

**REFERENDUM PROCEDURE**

2005 GENERAL SESSION

STATE OF UTAH

**Sponsor: David L. Hogue**

---

---

**LONG TITLE**

**General Description:**

This bill modifies provisions of the Election Code related to referendum procedures.

**Highlighted Provisions:**

This bill:

- ▶ provides a procedure for the certification of state and local referendum applications;
- ▶ clarifies that the lieutenant governor or local clerk is required to prepare and provide a referendum petition and petition signature pages that meet the requirements of the referendum law;
- ▶ prohibits the lieutenant governor or local clerk from invalidating a referendum petition or signature sheets based on a failure to meet the requirements of the referendum law if the petition and signature sheets match those prepared by the lieutenant governor or local clerk;
- ▶ requires the lieutenant governor or local clerk to provide a referendum petition and petition signature sheets within three working days after the date the referendum application is filed; and
- ▶ permits the Supreme Court to either enforce or enjoin certification of the referendum for the ballot if an action is brought by a voter.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **20A-7-302**, as last amended by Chapter 153, Laws of Utah 199531 **20A-7-304**, as last amended by Chapter 153, Laws of Utah 199532 **20A-7-307**, as last amended by Chapters 153 and 165, Laws of Utah 199533 **20A-7-602**, as last amended by Chapter 3, Laws of Utah 200034 **20A-7-604**, as enacted by Chapter 272, Laws of Utah 199435 **20A-7-607**, as last amended by Chapter 165, Laws of Utah 1995

36

37 *Be it enacted by the Legislature of the state of Utah:*38 Section 1. Section **20A-7-302** is amended to read:39 **20A-7-302. Referendum process -- Application procedures -- Certification of**  
40 **application.**41 (1) Persons wishing to circulate a referendum petition shall file an application with the  
42 lieutenant governor within five calendar days after the end of the legislative session at which  
43 the law passed.

44 (2) The application shall contain:

45 (a) the name and residence address of at least five sponsors of the referendum petition;

46 (b) a certification indicating that each of the sponsors:

47 (i) is a voter; and

48 (ii) has voted in a regular general election in Utah within the last three years;

49 (c) the signature of each of the sponsors, attested to by a notary public; and

50 (d) a copy of the law that is subject to ~~H~~→ [the] a ←~~H~~ referendum.51 (3) At the time a sponsor submits a referendum application:52 (a) the lieutenant governor shall certify that the application meets the requirements of53 Subsection (2) and file the application; or54 (b) if the application does not meet the requirements of Subsection (2), the lieutenant  
55 governor shall:56 (i) ~~H~~→ **notify the sponsors and** ←~~H~~ identify the corrections that must be made in order to  
56a meet the requirements of57 Subsection (2); and58 (ii) immediately file the application after the sponsor makes the required corrections.

59           (4) After a referendum application is filed with the lieutenant governor, there is a  
60 presumption that the application meets the requirements of Subsection (2) and qualifies for a  
61 referendum, which presumption is rebuttable only upon showing by clear and convincing  
62 evidence that the application is deficient.

63           Section 2. Section **20A-7-304** is amended to read:

64           **20A-7-304. Circulation requirements -- Lieutenant governor to provide sponsors**  
65 **with materials.**

66           (1) In order to obtain the necessary number of signatures required by this part, the  
67 sponsors shall circulate referendum packets that meet the form requirements of this part.

68           (2) [~~The~~] Within three working days after the date that the referendum application was  
69 filed, the lieutenant governor shall:

70           (a) prepare a referendum petition and a signature sheet that meet the requirements of  
71 this part; and

72           (b) furnish to the sponsors:

73           ~~[(a)]~~ (i) a copy of the referendum petition; and

74           ~~[(b)]~~ (ii) a signature sheet.

75           (3) The sponsors of the petition shall:

76           (a) arrange and pay for the printing of all additional copies of the petition and signature  
77 sheets; and

78           (b) ensure that the copies of the petition and signature sheets meet the form  
79 requirements of this section.

80           (4) (a) The sponsors may prepare the referendum for circulation by creating multiple  
81 referendum packets.

82           (b) The sponsors shall create those packets by binding a copy of the referendum  
83 petition, a copy of the law that is the subject of the referendum, and no more than 50 signature  
84 sheets together at the top in such a way that the packets may be conveniently opened for  
85 signing.

