

1 **ELECTION AND REFERENDUM PROCEDURES**

2 2006 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: David L. Hogue**

5 Senate Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Election Code by amending provisions related to state and local
10 referendum procedures.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ permits a local legislative body to call a special election for a referendum on a land
14 use law under certain circumstances;

15 ▶ provides a procedure for the certification of state and local referendum applications
16 and provides that a certified and filed referendum is presumed to comply with the
17 procedures;

18 ▶ requires the lieutenant governor or local clerk to provide a referendum petition and
19 petition signature sheets within three working days after the date the referendum
20 application is filed;

21 ▶ permits the Supreme Court to either enforce or enjoin certification of the
22 referendum for the ballot based on its meeting or not meeting the requirements of
23 the referendum procedures if an action is brought by a voter;

24 ▶ corrects a statutory conflict with the Utah Constitution by prohibiting a local law
25 challenged by a referendum from having force or effect until it is approved by
26 voters; and

27 ▶ clarifies when that law will take effect if it is approved by the voters.



28 **Monies Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **20A-1-204**, as last amended by Chapter 371, Laws of Utah 2004

35 **20A-7-302**, as last amended by Chapter 153, Laws of Utah 1995

36 **20A-7-304**, as last amended by Chapter 153, Laws of Utah 1995

37 **20A-7-307**, as last amended by Chapters 153 and 165, Laws of Utah 1995

38 **20A-7-601**, as last amended by Chapter 258, Laws of Utah 2004

39 **20A-7-602**, as last amended by Chapter 3, Laws of Utah 2000

40 **20A-7-604**, as enacted by Chapter 272, Laws of Utah 1994

41 **20A-7-607**, as last amended by Chapter 165, Laws of Utah 1995



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

44 Section 1. Section **20A-1-204** is amended to read:

45 **20A-1-204. Date of special election -- Legal effect.**

46 (1) (a) The governor, Legislature, or the legislative body of a local political subdivision
47 calling a statewide special election or local special election under Section 20A-1-203 shall
48 schedule the special election to be held on:

- 49 (i) the fourth Tuesday in June; or
- 50 (ii) the first Tuesday after the first Monday in November.

51 (b) Except as provided in Subsection (1)(c), the governor, Legislature, or the legislative
52 body of a local political subdivision calling a statewide special election or local special election
53 under Section 20A-1-203 may not schedule a special election to be held on any other date.

54 (c) (i) Notwithstanding the requirements of Subsection (1)(b), the legislative body of a
55 local political subdivision may call a local special election on a date other than those specified
56 in this section if the legislative body:

57 (A) determines and declares that:

- 58 (1) there is a disaster, as defined in Section 63-5-2, requiring that a special election be

59 held on a date other than the ones authorized in statute; or

60 (II) a vote on a referendum involving a land use law, as defined in Subsection
61 20A-7-601(2)(a), is required before the date of the next regularly scheduled election in order to
62 timely address a matter of significant importance to the community;

63 (B) identifies specifically the nature of the disaster~~[, as defined in Section 63-5-2,]~~ or
64 the circumstances requiring an expedited vote on the referendum and the reasons for holding
65 the special election on that other date; and

66 (C) votes unanimously to hold the special election on that other date.

67 (ii) The legislative body of a local political subdivision may not call a local special
68 election for the date established in Title 20A, Chapter 9, Part 8, Western States Presidential
69 Primary, for Utah's Western States Presidential Primary.

70 (d) Nothing in this section prohibits:

71 (i) the governor or Legislature from submitting a matter to the voters at the regular
72 general election if authorized by law; or

73 (ii) a local government from submitting a matter to the voters at the regular municipal
74 election if authorized by law.

75 (2) (a) Two or more entities shall comply with Subsection (2)(b) if those entities hold a
76 special election within a county on the same day as:

77 (i) another special election;

78 (ii) a regular general election; or

79 (iii) a municipal general election.

80 (b) Entities described in Subsection (2)(a) shall, to the extent practicable, coordinate:

81 (i) polling places;

82 (ii) ballots;

83 (iii) election officials; and

84 (iv) other administrative and procedural matters connected with the election.

85 Section 2. Section **20A-7-302** is amended to read:

86 **20A-7-302. Referendum process -- Application procedures.**

87 (1) Persons wishing to circulate a referendum petition shall file an application with the
88 lieutenant governor within five calendar days after the end of the legislative session at which
89 the law passed.

