

DEC 18 2018

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IN THE UTAH STATE SUPREME COURT

GRANT v. GOV. HERBERT

:
: MEMORANDUM (LETTER) IN
: SUPPORT OF PETITION FOR
: EXTRAORDINARY WRIT OF
: RELIEF
: REQUEST FOR ADDITIONAL
: BRIEFING
: REQUEST FOR HEARING AND
: ORAL ARGUMENTS

Case: 20180997 SC

1. I, Bart Grant, acting *pro se*, exercising my First Amendment right as guaranteed by the Utah and United States Constitutions hereby petition the government for redress of grievances, and request a hearing with the court.
2. The right of the citizens of Utah under Article VI of the Utah Constitution of Utah to “initiate any desired legislation and cause it to be submitted to the people for adoption upon a majority vote of those voting on the legislation” has been violated by the Governor, Lt. Governor, Elections Director, and the Utah Legislature.

3. The Lt. Governor has refused to accept a valid application to refer this action to the voters.

4. The only recourse remaining is to ask this court for relief.

5. In support of the plaintiff's Motion for Extraordinary Writ of Relief I submit my motion in support as follows:

6. I have been actively involved in many Citizen Initiatives and Referenda in the state of Utah for the past THIRTY YEARS. My first involvement was as a volunteer petition circulator back in the days when citizen initiatives could be accomplished by mostly volunteer organizations. I have personally gathered and managed the collection of thousands and thousands of signatures for Citizen Initiatives in Utah. In 1988 I was a supporter of initiatives A, B, and C in to Limit Taxes and Spending, Reduce Taxes, and provide for and Income Tax Credit for Private Education. In 1990 I petitioned for the Removal of State and Local Sales Tax from Food. In 1994 I was the Director of Utah Term Limits and helped place the initiative for Term Limits and Election by Majority Vote (or Run-Off Elections) on the Utah ballot. In 2000 I helped organize petitioners for Initiative A and B to make English the Official Language of Utah and for the Utah Property Protection Act. In 2002 I also organized petition circulators to qualify the Radioactive Waste Restrictions Act, gathering hundreds of signatures myself and hundreds more by my immediate family members and thousands by petition circulators who I managed. In addition to these citizen initiatives that were successful in qualifying to be on the ballot in Utah I have also been involved in several citizen initiative efforts that were unsuccessful in gaining access to the ballot due to the continuously increasing difficulty placed on citizens by our Legislature. I

was also one of the original sponsors of a referendum to overturn HB477 in 2011 as well as a sponsor of the Referendum application that is at the heart of the matter before this court today.

7. This year the citizens of Utah brought Proposition 2 to the ballot and a clear majority of the voters passed this citizen initiated legislation. That should be the end of the story.

Unfortunately it is not, and rarely has been the case in Utah.

8. My interest and concern in the matters surrounding the passage and overturning of Proposition 2 this year (2018) has more to do with the citizen initiative process than with Medical Cannabis, although I did sign the initiative and I voted in favor of Proposition 2 in the Elections on November 6 this year because, like the clear majority of voters in Utah I believe people who could benefit from the medical use of cannabis should be allowed to ease their suffering. The concern shared by myself and many people who voted both for and against Proposition 2 is the absolute disregard the Legislature has shown for the will of voters of Utah.

9. The citizen's right to pass or repeal legislation through the Initiative and Referendum process is, as this court has recognized in the past, "a fundamental right guaranteed in the Utah Constitution." The people have exercised this right very sparingly, and usually only after the Legislature has failed to enact legislation popular with a large segment of voters, or when the Legislature has a clear conflict of interest in the matter. When the citizens have exercised this right it is rare that their petitions have ever meet the requirements set by the Legislature and qualify to be submitted to the people for a vote. Only twenty three citizen

initiatives have done so since 1960. It is even more uncommon that a citizen initiative receives a majority of the vote. Only nine citizen initiated ballot measures have passed since 1960 (three of those in the 2018 election). Compared to the hundreds of bills submitted and passed by the Legislature each year citizen initiatives are very rare indeed.

[EXHIBIT A]

10. Through my years of experience in the citizen's Initiative and Referendum process I have recognized some common patterns and tactics used by different levels of government in Utah and by Legislative and Executive branches in their efforts to silence and defeat citizens attempting to bring about change through the Initiative and Referendum process.

Government officials have actively campaigned against citizen initiatives. They have used taxpayer resources to campaign against the citizens. The Legislature has continuously increased the requirements for citizens to qualify an initiative for the ballot. The Legislature has amended citizen enacted laws out of existence or blatantly repealed them before they could become effective.

11. Every time the citizens have succeeded or come close to qualifying a petition for the ballot our government has tried to prevent, or make it more difficult for us to do so. I have seen clerks aggressively work to disqualify signatures and use their positions to campaign against citizens. The Legislature has consistently increased the requirements and made it more difficult for citizens to qualify a petition for the ballot.

12. In 1989 the legislature failed to act on two proposals to remove the sales tax on food

[EXHIBIT B] and [EXHIBIT C], so in 1990 citizen volunteers qualified Initiative A for the

ballot to remove State and Local sales taxes from food. Opposition from incumbent politicians from all over the state was overwhelming as the cry went up from many different State and Local government entities that the “sky is falling”. Claims were made that “thousands of students would be denied access to colleges” [EXHIBIT D], cities would have to cut budgets by double digits, [EXHIBIT E] or raise property taxes by millions of dollars. [EXHIBIT F] Legislators even asked the Governor to call a special session to pass a tax credit for low and middle-income Utah residents to reduce support for Initiative A. [EXHIBIT G]

13. In 1994 the campaign to defeat the Term Limits initiative was led by then Speaker of the House and Current Congressman, Rob Bishop. Bishop had pushed a weaker Term Limits law through the Legislature that year [EXHIBIT H] and then disingenuously assured voters that since we already had Term Limits and they did not need to vote for the Term Limits Initiative. Bishop was the leader and spokesperson for “Citizens for Responsible Term Limits”. As anticipated by actual term limit supporters the law enacted by the 1994 legislature was repealed by the 2003 legislature before any terms were in fact, limited. See 2003 SB240 [EXHIBIT I].

14. In 2000 voters passed Initiative B, the "Utah Property Protection Act" by a 69% to 31% majority. [see EXHIBIT A] In 2004, before the citizen initiative took effect the legislature passed SB 175 [EXHIBIT J], which reversed the most important reforms from Initiative B. Before the debate on the floor of the House of Representatives I was on the telephone with Rep. Darrin Peterson encouraging him to vote against SB175. He told me that he honestly

didn't know how he was going to vote. Immediately after our telephone conversation there was a FOUR minute debate on this bill which included a strong statement in support of SB175 by Rep. Peterson. SB175 passed with a 46 - 27 vote in the House and a 16 – 9 vote in the Senate. These events demonstrate how meaningless citizen initiatives are to our Legislators.

15. In recent years the Legislature has consistently increased the burden on citizens who wish to submit an initiative to the voters of Utah.
16. 1998 HB304 increased the geographic distribution requirement for signatures from 15 counties to 20 counties. [EXHIBIT K]
17. In 1999 HB110 increased financial reporting requirements for citizen initiative sponsors. [EXHIBIT L]
18. In 2000 HB220 attempted to increase the geographic distribution requirement for signatures from 20 counties to 29 counties. This bill passed the House of Representatives with a large majority but fortunately failed in the Senate. Nevertheless, the Citizen Initiative process is constantly under attack. [EXHIBIT M]
19. In 2003 SB28 increased the geographic distribution requirement for signatures to 26 of 29 Senate districts. This bill also removed the opportunity of citizens to continue collecting signatures and qualify their initiatives for the following general election if the number of signatures was insufficient for the pending general election. It reduced the amount of time to qualify a citizen initiative for the ballot to One year, and restricted citizens from

submitting initiatives for similar laws for two years after an initiative application has been filed. [EXHIBIT N]

20. In 2002 HB115 increased the signature requirements for municipal initiatives.

[EXHIBIT O]

21. One very interesting note that belies the intent of all of these legislative “reforms” to the citizen initiative process is the fact that none of them have applied to the Referendum procedures where signature distribution requirements remain at 15 of 29 counties. (See Utah Code 20A-7-301)

22. These examples, and many more, demonstrate the outright hostility that the Utah Legislature has toward the citizen’s right to initiative and referendum. This attitude was borne out again in 2018 as they called their emergency special session to repealed Proposition 2. (Something the people who hold Equal legislative powers have no access to.)

23. Today I request this court to either uphold the citizen’s right to effectively use the Initiative and Referendum process or to admit that this “Right” has been a big lie for all of these years.

X /S/ Bart Grant

DATE: December 19, 2018

CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2018, a true and correct copy of the foregoing MEMORANDUM (LETTER) IN SUPPORT OF PETITION FOR EXTRAORDINARY WRIT OF RELIEF, REQUEST FOR ADDITIONAL BRIEFING, and REQUEST FOR HEARING AND ORAL ARGUMENTS, was deposited in the United States mail or was sent by electronic mail to be delivered to:

ERIC N. WEEKS
eweeks@le.utah.gov

TYLER R. GREEN
tylergreen@agutah.gov

STANFORD E. PURSER
spurser@agutah.gov

By /S/ Bart Grant
Case No. 20180997



Elections » Initiative Results (1960-2018)

Initiative Results (1960-2018)

How to become a:

[Election Resources](#)[2016 Election Information](#)[Political District Maps](#)[Registered Political Parties](#)[Contact Your Elected Officials](#)[Offices Up For Election](#)[Contact Federal Officials](#)[Forms and Fees](#)[Election Results & Voter Statistics](#)[Utah Initiatives](#)[Utah Referenda](#)[Voting Machine Selection \(Archived\)](#)[Maps](#)[Election Code](#)[Links to Other Sites](#)[Campaign Finance](#)[Lobbyists](#)[Contact](#)

Year	Initiatives and Referendums	Result
2018	Utah Independent Redistricting Commission and Standards Act (I)	Passed
2018	Utah Decides Healthcare Act (I)	Passed
2018	Utah Medical Cannabis Act (I)	Passed
2007	House Bill No. 148 entitled "Education Vouchers" (R) (Not Enacted)	Passed
2004	Utah Clean Water, Quality Growth and Open Space (I)	Defeated
2002	Radioactive Waste Restrictions Act (I)	Defeated
2000	A) English as the Official Language of Utah (I)	Passed
	B) Utah Property Protection Act (I)	Passed
1998	NONE ON THE BALLOT	
1996	NONE ON THE BALLOT	
1994	Term Limits and Election by Majority Vote or by Run-Off (I)	Defeated
1992	County Option on Parimutuel Wagering (I)	Defeated
1990	Removal of State and Local Sales Tax From Food (I)	Defeated
1988	A) Tax and Spending Limitation (I)	Defeated
	B) Tax Reductions (I)	Defeated
	C) Income Tax Credit for Private Education (I)	Defeated
1986	NONE ON THE BALLOT	
1984	Cable TV Decency Act (I)	Defeated
1982	NONE ON THE BALLOT	
1980	A) Elimination of State Sales Tax on Food (I)	Defeated
	B) Tax Limitation Act (I)	Defeated
1978	NONE ON THE BALLOT	
1976	A) Freedom From Compulsory Fluoridation and Medication Act (I)	Passed
	B) The Utah Recall and Advisory Recall Act (I)	Defeated
	C) Budgetary Procedures Act Ceiling (I)	Defeated
1974	Land Use Act Referendum (R) (Not Enacted)	Passed
1972	NONE ON THE BALLOT	
1970	NONE ON THE BALLOT	
1968	Liquor Initiative (I)	Defeated
1966	NONE ON THE BALLOT	
1964	NONE ON THE BALLOT	
1962	NONE ON THE BALLOT	
1960	Establishment of Merit System for Deputy Sheriffs (I)	Passed

* To be voted on at an election yet to be determined

I = Initiative

R = Referendum

Download Zipped Introduced WP 6.1 SB0031S1.ZIP 29,101 Bytes

[Status] [Bill Documents] [Fiscal Note] [Bills Directory]

First Substitute S.B. 31

Senator Scott N. Howell proposes to substitute the following bill:

1 **SALES TAX ON FOOD AMENDMENTS**

2 1998 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Scott N. Howell**

5 Michael G. Waddoups

6 AN ACT RELATING TO REVENUE AND TAXATION; PROVIDING FOR A TWO-YEAR
7 PERIOD AN INDIVIDUAL INCOME TAX CREDIT ASSIST TAX PAYERS IN MEETING
8 THE BURDEN OF PAYING SALES AND USE TAXES LEVIED ON FOOD; PROVIDING
9 THAT THE LEGISLATURE MAKE APPROPRIATIONS FROM THE GENERAL FUND TO
10 REPLACE UNIFORM SCHOOL FUND REVENUES EXPENDED IN PROVIDING FOR
11 THE CREDIT; REPEALING STATE AND LOCAL SALES AND USE TAXES LEVIED ON
12 FOOD BEGINNING ON JANUARY 1, 2001; PROVIDING DEFINITIONS; MAKING
13 TECHNICAL CHANGES; AND PROVIDING AN EFFECTIVE DATE.

14 This act affects sections of Utah Code Annotated 1953 as follows:

15 AMENDS:

16 **59-12-102** , as last amended by Chapters 209, 299 and 344, Laws of Utah 1997

17 **59-12-104** , as last amended by Chapters 218, 299, 344 and 378, Laws of Utah 1997

18 ENACTS:

19 **59-10-131** , Utah Code Annotated 1953

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

21 Section 1. Section **59-10-131** is enacted to read:

22 **59-10-131. Refundable credit to assist taxpayer in meeting burden of paying sales**
and

23 **use taxes levied on food -- Commission rulemaking authority.**

24 *(1) A taxpayer may claim as provided in this section the following refundable credits to*

1 *assist the taxpayer in meeting the burden of paying sales and use taxes levied on food:*

5 (b) for the taxable year beginning on or after January 1, 2000, but beginning before
 6 December 31, 2000, a credit equal to \$80 multiplied by the number of personal exemptions
 7 the

7 taxpayer is allowed for that taxable year under Section 151, Internal Revenue Code.

8 (2) A taxpayer may not carry forward or carry back the credits provided for in this section.

9 (3) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
 10 commission may make rules providing procedures for issuing refunds for the credit under
 11 this

11 section.

12 (4) The Legislature shall make appropriations from the General Fund to replace the
 13 Uniform School Fund revenues expended to provide for the credit under this section.

14 Section 2. Section **59-12-102** is amended to read:

15 **59-12-102. Definitions.**

16 As used in this chapter:

17 (1) (a) "Admission or user fees" includes season passes.

18 (b) "Admission or user fees" does not include annual membership dues to private
 19 organizations.

20 (2) "Authorized carrier" means:

21 (a) in the case of vehicles operated over public highways, the holder of credentials
 22 indicating that the vehicle is or will be operated pursuant to both the International Registration
 23 Plan (IRP) and the International Fuel Tax Agreement (IFTA);

24 (b) in the case of aircraft, the holder of a Federal Aviation Administration (FAA) operating
 25 certificate or air carrier's operating certificate; or

26 (c) in the case of locomotives, freight cars, railroad work equipment, or other rolling stock,
 27 the holder of a certificate issued by the United States Interstate Commerce Commission.

28 (3) (a) For purposes of Subsection **59-12-104** (44), "coin-operated amusement device"
 29 means:

30 (i) a coin-operated amusement, skill, or ride device;

31 (ii) that is not controlled through vendor-assisted, over-the-counter, sales of tokens; and

- 2 -

1 (iii) includes a music machine, pinball machine, billiard machine, video game machine,
 2 arcade machine, and a mechanical or electronic skill game or ride.

