RECALL ELECTIONS AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: ____________

LONG TITLE

General Description:
This bill adds to the Election Code, subject to passage of an enabling amendment to the Utah Constitution, recall election provisions for the recall of the governor, the state auditor, the state treasurer, or the attorney general.

Highlighted Provisions:
This bill:
- defines terms;
- enacts a chapter governing a recall election of the governor, the state auditor, the state treasurer, or the attorney general;
- describes application and petition requirements for a recall election;
- describes signature requirements and provides a process for a voter to remove the voter's signature from a petition;
- describes the signatures that are required, together with other requirements, to qualify for a recall election to be held;
- describes the process for submission and review of recall election packets;
- describes duties of the lieutenant governor and county clerks with respect to a recall election petition;
- establishes an appeals process if the lieutenant governor determines that a recall election petition is insufficient;
- describes circumstances under which a recall election may not be held;
describes the ballot and election date of a recall election;
provides for removal from office of an executive branch elected official who is recalled;
describes unlawful conduct in relation to provisions of this bill; and
makes passage of this bill contingent upon passage of an enabling amendment to the Utah Constitution.

Money Appropriated in this Bill:
None

Other Special Clauses:
This bill provides a contingent effective date of January 1, 2015.

Utah Code Sections Affected:
ENACTS:

20A-17-101, Utah Code Annotated 1953
20A-17-102, Utah Code Annotated 1953
20A-17-201, Utah Code Annotated 1953
20A-17-202, Utah Code Annotated 1953
20A-17-203, Utah Code Annotated 1953
20A-17-204, Utah Code Annotated 1953
20A-17-205, Utah Code Annotated 1953
20A-17-206, Utah Code Annotated 1953
20A-17-301, Utah Code Annotated 1953
20A-17-302, Utah Code Annotated 1953
20A-17-303, Utah Code Annotated 1953
20A-17-304, Utah Code Annotated 1953
20A-17-401, Utah Code Annotated 1953
20A-17-402, Utah Code Annotated 1953
20A-17-403, Utah Code Annotated 1953
20A-17-404, Utah Code Annotated 1953
20A-17-501, Utah Code Annotated 1953
20A-17-502, Utah Code Annotated 1953
Be it enacted by the Legislature of the state of Utah:

Section 1. Section 20A-17-101 is enacted to read:

CHAPTER 17. RECALL ELECTIONS


20A-17-101. Title.
(1) This chapter is known as "Recall Elections."
(2) This part is known as "General Provisions."

Section 2. Section 20A-17-102 is enacted to read:

20A-17-102. Definitions.
As used in this chapter:
(1) "Executive branch elected official" means the governor, the state auditor, the state treasurer, or the attorney general.
(2) "Legal voter" means an individual who:
   (a) is registered to vote; or
   (b) intends to register to vote within 30 days after the day on which the individual signs a recall election petition.

Section 3. Section 20A-17-201 is enacted to read:

Part 2. Application and Petition Requirements

20A-17-201. Title.
This part is known as "Application and Petition Requirements."

Section 4. Section 20A-17-202 is enacted to read:

(1) A person who desires to subject an executive branch elected official to a recall election shall file a recall election application with the lieutenant governor.
(2) The application shall be on a form provided by the lieutenant governor's office that contains:
   (a) the name and residential address of at least five sponsors of the recall election application;
   (b) a statement indicating that each of the sponsors:
      (i) is a resident of Utah; and
      (ii) voted in a regular general election in Utah within the last three years;
(c) the signature of each of the sponsors, attested to by a notary public; and
(d) the name and office of the executive branch elected official whom the sponsors desire to subject to a recall election; and
(e) a statement indicating whether any person may be paid to gather signatures for the recall election petition.

(3) The application and the application's contents are public when filed with the lieutenant governor.

Section 5. Section 20A-17-203 is enacted to read:

20A-17-203. Form of recall election petition and signature sheets.

