

HB0344S01 compared with HB0344

~~deleted text~~ shows text that was in HB0344 but was deleted in HB0344S01.

inserted text shows text that was not in HB0344 but was inserted into HB0344S01.

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Representative Jon Cox proposes the following substitute bill:

INCORPORATION ELECTION AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jon Cox

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to an election held to determine the incorporation of a city or town.

Highlighted Provisions:

This bill:

- ▶ authorizes a county to hold a local special election on the proposed incorporation of a city or town;
- ▶ amends the definitions of "incorporation election" and "incorporation petition"; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

HB0344S01 compared with HB0344

None

Utah Code Sections Affected:

AMENDS:

10-2-111, as last amended by Laws of Utah 2012, Chapter 359

10-2-127, as enacted by Laws of Utah 2012, Chapter 359

20A-1-203, as last amended by Laws of Utah 2013, Chapters 320 and 415

20A-11-101, as last amended by Laws of Utah 2013, Chapters 86, 170, 318, and 420

20A-11-1203, as last amended by Laws of Utah 2008, Chapter 225

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

Section 1. Section **10-2-111** is amended to read:

10-2-111. Incorporation election.

(1) (a) At the next regular general election date under Section 20A-1-201 more than 60 days after the county legislative body's receipt of the certified petition or certified modified petition under Subsection 10-2-110(1)(b)(i), or at the next local special election held in accordance with Section 20A-1-203 more than ~~60~~65 days after the county legislative body's receipt of the certified petition or certified modified petition under Subsection 10-2-110(1)(b)(i), the county legislative body shall hold an election on the proposed incorporation.

(b) Unless a person is a registered voter who resides, as defined in Section 20A-1-102, within the boundaries of the proposed city, the person may not vote on the proposed incorporation.

(2) (a) The county clerk shall publish notice of the election:

(i) in a newspaper of general circulation within the area proposed to be incorporated at least once a week for three successive weeks; and

(ii) in accordance with Section 45-1-101 for three weeks.

(b) The notice required by Subsection (2)(a) shall contain:

(i) a statement of the contents of the petition;

(ii) a description of the area proposed to be incorporated as a city;

(iii) a statement of the date and time of the election and the location of polling places;

and

HB0344S01 compared with HB0344

(iv) the feasibility study summary under Subsection 10-2-106(3)(b) and a statement that a full copy of the study is available for inspection and copying at the office of the county clerk.

(c) The last publication of notice required under Subsection (2)(a) shall occur at least one day but no more than seven days before the election.

(d) (i) In accordance with Subsection (2)(a)(i), if there is no newspaper of general circulation within the proposed city, the county clerk shall post at least one notice of the election per 1,000 population in conspicuous places within the proposed city that are most likely to give notice of the election to the voters of the proposed city.

(ii) The clerk shall post the notices under Subsection (2)(d)(i) at least seven days before the election under Subsection (1).

(3) If a majority of those casting votes within the area boundaries of the proposed city vote to incorporate as a city, the area shall incorporate.

Section 2. Section **10-2-127** is amended to read:

10-2-127. Incorporation of town -- Election to incorporate -- Ballot form.

(1) (a) At the next regular general election, as defined in Section 20A-1-102, more than 60 days after the public hearing described in Section 10-2-126, or at the next local special election held in accordance with Section 20A-1-203 at least ~~60~~65 days after the public hearing described in Section 10-2-126, the county legislative body shall hold an election on the proposed incorporation unless prohibited under the provisions of Section 10-2-126.

(b) Unless a person is a registered voter who resides, as defined in Section 20A-1-102, within the boundaries of the proposed town, the person may not vote on the proposed incorporation.

(2) (a) The county clerk shall publish notice of the election:

(i) in a newspaper of general circulation, within the area proposed to be incorporated, at least once a week for three successive weeks; and

(ii) in accordance with Section 45-1-101 for three weeks.

