

SB0066S02 compared with SB0066S01

~~text~~ shows text that was in SB0066S01 but was deleted in SB0066S02.

text shows text that was not in SB0066S01 but was inserted into SB0066S02.

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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 ~~local~~ 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

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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and shall prepare an unbiased, good faith written estimate of the fiscal and legal impact that will occur if the law is repealed; and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:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

ENACTS:

20A-7-607.5, Utah Code Annotated 1953

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

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

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

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

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

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

- (i) an application for a referendum petition is filed with a local clerk, in accordance

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with Section 20A-7-602 and Subsection 20A-7-601~~(4)~~(3)(a), with respect to the local obligation law relating to the bonds; or

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

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

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

(C) the provisions made for the security or payment of the bonds; or

(D) any other issue that materially and adversely affects the marketability of the bonds, as determined by the individual or body that holds the executive powers of the local political subdivision.

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

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

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

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

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

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

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

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

(f) The tolling provisions described in this Subsection (2) apply to all bonds described

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in this section that were approved by voters on or after May 8, 2002.

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

(b) In computing the amount of indebtedness that may be incurred pursuant to constitutional and statutory limitations, the constitutionally or statutorily permitted percentage, as the case may be, shall be applied to the fair market value, as defined under Section 59-2-102, of the taxable property in the local political subdivision, as computed from the last applicable equalized assessment roll before the incurring of the additional indebtedness.

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

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

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

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

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

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

(1) Except as provided in Subsection (2), a person seeking to have a law passed by the ~~local~~ legislative body of a local government entity submitted to a vote of the people shall obtain legal signatures in each precinct or subprecinct of the local government entity, in an amount equal to or ~~greater~~ grater than:

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

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

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

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

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

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

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

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

(i) in a county or in a city of the first or second class, 20% of all votes cast in the ~~[county or city]~~ precinct or subprecinct for all candidates for President of the United States at the last election at which a President of the United States was elected; and

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

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

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

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

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

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

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

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

(i) review the fiscal and legal impact estimate;

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

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

(5) If the local legislative body repeals a law described in Subsection (1) or (2) before

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the election day on which the law will otherwise be submitted to a vote of the people:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) (a) Three or more of the sponsors named in the application described in Subsection (1) may, within 20 days after the day on which a copy of the written estimate is mailed to, or

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personally served on, the five sponsors described in Subsection (1)(c), file a petition with the Utah Supreme Court, alleging that the written estimate described in Subsection (1)(b) is, taken as a whole, materially inaccurate.

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

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

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