86           (c) The sponsors need not attach a uniform number of signature sheets to each  
87 referendum packet.

88           (5) (a) After the sponsors have prepared sufficient referendum packets, they shall  
89 return them to the lieutenant governor.

90 (b) The lieutenant governor shall:

91 (i) number each of the referendum packets and return them to the sponsors within five  
92 working days; and

93 (ii) keep a record of the numbers assigned to each packet.

94 Section 3. Section **20A-7-307** is amended to read:

95 **20A-7-307. Evaluation by the lieutenant governor.**

96 (1) When each referendum packet is received from a county clerk, the lieutenant  
97 governor shall check off from his record the number of each referendum packet filed.

98 (2) (a) After all of the referendum packets have been received by the lieutenant  
99 governor, the lieutenant governor shall:

100 (i) count the number of the names certified by the county clerks that appear on each  
101 verified signature sheet; and

102 (ii) declare the petition to be sufficient or insufficient no later than 60 days after the  
103 end of the legislative session at which the law passed.

104 (b) If the total number of certified names from each verified signature sheet equals or  
105 exceeds the number of names required by Section 20A-7-301, the lieutenant governor shall  
106 mark upon the front of the petition the word "sufficient."

107 (c) If the total number of certified names from each verified signature sheet does not  
108 equal or exceed the number of names required by Section 20A-7-301, the lieutenant governor  
109 shall mark upon the front of the petition the word "insufficient."

110 (d) The lieutenant governor shall immediately notify any one of the sponsors of his  
111 finding.

112 (3) (a) If the lieutenant governor refuses to [~~accept and file any referendum petition~~]  
113 certify the referendum for the ballot ~~Ĥ~~→ **after it has been declared sufficient** ←~~Ĥ~~, any voter may  
113a apply to the Supreme Court for an  
114 extraordinary writ to compel him to do so within ten days after the refusal.

115 (b) If the Supreme Court determines that the referendum [~~petition is legally sufficient,~~  
116 ~~the lieutenant governor shall file it, with a verified copy of the judgment attached to it, as of the~~  
117 ~~date on which it was originally offered for filing in his office]~~ ~~Ĥ~~→ **has been declared sufficient**  
117a **and** ←~~Ĥ~~ meets the legal requirements to  
118 be placed on the ballot, the Supreme Court shall order the lieutenant governor and all other  
119 officers to certify and print the ballot title and numbers of that measure on the official ballot for  
120 the next election.

121 (c) If the Supreme Court determines that [~~any petition filed is not legally sufficient~~] the  
 122 referendum does not meet the legal requirements to be placed on the ballot, the Supreme Court  
 123 [~~may~~] shall enjoin the lieutenant governor and all other officers from certifying or printing the  
 124 ballot title and numbers of that measure on the official ballot for the next election.

125 Section 4. Section **20A-7-602** is amended to read:

126 **20A-7-602. Local referendum process -- Application procedures -- Certification**  
 127 **of application.**

128 (1) Persons wishing to circulate a referendum petition shall file an application with the  
 129 local clerk.

130 (2) The application shall contain:

131 (a) the name and residence address of at least five sponsors of the referendum petition;

132 (b) a certification indicating that each of the sponsors:

133 (i) is a resident of Utah; and

134 (ii) (A) if the referendum challenges a county ordinance, has voted in a regular general  
 135 election in Utah within the last three years; or

136 (B) if the referendum challenges a municipal ordinance, has voted in a regular  
 137 municipal election in Utah within the last three years;

138 (c) the signature of each of the sponsors, attested to by a notary public; and

139 (d) one copy of the law that is subject to ~~H~~→ [the] a ←~~H~~ referendum.

140 (3) At the time a sponsor submits a referendum application:

141 (a) the local clerk shall certify that the application meets the requirements of

142 Subsection (2) and file the application; or

143 (b) if the application does not meet the requirements of Subsection (2), the local clerk  
 144 shall:

145 (i) ~~H~~→ notify the sponsors and ←~~H~~ identify the corrections that must be made in order to  
 145a meet the requirements of

146 Subsection (2); and

147 (ii) immediately file the application after the sponsor has made the required  
 148 corrections.

149 (4) After a referendum application is filed with the local clerk, there is a presumption  
 150 that the application meets the requirements of Subsection (2) and qualifies for a referendum,  
 151 which presumption is rebuttable only upon a showing by clear and convincing evidence that the

152 application is deficient.