(b) The notice required by Subsection (2)(a) shall contain:

(i) a statement of the contents of the petition;

(ii) a description of the area proposed to be incorporated as a town;

(iii) a statement of the date and time of the election and the location of polling places;

HB0344S01 compared with HB0344

and

(iv) the county Internet website address, if applicable, and the address of the county office where the feasibility study is available for review.

(c) The last publication of notice required under Subsection (2)(a) shall occur at least one day but no more than seven days before the election.

(d) (i) In accordance with Subsection (2)(a)(i), if there is no newspaper of general circulation within the proposed town, the county clerk shall post at least one notice of the election per 100 population in conspicuous places within the proposed town that are most likely to give notice of the election to the voters of the proposed town.

(ii) The clerk shall post the notices under Subsection (2)(d)(i) at least seven days before the election under Subsection (1)(a).

(3) The ballot at the incorporation election shall pose the incorporation question substantially as follows:

Shall the area described as (insert a description of the proposed town) be incorporated as the town of (insert the proposed name of the proposed town)?

(4) The ballot shall provide a space for the voter to answer yes or no to the question in Subsection (3).

(5) If a majority of those casting votes within the area boundaries of the proposed town vote to incorporate as a town, the area shall incorporate.

Section 3. Section **20A-1-203** is amended to read:

20A-1-203. Calling and purpose of special elections -- Two-thirds vote

limitations.

(1) Statewide and local special elections may be held for any purpose authorized by law.

(2) (a) Statewide special elections shall be conducted using the procedure for regular general elections.

(b) Except as otherwise provided in this title, local special elections shall be conducted using the procedures for regular municipal elections.

(3) The governor may call a statewide special election by issuing an executive order that designates:

(a) the date for the statewide special election; and

HB0344S01 compared with HB0344

(b) the purpose for the statewide special election.

(4) The Legislature may call a statewide special election by passing a joint or concurrent resolution that designates:

(a) the date for the statewide special election; and

(b) the purpose for the statewide special election.

(5) (a) The legislative body of a local political subdivision may call a local special election only for:

(i) a vote on a bond or debt issue;

(ii) a vote on a voted local levy authorized by Section 53A-16-110 or 53A-17a-133;

(iii) an initiative authorized by Chapter 7, Part 5, Local Initiatives - Procedures;

(iv) a referendum authorized by Chapter 7, Part 6, Local Referenda - Procedures;

(v) if required or authorized by federal law, a vote to determine whether or not Utah's legal boundaries should be changed;

(vi) a vote authorized or required by Title 59, Chapter 12, Sales and Use Tax Act;

(vii) a vote to elect members to school district boards for a new school district and a remaining school district, as defined in Section 53A-2-117, following the creation of a new school district under Section 53A-2-118.1;

(viii) an election of town officers of a newly incorporated town under Section 10-2-128;

(ix) an election of officers for a new city under Section 10-2-116;

(x) a vote on a municipality providing cable television services or public telecommunications services under Section 10-18-204;

(xi) a vote to create a new county under Section 17-3-1;

(xii) a vote on the creation of a study committee under Sections 17-52-202 and 17-52-203.5; ~~or~~

(xiii) a vote on a special property tax under Section 53A-16-110~~[-];~~

(xiv) a vote on the incorporation of a city in accordance with Section 10-2-111; or

(xv) a vote on the incorporation of a town in accordance with Section 10-2-127.

(b) The legislative body of a local political subdivision may call a local special election by adopting an ordinance or resolution that designates:

(i) the date for the local special election as authorized by Section 20A-1-204; and

HB0344S01 compared with HB0344

(ii) the purpose for the local special election.

(c) A local political subdivision may not call a local special election unless the ordinance or resolution calling a local special election under Subsection (5)(b) is adopted by a two-thirds majority of all members of the legislative body, if the local special election is for:

(i) a vote on a bond or debt issue as described in Subsection (5)(a)(i);

(ii) a vote on a voted leeway or levy program as described in Subsection (5)(a)(ii); or

(iii) a vote authorized or required for a sales tax issue as described in Subsection (5)(a)(vi).

Section 4. Section **20A-11-101** is amended to read:

20A-11-101. Definitions.