3 (b) For purposes of Subsection **59-12-104** (44), "coin-operated amusement device" does
 4 not mean a coin-operated amusement device possessing a coinage mechanism that:

5 (i) accepts and registers multiple denominations of coins; and

6 (ii) allows the vendor to collect the sales and use tax at the time an amusement device is
 7 activated and operated by a person inserting coins into the device.

8 (4) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other fuels
 9 that does not constitute industrial use under Subsection [~~(10)~~] (11) or residential use
 under

10 Subsection [~~(17)~~] (18) .

11 (5) (a) "Common carrier" means a person engaged in or transacting the business of
 12 transporting passengers, freight, merchandise, or other property for hire within this state.

13 (b) (i) "Common carrier" does not include a person who, at the time the person is traveling
 14 to or from that person's place of employment, transports a passenger to or from the
 passenger's

15 place of employment.

21 (b) baling ties and twine used in the baling of hay and straw;
 22 (c) fuel used for providing temperature control of orchards and commercial greenhouses
 23 doing a majority of their business in wholesale sales, and for providing power for off-highway
 type
 24 farm machinery; and
 25 (d) feed, seeds, and seedlings.
 26 (7) "Construction materials" means any tangible personal property that will be converted
 27 into real property.
 28 (8)(a) Subject to the provisions of Subsections (8)(b) and (c), "food" is as defined in 7
 29 U.S.C. Sec. 2012(g) under the Food Stamp Program, 7 U.S.C. 2011 et seq., regardless of
whether
 30 the retailer from whom the food is purchased or the purchaser participates in a federal or
state food
 31 program.

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1 (b) "Food" includes:
 2 (i) hot or cold foods prepared for immediate consumption on or off the premises of a
 3 retailer that does not meet the definition of a restaurant under Subsection 59-12-602(4); or
 4 (ii) food sold through vending machines.
 5 (c) "Food" does not include prepared foods or beverages that are sold by restaurants as
 6 defined in Subsection 59-12-602(4).
 7 [~~(8)~~] (9) (a) "Fundraising sales" means sales:
 8 (i) (A) made by a public or private elementary or secondary school; or
 9 (B) made by a public or private elementary or secondary school student, grades
 10 kindergarten through 12;
 11 (ii) that are for the purpose of raising funds for the school to purchase equipment,
 12 materials, or provide transportation; and
 13 (iii) that are part of an officially sanctioned school activity.
 14 (b) For purposes of Subsection [~~(8)~~] (9) (a)(iii), "officially sanctioned school activity"
 15 means a school activity:
 16 (i) that is conducted in accordance with a formal policy adopted by the school or school
 17 district governing the authorization and supervision of fundraising activities;
 18 (ii) that does not directly or indirectly compensate an individual teacher or other
 19 educational personnel by direct payment, commissions, or payment in kind; and
 20 (iii) the net or gross revenues from which are deposited in a dedicated account controlled
 21 by the school or school district.
 22 [~~(9)~~] (10) (a) "Home medical equipment and supplies" means equipment and supplies
 that:
 23 (i) a licensed physician prescribes or authorizes in writing as necessary for the treatment
 24 of a medical illness or injury or as necessary to mitigate an impairment resulting from illness
 or
 25 injury;
 26 (ii) are used exclusively by the person for whom they are prescribed to serve a medical
 27 purpose; and
 28 (iii) are listed as eligible for payment under Title 18 of the federal Social Security Act or
 29 under the state plan for medical assistance under Title 19 of the federal Social Security Act.
 30 (b) "Home medical equipment and supplies" does not include:

1 defined in Subsection [~~(9)~~] (10) (c), doctor, nurse, or other health care provider for use in
 2 their

3 professional practice;

4 (ii) eyeglasses, contact lenses, or equipment to correct impaired vision; or

5 (iii) hearing aids or hearing aid accessories.

6 (c) For purposes of Subsection [~~(9)~~] (10) (b)(i), "health care facility" includes:

7 (i) a clinic;

8 (ii) a doctor's office; and

9 (iii) a health care facility as defined in Section **26-21-2** .

10 [~~(10)~~] (11) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil,
 11 or

12 other fuels in:

13 (a) mining or extraction of minerals;

14 (b) agricultural operations to produce an agricultural product up to the time of harvest or
 15 placing the agricultural product into a storage facility, including:

16 (i) commercial greenhouses;

17 (ii) irrigation pumps;

18 (iii) farm machinery;

19 (iv) implements of husbandry as defined in Subsection **41-1a-102** (23) that are not
 20 registered under Title 41, Chapter 1a, Part 2, Registration; and

21 (v) other farming activities; and

22 (c) manufacturing tangible personal property at an establishment described in SIC Codes
 23 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive
 24 Office

25 of the President, Office of Management and Budget.

26 [~~(11)~~] (12) "Manufactured home" means any manufactured home or mobile home as
 27 defined in Title 58, Chapter 56, Utah Uniform Building Standards Act.

28 [~~(12)~~] (13) For purposes of Subsection **59-12-104** (15), "manufacturing facility"
 29 means:

30 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial
 31 Classification Manual of the federal Executive Office of the President, Office of Management
 and

32 Budget; or

33 (b) a scrap recycler if:

34 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process one
 35 or more of the following items into prepared grades of processed materials for use in new
 products:

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1 (A) iron;

2 (B) steel;

3 (C) nonferrous metal;

4 (D) paper;

5 (E) glass;

6 (F) plastic;

7 (G) textile; or

8 (H) rubber; and

9 (ii) the new products under Subsection [~~(12)~~] (13) (b)(i) would otherwise be made with

14 pharmacist, or supplied to patients by a physician, surgeon, or podiatric physician;
 15 (ii) any medicine dispensed to patients in a county or other licensed hospital if prescribed
 16 for that patient and dispensed by a registered pharmacist or administered under the direction
 of a
 17 physician; and
 18 (iii) any oxygen or stoma supplies prescribed by a physician or administered under the
 19 direction of a physician or paramedic.
 20 (b) "Medicine" does not include:
 21 (i) any auditory, prosthetic, ophthalmic, or ocular device or appliance; or
 22 (ii) any alcoholic beverage.
 23 [~~(14)~~] (15) (a) "Other fuels" means products that burn independently to produce heat
 or
 24 energy.
 25 (b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible personal
 26 property.
 27 [~~(15)~~] (16) "Person" includes any individual, firm, partnership, joint venture,
 association,
 28 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,
 29 municipality, district, or other local governmental entity of the state, or any group or
 combination
 30 acting as a unit.
 31 [~~(16)~~] (17) "Purchase price" means the amount paid or charged for tangible personal

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1 property or any other taxable item or service under Subsection **59-12-103** (1), excluding only
 cash
 2 discounts taken or any excise tax imposed on the purchase price by the federal government.
 3 [~~(17)~~] (18) "Residential use" means the use in or around a home, apartment building,
 4 sleeping quarters, and similar facilities or accommodations.
 5 [~~(18)~~] (19) (a) "Retail sale" means any sale within the state of tangible personal property
 6 or any other taxable item or service under Subsection **59-12-103** (1), other than resale of
 such
 7 property, item, or service by a retailer or wholesaler to a user or consumer.
 8 (b) "Retail sale" includes sales by any farmer or other agricultural producer of poultry,
 9 eggs, or dairy products to consumers if the sales have an average monthly sales value of \$125
 or
 10 more.
 11 (c) "Retail sale" does not include, and no additional sales or use tax shall be assessed
 12 against, those transactions where a purchaser of tangible personal property pays applicable
 sales
 13 or use taxes on its initial nonexempt purchases of property and then enters into a sale-
 leaseback
 14 transaction by which title to such property is transferred by the purchaser-lessee to a lessor
 for
 15 consideration, provided:
 16 (i) the transaction is intended as a form of financing for the property to the
 17 purchaser-lessee; and
 18 (ii) pursuant to generally accepted accounting principles, the purchaser-lessee is required

24 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly
 25 engaged in the business of selling to users or consumers within the state.
 26 (c) "Retailer" includes any person who engages in regular or systematic solicitation of a
 27 consumer market in this state by the distribution of catalogs, periodicals, advertising flyers, or
 28 other advertising, or by means of print, radio or television media, by mail, telegraphy,
 telephone,
 29 computer data base, cable, optic, microwave, or other communication system.
 30 (d) "Retailer" does not include farmers, gardeners, stockmen, poultrymen, or other growers
 31 or agricultural producers producing and doing business on their own premises, except those
 who

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1 are regularly engaged in the business of buying or selling for a profit.
 2 (e) For purposes of this chapter the commission may regard as retailers the following if
 3 they determine it is necessary for the efficient administration of this chapter: salesmen,
 4 representatives, peddlers, or canvassers as the agents of the dealers, distributors, supervisors,
 or
 5 employers under whom they operate or from whom they obtain the tangible personal property
 sold
 6 by them, irrespective of whether they are making sales on their own behalf or on behalf of
 these
 7 dealers, distributors, supervisors, or employers, except that:
 8 (i) a printer's facility with which a retailer has contracted for printing shall not be
 9 considered to be a salesman, representative, peddler, canvasser, or agent of the retailer; and
 10 (ii) the ownership of property that is located at the premises of a printer's facility with
 11 which the retailer has contracted for printing and that consists of the final printed product,
 property
 12 that becomes a part of the final printed product, or copy from which the printed product is
 13 produced, shall not result in the retailer being deemed to have or maintain an office,
 distribution
 14 house, sales house, warehouse, service enterprise, or other place of business, or to maintain a
 stock
 15 of goods, within this state.
 16 [~~(20)~~] (21) "Sale" means any transfer of title, exchange, or barter, conditional or
 otherwise,
 17 in any manner, of tangible personal property or any other taxable item or service under
 Subsection
 18 **59-12-103** (1), for a consideration. It includes:
 19 (a) installment and credit sales;
 20 (b) any closed transaction constituting a sale;
 21 (c) any sale of electrical energy, gas, services, or entertainment taxable under this chapter;
 22 (d) any transaction if the possession of property is transferred but the seller retains the title
 23 as security for the payment of the price; and
 24 (e) any transaction under which right to possession, operation, or use of any article of
 25 tangible personal property is granted under a lease or contract and the transfer of possession
 would
 26 be taxable if an outright sale were made.
 27 [~~(24)~~] (22) (a) "Sales relating to schools" means sales by a public school district or

31 equipment;

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1 (ii) the sale of clothing that:

2 (A) a student is specifically required to wear as a condition of participation in a
3 school-related event or activity; and

4 (B) is not readily adaptable to general or continued usage to the extent that it takes the
5 place of ordinary clothing;

6 (iii) sales of food if the net or gross revenues generated by the food sales are deposited into
7 a school district fund or school fund dedicated to school meals; and

8 (iv) transportation charges for official school activities.

9 (b) "Sales relating to schools" does not include:

10 (i) gate receipts;

11 (ii) special event admission fees;

12 (iii) bookstore sales of items that are not educational materials or supplies; and

13 (iv) except as provided in Subsection(21)(a)(ii), clothing.

14 [~~(22)~~] (23) "State" means the state of Utah, its departments, and agencies.

15 [~~(23)~~] (24) "Storage" means any keeping or retention of tangible personal property or
any

16 other taxable item or service under Subsection **59-12-103** (1), in this state for any purpose
except

17 sale in the regular course of business.

18 [~~(24)~~] (25) (a) "Tangible personal property" means:

19 (i) all goods, wares, merchandise, produce, and commodities;

20 (ii) all tangible or corporeal things and substances which are dealt in or capable of being
21 possessed or exchanged;

22 (iii) water in bottles, tanks, or other containers; and

23 (iv) all other physically existing articles or things, including property severed from real
24 estate.

25 (b) "Tangible personal property" does not include:

26 (i) real estate or any interest or improvements in real estate;

27 (ii) bank accounts, stocks, bonds, mortgages, notes, and other evidence of debt;

28 (iii) insurance certificates or policies;

29 (iv) personal or governmental licenses;

30 (v) water in pipes, conduits, ditches, or reservoirs;

31 (vi) currency and coinage constituting legal tender of the United States or of a foreign

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1 nation; and

2 (vii) all gold, silver, or platinum ingots, bars, medallions, or decorative coins, not
3 constituting legal tender of any nation, with a gold, silver, or platinum content of not less than
4 80%.

5 [~~(25)~~] (26) (a) "Use" means the exercise of any right or power over tangible personal
6 property under Subsection **59-12-103** (1), incident to the ownership or the leasing of that
7 property,
item, or service.

12 vessel, as defined in Section **41-1a-102** ; that is required to be titled, registered, or both.
"Vehicle"

13 for purposes of Subsection **59-12-104** (37) only, also includes any locomotive, freight car,
railroad

14 work equipment, or other railroad rolling stock.

15 [~~(27)~~] (28). "Vehicle dealer" means a person engaged in the business of buying, selling,
or

16 exchanging vehicles as defined in Subsection [~~(26)~~] (27) .

17 [~~(28)~~] (29). (a) "Vendor" means:

18 (i) any person receiving any payment or consideration upon a sale of tangible personal
19 property or any other taxable item or service under Subsection **59-12-103** (1), or to whom
such

20 payment or consideration is payable; and

21 (ii) any person who engages in regular or systematic solicitation of a consumer market in
22 this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, or
by

23 means of print, radio or television media, by mail, telegraphy, telephone, computer data base,
24 cable, optic, microwave, or other communication system.

25 (b) "Vendor" does not mean a printer's facility described in Subsection [~~(19)~~] (20) (e).

