

**Representative Gregory H. Hughes** proposes the following substitute bill:

**ELECTION POLLING**

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gregory H. Hughes**

Senate Sponsor: Margaret Dayton

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**LONG TITLE**

**General Description:**

This bill enacts and amends provisions in Title 20A, Chapter 11, Campaign and Financial Reporting Requirements, regarding polls.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ requires the disclosure of the person who pays for a poll regarding a candidate or ballot proposition;
- ▶ imposes a fine for failure to make the disclosure described in the preceding paragraph; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**20A-11-101**, as last amended by Laws of Utah 2012, Chapter 230



26 ENACTS:

27 **20A-11-905**, Utah Code Annotated 1953



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

30 Section 1. Section **20A-11-101** is amended to read:

31 **20A-11-101. Definitions.**

32 As used in this chapter:

33 (1) "Address" means the number and street where an individual resides or where a  
34 reporting entity has its principal office.

35 (2) "Ballot proposition" includes initiatives, referenda, proposed constitutional  
36 amendments, and any other ballot propositions submitted to the voters that are authorized by  
37 the Utah Code Annotated 1953.

38 (3) "Candidate" means any person who:

39 (a) files a declaration of candidacy for a public office; or

40 (b) receives contributions, makes expenditures, or gives consent for any other person to  
41 receive contributions or make expenditures to bring about the person's nomination or election  
42 to a public office.

43 (4) "Chief election officer" means:

44 (a) the lieutenant governor for state office candidates, legislative office candidates,  
45 officeholders, political parties, political action committees, corporations, political issues  
46 committees, state school board candidates, judges, and labor organizations, as defined in  
47 Section 20A-11-1501; and

48 (b) the county clerk for local school board candidates.

49 (5) (a) "Contribution" means any of the following when done for political purposes:

50 (i) a gift, subscription, donation, loan, advance, or deposit of money or anything of  
51 value given to the filing entity;

52 (ii) an express, legally enforceable contract, promise, or agreement to make a gift,  
53 subscription, donation, unpaid or partially unpaid loan, advance, or deposit of money or  
54 anything of value to the filing entity;

55 (iii) any transfer of funds from another reporting entity to the filing entity;

56 (iv) compensation paid by any person or reporting entity other than the filing entity for

57 personal services provided without charge to the filing entity;

58 (v) remuneration from:

59 (A) any organization or its directly affiliated organization that has a registered lobbyist;

60 or

61 (B) any agency or subdivision of the state, including school districts; and

62 (vi) goods or services provided to or for the benefit of the filing entity at less than fair

63 market value.

64 (b) "Contribution" does not include:

65 (i) services provided without compensation by individuals volunteering a portion or all

66 of their time on behalf of the filing entity;

67 (ii) money lent to the filing entity by a financial institution in the ordinary course of

68 business; or

69 (iii) goods or services provided for the benefit of a candidate or political party at less

70 than fair market value that are not authorized by or coordinated with the candidate or political

71 party.

72 (6) "Coordinated with" means that goods or services provided for the benefit of a

73 candidate or political party are provided:

74 (a) with the candidate's or political party's prior knowledge, if the candidate or political

75 party does not object;

76 (b) by agreement with the candidate or political party;

77 (c) in coordination with the candidate or political party; or

78 (d) using official logos, slogans, and similar elements belonging to a candidate or

79 political party.

80 (7) (a) "Corporation" means a domestic or foreign, profit or nonprofit, business

81 organization that is registered as a corporation or is authorized to do business in a state and

82 makes any expenditure from corporate funds for:

83 (i) the purpose of expressly advocating for political purposes; or

84 (ii) the purpose of expressly advocating the approval or the defeat of any ballot

85 proposition.

86 (b) "Corporation" does not mean:

87 (i) a business organization's political action committee or political issues committee; or

88 (ii) a business entity organized as a partnership or a sole proprietorship.

