

REFERENDUM REVISIONS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stuart C. Reid

House Sponsor: Don L. Ipson

LONG TITLE

General Description:

This bill amends and enacts provisions relating to a referendum petition to challenge a law passed by a local legislative body.

Highlighted Provisions:

This bill:

- ▶ describes requirements for a referendum petition to challenge a law passed by a local legislative body;
- ▶ provides that when a clerk declares a referendum petition to be sufficient:
 - the law challenged in the referendum does not take effect unless and until the law is approved by a vote of the people;
 - the budget officer for the local government, in consultation with the attorney for the local government, shall determine whether, and to what extent, repealing the law has fiscal or legal implications, and shall prepare an unbiased, good faith written estimate of the fiscal and legal impact that will occur if the law is repealed; and
 - the local legislative body shall hold a public hearing to consider the estimate and determine whether to repeal the law that is challenged by the referendum;
- ▶ describes requirements relating to the written estimate; and
- ▶ provides for a legal challenge of the written estimate.

Money Appropriated in this Bill:



28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **11-14-301**, as last amended by Laws of Utah 2012, Chapter 204

34 ENACTS:

35 **20A-7-607.5**, Utah Code Annotated 1953

36 REPEALS AND REENACTS:

37 **20A-7-601**, as last amended by Laws of Utah 2012, Chapter 72



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

40 Section 1. Section **11-14-301** is amended to read:

41 **11-14-301. Issuance of bonds by governing body -- Computation of indebtedness**
42 **under constitutional and statutory limitations.**

43 (1) If the governing body has declared the bond proposition to have carried and no
44 contest has been filed, or if a contest has been filed and favorably terminated, the governing
45 body may proceed to issue the bonds voted at the election.

46 (2) (a) It is not necessary that all of the bonds be issued at one time, but, except as
47 otherwise provided in this Subsection (2), bonds approved by the voters may not be issued
48 more than 10 years after the day on which the election is held.

49 (b) The 10-year period described in Subsection (2)(a) is tolled if, at any time during the
50 10-year period:

51 (i) an application for a referendum petition is filed with a local clerk, in accordance
52 with Section 20A-7-602 and Subsection 20A-7-601[~~(4)~~](1)(a), with respect to the local
53 obligation law relating to the bonds; or

54 (ii) the bonds are challenged in a court of law or an administrative proceeding in
55 relation to:

56 (A) the legality or validity of the bonds, or the election or proceedings authorizing the
57 bonds;

58 (B) the authority of the local political subdivision to issue the bonds;

59 (C) the provisions made for the security or payment of the bonds; or
60 (D) any other issue that materially and adversely affects the marketability of the bonds,
61 as determined by the individual or body that holds the executive powers of the local political
62 subdivision.

63 (c) A tolling period described in Subsection (2)(b)(i) ends on the later of the day on
64 which:

65 (i) the local clerk determines that the petition is insufficient, in accordance with
66 Subsection 20A-7-607(2)(c), unless an application, described in Subsection 20A-7-607(4)(a), is
67 made to the Supreme Court;

68 (ii) the Supreme Court determines, under Subsection 20A-7-607(4)(c), that the petition
69 for the referendum is not legally sufficient; or

70 (iii) for a referendum petition that is sufficient, the governing body declares, as
71 provided by law, the results of the referendum election on the local obligation law.

72 (d) A tolling period described in Subsection (2)(b)(ii) ends after:

73 (i) there is a final settlement, a final adjudication, or another type of final resolution of
74 all challenges described in Subsection (2)(b)(ii); and

75 (ii) the individual or body that holds the executive powers of the local political
76 subdivision issues a document indicating that all challenges described in Subsection (2)(b)(ii)
77 are resolved and final.

78 (e) If the 10-year period described in Subsection (2)(a) is tolled under this Subsection
79 (2) and, when the tolling ends and after giving effect to the tolling, the period of time
80 remaining to issue the bonds is less than one year, the period of time remaining to issue the
81 bonds shall be extended to one year.

82 (f) The tolling provisions described in this Subsection (2) apply to all bonds described
83 in this section that were approved by voters on or after May 8, 2002.

84 (3) (a) Bonds approved by the voters may not be issued to an amount that will cause
85 the indebtedness of the local political subdivision to exceed that permitted by the Utah
86 Constitution or statutes.

