

Senator Stuart C. Reid proposes the following substitute bill:

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 the legislative body of a local government entity;
- ▶ 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and shall prepare an unbiased, good faith written estimate of the fiscal and legal impact that will occur if the law is repealed; and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



26 ▶ provides for a legal challenge of the written estimate.

27 **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 **20A-7-601**, as last amended by Laws of Utah 2012, Chapter 72

35 ENACTS:

36 **20A-7-607.5**, Utah Code Annotated 1953



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

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

40 **11-14-301. Issuance of bonds by governing body -- Computation of indebtedness**
41 **under constitutional and statutory limitations.**

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

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

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

50 (i) an application for a referendum petition is filed with a local clerk, in accordance
51 with Section 20A-7-602 and Subsection 20A-7-601[~~(4)~~](3)(a), with respect to the local
52 obligation law relating to the bonds; or

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

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

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

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

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

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

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

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

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

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

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

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

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

86 (b) In computing the amount of indebtedness that may be incurred pursuant to
87 constitutional and statutory limitations, the constitutionally or statutorily permitted percentage,

88 as the case may be, shall be applied to the fair market value, as defined under Section 59-2-102,
89 of the taxable property in the local political subdivision, as computed from the last applicable
90 equalized assessment roll before the incurring of the additional indebtedness.

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

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

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

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

113 Section 2. Section **20A-7-601** is amended to read:

114 **20A-7-601. Referendum challenging local law -- Signature requirements -- Public**
115 **hearing.**

116 (1) Except as provided in Subsection (2), a person seeking to have a law passed by the
117 [local] legislative body of a local government entity submitted to a vote of the people shall
118 obtain legal signatures, in each precinct or subprecinct of the local government entity, in an

119 amount equal to or grater than:

120 (a) 10% of all the votes cast in the [~~county, city, or town~~] precinct or subprecinct for all
121 candidates for President of the United States at the last election at which a President of the
122 United States was elected if the total number of votes exceeds 25,000;

123 (b) 12-1/2% of all the votes cast in the [~~county, city, or town~~] precinct or subprecinct
124 for all candidates for President of the United States at the last election at which a President of
125 the United States was elected if the total number of votes does not exceed 25,000 but is more
126 than 10,000;

127 (c) 15% of all the votes cast in the [~~county, city, or town~~] precinct or subprecinct for all
128 candidates for President of the United States at the last election at which a President of the
129 United States was elected if the total number of votes does not exceed 10,000 but is more than
130 2,500;

131 (d) 20% of all the votes cast in the [~~county, city, or town~~] precinct or subprecinct for all
132 candidates for President of the United States at the last election at which a President of the
133 United States was elected if the total number of votes does not exceed 2,500 but is more than
134 500;

135 (e) 25% of all the votes cast in the [~~county, city, or town~~] precinct or subprecinct for all
136 candidates for President of the United States at the last election at which a President of the
137 United States was elected if the total number of votes does not exceed 500 but is more than
138 250; and

139 (f) 30% of all the votes cast in the [~~county, city, or town~~] precinct or subprecinct for all
140 candidates for President of the United States at the last election at which a President of the
141 United States was elected if the total number of votes does not exceed 250.

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

144 (b) A person seeking to have a land use law or local obligation law passed by the
145 [~~local~~] legislative body of a local government entity submitted to a vote of the people shall
146 obtain legal signatures, in each precinct or subprecinct of the local government entity, in an
147 amount equal to or greater than:

148 (i) in a county or in a city of the first or second class, 20% of all votes cast in the
149 [~~county or city~~] precinct or subprecinct for all candidates for President of the United States at

150 the last election at which a President of the United States was elected; and

151 (ii) in a city of the third, fourth, or fifth class or a town, 35% of all the votes cast in the
152 ~~[city or town]~~ precinct or subprecinct for all candidates for President of the United States at the
153 last election at which a President of the United States was elected.

154 (3) ~~(a)~~ Sponsors of any referendum petition challenging, under Subsection (1) or (2),
155 any local law passed by a local legislative body shall file the application within five days after
156 the passage of the local law.

157 ~~[(b) When a referendum petition has been declared sufficient, the local law that is the
158 subject of the petition does not take effect unless and until the local law is approved by a vote
159 of the people.]~~

160 ~~[(4) If the referendum passes, the local law that was challenged by the referendum is
161 repealed as of the date of the election.]~~

162 (4) If the clerk for the applicable jurisdiction declares a referendum petition relating to
163 a law described in Subsection (1) or (2) sufficient:

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

166 (b) the local clerk or recorder shall submit a copy of the application described in
167 Subsection (3) to the budget officer for the jurisdiction within three business days after the day
168 on which the clerk declares that the referendum petition is sufficient; and

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

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

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

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

174 (5) If the local legislative body repeals a law described in Subsection (1) or (2) before
175 the election day on which the law will otherwise be submitted to a vote of the people:

176 (a) the law may not be submitted to a vote of the people; and

177 (b) any votes cast for or against the referendum may not be counted.

178 (6) If a referendum challenging a law described in Subsection (1) or (2) passes, the law
179 is repealed on the day of the election at which the law is submitted to a vote of the people.

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

181 20A-7-607.5. Estimate of referendum's fiscal and legal impact -- Petition
182 challenging estimate.

183 (1) Within 25 days after the day on which the budget officer for the local government
184 that passed the law being challenged by referendum receives a copy of an application under
185 Subsection 20A-7-601(4)(b), the budget officer shall, in consultation with the attorney for the
186 local government:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

215 (b) If the budget officer described in Subsection (1), in consultation with the attorney
216 for the local government, determines that repealing the law is likely to have fiscal or legal
217 implications, the budget officer shall include in the written estimate described in Subsection
218 (1)(b) a summary statement in substantially the following form:

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

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

230 (d) The brief written explanation described in Subsection (2)(c) is in addition to the
231 100-word limit described in Subsection (1)(b)(vi), but may not exceed 50 words.

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

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

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

242 (c) The sponsors described in Subsection (4)(a) have the burden of rebutting the

243 presumption described in Subsection (4)(b) by clear and convincing evidence.

244 (d) The Supreme Court may refer an issue related to the accuracy of the written

245 estimate to a master in accordance with Utah Rule of Civil Procedure 53.