89 (8) "County political party" means, for each registered political party, all of the persons  
90 within a single county who, under definitions established by the political party, are members of  
91 the registered political party.

92 (9) "County political party officer" means a person whose name is required to be  
93 submitted by a county political party to the lieutenant governor in accordance with Section  
94 20A-8-402.

95 (10) "Detailed listing" means:

96 (a) for each contribution or public service assistance:

97 (i) the name and address of the individual or source making the contribution or public  
98 service assistance;

99 (ii) the amount or value of the contribution or public service assistance; and

100 (iii) the date the contribution or public service assistance was made; and

101 (b) for each expenditure:

102 (i) the amount of the expenditure;

103 (ii) the person or entity to whom it was disbursed;

104 (iii) the specific purpose, item, or service acquired by the expenditure; and

105 (iv) the date the expenditure was made.

106 (11) "Election" means each:

107 (a) regular general election;

108 (b) regular primary election; and

109 (c) special election at which candidates are eliminated and selected.

110 (12) "Electioneering communication" means a communication that:

111 (a) has at least a value of \$10,000;

112 (b) clearly identifies a candidate or judge; and

113 (c) is disseminated through the Internet, newspaper, magazine, outdoor advertising  
114 facility, direct mailing, broadcast, cable, or satellite provider within 45 days of the clearly  
115 identified candidate's or judge's election date.

116 (13) (a) "Expenditure" means:

117 (i) any disbursement from contributions, receipts, or from the separate bank account  
118 required by this chapter;

119 (ii) a purchase, payment, donation, distribution, loan, advance, deposit, gift of money,  
120 or anything of value made for political purposes;

121 (iii) an express, legally enforceable contract, promise, or agreement to make any  
122 purchase, payment, donation, distribution, loan, advance, deposit, gift of money, or anything of  
123 value for political purposes;

124 (iv) compensation paid by a filing entity for personal services rendered by a person  
125 without charge to a reporting entity;

126 (v) a transfer of funds between the filing entity and a candidate's personal campaign  
127 committee; or

128 (vi) goods or services provided by the filing entity to or for the benefit of another  
129 reporting entity for political purposes at less than fair market value.

130 (b) "Expenditure" does not include:

131 (i) services provided without compensation by individuals volunteering a portion or all  
132 of their time on behalf of a reporting entity;

133 (ii) money lent to a reporting entity by a financial institution in the ordinary course of  
134 business; or

135 (iii) anything listed in Subsection (13)(a) that is given by a reporting entity to  
136 candidates for office or officeholders in states other than Utah.

137 (14) "Federal office" means the office of President of the United States, United States  
138 Senator, or United States Representative.

139 (15) "Filing entity" means the reporting entity that is required to file a financial  
140 statement required by this chapter or Chapter 12, Part 2, Judicial Retention Elections.

141 (16) "Financial statement" includes any summary report, interim report, verified  
142 financial statement, or other statement disclosing contributions, expenditures, receipts,  
143 donations, or disbursements that is required by this chapter or Chapter 12, Part 2, Judicial  
144 Retention Elections.

145 (17) "Governing board" means the individual or group of individuals that determine the  
146 candidates and committees that will receive expenditures from a political action committee,  
147 political party, or corporation.

148 (18) "Incorporation" means the process established by Title 10, Chapter 2, Part 1,  
149 Incorporation, by which a geographical area becomes legally recognized as a city or town.

150 (19) "Incorporation election" means the election authorized by Section 10-2-111.

151 (20) "Incorporation petition" means a petition authorized by Section 10-2-109.

152 (21) "Individual" means a natural person.

153 (22) "Interim report" means a report identifying the contributions received and

154 expenditures made since the last report.

155 (23) "Legislative office" means the office of state senator, state representative, speaker

156 of the House of Representatives, president of the Senate, and the leader, whip, and assistant

157 whip of any party caucus in either house of the Legislature.