153 Section 5. Section **20A-7-604** is amended to read:

154 **20A-7-604. Circulation requirements -- Local clerk to provide sponsors with**  
155 **materials.**

156 (1) In order to obtain the necessary number of signatures required by this part, the  
157 sponsors shall circulate referendum packets that meet the form requirements of this part.

158 (2) [~~The~~] Within three working days after the date that the referendum application was  
159 filed, the local clerk shall:

160 (a) prepare a referendum petition and signature sheets that meet the requirements of  
161 this part; and

162 (b) furnish to the sponsors:

163 [~~(a)~~] (i) five copies of the referendum petition; and

164 [~~(b)~~] (ii) five signature sheets.

165 (3) The sponsors of the petition shall:

166 (a) arrange and pay for the printing of all additional copies of the petition and signature  
167 sheets; and

168 (b) ensure that the copies of the petition and signature sheets meet the form  
169 requirements of this section.

170 (4) (a) The sponsors may prepare the referendum for circulation by creating multiple  
171 referendum packets.

172 (b) The sponsors shall create those packets by binding a copy of the referendum  
173 petition, a copy of the law that is the subject of the referendum, and no more than 50 signature  
174 sheets together at the top in such a way that the packets may be conveniently opened for  
175 signing.

176 (c) The sponsors need not attach a uniform number of signature sheets to each  
177 referendum packet.

178 (5) (a) After the sponsors have prepared sufficient referendum packets, they shall  
179 return them to the local clerk.

180 (b) The local clerk shall:

181 (i) number each of the referendum packets and return them to the sponsors within five  
182 working days; and

183 (ii) keep a record of the numbers assigned to each packet.

184 Section 6. Section **20A-7-607** is amended to read:

185 **20A-7-607. Evaluation by the local clerk.**

186 (1) When each referendum packet is received from a county clerk, the local clerk shall  
187 check off from his record the number of each referendum packet filed.

188 (2) (a) After all of the referendum packets have been received by the local clerk, the  
189 local clerk shall count the number of the names certified by the county clerks that appear on  
190 each verified signature sheet.

191 (b) If the total number of certified names from each verified signature sheet equals or  
192 exceeds the number of names required by Section 20A-7-601, the local clerk shall mark upon  
193 the front of the petition the word "sufficient."

194 (c) If the total number of certified names from each verified signature sheet does not  
195 equal or exceed the number of names required by Section 20A-7-601, the local clerk shall mark  
196 upon the front of the petition the word "insufficient."

197 (d) The local clerk shall immediately notify any one of the sponsors of his finding.

198 (3) If the local clerk finds the total number of certified signatures from each verified  
199 signature sheet to be insufficient, any sponsor may file a written demand with the local clerk  
200 for a recount of the signatures appearing on the referendum petition in the presence of any  
201 sponsor.

202 (4) (a) If the local clerk refuses to [~~accept and file any referendum petition~~] certify the  
203 referendum for the ballot ~~Ĥ→~~ **after it has been declared sufficient** ~~←Ĥ~~, any voter may apply to  
203a the Supreme Court for an extraordinary writ  
204 to compel him to do so within ten days after the refusal.

205 (b) If the Supreme Court determines that the referendum [~~petition is legally sufficient,~~  
206 ~~the local clerk shall file it, with a verified copy of the judgment attached to it, as of the date on~~  
207 ~~which it was originally offered for filing in his office~~] ~~Ĥ→~~ **has been declared sufficient and** ~~←Ĥ~~  
207a meets the legal requirements to be placed

208 on the ballot, the Supreme Court shall order the local clerk and all other officers to certify and  
209 print the ballot title and numbers of that measure on the official ballot for the next election.

210 (c) If the Supreme Court determines that [~~any petition filed is not legally sufficient~~] the  
211 referendum does not meet the legal requirements to be placed on the ballot, the Supreme Court  
212 [~~may~~] shall enjoin the local clerk and all other officers from certifying or printing the ballot  
213 title and numbers of that measure on the official ballot for the next election.

---

---

**Legislative Review Note**  
**as of 1-26-05 4:39 PM**

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**



---

---

**Fiscal Note**  
**Bill Number HB0274**

**Referendum Procedure**

*10-Feb-05*

*1:00 PM*

---

---

**State Impact**

No fiscal impact.

---

**Individual and Business Impact**

No fiscal impact.

---

**Office of the Legislative Fiscal Analyst**