- 90 (2) The application shall contain:
- 91 (a) the name and residence address of at least five sponsors of the referendum petition;
- 92 (b) a certification indicating that each of the sponsors:
- 93 (i) is a voter; and
- 94 (ii) has voted in a regular general election in Utah within the last three years;
- 95 (c) the signature of each of the sponsors, attested to by a notary public; and
- 96 (d) a copy of the law[?] that is the subject of the referendum.

97 (3) At the time a sponsor submits a referendum application, the lieutenant governor
 98 shall:

- 99 (a) certify that the application meets the requirements of Subsection (2) and file the
- 100 application; or
- 101 (b) if the application does not meet the requirements of Subsection (2):
- 102 (i) notify the sponsors and identify the corrections required to meet the requirements of
- 103 Subsection (2); and
- 104 (ii) immediately certify and file the application after the sponsor makes the required
- 105 corrections.

106 (4) After a referendum application is certified and filed by the lieutenant governor
 107 under this section, there is a presumption that the application meets the requirements of
 108 Subsection (2) and qualifies for a referendum, which presumption is rebuttable only upon a
 109 showing, by clear and convincing evidence, that the application is deficient.

110 Section 3. Section **20A-7-304** is amended to read:

111 **20A-7-304. Circulation requirements -- Lieutenant governor to provide sponsors**
 112 **with materials.**

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

115 (2) ~~[The]~~ Within three working days after the date that the referendum application was
 116 certified and filed under Section 20A-7-302, the lieutenant governor shall:

- 117 (a) prepare a referendum petition and a signature sheet that meet the requirements of
- 118 this part; and
- 119 (b) furnish to the sponsors:
- 120 ~~[(a)]~~ (i) a copy of the referendum petition; and

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

122 (3) The sponsors of the petition shall:

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

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

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

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

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

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

137 (b) The lieutenant governor shall:

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

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

141 Section 4. Section **20A-7-307** is amended to read:

142 **20A-7-307. Evaluation by the lieutenant governor.**

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

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

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

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

151 (b) If the total number of certified names from each verified signature sheet equals or

152 exceeds the number of names required by Section 20A-7-301, the lieutenant governor shall:

153 (i) mark upon the front of the petition the word "sufficient[-]"; and

154 (ii) certify the referendum for the ballot.

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

158 (d) The lieutenant governor shall immediately notify any one of the sponsors of ~~[his]~~
159 the finding.

160 (3) (a) If, after a referendum petition has been declared sufficient, the lieutenant
161 governor refuses to [accept and file any referendum petition] certify the referendum for the
162 ballot, any voter may apply to the Supreme Court for an extraordinary writ to compel [him] the
163 lieutenant governor to do so within ten days after the refusal.

164 (b) If the Supreme Court determines that the referendum [petition is legally sufficient,
165 the lieutenant governor shall file it, with a verified copy of the judgment attached to it, as of the
166 date on which it was originally offered for filing in his office.] has been declared sufficient by
167 the lieutenant governor and that it meets the legal requirements to be placed on the ballot, the
168 Supreme Court shall order the lieutenant governor and all other officers to certify and print the
169 ballot title and numbers of that measure on the official ballot for the next election.

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

174 Section 5. Section **20A-7-601** is amended to read:

175 **20A-7-601. Referenda -- General signature requirements -- Signature**
176 **requirements for land use laws -- Time requirements.**

177 (1) Except as provided in Subsection (2), a person seeking to have a law passed by the
178 local legislative body submitted to a vote of the people shall obtain legal signatures equal to:

179 (a) 10% of all the votes cast in the county, city, or town for all candidates for governor
180 at the last election at which a governor was elected if the total number of votes exceeds 25,000;

181 (b) 12-1/2% of all the votes cast in the county, city, or town for all candidates for
182 governor at the last election at which a governor was elected if the total number of votes does

183 not exceed 25,000 but is more than 10,000;

184 (c) 15% of all the votes cast in the county, city, or town for all candidates for governor
185 at the last election at which a governor was elected if the total number of votes does not exceed
186 10,000 but is more than 2,500;

187 (d) 20% of all the votes cast in the county, city, or town for all candidates for governor
188 at the last election at which a governor was elected if the total number of votes does not exceed
189 2,500 but is more than 500;

190 (e) 25% of all the votes cast in the county, city, or town for all candidates for governor
191 at the last election at which a governor was elected if the total number of votes does not exceed
192 500 but is more than 250; and

193 (f) 30% of all the votes cast in the county, city, or town for all candidates for governor
194 at the last election at which a governor was elected if the total number of votes does not exceed
195 250.

196 (2) (a) As used in this Subsection (2), "land use law" includes a land use development
197 code, an annexation ordinance, and comprehensive zoning ordinances.