26 Section 3. Section **59-12-104** is amended to read:

27 **59-12-104. Exemptions.**

28 The following sales and uses are exempt from the taxes imposed by this chapter:

29 (1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax
30 under Title 59, Chapter 13, Motor and Special Fuel Tax Act;

31 (2) through December 31, 1995, sales to the state, its institutions, and its political

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1 subdivisions, except sales of construction materials however, construction materials purchased
by

2 the state, its institutions, or its political subdivisions which are installed or converted to real
3 property by employees of the state, its institutions, or its political subdivisions are exempt;

4 (3) beginning January 1, 1996, sales to the state, its institutions, and its political
5 subdivisions; however, this exemption does not apply to sales of construction materials except:

6 (a) construction materials purchased by or on behalf of institutions of the public education
7 system as defined in Utah Constitution Article X, Section 2, provided the construction materials
8 are clearly identified and segregated and installed or converted to real property which is owned
by

9 institutions of the public education system; and

10 (b) construction materials purchased by the state, its institutions, or its political
11 subdivisions which are installed or converted to real property by employees of the state, its
12 institutions, or its political subdivisions;

13 (4) sales of food, beverage, and dairy products from vending machines in which the
14 proceeds of each sale do not exceed \$1 if the vendor or operator of the vending machine
reports

15 an amount equal to 150% of the cost of items as goods consumed;

16 (5) sales of food, beverage, dairy products, similar confections, and related services to
17 commercial airline carriers for in-flight consumption;

18 (6) sales of parts and equipment installed in aircraft operated by common carriers in

~~(8) sales of cleaning or washing machines, personal property by a coin-operated laundry,~~
 24 or dry cleaning machine;
 25 (9) sales made to or by religious or charitable institutions in the conduct of their regular
 26 religious or charitable functions and activities, if the requirements of Section **59-12-104.1**
 are
 27 fulfilled;
 28 (10) sales of vehicles of a type required to be registered under the motor vehicle laws of
 29 this state which are made to bona fide nonresidents of this state and are not afterwards
 registered
 30 or used in this state except as necessary to transport them to the borders of this state;
 31 (11) sales of medicine;

- 11 -

1 (12) sales or use of property, materials, or services used in the construction of or
 2 incorporated in pollution control facilities allowed by Sections **19-2-123** through **19-2-127** ;
 3 (13) sales of meals served by:
 4 (a) churches, charitable institutions, and institutions of higher education, if the meals are
 5 not available to the general public; and
 6 (b) inpatient meals provided at medical or nursing facilities;
 7 (14) isolated or occasional sales by persons not regularly engaged in business, except the
 8 sale of vehicles or vessels required to be titled or registered under the laws of this state in
 which
 9 case the tax is based upon:
 10 (a) the bill of sale or other written evidence of value of the vehicle or vessel being sold;
 11 or
 12 (b) in the absence of a bill of sale or other written evidence of value, the then existing fair
 13 market value of the vehicle or vessel being sold as determined by the commission;
 14 (15) (a) the following purchases or leases by a manufacturer on or after July 1, 1995:
 15 (i) machinery and equipment:
 16 (A) used in the manufacturing process;
 17 (B) having an economic life of three or more years; and
 18 (C) used:
 19 (I) to manufacture an item sold as tangible personal property; and
 20 (II) in new or expanding operations in a manufacturing facility in the state; and
 21 (ii) subject to the provisions of Subsection (15)(b), normal operating replacements that:
 22 (A) have an economic life of three or more years;
 23 (B) are used in the manufacturing process in a manufacturing facility in the state;
 24 (C) are used to replace or adapt an existing machine to extend the normal estimated useful
 25 life of the machine; and
 26 (D) do not include repairs and maintenance;
 27 (b) the rates for the exemption under Subsection (15)(a)(ii) are as follows:
 28 (i) beginning July 1, 1996, through June 30, 1997, 30% of the sale or lease described in
 29 Subsection (15)(a)(ii) is exempt;
 30 (ii) beginning July 1, 1997, through June 30, 1998, 60% of the sale or lease described in
 31 Subsection (15)(a)(ii) is exempt; and

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5 (d) on or before October 1, 1991, and every five years after October 1, 1991, the
6 commission shall:

7 (i) review the exemptions described in Subsection (15)(a) and make recommendations to
8 the Revenue and Taxation Interim Committee concerning whether the exemptions should be
9 continued, modified, or repealed; and

10 (ii) include in its report:

11 (A) the cost of the exemptions;

12 (B) the purpose and effectiveness of the exemptions; and

13 (C) the benefits of the exemptions to the state;

14 (16) sales of tooling, special tooling, support equipment, and special test equipment used
15 or consumed exclusively in the performance of any aerospace or electronics industry contract
16 with
17 the United States government or any subcontract under that contract, but only if, under the
18 terms
19 of that contract or subcontract, title to the tooling and equipment is vested in the United
20 States
21 government as evidenced by a government identification tag placed on the tooling and
22 equipment
23 or by listing on a government-approved property record if a tag is impractical;

24 (17) intrastate movements of:

25 (a) freight by common carriers; and

26 (b) people by taxicabs as described in SIC Code 4121 of the Standard Industrial
27 Classification Manual of the federal Executive Office of the President, Office of Management
28 and
29 Budget;

30 (18) sales of newspapers or newspaper subscriptions;

31 (19) tangible personal property, other than money, traded in as full or part payment of the
purchase price, except that for purposes of calculating sales or use tax upon vehicles not sold
by
a vehicle dealer, trade-ins are limited to other vehicles only, and the tax is based upon:

(a) the bill of sale or other written evidence of value of the vehicle being sold and the
vehicle being traded in; or

(b) in the absence of a bill of sale or other written evidence of value, the then existing fair

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1 market value of the vehicle being sold and the vehicle being traded in, as determined by the
2 commission;

3 (20) sprays and insecticides used to control insects, diseases, and weeds for commercial
4 production of fruits, vegetables, feeds, seeds, and animal products, but not those sprays and
5 insecticides used in the processing of the products;

6 (21) (a) sales of tangible personal property used or consumed primarily and directly in
7 farming operations, including sales of irrigation equipment and supplies used for agricultural
8 production purposes, whether or not they become part of real estate and whether or not
9 installed
10 by farmer, contractor, or subcontractor, but not sales of:

11 (i) machinery, equipment, materials, and supplies used in a manner that is incidental to
12 farming, such as hand tools with a unit purchase price not in excess of \$250, and maintenance
13 and

- 16 (iii) any vehicle required to be registered by the laws of this state, without regard to the
 17 use to which the vehicle is put;
- 18 (b) sales of hay;
- 19 (22) exclusive sale of locally grown seasonal crops, seedling plants, or garden, farm, or
 20 other agricultural produce if sold by a producer during the harvest season;
- 21 (23) purchases of food as defined in 7 U.S.C. Sec. 2012(g) under the Food Stamp
 22 Program, 7 U.S.C. Sec. 2011 et seq.;
- 23 (24) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,
 24 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,
 wholesaler,
 25 or retailer for use in packaging tangible personal property to be sold by that manufacturer,
 26 processor, wholesaler, or retailer;
- 27 (25) property stored in the state for resale;
- 28 (26) property brought into the state by a nonresident for his or her own personal use or
 29 enjoyment while within the state, except property purchased for use in Utah by a nonresident
 30 living and working in Utah at the time of purchase;
- 31 (27) property purchased for resale in this state, in the regular course of business, either in

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- 1 its original form or as an ingredient or component part of a manufactured or compounded
 product;
- 2 (28) property upon which a sales or use tax was paid to some other state, or one of its
 3 subdivisions, except that the state shall be paid any difference between the tax paid and the tax
 4 imposed by this part and Part 2, and no adjustment is allowed if the tax paid was greater than
 the
 5 tax imposed by this part and Part 2;
- 6 (29) any sale of a service described in Subsections **59-12-103** (1)(b), (c), and (d) to a person
 7 for use in compounding a service taxable under the subsections;
- 8 (30) purchases of supplemental foods as defined in 42 U.S.C. Sec. 1786(b)(14) under the
 9 special supplemental nutrition program for women, infants, and children established in 42
 U.S.C.
 10 Sec. 1786;
- 11 (31) (a) sales or leases made before June 30, 1996, of rolls, rollers, refractory brick,
 12 electric motors, and other replacement parts used in the furnaces, mills, and ovens of a steel
 mill
 13 described in SIC Code 3312 of the 1987 Standard Industrial Classification Manual of the federal
 14 Executive Office of the President, Office of Management and Budget; or
- 15 (b) contracts entered into or orders placed on or before January 1, 1996, to purchase or
 16 lease an item described in Subsection (31)(a) if the contract or order constitutes a:
- 17 (i) legal obligation to purchase or lease an item described in Subsection (31)(a); and
 18 (ii) sale or lease under Section **59-12-102** on or before June 30, 1997;
- 19 (32) sales of boats of a type required to be registered under Title 73, Chapter 18, State
 20 Boating Act, boat trailers, and outboard motors which are made to bona fide nonresidents of
 this
 21 state and are not thereafter registered or used in this state except as necessary to transport
 them to
 22 the borders of this state;
- 23 (33) sales of tangible personal property to persons within this state that is subsequently

the
 27 other state or political entity allows a credit for taxes imposed by this chapter;
 28 (34) sales of aircraft manufactured in Utah if sold for delivery and use outside Utah where
 29 a sales or use tax is not imposed, even if the title is passed in Utah;
 30 (35) amounts paid for the purchase of telephone service for purposes of providing
 31 telephone service;

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1 (36) fares charged to persons transported directly by a public transit district created under
 2 the authority of Title 17A, Chapter 2, Part 10, Public Transit Districts;
 3 (37) sales or leases of vehicles to, or use of vehicles by an authorized carrier;
 4 (38) until July 1, 2000, 45% of the sales price of any new manufactured home and 100%
 5 of the sales price of any used manufactured home;
 6 (39) sales relating to schools and fundraising sales;
 7 (40) sales or rentals of home medical equipment and supplies;
 8 (41) (a) sales to a ski resort of electricity to operate a passenger tramway as defined in
 9 Subsection **63-11-38** (8); and
 10 (b) the commission shall by rule determine the method for calculating sales exempt under
 11 Subsection (41)(a) that are not separately metered and accounted for in utility billings;
 12 (42) sales to a ski resort of:
 13 (a) snowmaking equipment;
 14 (b) ski slope grooming equipment; and
 15 (c) passenger tramways as defined in Subsection **63-11-38** (8);
 16 (43) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;
 17 (44) sales or rentals of the right to use or operate for amusement, entertainment, or
 18 recreation a coin-operated amusement device as defined in Subsection **59-12-102** (3);
 19 (45) sales of cleaning or washing of tangible personal property by a coin-operated car wash
 20 machine;
 21 (46) sales by the state or a political subdivision of the state, except state institutions of
 22 higher education as defined in Section **53B-3-102** , of:
 23 (a) photocopies; or
 24 (b) other copies of records held or maintained by the state or a political subdivision of the
 25 state; [and]
 26 (47) (a) amounts paid:
 27 (i) to a person providing intrastate transportation to an employer's employee to or from the
 28 employee's primary place of employment;
 29 (ii) by an:
 30 (A) employee; or
 31 (B) employer; and

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1 (iii) pursuant to a written contract between:
 2 (A) the employer; and
 3 (B) (I) the employee; or
 4 (II) a person providing transportation to the employer's employee; and

10 *This act takes effect on January 1, 1999.*

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H.B. 149

1

REVISION TO SALES TAX ON FOOD

2

1998 GENERAL SESSION

3

STATE OF UTAH

4

Sponsor: Steve Barth

5 AN ACT RELATING TO THE SALES AND USE TAX ACT; PHASING OUT THE STATE
6 PORTION OF THE SALES AND USE TAX IMPOSED ON CERTAIN FOOD PURCHASES;
7 MAKING TECHNICAL CHANGES; AND PROVIDING AN EFFECTIVE DATE.

8 This act affects sections of Utah Code Annotated 1953 as follows:

9 AMENDS:

10 **59-12-103** , as last amended by Chapters 261 and 272, Laws of Utah 1997

11 ENACTS:

12 **59-12-104.2** , Utah Code Annotated 1953

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

14 Section 1. Section **59-12-103** is amended to read:

15 **59-12-103. Sales and use tax base -- Rate -- Use of sales and use tax revenues.**

16 (1) There is levied a tax on the purchaser for the amount paid or charged for the following:

17 (a) retail sales of tangible personal property made within the state;

18 (b) amount paid to common carriers or to telephone or telegraph corporations, whether the
19 corporations are municipally or privately owned, for:

20 (i) all transportation;

21 (ii) intrastate telephone service; or

22 (iii) telegraph service;

23 (c) gas, electricity, heat, coal, fuel oil, or other fuels sold for commercial use;

24 (d) gas, electricity, heat, coal, fuel oil, or other fuels sold for residential use;

25 (e) meals sold;

26 (f) (i) admission or user fees for theaters, movies, operas, museums, planetariums, shows
27 of any type or nature, exhibitions, concerts, carnivals, amusement parks, amusement rides,

1 circuses, menageries, fairs, races, contests, sporting events, dances, boxing and wrestling
matches,

2 closed circuit television broadcasts, billiard or pool parlors, bowling lanes, golf and miniature
golf,

7 (ii) the tax imposed on admission or user fees in Subsection (1)(f)(i) does not affect an
8 entity's sales tax exempt status under Section **59-12-104.1** ;
9 (g) services for repairs or renovations of tangible personal property or services to install
10 tangible personal property in connection with other tangible personal property;
11 (h) except as provided in Subsection **59-12-104** (8), cleaning or washing of tangible
12 personal property;
13 (i) tourist home, hotel, motel, or trailer court accommodations and services for less than
14 30 consecutive days;
15 (j) laundry and dry cleaning services;
16 (k) leases and rentals of tangible personal property if the property situs is in this state, if
17 the lessee took possession in this state, or if the property is stored, used, or otherwise
18 consumed
19 in this state; [~~and~~]
20 (l) tangible personal property stored, used, or consumed in this state ; and
21 (m) food as provided in Section 59-12-104.2 .
22 (2) Except for Subsection (1)(d), the rates of the tax levied under Subsection (1) shall be:
23 (a) 5% through June 30, 1994;
24 (b) 4.875% beginning on July 1, 1994 through June 30, 1997; and
25 (c) 4.75% beginning on July 1, 1997.
26 (3) The rates of the tax levied under Subsection (1)(d) shall be 2% from and after January
27 1, 1990.
28 (4) (a) From January 1, 1990, through December 31, 1999, there shall be deposited in an
29 Olympics special revenue fund or funds as determined by the Division of Finance under
30 Section
31 **51-5-4** , for the use of the Utah Sports Authority created under Title 63A, Chapter 7, Utah
Sports
Authority Act:
(i) the amount of sales and use tax generated by a 1/64% tax rate on the taxable items and

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1 services under Subsection (1);
2 (ii) the amount of revenue generated by a 1/64% tax rate under Section **59-12-204** or
3 Section **59-12-205** on the taxable items and services under Subsection (1); and
4 (iii) interest earned on the amounts under Subsections (4)(a)(i) and (ii).
5 (b) These funds shall be used:
6 (i) by the Utah Sports Authority as follows:
7 (A) to the extent funds are available, to transfer directly to a debt service fund or to
8 otherwise reimburse to the state any amount expended on debt service or any other cost of
9 any
10 bonds issued by the state to construct any public sports facility as defined in Section **63A-7-**
103 ;
11 (B) to pay for the actual and necessary operating, administrative, legal, and other expenses
12 of the Utah Sports Authority, but not including protocol expenses for seeking and obtaining
13 the
14 right to host the Winter Olympic Games; and
15 (C) the Utah Sports Authority may not expend, loan, or pledge in the aggregate more than
16 \$59,000,000 of sales and use tax deposited into the Olympics special revenue fund under
17 Subsection (4)(a) unless the Legislature appropriates additional funds from the Olympics

19 costs may not be paid from the sales and tax revenues generated by municipalities or counties
and

20 deposited under Subsection (4)(a)(ii).

21 (c) A payment of salary, benefits, or administrative costs under Subsection **63A-10-103** (3)
22 is not considered an expenditure of the Utah Sports Authority.

23 (d) If the Legislature appropriates additional funds under Subsection (4)(b)(i)(C), the
24 authority may not expend, loan, pledge, or enter into any agreement to expend, loan, or
pledge the

25 appropriated funds unless the authority:

26 (i) contracts in writing for the full reimbursement of the monies to the Olympics special
27 revenue fund by a public sports entity or other person benefitting from the expenditure; and

28 (ii) obtains a security interest that secures payment or performance of the obligation to
29 reimburse.

30 (e) A contract or agreement entered into in violation of Subsection (4)(d) is void.

31 (f) Any monies in the Olympics special revenue fund or funds as of October 1, 2002, shall

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1 be dispersed as follows:

2 (i) 50% shall be deposited into the General Fund; and

3 (ii) 50% to counties, cities, or towns in proportion to the sales and use taxes generated by
4 the county, city, or town and deposited under Subsection (4)(a)(ii).

5 (5) (a) From July 1, 1997, the annual amount of sales and use tax generated by a 1/8% tax
6 rate on the taxable items and services under Subsection (1) shall be used as follows:

7 (i) 50% shall be used for water and wastewater projects as provided in Subsections (5)(b)
8 through (f); and

9 (ii) 50% shall be used for transportation projects as provided in Subsections (5)(g) through
10 (h).

11 (b) Five hundred thousand dollars each year shall be transferred to the Agriculture
12 Resource Development Fund created in Section **4-18-6**.