(1) A recall election petition is invalid unless:

(a) the recall election petition is printed in substantially the following form:

"RECALL ELECTION PETITION
To the Honorable ____, Lieutenant Governor:
We, the undersigned citizens of Utah, respectfully demand that _____________ (name and office of the executive branch elected official sought to be recalled) be subjected to a recall election;

Each signer says:
I have personally signed this petition;
I am registered to vote in Utah or intend to become registered to vote in Utah within 30 days after the day on which I sign this petition; and
My residence and post office address are written correctly after my name."); and

(b) each signature sheet:

(i) is printed on sheets of paper 8-1/2 inches long and 11 inches wide;

(ii) is ruled with a horizontal line three-fourths inch from the top, with the space above that line blank for the purpose of binding;

(iii) contains the words "Recall Election Petition for," followed immediately by the name and office of the executive branch elected official sought to be recalled, printed below the horizontal line;

(iv) contains the word "Warning" printed or typed at the top of each signature sheet;

(v) contains, to the right of the word "Warning," the following statement printed or typed in not less than eight-point, single leaded type:
"It is a class A misdemeanor for an individual to sign a recall election petition with any other name than the individual's own name, to knowingly sign the individual's name more than once for the same recall election, or to sign a recall election petition when the individual knows the individual is not a registered voter and does not intend to become a registered voter within 30 days after the day on which the individual signs the election recall petition."; and 

(vi) is vertically divided into columns as follows:

(A) the first column shall appear at the extreme left of the sheet, be five-eighths inch wide, be headed with "For Office Use Only," and be subdivided with a light vertical line down the middle with the left subdivision entitled "Registered" and the right subdivision left untitled;

(B) the next column shall be 2-1/2 inches wide, headed "Registered Voter's Printed Name (must be legible to be counted)";

(C) the next column shall be 2-1/2 inches wide, headed "Signature of Registered Voter";

(D) the next column shall be one inch wide, headed "Birth Date or Age (Optional)";

(E) the final column shall be 4-3/8 inches wide, headed "Street Address, City, Zip Code"; and

(F) at the bottom of the sheet, contain the following statement: "Birth date or age information is not required, but may be used to verify your identity with voter registration records. If you choose not to provide this information, your signature may not be verified as a valid signature if you change your address before petition signatures are verified or if the information you provide does not match your voter registration records."

(2) The final page of each recall election packet shall contain the following printed or typed statement:

"Verification

State of Utah, County of

I, ______________, of ____, hereby state that:

I am a resident of Utah and am at least 18 years old;

All the names that appear in this packet were signed by individuals who professed to be the individuals whose names appear in it, and each of the individuals signed the individual's name on it in my presence;

I believe that each individual printed and signed the individual's name and wrote the
individual's post office address and residence correctly and that each signer is registered to vote in Utah or intends to become registered to vote within 30 days after the day on which the individual signed the petition.

I have not paid or given anything of value to any individual who signed this recall petition to encourage that individual to sign it.

____________________________________________________________________

(Name)   (Residence Address)   (Date)"

(3) The forms prescribed in this section are not mandatory, and, if substantially followed, the recall election petitions are sufficient, notwithstanding clerical or technical errors.

Section 6. Section 20A-17-204 is enacted to read:

20A-17-204. Circulation requirements -- Lieutenant governor to provide sponsors with materials.

(1) In order to obtain the necessary number of signatures required by this chapter, the sponsors shall circulate recall election packets that meet the form requirements of this part.

(2) The lieutenant governor shall provide the sponsors with a copy of the recall election petition and one signature sheet.

(3) The sponsors of the recall election petition shall:

(a) arrange and pay for the printing of all additional copies of the petition and signature sheets; and

(b) ensure that the copies of the petition and signature sheets meet the requirements of this part.

(4) (a) The sponsors may prepare the recall election petition for circulation by creating multiple recall election packets.