As used in this chapter:

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

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

(3) "Candidate" means any person who:

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

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

(4) "Chief election officer" means:

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

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

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

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

(ii) an express, legally enforceable contract, promise, or agreement to make a gift,

HB0344S01 compared with HB0344

subscription, donation, unpaid or partially unpaid loan, advance, or deposit of money or anything of value to the filing entity;

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

(iv) compensation paid by any person or reporting entity other than the filing entity for personal services provided without charge to the filing entity;

(v) remuneration from:

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

or

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

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

(b) "Contribution" does not include:

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

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

(iii) goods or services provided for the benefit of a candidate or political party at less than fair market value that are not authorized by or coordinated with the candidate or political party.

(6) "Coordinated with" means that goods or services provided for the benefit of a candidate or political party are provided:

(a) with the candidate's or political party's prior knowledge, if the candidate or political party does not object;

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

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

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

(7) (a) "Corporation" means a domestic or foreign, profit or nonprofit, business organization that is registered as a corporation or is authorized to do business in a state and makes any expenditure from corporate funds for:

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

HB0344S01 compared with HB0344

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

(b) "Corporation" does not mean:

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

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

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

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

(10) "Detailed listing" means:

(a) for each contribution or public service assistance:

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

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

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

(b) for each expenditure:

(i) the amount of the expenditure;

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

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

(iv) the date the expenditure was made.

(11) (a) "Donor" means a person that gives money, including a fee, due, or assessment for membership in the corporation, to a corporation without receiving full and adequate consideration for the money.

(b) "Donor" does not include a person that signs a statement that the corporation may not use the money for an expenditure or political issues expenditure.

(12) "Election" means each:

(a) regular general election;

(b) regular primary election; and

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

HB0344S01 compared with HB0344

(13) "Electioneering communication" means a communication that:

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

(b) clearly identifies a candidate or judge; and

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

(14) (a) "Expenditure" means:

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

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

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

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

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

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

(b) "Expenditure" does not include:

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

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

(iii) anything listed in Subsection (14)(a) that is given by a reporting entity to candidates for office or officeholders in states other than Utah.

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

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

HB0344S01 compared with HB0344

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

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

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

(20) "Incorporation election" means the election authorized by Section 10-2-111 or 10-2-127.

(21) "Incorporation petition" means a petition authorized by Section 10-2-109 or 10-2-125.

(22) "Individual" means a natural person.

(23) "Interim report" means a report identifying the contributions received and expenditures made since the last report.

(24) "Legislative office" means the office of state senator, state representative, speaker of the House of Representatives, president of the Senate, and the leader, whip, and assistant whip of any party caucus in either house of the Legislature.

(25) "Legislative office candidate" means a person who:

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

(b) declares oneself to be a candidate for, or actively campaigns for, the position of speaker of the House of Representatives, president of the Senate, or the leader, whip, and assistant whip of any party caucus in either house of the Legislature; or

(c) receives contributions, makes expenditures, or gives consent for any other person to receive contributions or make expenditures to bring about the person's nomination, election, or appointment to a legislative office.

(26) "Major political party" means either of the two registered political parties that have the greatest number of members elected to the two houses of the Legislature.

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

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

HB0344S01 compared with HB0344

governing board of a registered political party.

(29) "Person" means both natural and legal persons, including individuals, business organizations, personal campaign committees, party committees, political action committees, political issues committees, and labor organizations, as defined in Section 20A-11-1501.

(30) "Personal campaign committee" means the committee appointed by a candidate to act for the candidate as provided in this chapter.

(31) "Personal use expenditure" has the same meaning as provided under Section 20A-11-104.

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

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

(ii) make expenditures to expressly advocate for any person to refrain from voting or to vote for or against any candidate or person seeking election to a municipal or county office.

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

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

(i) a party committee;

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

(iii) an individual;

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

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

(vi) a personal campaign committee.