13 (c) Fifty percent of the remaining amount generated by 50% of the 1/8% tax rate shall be
14 transferred to the Water Resources Conservation and Development Fund created in Section
15 **73-10-24** for use by the Division of Water Resources. In addition to the uses allowed of the
fund

16 under Section **73-10-24**, the fund may also be used to:

17 (i) provide a portion of the local cost share, not to exceed in any fiscal year 50% of the
18 funds made available to the Division of Water Resources under this section, of potential
project

19 features of the Central Utah Project;

20 (ii) conduct hydrologic and geotechnical investigations by the Department of Natural
21 Resources in a cooperative effort with other state, federal, or local entities, for the purpose of
22 quantifying surface and ground water resources and describing the hydrologic systems of an
area

23 in sufficient detail so as to enable local and state resource managers to plan for and
accommodate

24 growth in water use without jeopardizing the resource;

25 (iii) fund state required dam safety improvements; and

26 (iv) protect the state's interest in interstate water compact allocations, including the hiring
27 of technical and legal staff.

31 (e) Twenty-five percent of the remaining amount generated by 50% of the 1/8% tax rate

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1 shall be transferred to the Drinking Water Loan Program subaccount created in Section **73-10c-5**

2 for use by the Division of Drinking Water to:

3 (i) provide for the installation and repair of collection, treatment, storage, and distribution
4 facilities for any public water system, as defined in Section **19-4-102** ;

5 (ii) develop underground sources of water, including springs and wells; and

6 (iii) develop surface water sources.

7 (f) Notwithstanding Subsections (5)(b), (c), (d), and (e), \$100,000 of the remaining amount
8 generated by 50% of the 1/8% tax rate each year shall be transferred as dedicated credits to the
9 Division of Water Rights to cover the costs incurred in hiring legal and other technical staff for
10 the adjudication of water rights. Any remaining balance at the end of each fiscal year shall
lapse

11 back to the contributing funds on a prorated basis.

12 (g) Fifty percent of the 1/8% tax rate shall be transferred to the class B and class C roads
13 account to be expended as provided in Title 27, Chapter 12, Article 11, Finances, except as
14 provided in Subsection (5)(h).

15 (h) (i) If H.B. 53, "Transportation Corridor Preservation," passes in the 1996 General
16 Session, \$500,000 each year shall be transferred to the Transportation Corridor Preservation
17 Revolving Loan Fund, and if H.B. 121, "State Park Access Roads," passes in the 1996 General
18 Session, from July 1, 1997, through June 30, 2006, \$500,000 shall be transferred to the
Department

19 of Transportation for the State Park Access Highways Improvement Program. The remaining
20 amount generated by 50% of the 1/8% tax rate shall be transferred to the class B and class C
roads

21 account.

22 (ii) At least 50% of the money transferred to the Transportation Corridor Preservation
23 Revolving Loan Fund under Subsection (5)(h)(i) shall be used to fund loan applications made by
24 the Department of Transportation at the request of local governments.

25 (6) (a) Beginning on January 1, 2000, the Division of Finance shall deposit into the
26 Centennial Highway Trust Fund created in Section **63-49-22** a portion of the state sales and
use

27 tax under Subsections (2) and (3) equal to the revenues generated by a 1/64% tax rate on the
28 taxable items and services under Subsection (1).

29 (b) Beginning on January 1, 2000, the revenues generated by the 1/64% tax rate:

30 (i) retained under Subsection **59-12-204** (7)(a) shall be retained by the counties, cities, or
31 towns as provided in Section **59-12-204** ; and

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1 (ii) retained under Subsection **59-12-205** (4)(a) shall be distributed to each county, city, and
2 town as provided in Section **59-12-205** .

3 Section 2. Section **59-12-104.2** is enacted to read:

4 **59-12-104.2. State sales and use tax phase out for certain purchases of food.**

- 8 participates in a federal or state food program.
- 9 (b) "Food" includes:
- 10 (i) hot or cold foods prepared for immediate consumption on or off the premises of a
- 11 retailer that does not meet the definition of a restaurant under Subsection 59-12-602(4); or
- 12 (ii) food sold through vending machines.
- 13 (c) "Food" does not include prepared foods or beverages that are sold by restaurants as
- 14 defined in Subsection 59-12-602(4).
- 15 (2) Purchases of food as defined in Subsection (1) are subject to the state portion of the
- 16 sales and use tax under Section 59-12-103 at the following rates:
- 17 (a) beginning on July 1, 1998, through June 30, 1999, the rate is 3.5%;
- 18 (b) beginning on July 1, 1999, through June 30, 2000, the rate is 2.25%;
- 19 (c) beginning on July 1, 2000, through June 30, 2001, the rate is 1.0%; and
- 20 (d) beginning on July 1, 2001, the rate is 0%.
- 21 (3) The provisions of this section do not limit any authority provided to a county or a
- 22 municipality to levy a tax, including a tax on food, under this chapter.
- 23 **Section 3. Effective date.**
- 24 This act takes effect on July 1, 1998.

Legislative Review Note as of 1-29-98 1:00 PM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

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WOULD FOOD-TAX REMOVAL SLAM COLLEGE DOORS ON 9,700?

By Angelyn Nelson Hutchinson, Education Writer

Published: October 17, 1990 12:00 am

State higher education officials turned up the heat Tuesday on their campaign against removing the sales tax on food, now saying that 9,700 students could be turned away from campuses if a ballot initiative passes.

Utah Commissioner of Higher Education Wm. Rolfe Kerr, flanked by University of Utah President Chase N. Peterson, Regent Mike Leavitt and U. Institutional Council Chairman Jim Jardine, announced the new, much higher figures at a teleconference hookup of the state's nine colleges and universities. Reporters were invited to the U.'s Milton Bennion Hall for the announcement, which was made during the teleconference of the college presidents and their institutional council presidents. The meeting was beamed over EDNET, the state's closed-circuit television network.

Up until now, higher education officials have quoted 3,900 students as the number to be denied college access if the initiative passes. Initiative A, as it will be identified on ballots, would remove the state and local sales tax from food, except that prepared for immediate consumption or sold through vending machines.

Kerr said that the 3,900-student figure would be a best-case scenario. It was based on the assumption that increases in state revenue from a prosperous economy would reduce the loss to higher education from a projected \$31 million to \$6.4 million.

But economic indicators aren't as rosy now as they were when the enrollment cuts were first predicted. The national economy is slowing, which will in turn dampen Utah's economic growth, he said. Additionally, there are a variety of pending federal and state tax issues that could eat away growth revenues.

A \$31 million cut would eliminate 9,700 existing and new college students in addition to wiping out increases for salaries, libraries, equipment and other higher education needs, the commissioner said.

Several college presidents suggested that the commissioner's worst-case scenario might be too optimistic and even more students would be shut out of college. They said that this fall's enrollment total appears to be several thousand students higher than the number on which Kerr based his projections. An official fall-quarter enrollment tally will be released to the regents Oct. 26.

Kerr and Leavitt urged the presidents and their institutional councils to relay the new figures to their communities through the local media - an effort in line with the regents' decision to mount the media campaign against Initiative A.

The institutional council chairmen also agreed to sign a joint statement opposing the initiative. Several individual councils, as well as the regent board, have already gone on record opposing the initiative.

The regents have formed a political information committee, called Utahns for Higher Education, which will be registered with the state this week.

Leavitt said committee members already have been on the stump delivering speeches. The group plans to match the initiative proponents by airing paid commercials in the week before the election.

RICHFIELD COUNCIL OPPOSES FOOD-TAX REMOVAL AND APPROVES 4-WAY STOP SIGNS NEAR SCHOOL

By Reed L. Madsen, Correspondent

Published: November 2, 1990 12:00 am

Fearing the initiative to remove sales tax from food would cost Richfield upwards of \$100,000 annually, the City Council has unanimously gone on record opposing it.

An across-the-board cut of at least 5 percent would be needed if all departments were included in a budget cut because of revenue loss from the initiative, council members were told by Mike Langston, city finance director. The council agreed that the loss of revenue would seriously affect the city's operations and budget. One councilman, Paul Lyman, said he favored the initiative but voted with other council members in not supporting it in lieu of the lack of a better source of needed city revenues. "I think the food tax is very unfair," he stated. Lyman's motion to require the Utah Legislature to find other means of providing revenue to replace the food tax failed to find support from other council members.

Mayor Jay C. Andersen said he supported the council's action. He added that if the initiative passes and the city's essential services such as water, sewer, fire department and police department continued to operate at the present budget level, other areas of the city's operations would have to be cut at least 10 percent.

The council also decided to erect four-way stop signs at near the Ashman Elementary School as a safety measure. These are at Center and 200 West and 100 North and 200 West. Stop signs have been at these locations for north and south traffic, making Center and 100 North through streets.

Council members were not particularly enthused about the idea of the four-way stops even though they approved them.

Councilwoman Beth Roberts said the problem is not so much with children but with parents who stop their vehicles in the area, creating traffic hazards. The school grounds have high fences on the west and south sides and double fences where children get on and off buses.

Councilman Terry Anderson favored the four-way stop on Center Street but not on 100 North. He was joined by Councilman Jim Forsey in favor of erecting signs on only one street for a trial period. It will be determined in January whether the traffic change will remain permanent.

IMPACT: PROJECTED LOSS OF ALMOST \$900,000 MEANS SANDY RESIDENTS COULD FACE HIGHER PROPERTY TAXES.

By Alisa Y. Kim, Staff Writer

Published: June 10, 1990 12:00 am

Sandy will lose about \$900,000 in revenues in 1992 and might face increasing property taxes if the sales tax on food is eliminated.

If Utah voters approve the elimination of the food tax, the state will lose between \$80 million and \$90 million in revenue. Just how the state would make up the loss is still uncertain. Sandy City Council members also are speculating how to make up the revenue loss from its share of the sales tax, and when presented a projection sheet by Councilman Bruce Steadman, they spoke of increasing the property tax to make up the difference. The city has held the line on taxes for four years, even when the state raised taxes, and as a result has struggled through difficult economic times. However, that no-tax-increase record could be broken.

"The reality is if we remove the sales tax from food, that's nearly \$1 million that we will have the need to replace from other sources and that means property tax," Mayor Larry Smith said.

According to Steadman's estimate, 1992 revenues would be \$13.9 million. However, if the bill passes, revenues could drop to \$13 million.

"The only other revenue source that we can adjust is the property tax," Steadman said. "We hate it because it's such a hated tax. It just creates a lot of bad publicity and ill feelings."

The issue that is causing so much controversy among politicians is a food sales tax removal initiative that made the November ballot largely through the efforts of Merrill Cook and the Independent Party.

The initiative supports removing sales tax on unprepared food items which can be purchased with a food stamp, excluding non-food items and alcoholic beverages.

This elimination of food sales tax would create a hole in future Sandy city revenues because tax on food sales makes up one-fourth of its sales tax revenues.

Other major city revenue sources are franchise taxes - taxes on utility, telephone and electricity - user fees such as court fines and building permits and property tax.

In reviewing these sources, Steadman said, the franchise tax, which accounts for one-sixth of revenues, cannot be raised because rates are set by the state and limited to 6 percent.

"Basically, our franchise tax is at the state-set limit and can't be raised," he said.

Some user fees can be adjusted, but making up the revenue difference by raising fees would make them ridiculously high, Steadman said.

The only option is to adjust the property tax. In Sandy, since the property tax is 67 percent below the state-controlled ceiling, it can be adjusted.

"We're less than half at the ceiling that the state set. We have a window from which to work," Steadman said.

Although Sandy council members are concerned about the revenue loss, they have not taken a formal stand on the issue. They will not make definite plans until after the November elections.

"I'm not urging (citizens to vote) one way or another," Smith said. "My feeling is that issue is appropriate to be on the ballot and (we will) let the citizens make the determination. We'll follow whatever direction they give us.

"As of now I have some real concerns about it. If the loss of revenue on the state is made up on the property tax, Sandy residents will pay a greater amount of tax than the present sales tax."

Sharing the mayor's opinion is Councilman John Winders.

Council members opposing the sales tax initiative are Steadman, Dick Adair, Ron Gee, Scott Cowdell, Dennis Tenney and council Chairman Bryant Anderson.

"I don't think I want to make up the whole difference in property tax; however, the city can't stand the cut in revenues," Anderson said. "We'd have to cut basic services."

UTAHNS' SUPPORT OF FOOD-TAX INITIATIVE IS ON THE DECLINE

By Bob Bernick Jr., Political Editor

Published: September 23, 1990 12:00 am

The downward slide of the initiative to remove the sales tax from food continues, the latest Deseret News/KSL-TV poll shows, with more Utahns now opposing the removal than supporting it.

Pollster Dan Jones & Associates found in a poll taken just two weeks ago that if the November election were today, 54 percent of Utahns would vote against the removal initiative, 41 percent would vote for it, with 4 percent undecided. In April, Jones found just the opposite - 68 percent in favor with 26 percent opposed to removing the sales tax from food. In June, Jones found it split, 48 percent in favor of removing the tax, 48 percent opposed.

Merrill Cook, chairman of the Independent Party of Utah and chief advocate for removing the tax, said he's not surprised by the latest poll. "We've been out talking to people and found they are scared, scared what will happen if the tax is removed. Our job over the next several weeks is to unscare them, and we do that by talking surplus, surplus, surplus."

Cook maintains that removing the tax won't cost local and state governments as much as Gov. Norm Bangerter and other opponents say. And Cook argues that the cost can be absorbed through state surplus revenues and "cutting fat from state and local programs."

Bangerter says there will be about a \$50 million surplus for the year that ended June 30. In addition, there is a \$50-million rainy-day fund left over from past years' surpluses. If the economy stays strong, the \$50-million surplus of the past fiscal year will repeat.

But, he argues, removing the food tax will cost the state \$90 million, local governments \$23 million, and there is real need in public education and other programs for the extra money - that even with the surpluses the state isn't rich and certainly not wasteful.

Bangerter, public and higher education officials and a slew of other organizations and groups add that Cook is dead wrong in his estimates, and that vital state and local programs will be cut if citizens remove the tax.

As part of his latest poll, Jones also asked other questions concerning the food tax removal. He found that, should the tax be removed, almost half of all Utahns - 42 percent - want the lost revenue made up by spending state surpluses and trimming programs if need be.

"That's great," said Cook, "because that's exactly what we advocate: spend the surpluses and trim where possible."

Fourteen percent told Jones just programs should be cut if the tax removal passes, 27 percent said the surplus should be spent and then other taxes raised to offset any loss (the Democratic Party's official stand) and 18 percent don't know how to solve the revenue shortfall problem.

Democratic State Chairman Peter Billings Jr. has suggested a compromise to Bangerter - instead of removing the food tax, give an income tax credit to only low- and middle-income Utahns roughly equivalent to what they pay in food tax. Jones found that when that option was included in the mix, 23 percent favor removing the food tax, 33 percent want an income tax credit, 37 percent don't want taxes changed at all and 6 percent didn't know.

Finally, Billings has said if Bangerter will call a special legislative session before the November election, and the income tax credit is given, Democrats will end their support of Cook's initiative. But Jones found 51 percent of Utahns don't want a special session to consider any income tax credit for food tax paid.

POLL

If the election were held today, would you vote for or against removing the sales tax from food?

Definitely for removal 27%

Probably for removal 14%

Probably against removal 17%

Definitely against removal 11%

Don't know 4%

An income tax credit awarded to low-to-middle-income Utahns has been proposed as an alternative to removing the food sales tax. Which do you prefer?