(b) The sponsors shall create the recall election packets by binding a copy of the recall election petition and no more than 50 signature sheets together at the top in a manner that the packets may be conveniently opened for signing.

(c) The sponsors are not required to attach a uniform number of signature sheets to each recall election packet.

(5) (a) After the sponsors have prepared sufficient recall election packets, the sponsors shall deliver the recall election packets to the lieutenant governor.

(b) The lieutenant governor shall:
(i) within five working days after the day on which the sponsors delivered the recall
election packets to the lieutenant governor under Subsection (5)(a), number and return the
recall election packets to the sponsors; and
(ii) keep a record of the numbers assigned to each recall election packet.

Section 7. Section 20A-17-205 is enacted to read:


(1) A Utah voter may sign a recall election petition if the voter is a legal voter.

(2) (a) The sponsors shall ensure that the individual in whose presence each signature
sheet is signed:

(i) is at least 18 years old and meets the residency requirements described in Section
20A-2-105; and

(ii) verifies each signature sheet by completing the verification printed on the last page
of each recall election packet.

(b) An individual may not sign the verification printed on the last page of the recall
election packet if the person signed a signature sheet in the recall election packet.

(3) (a) A voter who signs a recall election petition may have the voter's signature
removed from the petition by, before the day on which the lieutenant governor completes the
process of removing signatures described in Section 20A-17-304, submitting to the county
clerk a statement requesting that the voter's signature be removed.

(b) The statement described in Subsection (3)(a) shall include:

(i) the name of the voter;

(ii) the resident address at which the voter is registered to vote;

(iii) the last four digits of the voter's Social Security number;

(iv) the voter's driver license or identification card number; and

(v) the signature of the voter.

(c) A voter may not submit the statement described in this Subsection (3) by email or
other electronic means.

(d) The county clerk shall deliver all statements received under this Subsection (3):

(i) with the recall election packets delivered to the lieutenant governor; or

(ii) in a supplemental delivery to the lieutenant governor for a statement submitted
after the county clerk delivers the recall election packets.
(e) An individual may only remove a signature from a recall election petition in accordance with this Subsection (3).

Section 8. Section 20A-17-206 is enacted to read:

20A-17-206. Signature requirements -- Submission to a vote of the people.

(1) A recall election of the executive branch elected official named in a recall election petition may not be held unless:

(a) the sponsors obtain legal signatures that, after the verification and evaluation process described in Sections 20A-17-303 and 20A-17-304, are equal to or greater than:

(i) 10% of the cumulative total of all votes cast by voters of this state for all candidates for president of the United States at the last regular general election at which a president of the United States was elected; and

(ii) for each of at least 26 Utah state Senate districts, 10% of the total of all votes cast in that district for all candidates for president of the United States at the last regular general election at which a president of the United States was elected;

(b) the sponsors obtain the signatures described in Subsection (1)(a) within the period of time that:

(i) begins on the day on which the lieutenant governor returns the recall election packets to a sponsor under Subsection 20A-17-204(5)(b); and

(ii) ends 180 days after the day described in Subsection (1)(b)(i); and

(c) the recall election petition is declared sufficient in accordance with Section 20A-17-304.

(2) The lieutenant governor shall provide the following information from the official canvass of the last regular general election at which a president of the United States was elected to any interested person:

(a) the cumulative total of all votes cast by voters in this state for all candidates for president of the United States; and

(b) for each Utah state Senate district, the total of all votes cast in that district for all candidates for president of the United States.

(3) A person may not use signature sheets, or signatures collected on those signature sheets, in relation to a previous recall election petition for a subsequent recall election petition.

Section 9. Section 20A-17-301 is enacted to read:
Part 3. Submission and Review of Petition

20A-17-301. Title.

This part is known as "Submission and Review of Petition."

Section 10. Section 20A-17-302 is enacted to read:

20A-17-302. Submitting recall election petition -- Certification of signatures by county clerks -- Transfer to lieutenant governor.