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

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

HB0344S01 compared with HB0344

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

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

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

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

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

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

(iii) an individual;

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

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

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

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

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

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

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

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

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

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

HB0344S01 compared with HB0344

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

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

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

(A) a ballot proposition; or

(B) an incorporation petition or incorporation election;

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

(A) a ballot proposition; or

(B) an incorporation petition or incorporation election;

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

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

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

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

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

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

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

(38) (a) "Poll" means the survey of a person regarding the person's opinion or knowledge of an individual who has filed a declaration of candidacy for public office, or of a ballot proposition that has legally qualified for placement on the ballot, which is conducted in person or by telephone, facsimile, Internet, postal mail, or email.

(b) "Poll" does not include:

HB0344S01 compared with HB0344

- (i) a ballot; or
- (ii) an interview of a focus group that is conducted, in person, by one individual, if:
 - (A) the focus group consists of more than three, and less than thirteen, individuals; and
 - (B) all individuals in the focus group are present during the interview.

(39) "Primary election" means any regular primary election held under the election laws.

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

(41) (a) "Public service assistance" means the following when given or provided to an officeholder to defray the costs of functioning in a public office or aid the officeholder to communicate with the officeholder's constituents:

- (i) a gift, subscription, donation, unpaid or partially unpaid loan, advance, or deposit of money or anything of value to an officeholder; or

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

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

- (i) anything provided by the state;

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

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

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

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

(42) "Publicly identified class of individuals" means a group of 50 or more individuals sharing a common occupation, interest, or association that contribute to a political action committee or political issues committee and whose names can be obtained by contacting the political action committee or political issues committee upon whose financial statement the

HB0344S01 compared with HB0344

individuals are listed.

(43) "Receipts" means contributions and public service assistance.

(44) "Registered lobbyist" means a person registered under Title 36, Chapter 11, Lobbyist Disclosure and Regulation Act.

(45) "Registered political action committee" means any political action committee that is required by this chapter to file a statement of organization with the Office of the Lieutenant Governor.

(46) "Registered political issues committee" means any political issues committee that is required by this chapter to file a statement of organization with the Office of the Lieutenant Governor.

(47) "Registered political party" means an organization of voters that:

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

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

(48) (a) "Remuneration" means a payment:

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

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

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

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

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

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

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

(49) "Reporting entity" means a candidate, a candidate's personal campaign committee, a judge, a judge's personal campaign committee, an officeholder, a party committee, a political action committee, a political issues committee, a corporation, or a labor organization, as defined in Section 20A-11-1501.

(50) "School board office" means the office of state school board or local school board.

(51) (a) "Source" means the person or entity that is the legal owner of the tangible or

HB0344S01 compared with HB0344

intangible asset that comprises the contribution.

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

(52) "State office" means the offices of governor, lieutenant governor, attorney general, state auditor, and state treasurer.

(53) "State office candidate" means a person who:

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

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

(54) "Summary report" means the year end report containing the summary of a reporting entity's contributions and expenditures.

(55) "Supervisory board" means the individual or group of individuals that allocate expenditures from a political issues committee.

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Legislative Review Note

~~as of 11-19-13 12:33 PM~~

~~Office of Legislative Research and General Counsel~~; Section 5. Section 20A-11-1203 is amended to read:

20A-11-1203. Public entity prohibited from expending public funds on certain electoral matters.

(1) Unless specifically required by law, a public entity may not make an expenditure from public funds for political purposes or to influence a ballot proposition.

(2) Nothing in this chapter prohibits a public official from speaking, campaigning, contributing personal money, or otherwise exercising the public official's individual First Amendment rights for political purposes.

HB0344S01 compared with HB0344

(3) Nothing in this chapter prohibits a public entity from providing factual information about a ballot proposition to the public, so long as the information grants equal access to both the opponents and proponents of the ballot proposition.

(4) Nothing in this chapter prohibits a public entity from the neutral encouragement of voters to vote.

[(5) Nothing in this chapter prohibits a public entity from preparing information analyzing the pros and cons of a ballot proposition when requested to do so by the public entity's governing body.]

[(6) (5) Nothing in this chapter prohibits an elected official from campaigning or advocating for or against a ballot proposition.

[(7) (6) A violation of this section does not invalidate an otherwise valid election.