Remove sales tax from food 23%

Income tax credit 33%

No change in tax structure at all 37%

Don't know 6%

Sample size: 900; margin of error plus or minus 3.2%



0264

MICHAEL O. LEAVITT
GOVERNOR

STATE OF UTAH
OFFICE OF THE GOVERNOR
SALT LAKE CITY
84114-0601

OLENE S. WALKER
LIEUTENANT GOVERNOR

March 21, 1994

Honorable Rob W. Bishop
Speaker of the House
and
Honorable Arnold Christensen
President of the Senate
BUILDING MAIL

Dear Speaker Bishop & President Christensen:

This is to inform you that on March 21, 1994, I have signed House Bill HB0305S1, Utah Term Limitation Act of 1994, and have forwarded this to the Lieutenant Governor for filing.

Sincerely,

A handwritten signature in cursive script that reads "Michael O. Leavitt".

Michael O. Leavitt
Governor

S.B. 240 Term Limit Repeal

Bill Text

Status

Hearings/Debate

Enrolled

S.B. 240

Printer Friendly 

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[Introduced] [Status] [Bill Documents] [Fiscal Note] [Bills Directory]

Bill Sponsor:



Sen. Bramble,
Curtis S.

Floor Sponsor:

Rep.
Hansen,
Neil A.

S.B. 240 Enrolled

Drafting Attorney: John L. Fellows

TERM LIMIT REPEAL

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Curtis S. Bramble

This act repeals Utah's term limits statutes.

This act affects sections of Utah Code Annotated 1953 as follows:


REPEALS:

20A-10-101 , as enacted by Chapter 264, Laws of Utah 1994

20A-10-102 , as enacted by Chapter 264, Laws of Utah 1994

Bill Text

Introduced 

Enrolled  (Currently Displayed)

Related Documents

Information

Last Action: 17 Mar 2003, Governor Signed

Utah:

2003

Section 1. **Repealer.**

This act repeals:

Section **20A-10-101,**

Section **20A-10-102,**

Section **20A-10-201,**

Section **20A-10-301,**

Title.

Definitions.

Term limits -- State

Term limits -- Federal

Session Law Chapter:

181

officers.

officers.

Similar Bills

Elections

Government

Operations (State

Issues)

[Bill Documents]

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You may print the text of a bill from the PDF version located on the 'Bill Text' tab above.

State Senate

350 North State, Suite 320

PO Box 145115

Salt Lake City, Utah 84114

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House of Representatives

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PO Box 145030

Salt Lake City, Utah 84114

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S.B. 175 Protection of Private Lawfully Obtained Property

Bill Text**Status****Hearings/Debate**

Enrolled

S.B. 175

Bill Sponsor:

Sen.

Buttars, D.

Chris

Floor Sponsor:

Rep.

Urquhart,

Stephen H.

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[Introduced] [Amended] [Status] [Bill Documents] [Fiscal Note] [Bills Directory]

S.B. 175 Enrolled

PROTECTION OF PRIVATE LAWFULLY**OBTAINED PROPERTY**

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: D. Chris Buttars

Mike Dmitrich
 Ron Allen
 Patrice M. Arent
 Gregory S. Bell
 Leonard M. Blackham

CoSponsor(s):

Dmitrich, M. Allen, R.
 Arent, P. Bell, G.
 Blackham, L. Bramble, C.
 Davis, G. Eastman, D.
 Evans, B. Evans, J.
 Hale, K. Hatch, T.
 Hickman, J. Julander, P.
 Knudson, P. Mansell, L. A.
 Mayne, E. Walker, C.
 Killpack, S.

Drafting Attorney:
 Susan Creager Allred

Karen Hale

Thomas V. Hatch

John W. Hickman Paula F. Julander

Sheldon L. Killpack

Peter C. Knudson

L. Alma Mansell

Ed P. Mayne

Carlene M. Walker

LONG TITLE

General Description:

This bill modifies the Utah Uniform Forfeiture Procedures Act regarding property owner interests, allocation of forfeiture proceeds, and reporting.

Highlighted Provisions:

This bill:

- . provides additional definitions;
- . increases innocent owner protections;
- . repeals the provision for depositing forfeiture proceeds in the Uniform School Fund;
- . creates a restricted account for specified state forfeiture funds, and provides that funds in the account shall be appropriated to the Commission on Criminal and Juvenile Justice;
- . specifies accountability standards in management of forfeited property and of the proceeds;
- . specifies law enforcement purposes for which the proceeds may be used and those purposes for which the proceeds may not be used;
- . specifies standards and procedures for allocation of the proceeds to law enforcement agencies by the Commission on Criminal and Juvenile Justice; and

- . requires reporting by agencies and by the Commission on Criminal and Juvenile Justice.

Monies Appropriated in this Bill:

None

Other Special Clauses:


None

Utah Code Sections Affected:

AMENDS:

24-1-2 , as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

24-1-3 , as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

Enrolled  (Currently Displayed)

Other Versions

S.B. 175

S.B. 175 1st

Substitute

Related Documents

Fiscal Note 

House Floor
Amendment 8

House Floor
Amendment
9(passed)

Information

Last Action: 23 Mar 2004, Governor Signed

Last Location:
Lieutenant
Governor's office for filing

Effective Date: 3 May 2004

Session Law Chapter: 296

Similar Bills

Criminal Code

~~24-1-7~~ , as last amended by Chapter 185,
Laws of Utah 2002
24-1-10 , as last amended by Chapter 185,
Laws of Utah 2002
24-1-11 , as enacted by Statewide Initiative
B, Nov. 7, 2000, Laws of Utah 2000
24-1-12 , as enacted by Statewide Initiative
B, Nov. 7, 2000, Laws of Utah 2000
24-1-14 , as enacted by Statewide Initiative
B, Nov. 7, 2000, Laws of Utah 2000
24-1-15 , as last amended by Chapter 185,
Laws of Utah 2002
 ENACTS:
24-1-3.5 , Utah Code Annotated 1953
24-1-17 , Utah Code Annotated 1953
24-1-18 , Utah Code Annotated 1953
24-1-19 , Utah Code Annotated 1953
24-1-20 , Utah Code Annotated 1953
 REPEALS:
24-1-16 , as last amended by Chapter 185,
Laws of Utah 2002

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

- 2 -

Section 1. Section **24-1-2** is amended to
read:

24-1-2. Purpose.
It is the intent of this chapter to:

(1) provide [~~for~~] a uniform set of
procedures and substantive standards for the criminal
and civil forfeiture of property within the state of
Utah;

(2) permit law enforcement personnel to deter
crime by lawfully seizing and forfeiting
contraband and the instrumentalities and
proceeds of criminal conduct;

(3) protect innocent owners and innocent
interest holders from the [~~wrongful taking~~]
forfeiture of their property;

(4) ensure that seizures and forfeitures of
property from private citizens are [~~not~~
disproportionate] in proportion to the
violation or crime committed;

(5) ensure direct control and accountability
over the use and sale of forfeited property and
[~~the proceeds generated therefrom~~] the
revenue resulting from the disposal of forfeited

~~(a) law enforcement, crime prevention, and drug courts; and~~

~~(b) other appropriate activities related to the functions under Subsection (6)(a);~~

~~(7) maximize the benefits of, and accountability for, federal asset forfeiture sharing for the citizens of the state; and~~

[~~(6)~~] (8) direct that any and all revenues resulting from the sale of forfeited property be

[~~contributed to the Uniform School Fund~~]
allocated to the Utah Commission on Criminal and Juvenile Justice for grants to state and local law enforcement agencies according to specified guidelines .

Section 2. Section **24-1-3** is amended to read:

24-1-3. Definitions.

As used in this section:

(1) "Account" means the Criminal Forfeiture Restricted Account created in Section 24-1-18.

- 3 -

[~~(1)~~] (2) "Agency" [~~shall mean~~] means any agency of municipal, county, or state government, including law enforcement agencies, law enforcement personnel, and multi-jurisdictional task forces.

(3) "Claimant" means:

(a) any owner of property as defined in this section;

(b) any interest holder as defined in this section; and

(c) any other person or entity who asserts a claim to any property seized for forfeiture under this section.

(4) "Complaint" means a civil complaint seeking the forfeiture of any real or personal property pursuant to this chapter.

(5) "Constructive seizure" means a seizure of property where the property is left in the control of the owner and the seizing agency posts the property with notice of seizure by that agency for forfeiture.

[~~(2)~~] (6) "Contraband" [~~shall mean~~] means any property , item, or substance which is unlawful to produce or to possess under state or federal law.

(7)(a) "Innocent owner" means an owner or

conduct subjecting the property to seizure, or
(ii) upon learning of the conduct subjecting
the property to seizure, took reasonable steps
to prohibit the illegal use of the property.

(b) "Innocent owner" means an owner or
interest holder who acquired an ownership
interest in the property and who had no
knowledge that the illegal conduct subjecting the
property

to seizure had occurred or that the property
had been seized for forfeiture, and:

(i) acquired the property in a bona fide
transaction for value;

(ii) was a person, including a minor child,
who acquired an interest in the property
through probate or inheritance; or

(iii) was a spouse who acquired an interest in
property through dissolution of marriage or
by operation of law.

- 4 -

(8)(a) "Interest holder" means a secured
party as defined in Subsection 70A-9a-102 (72),
a mortgagee, lien creditor, or the beneficiary of
a security interest or encumbrance pertaining to
an interest in property, whose interest would
be perfected against a good faith purchaser for
value.

(b) "Interest holder" does not mean a person
who holds property for the benefit of or as
an agent or nominee for another person, or
who is not in substantial compliance with any statute
requiring an interest in property to be
recorded or reflected in public records in order to
perfect
the interest against a good faith purchaser for
value.

(9) "Legal costs" means the costs and
expenses incurred by the prosecuting agency, not
to exceed 20% of the net value of the forfeited
property.

(10) "Legislative body" means:

(a)(i) the state Legislature, county
commission, county council, city commission, city
council, or town council that has fiscal
oversight and budgetary approval authority over a
seizing

agency; or

(ii) the seizing agency's governing political

~~the agencies participating in the task force.~~

[~~(3)~~] (11) "Multijurisdictional task force" [~~shall mean~~] means a law enforcement task force or other agency comprised of persons who are employed by or acting under the authority of different governmental authorities, including federal, state, county or municipal governments, or any combination [~~thereof~~] of these agencies .

[~~(4)~~] (12) "Owner" [~~shall mean~~] means any person or entity , other than an interest holder as defined in this section, that possesses a bona fide legal or equitable interest in real or personal property [~~, including a security interest~~].

(13) "Program" means the Crime Reduction Assistance Program created in Section 24-1-19.

[~~(5)~~] (14) "Property" [~~shall mean~~] means all property, whether real or personal, tangible or intangible.

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[~~(6)~~] (15) "Prosecuting attorney" [~~shall mean the public attorney authorized by a specific provision of state law to initiate forfeiture proceedings under this chapter.~~] means:

- (a) the state attorney general and any assistant attorney general;
- (b) any district attorney or deputy district attorney; and
- (c) any county attorney or assistant county attorney;
- (d) any other attorney authorized to commence an action on behalf of the state under this chapter or other provisions of state law.

(16) "Seize for forfeiture" means seizure of property:

- (a) by a law enforcement officer or law enforcement agency, including a constructive seizure; and
- (b) accompanied by an assertion by the officer or agency or by a prosecuting attorney that the property is seized for forfeiture in accordance with this chapter.

[(7) "State law" means all Utah law, including municipal, county and state law.]

Section 3. Section **24-1-3.5** is enacted to

read:

(a) all interests in property in the property for which forfeiture is sought is within this state at the time the action is filed; and

(b) the interests of owners or interest holders in the property, if the owner or interest holder is subject to the personal jurisdiction of the district court.

(2)(a) In addition to the venue provided for under Title 78, Chapter 13, Place of Trial-Venue, or any other provisions of law, a proceeding for forfeiture under this chapter may be maintained in the judicial district in which:

(i) any part of the property is found; or
(ii) a civil or criminal action could be maintained against an owner or interest holder for the conduct alleged to give cause for the forfeiture.

(b) A claimant may obtain a change of venue under Section 78-13-9.

- 6 -

Section 4. Section **24-1-4** is amended to read:

24-1-4. Civil Procedures.

(1) An agency which seizes property under any provision of state law subjecting [~~an~~ owner's] the property to [~~civil~~] forfeiture shall, as soon as practicable, but in no case more than 30

days after seizure:

(a) prepare a detailed inventory of all property seized and transfer the seized property to a designated official within the agency, who shall be responsible for holding and maintaining seized property pending a court order of release or final determination of forfeiture and disposition of property under this chapter;

(b) notify the prosecuting attorney for the appropriate jurisdiction who is responsible for initiating [~~civil~~] forfeiture proceedings under this chapter of the items of property seized, the place of the seizure and any persons arrested at the time of seizure; and

(c) give written notice to all owners and interest holders known, or reasonably discoverable after due diligence, of [~~the following items~~]:

(i) the date of the seizure and the property seized;

~~(iii) [an outline] a brief description of the [steps in the] statutory basis for the forfeiture and the judicial proceedings by which property is forfeited under this chapter.~~

~~(2) (a) If the seizing agency fails to provide notice as required in [subparagraph]~~

~~Subsection (1)[(e)], an owner or interest holder entitled to notice who does not receive notice may void the forfeiture with respect to the owner's or interest holder's interest in the property by bringing a motion before the appropriate district court and serving it upon the seizing agency.~~

~~[~~Such~~] The motion may be brought at any time prior to the final disposition of the property under this chapter.~~

~~(b) If an owner or interest holder brings a motion to void the forfeiture for lack of the notice required under [subparagraph] Subsection (1)[(e)], the court shall void the forfeiture unless~~

~~the seizing agency demonstrates:~~

- 7 -

~~[(a)] (i) good cause for the failure to give notice to that owner; or~~

~~[(b)] (ii) that the owner otherwise had actual notice of the seizure.~~

~~(3) (a) Within [90] 60 days of any seizure, the prosecuting attorney shall file a complaint for forfeiture in the appropriate district court and serve a summons and notice of intent to seek forfeiture with a copy of the complaint upon all owners and interest holders known to the prosecuting attorney to have an interest in the property . Service shall be by one of the following methods:~~

~~[(i) personal service upon each owner whose name and address is known, or by mailing a copy to the last known address; or]~~

~~[(ii) upon all other owners whose addresses are not known, by publication in a newspaper of general circulation in the county where the seizure was made for a period of two consecutive weeks.]~~

~~(i) if the owner's or interest holder's name and current address are known, either by personal service by any person qualified to serve process, by a law enforcement officer, or by certified mail, return receipt requested, to that~~

perfect an interest in property and the owner's or interest

holder's current address is not known, by mailing a copy of the notice by certified mail, return receipt requested, to the most recent address listed by any of those agencies; or

(iii) if the owner's or interest holder's address is not known and is not on record as provided in Subsection (3)(a)(i) or (ii), by publication for two successive weeks in a newspaper of general circulation in the county in which the seizure occurred.

(b) Notice is effective upon the earlier of personal service, publication, or the mailing of a written notice.

(c) The summons and notice of intent to seek forfeiture shall:

(i) be addressed to the known owners and interest holders of the seized property, and to the person from whom the property was seized;

(ii) contain the name, business address, and business telephone number of the prosecuting

- 8 -

attorney seeking the forfeiture; and

(iii) contain:

(A) a description of the property which is the subject matter of the forfeiture proceeding;

(B) notice that a complaint for forfeiture has been or will be filed;

(C) the time and procedural requirements for filing an answer or claim;

(D) notice of the availability of hardship or bond release of the property; and

(E) notice that failure to file an answer or other claim regarding the seized property will result in a default judgment against the seized property.

[~~(b)~~] (d) The complaint shall describe with reasonable particularity:

(i) the property which is the subject matter of the forfeiture proceeding;

(ii) the date and place of seizure; and

(iii) the allegations which constitute a basis for forfeiture.

