsection (4).

(4) Each municipal clerk or recorder shall, at the time the candidate for municipal office files a declaration of candidacy and again 14 days before each municipal general election, notify the candidate in writing of:

(a) the provisions of statute or municipal ordinance governing the disclosure of campaign contributions and expenditures;

(b) the dates when the candidate's campaign finance statement is required to be filed; and

(c) the penalties that apply for failure to file a timely campaign finance statement, including the statutory provision that requires removal of the candidate's name from the ballot for failure to file the required campaign finance statement when required.

(5) Notwithstanding any provision of Title 63, Chapter 2, Government Records Access and Management Act, the municipal clerk or recorder shall make each campaign finance statement filed by a candidate available for public inspection and copying no later than one business day after the statement is filed.

(6) (a) If a candidate fails to file a campaign finance statement before the municipal general election by the deadline specified in Subsection (2)(a)(i)(A), the municipal clerk or recorder shall inform the appropriate election official who:

(i) shall:

(A) if practicable, remove the candidate's name from the ballot by blacking out the candidate's name before the ballots are delivered to voters; or

(B) if removing the candidate's name from the ballot is not practicable, inform the voters by any practicable method that the candidate has been disqualified and that votes cast for the candidate will not be counted; and

(ii) may not count any votes for that candidate.

(b) Notwithstanding Subsection (6)(a), a candidate who files a campaign finance statement seven days before a municipal general election is not disqualified if:

(i) the statement details accurately and completely the information required under

Subsection (2)(b), except for inadvertent omissions or insignificant errors or inaccuracies; and

(ii) the omissions, errors, or inaccuracies are corrected in an amended report or in the next scheduled report.

(7) A campaign finance statement required under this section is considered filed if it is received in the municipal clerk or recorder's office by 5 p.m. on the date that is it due.

(8) (a) A private party in interest may bring a civil action in district court to enforce the provisions of this section or an ordinance adopted under this section.

(b) In a civil action under Subsection (8)(a), the court may award costs and attorney's fees to the prevailing party.

Section 2. Section **20A-9-203** is amended to read:

20A-9-203. Declarations of candidacy -- Municipal general elections.

(1) (a) A person may become a candidate for any municipal office if the person is a registered voter and:

(i) the person has resided within the municipality in which that person seeks to hold elective office for the 12 consecutive months immediately before the date of the election; or

(ii) if the territory in which the person resides was annexed into the municipality, the person has resided within the annexed territory or the municipality for 12 months.

(b) In addition to the requirements of Subsection (1)(a), candidates for a municipal council position under the council-mayor or council-manager alternative forms of municipal government shall, if elected from districts, be residents of the council district from which they are elected.

(c) Pursuant to Utah Constitution Article IV, Section 6, any mentally incompetent person, any person convicted of a felony, or any person convicted of treason or a crime against the elective franchise may not hold office in this state until the right to vote or hold elective office is restored as provided by statute.

(2) (a) ~~[Each]~~ Except as provided in Subsections (2)(b) or (2)(c), each person seeking to become a candidate for a municipal office shall file a declaration of candidacy in person with the city recorder or town clerk during office hours and not later than 5 p.m. between July 15 and

August 15 of any odd numbered year and pay the filing fee, if one is required by municipal ordinance.

(b) (i) As used in this Subsection (2)(b), "registered voters" means the number of persons registered to vote in the municipality on the January 1 of the municipal election year.

(ii) A third, fourth, or fifth class city that used the convention system to nominate candidates in the last municipal election as authorized by Subsection 20A-9-404(3) or used the process contained in this Subsection (2)(b) in the last municipal election or a town that used the convention system to nominate candidates in the last municipal election as authorized by Subsection 20A-9-404(3) or used the process contained in this Subsection (2)(b) in the last municipal election may, by ordinance, require, in lieu of the convention system, that candidates for municipal office file a nominating petition signed by a percentage of registered voters at the same time that the candidate files a declaration of candidacy.

(iii) The ordinance shall specify the number of signatures that the candidate must obtain on the nominating petition in order to become a candidate for municipal office under this Subsection (2), but that number may not exceed 5% of registered voters.

~~(b)~~ (c) Any resident of a municipality may nominate a candidate for a municipal office by filing a nomination petition with the city recorder or town clerk during office hours but not later than 5 p.m. between July 15 and August 15 of any odd numbered year and pay the filing fee, if one is required by municipal ordinance.