(1) (a) In order to qualify for holding a recall election, the sponsors of a recall election petition shall deliver each signed and verified recall election packet to the county clerk of the county in which the packet was circulated no later than 180 days after the day on which the lieutenant governor returns the recall election packets to a sponsor under Subsection 20A-17-204(5)(b).

(b) A sponsor may not submit a recall election packet after the deadline described in Subsection (1)(a).

(2) Within 30 days after the day on which a county clerk receives each signed and verified recall election packet that was circulated in the county, the county clerk shall:

(a) check the name of each individual who completed the verification for each recall election packet to determine whether each individual is a resident of Utah and is at least 18 years old; and

(b) submit to the attorney general and the county attorney the name of each individual who completed the verification for a recall election packet who is not a Utah resident or who is not at least 18 years old.

(3) The county clerk may not certify a signature under Subsection (4) on a recall election packet that is not verified in accordance with Section 20A-17-205.

(4) No later than 30 days after the day on which a county clerk receives each signed and verified recall election packet that was circulated in the county, the county clerk shall:

(a) determine whether each signer is a registered voter in accordance with the requirements of Section 20A-17-303;

(b) certify on each recall election packet whether each name in the packet is the name of a registered voter; and

(c) deliver each verified recall election packet to the lieutenant governor.

(5) Upon receipt of a recall election packet under Subsection (4) and any statement...
timely submitted under Subsection 20A-17-205(3), the lieutenant governor shall remove from
the recall election petition a voter's signature if the voter has requested removal in accordance
with Subsection 20A-17-205(3).

(6) A sponsor or an agent of a sponsor may not retrieve a recall election packet from a
county clerk or the lieutenant governor after the sponsor or an agent of the sponsor submits the
recall election packet to the county clerk.

Section 11. Section 20A-17-303 is enacted to read:

20A-17-303. Verification of petition signatures.

(1) As used in this section:
(a) "Substantially similar name" means:
(i) the given name or surname shown on the petition, or both, contain only minor
spelling differences when compared to the given name or surname shown on the official
register;
(ii) the surname shown on the petition exactly matches the surname shown on the
official register, and the given names differ only because one of the given names shown is a
commonly used abbreviation or variation of the other given name;
(iii) the surname shown on the petition exactly matches the surname shown on the
official register, and the given names differ only because one of the given names shown is
accompanied by a first or middle initial or a middle name that is not shown on the other record;
or
(iv) the surname shown on the petition exactly matches the surname shown on the
official register, and the given names differ only because one of the given names shown is an
alphabetically corresponding initial that has been provided in the place of a given name shown
on the other record.
(b) "Substantially similar name" does not include a name with an initial or a middle
name shown on the petition that does not match a different initial or middle name shown on the
official register.

(2) The county clerk shall use the following procedures in determining whether a
signer is a registered voter:
(a) when a signer's name and address shown on the petition exactly match a name and
address shown on the official register and the signer's signature appears substantially similar to
the signature on the statewide voter registration database, the county clerk shall declare the
signature valid;
(b) when there is no exact match of an address and a name, the county clerk shall
declare the signature valid if:
   (i) the address on the petition matches the address of an individual on the official
register with a substantially similar name; and
   (ii) the signer's signature appears substantially similar to the signature on the statewide
voter registration database of the individual described in Subsection (2)(b)(i); or
(c) when there is no match of an address, but a substantially similar name, the county
clerk shall declare the signature valid if:
   (i) the birth date or age on the petition matches the birth date or age of an individual on
the official register with a substantially similar name; and
   (ii) the signer's signature appears substantially similar to the signature on the statewide
voter registration database of the individual described in Subsection (2)(c)(i).
(3) If a signature is not declared valid under Subsection (2), the county clerk shall
declare the signature to be invalid.