(4) (a) If the prosecuting attorney does not timely file a complaint for forfeiture of the property in accordance with [~~subparagraph~~]

forfeiture of [~~such~~] the property.

(b) If the agency knows of more than one owner, it shall return the property to the owner who was in possession at the time of the seizure.

(5) (a) In any case where the prosecuting attorney files a complaint for forfeiture of property, an owner or interest holder may file a claim and an answer to the complaint.

(b) The claim and answer shall be filed within 30 days after the complaint is served in person or by mail, or where applicable, within 30 days after publication under [~~subparagraph~~] Subsection (3)[~~(a)(ii)~~].

(6) (a) Except as otherwise provided in this chapter, [~~civil~~] forfeiture proceedings are governed by the Utah Rules of Civil Procedure.

(b) The court shall take all reasonable steps to expedite forfeiture proceedings and shall give [~~such~~] these proceedings the same priority as is given to criminal cases.

(c) In all suits or actions brought for the civil forfeiture of any property under this

- 9 -

chapter, the burden of proof is on the prosecuting attorney to establish, by clear and convincing evidence, to what extent, if any, property is subject to forfeiture.

(d) The right to trial by jury applies to [~~civil~~] forfeiture proceedings under this chapter .

Section 5. Section **24-1-6** is amended to read:

24-1-6. Innocent owners.

(1) An innocent owner's or interest holder's interest in property [~~shall~~] may not be forfeited [~~civily~~] under any provision of state law.

(2) The prosecuting attorney [~~shall have~~] has the burden of establishing by clear and convincing evidence that an [~~individual is not an innocent~~] owner [~~:~~] or interest holder:

[~~(3) With respect to an ownership interest in existence at the time the conduct subjecting the property to seizure took place, the term "innocent owner" means an owner who:~~]

[~~(a) did not have actual knowledge of the conduct subjecting the property to seizure; or~~]

[~~(b) upon learning of the conduct subjecting~~

SUBSECTION (4).

(b) knew of the conduct giving rise to the forfeiture, and allowed the property to be used in furtherance of the conduct;

(c) acquired the property with notice of its actual or constructive seizure for forfeiture under this chapter;

(d) acquired the property knowing the property was subject to forfeiture under this chapter; or

(e) acquired the property in an effort to conceal, prevent, hinder, or delay its lawful seizure or forfeiture under any provision of state law.

[~~(4)~~] (3) For purposes of [subparagraph (3)(b), no] this chapter, an owner [shall] or interest holder may not be required to take steps that he reasonably believes would be likely to [subject any person (other than the person whose conduct gave rise to the forfeiture) to] result in physical harm or danger to any person . An owner or interest holder may demonstrate that he

- 10 -

took reasonable action to prohibit [~~such~~] the illegal use of the property by, for example:

(a) timely notifying a law enforcement agency of information that led the owner to know

that conduct subjecting the property to seizure would occur, was occurring, or has occurred; [~~or~~]

(b) timely revoking or attempting to revoke permission for those engaging in [~~such~~] the illegal conduct to use the property; or

(c) taking reasonable actions to discourage or prevent the illegal use of the property.

[~~(5) With respect to an ownership interest acquired after the conduct subjecting the property to seizure has occurred, the term "innocent owner" means a person who, at the time he acquired the interest in the property, had no knowledge that the illegal conduct subjecting the property to seizure had occurred or that the property had been seized for forfeiture, and:]~~

[(a) acquired the property in a bona fide transaction for value;]

[(b) was a person, including a minor child, who acquired an interest in property through probate or inheritance; or]

~~establish that a person is not an innocent~~
owner or interest holder, and if the owner or the interest holder is criminally charged with the conduct giving rise to the forfeiture and is acquitted of that charge on the merits:

(a) the property subject to the forfeiture or the value of the property, if the property has been disposed of under Subsection 24-1-7 (15), shall be returned to the owner or interest holder;

and

(b) any payments required under this chapter regarding holding the property shall be paid to the owner or interest holder.

[~~(6)~~] (5) No owner may assert, under this [~~paragraph~~] section, an ownership interest in contraband.

(6) Property is presumed to be subject to forfeiture under this chapter if the prosecuting attorney establishes, by clear and convincing evidence, that:

(a) the owner or interest holder has engaged in conduct giving cause for forfeiture;

- 11 -

(b) the property was acquired by the owner or interest holder during that period of the conduct giving cause for forfeiture or within a reasonable time after that period; and

(c) there was no likely source for the purchase or acquisition of the property other than the conduct giving cause for forfeiture.

(7) A finding that property is the proceeds of conduct giving cause for forfeiture does not require proof that the property was the proceeds of any particular exchange or transaction.

Section 6. Section **24-1-7** is amended to read:

24-1-7. Hardship release of seized property.

(1) After property is seized for forfeiture, a person or entity may not alienate, convey, sequester, or attach that property until the court issues a final order of dismissal or an order of forfeiture regarding the property.

(2) The seizing agency or the prosecuting attorney may authorize the release of property seized for forfeiture to its owner if retention of actual custody is unnecessary.

(3) With the consent of a court of competent

has initiated forfeiture proceedings involving the same property.

(4) Property seized for forfeiture is considered to be in the custody of the district court and subject only to:

(a) the orders and decrees of the court having jurisdiction over the property or the forfeiture proceedings; and

(b) the acts of the seizing agency or the prosecuting attorney pursuant to this chapter.

(5) (a) An owner of property seized pursuant to this chapter may obtain release of the property by posting with the district court a surety bond or cash in an amount equal to the current fair market value of the property as determined by the court or by the parties' stipulation.

(b) The district court may refuse to order the release of the property if:

(i) the bond tendered is inadequate;

(ii) the property is contraband or is retained as evidence; or

(iii) the property is particularly altered or designed for use in conduct giving cause for

- 12 -

forfeiture.

(c) If a surety bond or cash is posted and the property seized and then released on a bond or cash is forfeited, the court shall order the forfeiture of the surety bond or cash in lieu of the property.

(6) (a) As soon as practicable after seizure for forfeiture, and in no case later than 30 days after seizure for forfeiture, the seizing agency shall conduct a written inventory of the property seized.

(b) The seizing agency shall deposit property that is in the form of cash or other readily negotiable instruments into a restricted account maintained by the agency solely for the purpose of managing and protecting the property from commingling, loss, or devaluation during the pendency of the forfeiture proceedings.

(c) The seizing agency shall have in place written policy for the identification, tracking, management, and safekeeping of seized property, which shall include a prohibition against the transfer, sale, or auction of forfeited property to any employee of the seizing agency.

~~maintained the inventory policy, restricted account, and written policies required by this Subsection (6).~~

[~~(4)~~] ~~(7)~~ An owner is entitled to the immediate release of seized property from the seizing agency pending the final determination of [~~civil~~] forfeiture if:

- (a) the owner [~~has~~] had a possessory interest in the property at the time of seizure ;
- (b) continued possession by the agency or the state pending the final disposition of the forfeiture proceedings will cause substantial hardship to the owner, such as:
 - (i) preventing the functioning of a legitimate business;
 - (ii) preventing any individual from working;
 - (iii) preventing any minor child or student from attending school;
 - (iv) preventing or hindering any person from receiving necessary medical care;
 - (v) hindering the care of an elderly or disabled dependent child or adult;

- 13 -

(vi) preventing an owner from retaining counsel to provide a defense in the forfeiture proceeding; or

(vii) leaving any individual homeless, or any other condition that the court determines causes a substantial hardship; [~~and~~]

(c) the hardship from the continued possession by the agency of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the owner during the pendency of the proceeding[~~:~~] ; and

(d) determination of substantial hardship under this Subsection (7) is based upon the property's use prior to the seizure.

[~~(2)~~] ~~(8)~~ The right to appointed counsel under Section 24-1-9 applies throughout civil forfeiture proceedings, including an owner's motion for hardship release.

~~(9)~~ An owner may file a motion for hardship release:

- (a) in the court in which forfeiture proceedings have commenced; or
- (b) in any district court having jurisdiction over the property, if forfeiture proceedings

Timing the motion.

[~~(3)~~] (11) The court shall render a decision on a motion [~~or complaint~~] for hardship filed

under [~~Subsection (2)~~] this section not later than [~~ten~~] 20 days after the date of filing, or ten days

after service upon the prosecuting attorney or seizing agency, whichever is earlier, unless [~~the ten-day~~] this period is extended by the [~~consent of the~~] parties or by the court for good cause shown.

[~~(4)~~] (12)(a) If the owner demonstrates substantial hardship pursuant to [~~subparagraph (4)~~] this section, the court shall order the property immediately released to the owner pending completion of proceedings by the government to obtain forfeiture of the property.

(b) The court may place [~~such~~] conditions on release of the property as it finds [~~are~~] necessary and appropriate to preserve the availability of the property or its equivalent for forfeiture.

- 14 -

[~~(5) Subparagraph (1) shall~~] (13) The hardship release does not apply if the seized property is:

(a) contraband;
 (b) currency or other monetary instrument or electronic funds, unless [~~such~~] the property is used to pay for the reasonable costs of defending against the forfeiture proceeding or constitutes the assets of a legitimate business;
 or

(c) likely to be used to commit additional illegal acts if returned to the owner.

(14)(a) The court may order property which has been seized for forfeiture to be sold as allowed by Subsection (15), leased, rented, or operated to satisfy a specified interest of any owner or interest holder, or to preserve the interests of any party on motion of that party.

(b) The court may enter orders under Subsection (14)(a) after notice to persons known to have an interest in the property, and after an opportunity for a hearing.

(15)(a) A sale may be ordered under Subsection (14) when the property is liable to

~~shall dispose of the property by commercially~~
reasonable public sale and distribute the
proceeds in the following order of priority:
 (i) first, for the payment of reasonable
expenses incurred in connection with the sale;
 (ii) second, for the satisfaction of any
interests, including those of interest holders, in the
order of their priority as determined by Title
70A, Uniform Commercial Code; and
 (iii) third, any balance of the proceeds shall
be preserved in the actual or constructive
custody of the court, in an interest-bearing
account, subject to further proceedings under this
chapter.

Section 7. Section **24-1-10** is amended to read:

24-1-10. Prejudgment and postjudgment interest.

In any [~~civil or criminal~~] proceeding to forfeit currency or other negotiable instruments under this chapter, the court shall award a prevailing [~~owner~~] party prejudgment and postjudgment interest on the currency or negotiable instruments at the legal rate of interest

- 15 -

established by Section 15-1-1 .

Section 8. Section **24-1-11** is amended to read:

24-1-11. Attorneys' fees and costs.

In any [~~civil or criminal~~] proceeding to forfeit seized property under this chapter, the court shall award a prevailing [~~owner~~] party reasonable attorneys' fees and other costs of [~~suit~~] litigation reasonably incurred by the owner. An owner who prevails only in part [~~shall be~~] is entitled to recover reasonable attorneys' fees and reasonable costs of suit related to those issues on which he

prevailed.

Section 9. Section **24-1-12** is amended to read:

24-1-12. Compensation for damaged property.

(1) [~~In any civil or criminal proceeding,~~] If
property seized for forfeiture is returned by
operation of this chapter, an owner [~~shall~~
~~have a private~~] has a civil right of action against a

was

seized for the purpose of initiating forfeiture proceedings under this chapter].

(2) [For the purposes of] As used in this section, "damage or other injury" does not include normal depreciation, deterioration , or ordinary wear and tear.

Section 10. Section **24-1-14** is amended to read:

24-1-14. Proportionality.

(1)(a) An owner's interest in property, excluding contraband, [shall not be civilly or criminally forfeited under a] is not subject to forfeiture under any provision of state law [unless such] if the forfeiture is substantially [proportional to both] disproportional to the use of the

property in committing or facilitating a violation of state law and the value of the property.

(b) Forfeiture of property used solely in a manner that is merely incidental and not instrumental to the commission or facilitation of a violation of law is not proportional [, as a matter of law].

(2)(a) In determining proportionality, the court shall consider:

(i) the conduct giving cause for the forfeiture;

(ii) what portion of the forfeiture, if any, is remedial in nature;

(iii) the gravity of the conduct for which the claimant is responsible in light of the offense;

and

(iv) the value of the property.

(b) If the court finds that the forfeiture is substantially disproportional to the conduct for which the claimant is responsible, it shall reduce or eliminate the forfeiture, as it finds appropriate.

(3) The prosecuting attorney has the burden to demonstrate that any forfeiture is proportional to an alleged violation of state law. It is the province of the court, not the jury, to decide questions of proportionality.

Section 11. Section **24-1-15** is amended to read:

24-1-15. Transfer and sharing procedures.

(2) (a) Seizing agencies or prosecuting attorneys authorized to bring civil or criminal forfeiture proceedings under this chapter [~~shall~~] may not directly or indirectly transfer seized property to any federal agency or any governmental entity not created under and subject to state

law unless the court enters an order, upon petition of the prosecuting attorney, authorizing the property to be transferred. The court may not enter an order authorizing a transfer unless:

(i) the activity giving rise to the investigation or seizure is interstate in nature and sufficiently complex to justify [~~such~~] the transfer;

(ii) the seized property may only be forfeited under federal law; or

(iii) pursuing forfeiture under state law would [~~unduly~~] unreasonably burden prosecuting attorneys or state law enforcement agencies.

(b) Notwithstanding [~~Subparagraph~~] Subsection (2)(a), the court may refuse to enter an order authorizing a transfer to the federal government if [~~such~~] the transfer would circumvent the

protections of the Utah Constitution or of this chapter that would otherwise be available to the property owner.

(c) Prior to granting any order to transfer pursuant to [~~Subparagraph~~] Subsection (2)(a),

- 17 -

the court must give any owner the right to be heard with regard to the transfer.

(3) (a) [~~All~~] Subject to Subsection (3)(b), all property, money, or other things of value received by an agency pursuant to federal law which authorizes the sharing or transfer of all or a portion of forfeited property or the proceeds of the sale of forfeited property to an agency [~~shall be promptly transferred to the state treasurer and sold and deposited in the Uniform School Fund as provided under Section 24-1-16.~~] :

(i) shall be used in compliance with federal rules and regulations relating to equitable sharing;

(ii) shall be used only for those law enforcement purposes specified in Subsection 24-1-19 (8); and

under subsection (3)(a) that equal an amount that is more than 25% greater than the annual budget of the receiving agency, the amount of the proceeds that is in excess of 125% of the agency's annual budget shall be passed through by the agency to the Commission on Criminal and Juvenile Justice to be used for the purposes under Section 24-1-19.

[~~(b)~~] (c) Subject to [Subparagraph] Subsection (3)(a), state agencies are encouraged to seek an equitable share of property forfeited by the federal government and to cooperate with federal law enforcement agencies in all cases in which [~~such~~] cooperation is in the interest of this state.

(d) A law enforcement agency awarded any equitable share of property forfeited by the federal government may only use the award monies after approval or appropriation by the agency's legislative body.

(e) Law enforcement agencies are entitled to their equitable share of property forfeited by the federal government since March 29, 2001.

(f)(i) Each agency awarded any equitable share of property forfeited by the federal government shall file copies of all federal equitable sharing certifications, applications, and reports

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with the state auditor and the Commission on Criminal and Juvenile Justice at least annually.

(ii) This information shall provide details of all awards received from the federal government during the preceding reporting period, including for each award:

(A) the agency's case number or other identification;

(B) the amount of the award;

(C) the date of the award;

(D) the identity of the federal agency involved in the forfeiture;

(E) how the awarded property has been used; and

(F) a statement signed by both the agency's executive officer or designee and by the agency's legal counsel, that the agency has only used the awarded property for crime reduction or law enforcement purposes authorized under

[Subparagraph] SUBSECTION (2) or (3) IS CIVILY LIABLE
to

the state for three times the amount of the
forfeiture diverted and for costs of suit and reasonable
attorneys' fees.