158 (24) "Legislative office candidate" means a person who:

159 (a) files a declaration of candidacy for the office of state senator or state representative;

160 (b) declares oneself to be a candidate for, or actively campaigns for, the position of

161 speaker of the House of Representatives, president of the Senate, or the leader, whip, and

162 assistant whip of any party caucus in either house of the Legislature; or

163 (c) receives contributions, makes expenditures, or gives consent for any other person to

164 receive contributions or make expenditures to bring about the person's nomination or election

165 to a legislative office.

166 (25) "Officeholder" means a person who holds a public office.

167 (26) "Party committee" means any committee organized by or authorized by the

168 governing board of a registered political party.

169 (27) "Person" means both natural and legal persons, including individuals, business

170 organizations, personal campaign committees, party committees, political action committees,

171 political issues committees, and labor organizations, as defined in Section 20A-11-1501.

172 (28) "Personal campaign committee" means the committee appointed by a candidate to

173 act for the candidate as provided in this chapter.

174 (29) "Personal use expenditure" has the same meaning as provided under Section

175 20A-11-104.

176 (30) (a) "Political action committee" means an entity, or any group of individuals or

177 entities within or outside this state, a major purpose of which is to:

178 (i) solicit or receive contributions from any other person, group, or entity for political

179 purposes; or

180 (ii) make expenditures to expressly advocate for any person to refrain from voting or to

181 vote for or against any candidate or person seeking election to a municipal or county office.

182 (b) "Political action committee" includes groups affiliated with a registered political  
183 party but not authorized or organized by the governing board of the registered political party  
184 that receive contributions or makes expenditures for political purposes.

185 (c) "Political action committee" does not mean:

186 (i) a party committee;

187 (ii) any entity that provides goods or services to a candidate or committee in the regular  
188 course of its business at the same price that would be provided to the general public;

189 (iii) an individual;

190 (iv) individuals who are related and who make contributions from a joint checking  
191 account;

192 (v) a corporation, except a corporation a major purpose of which is to act as a political  
193 action committee; or

194 (vi) a personal campaign committee.

195 (31) "Political convention" means a county or state political convention held by a  
196 registered political party to select candidates.

197 (32) (a) "Political issues committee" means an entity, or any group of individuals or  
198 entities within or outside this state, a major purpose of which is to:

199 (i) solicit or receive donations from any other person, group, or entity to assist in  
200 placing a ballot proposition on the ballot, assist in keeping a ballot proposition off the ballot, or  
201 to advocate that a voter refrain from voting or vote for or vote against any ballot proposition;

202 (ii) make expenditures to expressly advocate for any person to sign or refuse to sign a  
203 ballot proposition or incorporation petition or refrain from voting, vote for, or vote against any  
204 proposed ballot proposition or an incorporation in an incorporation election; or

205 (iii) make expenditures to assist in qualifying or placing a ballot proposition on the  
206 ballot or to assist in keeping a ballot proposition off the ballot.

207 (b) "Political issues committee" does not mean:

208 (i) a registered political party or a party committee;

209 (ii) any entity that provides goods or services to an individual or committee in the  
210 regular course of its business at the same price that would be provided to the general public;

211 (iii) an individual;

212 (iv) individuals who are related and who make contributions from a joint checking  
213 account; or

214 (v) a corporation, except a corporation a major purpose of which is to act as a political  
215 issues committee.

216 (33) (a) "Political issues contribution" means any of the following:

217 (i) a gift, subscription, unpaid or partially unpaid loan, advance, or deposit of money or  
218 anything of value given to a political issues committee;

219 (ii) an express, legally enforceable contract, promise, or agreement to make a political  
220 issues donation to influence the approval or defeat of any ballot proposition;

221 (iii) any transfer of funds received by a political issues committee from a reporting  
222 entity;

223 (iv) compensation paid by another reporting entity for personal services rendered  
224 without charge to a political issues committee; and

225 (v) goods or services provided to or for the benefit of a political issues committee at  
226 less than fair market value.