Section 12. Section 20A-17-304 is enacted to read:

20A-17-304. Evaluation by the lieutenant governor.
(1) When a recall election packet is received from a county clerk, the lieutenant
governor shall check off from the record the number of the recall election packet filed.
(2) Within 15 days after the day on which the lieutenant governor receives all of the
recall election packets, the lieutenant governor shall:
   (a) remove the signatures as required by Section 20A-17-205; and
   (b) after removing the signatures as required by Section 20A-17-205:
      (i) count the number of the names certified by the county clerks that remain on each
verified signature sheet; and
      (ii) declare the recall election petition to be sufficient or insufficient.
   (3) (a) If the total number of names counted under Subsection (2)(b)(i) equals or
exceeds the number of names required under Section 20A-17-206 and the requirements of this
chapter are met, the lieutenant governor shall mark upon the front of the recall election petition
the word "sufficient."
(b) If the total number of names counted under Subsection (2)(b)(i) does not equal or exceed the number of names required under Section 20A-17-206 or a requirement of this chapter is not met, the lieutenant governor shall mark upon the front of the recall election petition the word "insufficient."

(c) The lieutenant governor shall, on the day on which the lieutenant governor marks the recall election petition "sufficient" or "insufficient":

(i) send notice of the lieutenant governor's action to any one of the sponsors; and

(ii) post notice of the lieutenant governor's action on the lieutenant governor's website.

(4) After the lieutenant governor declares a recall election petition to be insufficient, the sponsors may not submit additional signatures to qualify the petition for the ballot.

(5) (a) If the lieutenant governor marks a recall election petition "insufficient" or fails to timely comply with Subsection (2)(b)(ii), any voter who believes that the recall election petition is sufficient may, within 15 days after the earlier of the day on which the lieutenant governor makes the notification described in Subsection (3)(c) or the day on which the deadline described in Subsection (2) expires, apply to the Supreme Court for an extraordinary writ to compel the lieutenant governor to declare the election petition to be sufficient.

(b) The Supreme Court shall:

(i) determine whether the recall election petition is legally sufficient; and

(ii) certify the court's findings to the lieutenant governor.

(c) If the supreme Court certifies that the recall election petition is legally sufficient, the lieutenant governor shall, within one business day after the day on which the Supreme Court certifies that the recall election petition is legally sufficient:

(i) attach a verified copy of the judgment to the recall election petition; and

(ii) mark the petition as "sufficient."

(d) If the Supreme Court determines that a recall election petition is not legally sufficient, the Supreme Court may enjoin the lieutenant governor and all other officers from proceeding with the recall election.

(6) A petition determined to be sufficient in accordance with this section is qualified for the ballot.

Section 13. Section 20A-17-401 is enacted to read:

Part 4. Recall Election
20A-17-401. Title.
This part is known as "Recall Election."

Section 14. Section 20A-17-402 is enacted to read:

20A-17-402. Recall election dates -- Cancellation of recall election.

(1) Except as provided in Subsection (2), the lieutenant governor and each county clerk shall ensure that a recall election, based on a recall election petition that is declared to be sufficient under Section 20A-17-304, is held on the earlier of:

(a) the next Western States Presidential Primary that will occur at least 65 days after the day on which the recall election petition is declared to be sufficient under Section 20A-17-304;
(b) the next regular primary election that will occur at least 65 days after the day on which the recall election petition is declared to be sufficient under Section 20A-17-304;
(c) the next regular general election that will occur at least 65 days after the day on which the recall election petition is declared to be sufficient under Section 20A-17-304; or
(d) the next statewide special election called by the governor or the Legislature that will occur at least 65 days after the day on which the recall election petition is declared to be sufficient under Section 20A-17-304, regardless of whether the special election is called for the purpose of the recall election.

(2) A recall election may not be held if:

(a) the executive branch elected official who is the subject of the recall election petition resigns or is otherwise removed from office before the day on which the recall election will be held;
(b) (i) the executive branch elected official's term of office will end within 90 days after the day on which the recall election petition is declared to be sufficient under Section 20A-17-304; and
(ii) the executive branch elected official will not be on the ballot for reelection; or
(c) (i) the recall election would, under Subsection (1), be held at the next general election; and
(ii) the executive branch elected official will be on the ballot for reelection in a regular general election.

Section 15. Section 20A-17-403 is enacted to read:
20A-17-403. Form of ballot -- Manner of voting.

(1) The county clerks shall ensure that the portion of a ballot for a recall election of an executive branch elected official is presented on the official ballot as follows:

   (a) the name of the executive branch elected official who is the subject of the recall election petition shall appear on the ballot;

   (b) immediately after the executive branch elected official's name shall appear the name of the registered political party of which the executive branch elected official is a member;

   (c) immediately after the name and political party described in Subsections (1)(a) and (b) shall appear the question, "Shall __________ (name of the executive branch elected official) be retained as __________ (position that the executive branch elected official holds)?"; and

   (d) immediately adjacent to the question described in Subsection (1)(c) shall appear the words "Yes" and "No," each word presented with an adjacent square in which the elector may indicate the elector's vote.

(2) Electors desiring to retain the executive branch elected official in office shall mark the square adjacent to the word "Yes," and electors desiring to remove the executive branch elected official from office shall mark the square adjacent to the word "No."

Section 16. Section 20A-17-404 is enacted to read:


(1) The votes in a recall election shall be counted, canvassed, and delivered as provided in Title 20A, Chapter 4, Part 3, Canvassing Returns.

(2) After the state board of canvassers completes its canvass, the lieutenant governor shall issue a proclamation that:

   (a) certifies the number of votes for and against retaining the executive branch elected official in office; and

   (b) (i) if the number of votes for retaining the executive branch elected official in office equals or exceeds the number of votes against retaining the executive branch elected official in office, declares that the executive branch elected official is retained in office; or

   (ii) if the number of votes for retaining the executive branch elected official in office does not equal or exceed the number of votes against retaining the executive branch elected official in office.
official in office, declares that the executive branch elected official is removed from office and
that the office is vacant.
Section 17. Section 20A-17-501 is enacted to read:

Part 5. Unlawful Conduct

20A-17-501. Title.
This part is known as "Unlawful Conduct."
Section 18. Section 20A-17-502 is enacted to read:

(1) It is a class B misdemeanor for a person to:
(a) sign any name other than the person's own name to a recall election petition;
(b) knowingly sign the person's name more than once for the same recall election
petition;
(c) sign a recall election petition if, at the time that the person signs the recall election
petition, the person:
(i) knows that the person is not a legal voter; and
(ii) does not intend to become a legal voter within 30 days after the day on which the
person signs the recall election petition; or
(d) knowingly and willfully violate any provision of this part that is not described in
Subsections (1)(a) through (c), (2), or (3).
(2) It is a class B misdemeanor for an individual to sign the verification for a recall
election packet knowing that:
(a) the individual does not meet the residency requirements described in Section
20A-2-105;
(b) the individual did not witness the signatures of the individuals whose names appear
in the recall election packet; or
(c) an individual whose signature appears in the recall election packet:
(i) is not registered to vote in Utah; and
(ii) does not intend to become registered to vote in Utah within 30 days after the day on
which the individual signs the recall election packet.
(3) A person is guilty of a class A misdemeanor if the person:
(a) pays an individual to sign a recall election petition;
(b) pays an individual to remove the individual's signature from a recall election petition;

c) accepts payment to sign a recall election petition;

d) accepts payment to have the individual's name removed from a recall election petition; or

e) removes an individual's name from a recall election petition, unless authorized by law to remove the individual's name from the recall election petition.

Section 19. Effective date.

This bill takes effect on January 1, 2015, if the amendment to the Utah Constitution proposed by H.J.R. 4, Joint Resolution on Recall Elections, 2014 General Session, passes the Legislature and is approved by a majority of those voting on the amendment at the next regular general election.

Legislative Review Note
as of 1-14-14 8:20 AM

Office of Legislative Research and General Counsel