(b) Any damages awarded to the state shall
be paid to the [Uniform School Fund]

Criminal Forfeiture Restricted Account created
in Section 24-1-18 .

(c) Any agent, including a state law
enforcement [officers who are] officer, detached to,
deputized or commissioned by, or working in
conjunction with a federal agency, who knowingly
transfers or otherwise [trades] trades
seized property in violation of [Subparagraph]

Subsection

(2)(a) or who receives property, money , or
other things of value under [Subparagraph]

Subsection (3)(a) and knowingly fails to
transfer [such] the property [to the state
treasurer] in

accordance with this section is guilty of a
class B misdemeanor.

Section 12. Section **24-1-17** is enacted to
read:

**24-1-17. Disposition and allocation of
forfeiture property.**

(1) Upon finding that property is subject to
forfeiture under this chapter, the court shall
order the property forfeited to the state, and
the seizing agency shall then:

(a) make the payments as required under
this chapter; and

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(b) transfer possession, custody, and control
of the net forfeiture property or proceeds
immediately to the Criminal Forfeiture
Restricted Account created under Section 24-1-18.

(2) If the forfeiture arises from any violation
of Section 23-20-1 relating to wildlife
resources, the court shall:

(a) direct that the legal costs of the forfeiture
proceeding be paid to the prosecuting
agency; and

(b) direct that the net forfeited property
after the legal costs shall be deposited in the
Wildlife Resources Account created in Section
23-14-13.

destroyed and that is not harmful to the public.

(b) The proceeds of the forfeited property shall remain segregated from other property, equipment, or assets of the seizing agency until transferred to the state in accordance with this chapter.

(4) From the forfeited property, both currency and the proceeds or revenue from the property, the seizing agency shall:

(a) deduct the seizing agency's direct costs and expenses, as approved by the court, of obtaining and maintaining the property pending forfeiture; and

(b) pay the legal costs to the prosecuting agency for the prosecution of the forfeiture proceeding.

(5) The remaining forfeited property shall then be deposited in the Criminal Forfeiture Restricted Account created in Section 24-1-18

(6) All property and proceeds awarded to the state through forfeiture proceedings under this chapter shall be deposited in the Criminal Forfeiture Restricted Account created in Section 24-1-18.

Section 13. Section **24-1-18** is enacted to

read:

24-1-18. Criminal Forfeiture Restricted Account.

(1) There is created within the General Fund a restricted account known as the Criminal

- 20 -

Forfeiture Restricted Account.

(2) Proceeds from forfeited property and forfeited monies through state forfeitures shall be deposited in this account.

(3) Money in the account shall be appropriated to the Commission on Criminal and Juvenile Justice for implementing the Crime Reduction Assistance Program under Section 24-1-19.

Section 14. Section **24-1-19** is enacted to

read:

24-1-19. Crime Reduction Assistance Program.

(1) There is created the Crime Reduction Assistance Program.

the profits and proceeds of their illegal activities;

(b) weakening criminal enterprises by removing the instrumentalities of crime;

(c) reducing crimes involving substance abuse by supporting the creation, administration, or operation of drug court programs throughout the state;

(d) encouraging cooperation between local, state, and multijurisdictional law enforcement agencies;

(e) allowing the costs and expenses of law enforcement to be defrayed by the forfeited proceeds of crime; and

(f) increasing the equitability and accountability of the use of forfeited property used to assist law enforcement in reducing and preventing crime.

(3)(a) When property is forfeited under this chapter and transferred to the fund, the Commission on Criminal and Juvenile Justice shall make awards of monies from the fund to state, local, or multijurisdictional law enforcement agencies or political subdivisions of the state in compliance with this section and to further the program purposes under Subsection (2).

(b) In granting the awards, the Commission on Criminal and Juvenile Justice shall ensure that the amount of each award takes into consideration:

- 21 -

(i) the demonstrated needs of the agency;

(ii) the demonstrated ability of the agency to appropriately use the award;

(iii) the degree to which the agency's need is offset through the agency's participation in federal equitable sharing or through other federal and state grant programs; and

(iv) the agency's cooperation with other state and local agencies and task forces.

(4) Agencies or political subdivisions shall apply for program awards by completing and submitting forms specified by the Commission on Criminal and Juvenile Justice.

(5) Applying agencies or political subdivisions shall demonstrate compliance with all reporting and policy requirements applicable under this chapter and under Title 63, Chapter 25a.

approval or appropriation by the agency's legislative body, and the award monies are nonlapsing.

(7) A recipient law enforcement agency or political subdivision shall use program awards

only for law enforcement or controlled substance law enforcement purposes as described in Subsection (8), and only as these purposes are specified by the agency or political subdivision in its application for the award.

(8) Permissible law enforcement purposes for which award monies may be used include:

(a) controlled substance interdiction and enforcement activities;

(b) drug court programs;

(c) activities calculated to enhance future investigations;

(d) law enforcement training that includes:

(i) implementation of the Fourth Amendment of the federal constitution and Utah Constitution Article I, Section 7, and addresses the protection of the individual's rights of due process;

(ii) protection of the rights of innocent property holders; and

(iii) the Tenth Amendment of the federal constitution regarding states' sovereignty and the states' reserved rights;

(e) law enforcement or detention facilities;

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(f) law enforcement operations or equipment which are not routine costs or operational expenses;

(g) drug, gang, or crime prevention education programs which are sponsored in whole or in part by the law enforcement agency or its legislative body; and

(h) matching funds for other state or federal law enforcement grants.

(9) Law enforcement purposes for which award monies may not be granted or used include:

(a) payment of salaries, retirement benefits, or bonuses to any person;

(b) payment of enforcement expenses not related to law enforcement;

(c) uses not specified in the agency's award application;

(d) uses not approved or appropriated by

(1) uses, payments, or expenses that are not within the scope of the agency's functions.

(10) For each fiscal year, any state, local, or multijurisdictional agency or political subdivision that received a program award shall prepare, and file with the Utah Commission on Criminal and Juvenile Justice and the state auditor, a report in a form specified by the Utah Commission on Criminal and Juvenile Justice. The report shall include the following regarding each award:

(a) the agency's name;

(b) the amount of the award;

(c) the date of the award;

(d) how the award has been used; and

(e) a statement signed by both the agency's or political subdivision's executive officer or designee and by the agency's legal counsel,

that:

(i) the agency or political subdivision has complied with all inventory, policy, and reporting requirements of this chapter;

(ii) all program awards were used for crime reduction or law enforcement purposes as

- 23 -

specified in the application; and
(iii) and only upon approval or appropriation by the agency's or political subdivision's legislative body.

(11) The Utah Commission on Criminal and Juvenile Justice shall report in writing to the legislative Law Enforcement and Criminal Justice Interim Committee annually regarding the forfeited property transferred to the fund, awards made by the program, uses of program awards, and any equitable share of property forfeited by the federal government as reported by agencies pursuant to Subsection 24-1-15 (3).

Section 15. Section **24-1-20** is enacted to read:

24-1-20. State Law Enforcement Forfeiture Account created -- Revenue sources -- Use of account designated.

(1) (a) There is created in the General Fund a restricted account called the State Law Enforcement Forfeiture Account.

(b) All monies awarded to the Department of Public Safety or the Department of

FORFEITURE ACCOUNT.

(c) All monies previously deposited, or currently held in the Drug Forfeiture Account created in Section 58-37-20, and that were in that account when it was repealed by Initiative B, which passed in 2000, and which became effective March 29, 2001, shall be transferred to and deposited in the State Law Enforcement Forfeiture Account created in this Subsection (1).

(2) The Department of Public Safety and the Department of Corrections may expend amounts as appropriated by the Legislature from the State Law Enforcement Forfeiture Account for law enforcement purposes or controlled substance law enforcement purposes as specified in Section 24-1-19.

(3) That portion of funds forfeited or that are required to be disbursed to other governmental entities under existing contractual agreements or Utah statutory requirements are exempt from this section.

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(4) Funds forfeited as a result of the Salt Lake Airport Drug Program operated by the Department of Public Safety, not to exceed the Department of Public Safety's expenditure to that program, are exempt from this section.

(5) The Department of Public Safety and the Department of Corrections, as part of the annual legislative budget hearings, shall provide to the legislative Executive Offices and Criminal Justice Appropriations Subcommittee a complete accounting of expenditures and revenues from the funds received under this section.

(6) The Legislature may annually provide, in an appropriations act, legislative direction for anticipated expenditures of the monies received under this section.

Section 16. **Repealer.**

This bill repeals:

Section **24-1-16, Disposition of proceeds from criminal or civil forfeiture.**

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State Senate

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H.B. 304 Enrolled

INITIATIVE PROCESS AMENDMENTS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Kevin S. Garn

Melvin R. Brown

John L. Valentine

AN ACT RELATING TO ISSUES SUBMITTED TO VOTERS; MODIFYING INITIATIVE REQUIREMENTS; AND MAKING TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

20A-7-201, as last amended by Chapter 152, Laws of Utah 1995

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

Section 1. Section **20A-7-201** is amended to read:

20A-7-201. Statewide initiatives -- Signature requirements -- Submission to

the

Legislature or to a vote of the people.

or

(1) (a) A person seeking to have an initiative submitted to the Legislature for approval

rejection shall obtain:

(i) legal signatures equal to 5% of the cumulative total of all votes cast for all candidates for governor at the last regular general election at which a governor was elected; and

of all

(ii) from each of at least [45] 20 counties, legal signatures equal to 5% of the total

election at which

votes cast in that county for all candidates for governor at the last regular general

a governor was elected.

session

(b) If, at any time not less than ten days before the beginning of an annual general

signed

of the Legislature, the lieutenant governor declares sufficient any initiative petition that is

approval or rejection shall obtain:
 (i) legal signatures equal to 10% of the cumulative total of all votes cast for all candidates for governor at the last regular general election at which a governor was elected; and

(ii) from each of at least [~~15~~] 20 counties, legal signatures equal to 10% of the total of all votes cast in that county for all candidates for governor at the last regular general election at which a governor was elected.

(b) If, at any time not less than four months before any regular general election, the lieutenant governor declares sufficient any initiative petition that is signed by enough legal voters to meet the requirements of this subsection, the lieutenant governor shall submit the proposed law to a vote of the people at the next regular general election.

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

- (a) the cumulative total of all votes cast for all candidates for governor; and
- (b) for each county, the total of all votes cast in that county for all candidates for governor.

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State Senate

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H.B. 110 Enrolled

FINANCIAL DISCLOSURE REQUIREMENTS ON INITIATIVES

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Jackie Biskupski

AN ACT RELATING TO ELECTION LAW; CLARIFYING REQUIREMENTS FOR REPORTING BY POLITICAL ISSUES COMMITTEES; ADDING ADDITIONAL REPORTING REQUIREMENTS FOR PERSONS CIRCULATING INITIATIVE PETITIONS; AND MAKING TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

20A-11-802 , as last amended by Chapter 40, Laws of Utah 1998

ENACTS:

20A-7-205.5 , Utah Code Annotated 1953

20A-7-206.5 , Utah Code Annotated 1953

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

Section 1. Section **20A-7-205.5** is enacted to read:

20A-7-205.5. Monthly reports.

(1) When petitions are being circulated by paid circulators, the sponsors of the

initiative

shall file a report with the lieutenant governor on the last Tuesday in April and on the

Tuesday

before the regular general election.

(2) The report shall contain:

(a) the names of the sponsors; and

(b) the name of the proposed measure for which petitions are being circulated by

paid

circulators.

Section 2. Section **20A-7-206.5** is enacted to read:

20A-7-206.5. Financial disclosure -- Paid circulators.

(1) When the proponents of a proposed initiative have paid persons to circulate the petition, the proponents shall, at the time the last initiative packet is filed with the

county clerk,

by this

section.

Section 3. Section **20A-11-802** is amended to read:

20A-11-802. Political issues committees -- Financial reporting.

issues

current or proposed

on current or

Legislature

previous

financial

received

issues

political issues

(1) (a) Each registered political issues committee that has [~~made~~] received political contributions totaling at least \$750 or disbursed political issues expenditures [~~on~~ current or proposed ballot issues that total at least \$750] totaling at least \$50 during a calendar year on current or proposed ballot propositions, or on initiative petitions to be submitted to the

, shall file a verified financial statement with the lieutenant governor's office on:

(i) January 5, reporting contributions and expenditures as of December 31 of the previous year;

(ii) September 15; and
(iii) seven days before the regular general election.

(b) The political issues committee shall report:

(i) a detailed listing of all contributions received and expenditures made since the last statement; and

(ii) for financial statements filed on September 15 and before the general election, all contributions and expenditures as of three days before the required filing date of the financial statement.

(c) The political issues committee need not file a statement under this section if it

received no contributions and made no expenditures during the reporting period.

(2) (a) That statement shall include:

(i) the name, address, and occupation of any individual that makes a political issues contribution to the reporting political issues committee, and the amount of the political

contribution;

(ii) the identification of any publicly identified class of individuals that makes a political issues contribution to the reporting political issues committee, and the amount of the

contribution;

makes a

of the

contribution

contribution;

(iii) the name and address of any political issues committee, group, or entity that

political issues contribution to the reporting political issues committee, and the amount

political issues contribution;

(iv) the name and address of each reporting entity that makes a political issues

to the reporting political issues committee, and the amount of the political issues

committee, and the amount of each political issues expenditure;
 (vii) for each nonmonetary expenditure, the fair market value of the expenditure;
 (viii) the total amount of political issues contributions received and political issues expenditures disbursed by the reporting political issues committee;
 (ix) a paragraph signed by the political issues committee's treasurer or chief financial officer verifying that, to the best of the signer's knowledge, the financial statement is accurate;
 and
 (x) a summary page in the form required by the lieutenant governor that identifies:
 (A) beginning balance;
 (B) total contributions during the period since the last statement;
 (C) total contributions to date;
 (D) total expenditures during the period since the last statement; and
 (E) total expenditures to date.
 (b) (i) Political issues contributions received by a political issues committee that have a value of \$50 or less need not be reported individually, but shall be listed on the report as an aggregate total.
 (ii) Two or more political issues contributions from the same source that have an aggregate total of more than \$50 may not be reported in the aggregate, but shall be reported separately.

[Bill Documents][Bills Directory]

State Senate

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[Introduced] [Status] [Bill Documents] [Fiscal Note] [Bills Directory]

Second Substitute H.B. 220

Representative Tammy J. Rowan proposes to substitute the following bill:

1

INITIATIVE PROCESS AMENDMENTS

2

2000 GENERAL SESSION

3

STATE OF UTAH

4

Sponsor: Tammy J. Rowan

5 AN ACT RELATING TO INITIATIVES; ELIMINATING THE AUTHORIZATION FOR
6 INITIATIVES TO BE SUBMITTED TO THE LEGISLATURE; AND MAKING TECHNICAL
7 CORRECTIONS.