227 (b) "Political issues contribution" does not include:

228 (i) services provided without compensation by individuals volunteering a portion or all  
229 of their time on behalf of a political issues committee; or

230 (ii) money lent to a political issues committee by a financial institution in the ordinary  
231 course of business.

232 (34) (a) "Political issues expenditure" means any of the following:

233 (i) any payment from political issues contributions made for the purpose of influencing  
234 the approval or the defeat of:

235 (A) a ballot proposition; or

236 (B) an incorporation petition or incorporation election;

237 (ii) a purchase, payment, distribution, loan, advance, deposit, or gift of money made for  
238 the express purpose of influencing the approval or the defeat of:

239 (A) a ballot proposition; or

240 (B) an incorporation petition or incorporation election;

241 (iii) an express, legally enforceable contract, promise, or agreement to make any  
242 political issues expenditure;



243 (iv) compensation paid by a reporting entity for personal services rendered by a person  
244 without charge to a political issues committee; or

245 (v) goods or services provided to or for the benefit of another reporting entity at less  
246 than fair market value.

247 (b) "Political issues expenditure" does not include:

248 (i) services provided without compensation by individuals volunteering a portion or all  
249 of their time on behalf of a political issues committee; or

250 (ii) money lent to a political issues committee by a financial institution in the ordinary  
251 course of business.

252 (35) "Political purposes" means an act done with the intent or in a way to influence or  
253 tend to influence, directly or indirectly, any person to refrain from voting or to vote for or  
254 against any candidate or a person seeking a municipal or county office at any caucus, political  
255 convention, or election.

256 (36) (a) "Poll" means the survey of a person regarding the person's opinion or  
257 knowledge of ~~§~~ → [a candidate] an individual who has filed a declaration of candidacy for  
257a public office, ←~~§~~ or ~~§~~ → of a ←~~§~~ ballot proposition ~~§~~ → that has legally qualified for  
257b placement on the ballot ←~~§~~ , which is conducted in person or by telephone,  
258 facsimile, Internet, postal mail, or email.

259 (b) "Poll" does not include:

260 (i) a ballot; or

261 (ii) an interview of a focus group that is conducted, in person, by one individual, if:

262 (A) the focus group consists of more than three, and less than thirteen, individuals; and

263 (B) all individuals in the focus group are present during the interview.

264 [~~36~~] (37) "Primary election" means any regular primary election held under the  
265 election laws.

266 [~~37~~] (38) "Public office" means the office of governor, lieutenant governor, state  
267 auditor, state treasurer, attorney general, state or local school board member, state senator, state  
268 representative, speaker of the House of Representatives, president of the Senate, and the leader,  
269 whip, and assistant whip of any party caucus in either house of the Legislature.

270 [~~38~~] (39) (a) "Public service assistance" means the following when given or provided  
271 to an officeholder to defray the costs of functioning in a public office or aid the officeholder to  
272 communicate with the officeholder's constituents:

273 (i) a gift, subscription, donation, unpaid or partially unpaid loan, advance, or deposit of

274 money or anything of value to an officeholder; or

275 (ii) goods or services provided at less than fair market value to or for the benefit of the  
276 officeholder.

277 (b) "Public service assistance" does not include:

278 (i) anything provided by the state;

279 (ii) services provided without compensation by individuals volunteering a portion or all  
280 of their time on behalf of an officeholder;

281 (iii) money lent to an officeholder by a financial institution in the ordinary course of  
282 business;

283 (iv) news coverage or any publication by the news media; or

284 (v) any article, story, or other coverage as part of any regular publication of any  
285 organization unless substantially all the publication is devoted to information about the  
286 officeholder.

287 ~~[(39)]~~ (40) "Publicly identified class of individuals" means a group of 50 or more  
288 individuals sharing a common occupation, interest, or association that contribute to a political  
289 action committee or political issues committee and whose names can be obtained by contacting  
290 the political action committee or political issues committee upon whose financial statement the  
291 individuals are listed.

292 ~~[(40)]~~ (41) "Receipts" means contributions and public service assistance.

293 ~~[(41)]~~ (42) "Registered lobbyist" means a person registered under Title 36, Chapter 11,  
294 Lobbyist Disclosure and Regulation Act.

295 ~~[(42)]~~ (43) "Registered political action committee" means any political action  
296 committee that is required by this chapter to file a statement of organization with the lieutenant  
297 governor's office.

298 ~~[(43)]~~ (44) "Registered political issues committee" means any political issues  
299 committee that is required by this chapter to file a statement of organization with the lieutenant  
300 governor's office.

301 ~~[(44)]~~ (45) "Registered political party" means an organization of voters that:

302 (a) participated in the last regular general election and polled a total vote equal to 2%  
303 or more of the total votes cast for all candidates for the United States House of Representatives  
304 for any of its candidates for any office; or

305 (b) has complied with the petition and organizing procedures of Chapter 8, Political  
306 Party Formation and Procedures.

307 [~~(45)~~] (46) (a) "Remuneration" means a payment:

308 (i) made to a legislator for the period the Legislature is in session; and

309 (ii) that is approximately equivalent to an amount a legislator would have earned  
310 during the period the Legislature is in session in the legislator's ordinary course of business.

311 (b) "Remuneration" does not mean anything of economic value given to a legislator by:

312 (i) the legislator's primary employer in the ordinary course of business; or

313 (ii) a person or entity in the ordinary course of business:

314 (A) because of the legislator's ownership interest in the entity; or

315 (B) for services rendered by the legislator on behalf of the person or entity.

316 [~~(46)~~] (47) "Reporting entity" means a candidate, a candidate's personal campaign

317 committee, a judge, a judge's personal campaign committee, an officeholder, a party

318 committee, a political action committee, a political issues committee, a corporation, or a labor

319 organization, as defined in Section 20A-11-1501.

320 [~~(47)~~] (48) "School board office" means the office of state school board or local school  
321 board.

322 [~~(48)~~] (49) (a) "Source" means the person or entity that is the legal owner of the  
323 tangible or intangible asset that comprises the contribution.

324 (b) "Source" means, for political action committees and corporations, the political  
325 action committee and the corporation as entities, not the contributors to the political action  
326 committee or the owners or shareholders of the corporation.

327 [~~(49)~~] (50) "State office" means the offices of governor, lieutenant governor, attorney  
328 general, state auditor, and state treasurer.

329 [~~(50)~~] (51) "State office candidate" means a person who:

330 (a) files a declaration of candidacy for a state office; or

331 (b) receives contributions, makes expenditures, or gives consent for any other person to  
332 receive contributions or make expenditures to bring about the person's nomination or election  
333 to a state office.

334 [~~(51)~~] (52) "Summary report" means the year end report containing the summary of a  
335 reporting entity's contributions and expenditures.

336            [~~52~~] (53) "Supervisory board" means the individual or group of individuals that  
337 allocate expenditures from a political issues committee.

338            Section 2. Section **20A-11-905** is enacted to read:

339            **20A-11-905. Election polls -- Disclosure required.**

340            (1) A person who conducts a poll shall disclose to the person being surveyed who paid  
341 for the poll before or at the conclusion of the poll.

342            (2) The lieutenant governor shall:

343            (a) impose a \$100 fine on a person who fails to make the disclosure required under  
344 Subsection (1); and

345            (b) deposit the fine described in Subsection (2)(a) in the General Fund.

345a            **§→ (3) A person does not violate Subsection (1) if the person is prevented from making the**  
345b **disclosure at the conclusion of the poll, because the person being surveyed terminates the**  
345c **survey before the survey is completed. ←§**