~~(c)~~ (d) When August 15 is a Saturday or Sunday, the filing time shall be extended until 5 p.m. on the following Monday.

(3) (a) Before the filing officer may accept any declaration of candidacy or nomination petition, the filing officer shall:

(i) read to the prospective candidate or person filing the petition the constitutional and statutory qualification requirements for the office that the candidate is seeking; and

(ii) require the candidate or person filing the petition to state whether or not the candidate meets those requirements.

(b) If the prospective candidate does not meet the qualification requirements for the

office, the filing officer may not accept the declaration of candidacy or nomination petition.

(c) If it appears that the prospective candidate meets the requirements of candidacy, the filing officer shall accept the declaration of candidacy or nomination petition.

(4) The declaration of candidacy shall substantially comply with the following form:

"I, (print name) _____, being first sworn, say that I reside at _____ Street, City of _____, County of _____, state of Utah, Zip Code _____, Telephone Number (if any) _____; that I am a registered voter; and that I am a candidate for the office of _____ (stating the term). I request that my name be printed upon the applicable official ballots. (Signed) _____

Subscribed and sworn to (or affirmed) before me by _____ on this _____(month\day\year).

(Signed) _____ (Clerk or other officer qualified to administer oath)"

(5) (a) ~~Any~~ In all first and second class cities, and in third, fourth, or fifth class cities that have not passed the ordinance authorized by Subsection (2)(b) and in towns that have not passed the ordinance authorized by Subsection (2)(b), any registered voter may be nominated for municipal office by submitting a petition signed by:

- (i) 25 residents of the municipality who are at least 18 years old; or
 - (ii) 20% of the residents of the municipality who are at least 18 years old.
- (b) (i) The petition shall substantially conform to the following form:

"NOMINATION PETITION

The undersigned residents of (name of municipality) being 18 years old or older nominate (name of nominee) to the office of _____ for the (two or four-year term, whichever is applicable)."

(ii) The remainder of the petition shall contain lines and columns for the signatures of persons signing the petition and their addresses and telephone numbers.

(6) (a) In third, fourth, and fifth class cities that have passed the ordinance authorized by Subsection (2)(b), and in towns that have passed the ordinance authorized by Subsection (2)(b), any registered voter may be nominated for municipal office by submitting a petition signed by the same percentage of registered voters in the municipality as required by the ordinance passed under authority of Subsection (2)(b).

(b) (i) The petition shall substantially conform to the following form:

"NOMINATION PETITION

The undersigned residents of (name of municipality) being 18 years old or older nominate (name of nominee) to the office of (name of office) for the (two or four-year term, whichever is applicable)."

(ii) The remainder of the petition shall contain lines and columns for the signatures of persons signing the petition and their addresses and telephone numbers.

~~[(c)]~~ (7) If the declaration of candidacy or nomination petition fails to state whether the nomination is for the two or four-year term, the clerk shall consider the nomination to be for the four-year term.

~~[(d)-(i)]~~ (8) (a) The clerk shall verify with the county clerk that all candidates are registered voters.

~~[(i)]~~ (b) Any candidate who is not registered to vote is disqualified and the clerk may not print the candidate's name on the ballot.

~~[(6)]~~ (9) Immediately after expiration of the period for filing a declaration of candidacy, the clerk shall:

(a) cause the names of the candidates as they will appear on the ballot to be published in at least two successive publications of a newspaper with general circulation in the municipality; and

(b) notify the lieutenant governor of the names of the candidates as they will appear on the ballot.

~~[(7)]~~ (10) (a) A declaration of candidacy or nomination petition filed under this section is valid unless a written objection is filed with the clerk within five days after the last day for filing.

(b) If an objection is made, the clerk shall:

(i) mail or personally deliver notice of the objection to the affected candidate immediately; and

(ii) decide any objection within 48 hours after it is filed.

(c) If the clerk sustains the objection, the candidate may correct the problem by amending

the declaration or petition within three days after the objection is sustained or by filing a new declaration within three days after the objection is sustained.

(d) (i) The clerk's decision upon objections to form is final.

(ii) The clerk's decision upon substantive matters is reviewable by a district court if prompt application is made to the district court.

(iii) The decision of the district court is final unless the Supreme Court, in the exercise of its discretion, agrees to review the lower court decision.

~~[(8)]~~ (11) Any person who filed a declaration of candidacy and was nominated, and any person who was nominated by a nomination petition, may, any time up to 23 days before the election, withdraw the nomination by filing a written affidavit with the clerk.