87 (b) In computing the amount of indebtedness that may be incurred pursuant to
88 constitutional and statutory limitations, the constitutionally or statutorily permitted percentage,
89 as the case may be, shall be applied to the fair market value, as defined under Section 59-2-102,

90 of the taxable property in the local political subdivision, as computed from the last applicable
91 equalized assessment roll before the incurring of the additional indebtedness.

92 (c) In determining the fair market value of the taxable property in the local political
93 subdivision as provided in this section, the value of all tax equivalent property, as defined in
94 Section 59-3-102, shall be included as a part of the total fair market value of taxable property
95 in the local political subdivision, as provided in Title 59, Chapter 3, Tax Equivalent Property
96 Act.

97 (4) Bonds of improvement districts issued in a manner that they are payable solely
98 from the revenues to be derived from the operation of the facilities of the district may not be
99 included as bonded indebtedness for the purposes of the computation.

100 (5) Where bonds are issued by a city, town, or county payable solely from revenues
101 derived from the operation of revenue-producing facilities of the city, town, or county, or
102 payable solely from a special fund into which are deposited excise taxes levied and collected by
103 the city, town, or county, or excise taxes levied by the state and rebated pursuant to law to the
104 city, town, or county, or any combination of those excise taxes, the bonds shall be included as
105 bonded indebtedness of the city, town, or county only to the extent required by the Utah
106 Constitution, and any bonds not so required to be included as bonded indebtedness of the city,
107 town, or county need not be authorized at an election, except as otherwise provided by the Utah
108 Constitution, the bonds being hereby expressly excluded from the election requirement of
109 Section 11-14-201.

110 (6) A bond election is not void when the amount of bonds authorized at the election
111 exceeded the limitation applicable to the local political subdivision at the time of holding the
112 election, but the bonds may be issued from time to time in an amount within the applicable
113 limitation at the time the bonds are issued.

114 Section 2. Section **20A-7-601** is repealed and reenacted to read:

115 **20A-7-601. Referendum challenging local law -- Signature requirements -- Public**
116 **hearing.**

117 (1) An individual who seeks to have a law that was passed by a local legislative body
118 submitted to a vote of the people shall:

119 (a) within five days after the day on which the law is passed, file an application for a
120 referendum petition in accordance with the requirements of Section 20A-7-602; and

121 (b) obtain legal signatures of individuals who are registered to vote in the area subject
122 to the jurisdiction of the local government in which the law applies in an amount equal to or
123 greater than:

124 (i) for a jurisdiction entirely within a county of the first class, 20% of all votes cast in
125 the jurisdiction for all candidates for president of the United States at the last election in which
126 a president of the United States was elected; or

127 (ii) for a jurisdiction other than a jurisdiction described in Subsection (1)(b)(i), 30% of
128 all votes cast in the jurisdiction for all candidates for president of the United States at the last
129 election in which a president of the United States was elected.

130 (2) If the clerk for the applicable jurisdiction declares a referendum petition relating to
131 a law described in Subsection (1) sufficient:

132 (a) the law does not take effect unless and until the law is approved by a vote of the
133 people;

134 (b) the local clerk or recorder shall submit a copy of the application described in
135 Subsection (1)(a) to the budget officer for the jurisdiction within three business days after the
136 day on which the clerk declares that the referendum petition is sufficient; and

137 (c) after the fiscal and legal impact estimate described in Section 20A-7-607.5 is
138 completed, the local legislative body shall hold at least one public hearing to:

139 (i) review the fiscal and legal impact estimate;

140 (ii) take testimony from supporters and opponents of the law; and

141 (iii) determine whether to submit the law to a vote of the people or to repeal the law.

142 (3) If the local legislative body repeals a law described in Subsection (1) before the
143 election day on which the law will otherwise be submitted to a vote of the people, the law may
144 not be submitted to a vote of the people.

145 (4) If a referendum challenging a law described in Subsection (1) passes, the law is
146 repealed on the day of the election at which the law is submitted to a vote of the people.