198 (b) A person seeking to have a land use law passed by the local legislative body
199 submitted to a vote of the people shall obtain legal signatures equal to:

200 (i) in a county or in a city of the first or second class, 20% of all votes cast in the
201 county or city for all candidates for governor at the last election at which a governor was
202 elected; and

203 (ii) in a city of the third, fourth, or fifth class or a town, 35% of all the votes cast in the
204 city or town for all candidates for governor at the last election at which a governor was elected.

205 (3) ~~(a)~~ Sponsors of any referendum petition challenging, under Subsection (1) or (2),
206 any local law passed by a local legislative body shall file the petition within 45 days after the
207 passage of the local law.

208 ~~[(b) The local law remains in effect until repealed by the voters via referendum.]~~

209 (4) (a) A local law challenged in accordance with this section, has no force or effect
210 unless and until the voters approve the challenged local law:

211 (i) at a regular municipal election or a municipal special election, if the challenged law
212 was enacted by a municipality; or

213 (ii) at a regular general election or a county special election, if the challenged law was

214 enacted by a county.

215 ~~[(4)]~~ (b) If the ~~[referendum passes]~~ voters approve the challenged local law, the local
216 law that was challenged by the referendum ~~[is repealed as of]~~ takes effect on the date of the
217 election.

218 Section 6. Section **20A-7-602** is amended to read:

219 **20A-7-602. Local referendum process -- Application procedures.**

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

222 (2) The application shall contain:

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

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

225 (i) is a resident of Utah; and

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

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

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

231 (d) one copy of the law~~[-]~~ that is the subject of the referendum.

232 (3) At the time a sponsor submits a referendum application, the local clerk shall:

233 (a) certify that the application meets the requirements of Subsection (2) and file the
234 application; or

235 (b) if the application does not meet the requirements of Subsection (2):

236 (i) notify the sponsors and identify the corrections required to meet the requirements of
237 Subsection (2); and

238 (ii) immediately certify and file the application after the sponsor has made the required
239 corrections.

240 (4) After a referendum application is certified and filed with the local clerk under this
241 section, there is a presumption that the application meets the requirements of Subsection (2)
242 and qualifies for a referendum, which presumption is rebuttable only upon a showing, by clear
243 and convincing evidence, that the application is deficient.

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

245 **20A-7-604. Circulation requirements -- Local clerk to provide sponsors with**
246 **materials.**

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

249 (2) ~~[The]~~ Within three working days after the date that the referendum application was
250 certified and filed under Section 20A-7-602, the local clerk shall:

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

253 (b) furnish to the sponsors:

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

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

256 (3) The sponsors of the petition shall:

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

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

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

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

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

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

271 (b) The local clerk shall:

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

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

275 Section 8. Section **20A-7-607** is amended to read:

276 **20A-7-607. Evaluation by the local clerk.**

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

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

282 (b) If the total number of certified names from each verified signature sheet equals or
283 exceeds the number of names required by Section 20A-7-601, the local clerk shall:

284 (i) mark upon the front of the petition the word "sufficient[-]"; and

285 (ii) certify the referendum for the ballot.

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

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

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

294 (4) (a) ~~If, after a referendum petition has been declared sufficient, the local clerk~~
295 ~~refuses to [accept and file any referendum petition]~~ certify the referendum for the ballot, any
296 voter may apply to the Supreme Court for an extraordinary writ to compel him to do so within
297 ten days after the refusal.

298 (b) If the Supreme Court determines that the referendum ~~[petition is legally sufficient,~~
299 ~~the local clerk shall file it, with a verified copy of the judgment attached to it, as of the date on~~
300 ~~which it was originally offered for filing in his office.]~~ has been declared sufficient by the local
301 clerk and that it meets the legal requirements to be placed on the ballot, the Supreme Court
302 shall order the local clerk and all other officers to certify and print the ballot title and numbers
303 of that measure on the official ballot for the next election.

304 (c) If the Supreme Court determines that ~~[any petition filed is not legally sufficient]~~ the
305 referendum does not meet the legal requirements to be placed on the ballot, the Supreme Court
306 ~~[may]~~ shall enjoin the local clerk and all other officers from certifying or printing the ballot

307 title and numbers of that measure on the official ballot for the next election.

Legislative Review Note
as of 12-8-05 7:19 AM

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 HB0120

Election and Referendum Procedures

25-Jan-06

4:48 PM

State Impact

Provisions of this bill can be implemented with existing state resources. Local government entities may incur additional expenses to fund costs of elections that are held on days other than a regular primary or general election.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst