

**ELECTION OFFENSE AMENDMENTS**

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Peter C. Knudson**

House Sponsor: Stephen G. Handy

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**LONG TITLE**

**General Description:**

This bill amends provisions of the Election Code relating to election offenses.

**Highlighted Provisions:**

This bill:

- ▶ clarifies and amends the procedure for bringing a proceeding authorized under Title 20A, Chapter 1, Part 7, Prosecuting and Adjudicating Election Offenses;

- ▶ provides that, if a registered voter files a petition alleging that the attorney general violated a provision of the Election Code, and the lieutenant governor determines that the attorney general has a conflict of interest in relation to the petition, the lieutenant governor shall appoint special counsel to investigate and determine whether a violation occurred, and to bring a proceeding if a proceeding is warranted; and

- ▶ provides a transition clause.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides an immediate effective date.

This bill provides retrospective operation.

This bill coordinates with S.B. 190, Procurement Revisions, by making technical changes.

**Utah Code Sections Affected:**

AMENDS:

30 20A-1-703, as last amended by Laws of Utah 2011, Chapter 297

31 20A-1-706, as enacted by Laws of Utah 1993, Chapter 1

32 ENACTS:

33 20A-1-707, Utah Code Annotated 1953

34 **Utah Code Sections Affected by Coordination Clause:**

35 20A-1-703, as last amended by Laws of Utah 2011, Chapter 297



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

38 Section 1. Section 20A-1-703 is amended to read:

39 **20A-1-703. Proceedings by registered voter.**

40 (1) Any registered voter who has information that any provisions of this title have been  
41 violated by any candidate for whom the registered voter had the right to vote, by any personal  
42 campaign committee of that candidate, by any member of that committee, or by any election  
43 official, may file a verified petition with the lieutenant governor.

44 (2) (a) The lieutenant governor shall gather information and determine if a special  
45 investigation is necessary.

46 (b) If the lieutenant governor determines that a special investigation is necessary, the  
47 lieutenant governor shall:

48 (i) except as provided in Subsection (2)(b)(ii), refer the information to the attorney  
49 general, who shall:

50 [(†)] (A) bring a special proceeding to investigate and determine whether [~~or not~~] there  
51 has been a violation; and

52 [(†)] (B) appoint special counsel to conduct that proceeding on behalf of the state[-]; or

53 (ii) if the verified petition alleges that the attorney general violated a provision of this

54 title, or if the lieutenant governor determines that the Office of the Attorney General has a

55 conflict of interest in relation to the verified petition, in accordance with Title 63G, Chapter 6,

56 Utah Procurement Code, appoint a person who is not an employee of the Office of the Attorney

57 General as special counsel to:

58           (A) bring a special proceeding to investigate and determine whether there has been a  
59 violation; and

60           (B) conduct that proceeding on behalf of the state.

61           (3) If it appears from the petition or otherwise that sufficient evidence is obtainable to  
62 show that there is probable cause to believe that a violation has occurred[-];

63           (a) except as provided in Subsection (3)(b), the attorney general shall:

64           ~~[(a)]~~ (i) grant leave to bring the proceeding; and

65           ~~[(b)]~~ (ii) appoint special counsel to conduct the proceeding[-]; or

66           (b) if the lieutenant governor has appointed special counsel under Subsection (2)(b)(ii),  
67 the lieutenant governor shall:

68           (i) grant leave to bring the proceeding; and

69           (ii) direct the special counsel to conduct the proceeding.

70           (4) (a) If leave is granted, the registered voter may, by a special proceeding brought in  
71 the district court in the name of the state upon the relation of the registered voter, investigate  
72 and determine whether or not the candidate, candidate's personal campaign committee, any  
73 member of the candidate's personal campaign committee, or any election officer has violated  
74 any provision of this title.

75           (b) (i) In the proceeding, the complaint shall:

76           (A) be served with the summons; and

77           (B) set forth the name of the person or persons who have allegedly violated this title  
78 and the grounds of those violations in detail.

79           (ii) The complaint may not be amended except by leave of the court.

80           (iii) The summons and complaint in the proceeding shall be filed with the court no  
81 later than five days after they are served.

82           (c) (i) The answer to the complaint shall be served and filed within 10 days after the  
83 service of the summons and complaint.

84           (ii) Any allegation of new matters in the answer shall be considered controverted by the  
85 adverse party without reply, and the proceeding shall be considered at issue and stand ready for

86 trial upon five days' notice of trial.

87 (d) (i) All proceedings initiated under this section have precedence over any other civil  
88 actions.

89 (ii) The court shall always be considered open for the trial of the issues raised in this  
90 proceeding.

91 (iii) The proceeding shall be tried and determined as a civil action without a jury, with  
92 the court determining all issues of fact and issues of law.

93 (iv) If more than one proceeding is pending or the election of more than one person is  
94 investigated and contested, the court may:

95 (A) order the proceedings consolidated and heard together; and

96 (B) equitably apportion costs and disbursements.

97 (e) (i) Either party may request a change of venue as provided by law in civil actions,  
98 but application for a change of venue shall be made within five days after service of summons  
99 and complaint.

100 (ii) The judge shall decide the request for a change of venue and issue any necessary  
101 orders within three days after the application is made.

102 (iii) If a party fails to request a change of venue within five days of service, that party  
103 has waived that party's right to a change of venue.

104 (f) (i) If judgment is in favor of the plaintiff, the relator may petition the judge to  
105 recover his taxable costs and disbursements against the person whose right to the office is  
106 contested.

107 (ii) The judge may not award costs to the defendant unless it appears that the  
108 proceeding was brought in bad faith.

109 (iii) Subject to the limitations contained in Subsection (4)(f), the judge may decide  
110 whether or not to award costs and disbursements.

111 (5) Nothing in this section may be construed to prohibit any other civil or criminal  
112 actions or remedies against alleged violators.

113 (6) In the event a witness asserts a privilege against self-incrimination, testimony and

114 evidence from the witness may be compelled pursuant to Title 77, Chapter 22b, Grants of  
115 Immunity.

116 Section 2. Section **20A-1-706** is amended to read:

117 **20A-1-706. Special counsel on appeal.**

118 (1) If either party appeals the judgment of the trial court, the district judge, the attorney  
119 general, or the lieutenant governor who appointed special counsel for the trial court shall  
120 authorize that counsel, or some other person, to appear as special counsel in the appellate court  
121 in the matter.

122 (2) (a) The special counsel authorized by this chapter shall receive a reasonable  
123 compensation for his services.

124 (b) The compensation shall be audited by the lieutenant governor and paid out of the  
125 state treasury upon a voucher and upon the written statement of the officer appointing the  
126 counsel that:

127 (i) the appointment has been made;

128 (ii) the person appointed has faithfully performed the duties imposed upon him; and

129 (iii) that the special counsel's bill is accurate and correct.

130 (c) Compensation for special counsel shall be audited and paid in the same manner as  
131 other claims against the state are audited and paid.

132 Section 3. Section **20A-1-707** is enacted to read:

133 **20A-1-707. Transition clause.**

134 Any petition that is filed or pending under this part on or after March 1, 2013, shall be  
135 subject to the provisions of this part, including any amendments to this part made by Senate  
136 Bill 289, passed in the 2013 General Session.

137 Section 4. **Effective date -- Retrospective operation.**

138 (1) Subject to Subsection (2), if approved by two-thirds of all the members elected to  
139 each house, this bill takes effect upon approval by the governor, or the day following the  
140 constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's  
141 signature, or in the case of a veto, the date of veto override.

142           (2) This bill has retrospective operation to a petition that is filed on or after March 1,  
143 2013, under Title 20A, Chapter 1, Part 7, Prosecuting and Adjudicating Election Offenses.

144           Section 5. **Coordinating S.B. 289 with S.B. 190 -- Technical changes.**

145           If this S.B. 289 and S.B. 190, Procurement Revisions, both pass and become law, it is  
146 the intent of the Legislature that the Office of Legislative Research and General Counsel, in  
147 preparing the Utah Code database for publication, on May 1, 2013, change the language in  
148 Subsection 20A-1-703(2)(b)(ii) in this S.B. 289 from "Title 63G, Chapter 6, Utah Procurement  
149 Code" to "Title 63G, Chapter 6a, Utah Procurement Code".