147 Section 3. Section **20A-7-607.5** is enacted to read:

148 **20A-7-607.5. Estimate of referendum's fiscal and legal impact -- Petition**
149 **challenging estimate.**

150 (1) Within 25 days after the day on which the budget officer for the local government
151 that passed the law being challenged by referendum receives a copy of an application under

152 Subsection 20A-7-601(2)(b), the budget officer shall, in consultation with the attorney for the
153 local government:

154 (a) determine whether, and to what extent, repealing the law has fiscal or legal
155 implications, including whether repealing the law may impact the legal rights of an individual;

156 (b) prepare an unbiased, good faith written estimate of the fiscal and legal impact that
157 will occur if the law is repealed, including:

158 (i) a total dollar amount representing the fiscal and legal impact of repealing the law;

159 (ii) a dollar amount representing the total increase or decrease in taxes that will occur if
160 the law is repealed;

161 (iii) for each type of tax that will increase or decrease if the law is repealed, the total
162 dollar amount of the increase or decrease;

163 (iv) a dollar amount representing the increase or decrease of public liability or debt if
164 the law is repealed, due to:

165 (A) an adverse impact on a person's legal rights; or

166 (B) the issuance of, or change in the status of, bonds, notes, or other debt instruments;

167 (v) a list of all funding sources that will be impacted by the estimated fiscal impact of
168 the law's repeal; and

169 (vi) in accordance with Subsection (2), a concise summary, of 100 words or less, of the
170 information described in Subsections (1)(b)(i) through (v);

171 (c) mail, or personally deliver, a copy of the written estimate described in Subsection
172 (1)(b) to the first five sponsors named in the application; and

173 (d) prepare an unbiased, good faith estimate of the cost of including the written
174 estimate described in Subsection (1)(b) in the voter information pamphlet.

175 (2) (a) If the budget officer described in Subsection (1), in consultation with the
176 attorney for the local government, determines that repealing the law is unlikely to have fiscal or
177 legal implications, the budget officer shall include in the written estimate described in
178 Subsection (1)(b) a summary statement in substantially the following form:

179 "The (title of the local budget officer) estimates that, if passed, the referendum will
180 have no significant fiscal or legal impact, no significant impact on vested property rights, and
181 will not result in an increase or decrease in taxes or public debt."

182 (b) If the budget officer described in Subsection (1), in consultation with the attorney

183 for the local government, determines that repealing the law is likely to have fiscal or legal
184 implications, the budget officer shall include in the written estimate described in Subsection
185 (1)(b) a summary statement in substantially the following form:

186 "The (title of the local budget officer) estimates that the referendum, if passed, will
187 result in a total fiscal (expense or savings, as applicable), including a (type of tax) tax (increase
188 or decrease, as applicable) of \$ _____ and a \$ _____ (increase or decrease, as applicable) in
189 public debt and will impact vested property rights of _____ owners, which may require earlier
190 action taken to be reversed, or for which the public may be responsible to remedy with
191 monetary compensation or by other means."

192 (c) If the budget officer described in Subsection (1), in consultation with the attorney
193 for the local government, determines that the estimated fiscal or legal impact of repealing the
194 law is highly variable or otherwise difficult to reasonably express, the budget officer may
195 include in the summary statement a brief explanation that identifies the factors that make the
196 estimate highly variable or otherwise difficult to reasonably express.

197 (d) The brief written explanation described in Subsection (2)(c) is in addition to the
198 100-word limit described in Subsection (1)(b)(vi), but may not exceed 50 words.

199 (3) A local legislative body may include the written estimate described in Subsection
200 (1)(b) in the voter information pamphlet relating to the election where the referendum will be
201 submitted to a vote of the people.

202 (4) (a) Three or more of the sponsors named in the application described in Subsection
203 (1) may, within 20 days after the day on which a copy of the written estimate is mailed to, or
204 personally served on, the five sponsors described in Subsection (1)(c), file a petition with the
205 Utah Supreme Court, alleging that the written estimate described in Subsection (1)(b) is, taken
206 as a whole, materially inaccurate.

207 (b) There is a presumption that the written estimate is accurate, based on reasonable
208 assumptions and data, and applies accepted analytical methods.

209 (c) The sponsors described in Subsection (4)(a) have the burden of rebutting the
210 presumption described in Subsection (4)(b) by clear and convincing evidence.

211 (d) The Supreme Court may refer an issue related to the accuracy of the written
212 estimate to a master in accordance with Utah Rule of Civil Procedure 53.

213 (e) The Supreme Court shall certify to the clerk or recorder of the local government a

214 written estimate that complies with the requirements of this section.

Legislative Review Note
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Office of Legislative Research and General Counsel