8 This act affects sections of Utah Code Annotated 1953 as follows:

9 AMENDS:

10 **20A-7-201** , as last amended by Chapter 115, Laws of Utah 1999

11 REPEALS:

12 **20A-7-208** , as last amended by Chapter 115, Laws of Utah 1999

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

14 Section 1. Section **20A-7-201** is amended to read:

15 **20A-7-201. Statewide initiatives -- Signature requirements -- Submission**

to the

16 **Legislature or to a vote of the people.**

17 approval

[~~(1)(a) A person seeking to have an initiative submitted to the Legislature for~~

18 ~~or rejection shall obtain:]~~

19 candidates

[~~(i) legal signatures equal to 5% of the cumulative total of all votes cast for all~~

20 and]

for governor at the last regular general election at which a governor was elected;

21 votes

[~~(ii) from each of at least 20 counties, legal signatures equal to 5% of the total of all~~

22 at which a

cast in that county for all candidates for governor at the last regular general election

23 ~~governor was elected.]~~

24 [~~(b) If, at any time not less than ten days before the beginning of an annual~~

~~26 by enough voters to meet the requirements of this Subsection (1), the lieutenant~~
~~governor shall~~
~~27 deliver a copy of the petition and the cover sheet required by Subsection (1)(c) to the~~
~~president of~~
~~28 the Senate, the speaker of the House, and the director of the Office of Legislative~~
~~Research and~~
~~29 General Counsel.]~~
~~30 [(c) In delivering a copy of the petition, the lieutenant governor shall include a~~
~~cover sheet~~
~~31 that contains:]~~
~~32 [(i) the cumulative total of all votes cast for all candidates for governor at the last~~
~~regular~~
~~33 general election at which a governor was elected;]~~
~~34 [(ii) the total of all votes cast in each county for all candidates for governor at the~~
~~last~~
~~35 regular general election at which a governor was elected;]~~
~~36 [(iii) the total number of certified signatures received for the submitted initiative;~~
~~and]~~
~~37 [(iv) the total number of certified signatures received from each county for the~~
~~submitted~~
~~38 initiative.]~~
~~39 [(2)] (1) (a) A person seeking to have an initiative submitted to a vote of the~~
~~people for~~
~~40 approval or rejection shall obtain:~~
~~41 (i) legal signatures equal to 10% of the cumulative total of all votes cast for all~~
~~candidates~~
~~42 for governor at the last regular general election at which a governor was elected; and~~
~~43 (ii) from each of at least ~~h [20] 29h~~ counties, legal signatures equal to 10% of~~
~~the total of~~
~~43a all votes~~
~~44 cast in that county for all candidates for governor at the last regular general election~~
~~at which a~~
~~45 governor was elected.~~
~~46 (b) If, at any time not less than four months before any regular general election, the~~
~~47 lieutenant governor declares sufficient any initiative petition that is signed by enough~~
~~legal voters~~
~~48 to meet the requirements of this subsection, the lieutenant governor shall submit the~~
~~proposed law~~
~~49 to a vote of the people at the next regular general election.~~
~~50 [(3)] (2) The lieutenant governor shall provide the following information from~~
~~the official~~
~~51 canvass of the last regular general election at which a governor was elected to any~~
~~interested~~
~~52 person:~~
~~53 (a) the cumulative total of all votes cast for all candidates for governor; and~~
~~54 (b) for each county, the total of all votes cast in that county for all candidates for~~
~~governor.~~
~~55 Section 2. **Repealer.**~~
~~56 This act repeals:~~

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S.B. 28 Initiative Amendments

Bill Text

Status

Hearings/Debate

Enrolled


S.B. 28

Bill Sponsor:Sen.
Hickman,
John W.**Floor
Sponsor:**Rep. Buttars,
Craig W.Printer Friendly 

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[Introduced] [Status] [Bill Documents] [Fiscal
Note] [Bills Directory]**Drafting Attorney:** John
L. Fellows

S.B. 28 Enrolled

Bill TextIntroduced Enrolled  (Currently
Displayed)

Conference

Committee Report 1

INITIATIVE AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: John W. Hickman

This act modifies the Election Code provisions relating to statewide initiatives. This act modifies signature requirements, modifies certain disclosure requirements, and modifies the time period during which sponsors may gather signatures. This act establishes a moratorium before an initiative that failed may be recirculated. This act requires that

Other Versions

S.B. 28

S.B. 28 1st Substitute

s.b. 28 2nd Substitute
(Not Adopted)

and corporation financial disclosure requirements. This act makes it a crime for persons to pay someone to sign or remove their signature from an initiative petition and makes it a crime for persons to accept payment for signing or removing their name from an initiative petition. This act includes a severability clause. This act makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

20A-7-201 , as last amended by Chapter 115, Laws of Utah 1999

20A-7-202 , as last amended by Chapter 45, Laws of Utah 1999

20A-7-203 , as last amended by Chapters 3 and 75, Laws of Utah 2000

20A-7-207 , as last amended by Chapters 153 and 165, Laws of Utah 1995

20A-7-213 , as last amended by Chapter 45, Laws of Utah 1999

20A-11-702 , as last amended by Chapter 355, Laws of Utah 1997

20A-11-802 , as last amended by Chapters 45 and 109, Laws of Utah 1999

ENACTS:

20A-7-204.1 , Utah Code Annotated 1953

Be it enacted by the Legislature of the state of

Utah:

Section 1. Section **20A-7-201** is amended to read:

20A-7-201. Statewide initiatives -- Signature requirements -- Submission to the

Legislature or to a vote of the people.

(1) (a) A person seeking to have an initiative submitted to the Legislature for approval or rejection shall obtain:

(i) legal signatures equal to 5% of the cumulative total of all votes cast for all candidates for governor at the last regular general election at which a governor was elected; and

(ii) from each of at least [~~20 counties~~] 26 Utah State Senate districts , legal signatures equal to 5% of the total of all votes cast in that [~~county~~] district for all candidates for governor at the last regular general election at which a governor was elected.

Information

Last Action: 24 Mar 2003, Governor Signed

Last Location: Lieutenant Governor's office for filing

Effective Date: 5 May 2003

Session Law Chapter: 304

Similar Bills

Elections

Government

Operations (State Issues)

Subsection (1), the lieutenant governor shall deliver a copy of the petition and the cover sheet required by Subsection (1)(c) to the president of the Senate, the speaker of the House, and the director of the Office of Legislative Research and General Counsel.

(c) In delivering a copy of the petition, the lieutenant governor shall include a cover sheet that contains:

- (i) the cumulative total of all votes cast for all candidates for governor at the last regular general election at which a governor was elected;
- (ii) the total of all votes cast in each [~~county~~] Utah State Senate district for all candidates for governor at the last regular general election at which a governor was elected;
- (iii) the total number of certified signatures received for the submitted initiative; and
- (iv) the total number of certified signatures received from each [~~county~~] Utah State Senate district for the submitted initiative.

(2) (a) A person seeking to have an initiative submitted to a vote of the people for approval or rejection shall obtain:

- (i) legal signatures equal to 10% of the cumulative total of all votes cast for all candidates for governor at the last regular general election at which a governor was elected; and
- (ii) from each of at least [~~20 counties~~] 26 Utah State Senate districts , legal signatures

- 2 -

equal to 10% of the total of all votes cast in that [~~county~~] district for all candidates for governor at the last regular general election at which a governor was elected.

(b) If, at any time not less than four months before any regular general election, the lieutenant governor declares sufficient any initiative petition that is signed by enough legal voters to meet the requirements of this subsection, the lieutenant governor shall submit the proposed law to a vote of the people at the next regular general election.

(3) The lieutenant governor shall provide the following information from the official canvass of the last regular general election at which a governor was elected to any interested

~~district~~ for all candidates for governor.

Section 2. Section **20A-7-202** is amended to

read:

20A-7-202. Statewide initiative process -- Application procedures -- Time to gather signatures -- Grounds for rejection.

(1) Persons wishing to circulate an initiative petition shall file an application with the lieutenant governor.

(2) The application shall contain:

(a) the name and residence address of at least five sponsors of the initiative petition;

(b) a statement indicating that each of the sponsors:

(i) is a resident of Utah; and

(ii) has 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) a copy of the proposed law[:] ;and

(e) a statement indicating whether or not persons gathering signatures for the petition may be paid for doing so.

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

(4) (a) The sponsors shall qualify the petition for the regular general election ballot no

- 3 -

later than [~~the second regular general election~~] one year after the application is filed.

(b) If the sponsors fail to qualify the petition for that ballot, the sponsors must:

(i) submit a new application;

(ii) obtain new signature sheets; and

(iii) collect signatures again.

(5) The lieutenant governor shall reject the application and not issue circulation sheets if:

(a) the law proposed by the initiative is patently unconstitutional;

(b) the law proposed by the initiative is nonsensical; [~~or~~]

(c) the proposed law could not become law if passed[:] ;or

(d) the law proposed by the initiative is identical or substantially similar to a law proposed by an initiative that was submitted to the county clerks and lieutenant governor for

20A-7-203. Form of initiative petition and signature sheets.

(1) (a) Each proposed initiative petition shall be printed in substantially the following form:

"INITIATIVE PETITION To the Honorable _____, Lieutenant Governor:

We, the undersigned citizens of Utah, respectfully demand that the following proposed law be submitted to the legal voters/Legislature of Utah for their/its approval or rejection at the regular general election/session to be held/ beginning on _____(month\day\year);

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 before the certification of the petition names by the county clerk; and

My residence and post office address are written correctly after my name.["]

NOTICE TO SIGNERS:

Public hearings to discuss this petition were held at: (list dates and locations of public

- 4 -

hearings.)"

(b) The sponsors of an initiative shall attach a copy of the proposed law to each initiative petition.

(2) Each signature sheet shall:

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

(b) be ruled with a horizontal line 3/4 inch from the top, with the space above that line blank for the purpose of binding;

(c) contain the title of the initiative printed below the horizontal line;

(d) contain the word "Warning" printed or typed at the top of each signature sheet under the title of the initiative;

(e) contain, 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 anyone to sign any initiative petition with any other name than his own, or knowingly to sign his name more than once for the same measure, or to

[~~(f)~~ contain horizontally ruled lines, 3/8 inch apart under the "Warning" statement required by this section; and]
 [~~(g)~~] (f) be vertically divided into columns as follows:

(i) the first column shall appear at the extreme left of the sheet, be 5/8 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;

(ii) the next column shall be three inches wide, headed "Registered Voter's Printed Name (must be legible to be counted)";

(iii) the next column shall be three inches wide, headed "Signature of Registered Voter"; and

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

- 5 -

Code".

(3) The final page of each initiative 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 persons who professed to be the persons whose names appear in it, and each of them signed his name on it in my presence;

I believe that each has printed and signed his name and written his post office address and residence correctly, and that each signer is registered to vote in Utah or intends to become registered to vote before the certification of the petition names by the county clerk.

I have not paid or given anything of value to any person who signed this petition to encourage them to sign it.

(Name) (Residence Address) (Date)"

(4) The forms prescribed in this section are not mandatory, and, if substantially followed,

before initiative petitions are circulated.

(1)(a) Before circulating initiative petitions for signature statewide, sponsors of the initiative petition shall hold at least seven public hearings throughout Utah as follows:

(i) one in the Bear River region -- Box Elder, Cache, or Rich County;

(ii) one in the Southwest region -- Beaver, Garfield, Iron, Kane, or Washington County;

(iii) one in the Mountain region -- Summit, Utah, or Wasatch County;

(iv) one in the Central region -- Juab, Millard, Piute, Sanpete, Sevier, or Wayne County;

(v) one in the Southeast region -- Carbon, Emery, Grand, or San Juan County;

(vi) one in the Uintah Basin region -- Daggett, Duchesne, or Uintah County; and

- 6 -

(vii) one in the Wasatch Front region -- Davis, Morgan, Salt Lake, Tooele, or Weber County.

(b) Of the seven meetings, at least two of the meetings must be held in a first or second class county, but not in the same county.

(2) At least three calendar days before the date of the public hearing, the sponsors shall:

(a) provide written notice of the public hearing to:

(i) the lieutenant governor for posting on the state's website; and

(ii) each state senator, state representative, and county commission or county council member who is elected in whole or in part from the region where the public hearing will be held;

and

(b) publish written notice of the public hearing detailing its time, date, and location in at least one newspaper of general circulation in each county in the region where the public hearing will be held.

(3)(a) During the public hearing, the sponsors shall either:

(i) video tape or audio tape the public hearing and, when the hearing is complete, deposit the complete audio or video tape of the meeting with the lieutenant governor; or

(ii) take comprehensive minutes of the public

public.

Section 5. Section **20A-7-207** is amended to read:

20A-7-207. Evaluation by the lieutenant governor.

(1) When each initiative packet is received from a county clerk, the lieutenant governor shall check off from his record the number of each initiative packet filed.

(2) (a) After all of the initiative packets have been received by the lieutenant governor, the lieutenant governor shall:

(i) count the number of the names certified by the county clerks that appear on each verified signature sheet; and

- 7 -

(ii) declare the petition to be sufficient or insufficient by July 6 before the regular general election.

(b) If the total number of certified names from each verified signature sheet equals or exceeds the number of names required by Section 20A-7-201 , the lieutenant governor shall mark upon the front of the petition the word "sufficient."

(c) If the total number of certified names from each verified signature sheet does not equal or exceed the number of names required by Section 20A-7-201 , the lieutenant governor shall mark upon the front of the petition the word "insufficient."

(d) The lieutenant governor shall immediately notify any one of the sponsors of his finding.

(3) [~~(a)~~] Once a petition is declared insufficient, the sponsors may not submit additional signatures to qualify the petition for the pending regular general election.

[~~(b) The petition sponsors may submit additional signatures to qualify the petition for the regular general election following the pending regular general election if:~~]

[~~(i) the petition is declared insufficient; and~~]
 [~~(ii) the pending general election is the first regular general election after the application was filed.~~]

(4) (a) If the lieutenant governor refuses to accept and file any initiative petition that a

- (i) determine whether or not the initiative petition is legally sufficient; and
- (ii) certify its findings to the lieutenant governor by July 30.
- (c) If the supreme court certifies that the initiative petition is legally sufficient, the lieutenant governor shall file it, with a verified copy of the judgment attached to it, as of the date on which it was originally offered for filing in his office.
- (d) If the supreme court determines that any petition filed is not legally sufficient, the supreme court may enjoin the lieutenant governor and all other officers from certifying or

- 8 -

printing the ballot title and numbers of that measure on the official ballot for the next election.

Section 6. Section **20A-7-213** is amended to read:

20A-7-213. Misconduct of electors and officers -- Penalty.

- (1) It is unlawful for any person to:
- (a) sign any name other than his own to any initiative petition;
- (b) knowingly sign his name more than once for the same measure at one election;
- (c) sign an initiative knowing he is not a legal voter; or
- (d) knowingly and willfully violate any provision of this part.
- (2) It is unlawful for any person to sign the verification for an initiative packet knowing that:
- (a) he does not meet the residency requirements of Section 20A-2-105 ;
- (b) he has not witnessed the signatures of those persons whose names appear in the initiative packet; or
- (c) one or more persons whose signatures appear in the initiative packet is either:
- (i) not registered to vote in Utah; or
- (ii) does not intend to become registered to vote in Utah.

- (3) It is unlawful for any person to:*
- (a) pay a person to sign an initiative petition;*
- (b) pay a person to remove the person's signature from an initiative petition;*

guilty of a class A misdemeanor.

[~~(4)~~] (5) The attorney general or the county attorney shall prosecute any violation of this section.

Section 7. Section **20A-11-702** is amended to read:

20A-11-702. Campaign financial reporting of political issues expenditures by corporations -- Financial reporting.

(1) (a) Each corporation that has made political issues expenditures on current or

- 9 -

proposed ballot issues that total at least \$750 during a calendar year shall file a verified financial statement with the lieutenant governor's office on:

(i) January 5, reporting expenditures as of December 31 of the previous year;

(ii) March 1;

(iii) June 1;

[~~(ii)~~] *(iv)* September 15; and

[~~(iii)~~] *(v)* seven days before the regular general election.

(b) The corporation shall report:

(i) a detailed listing of all expenditures made since the last statement; and

(ii) for financial statements filed on September 15 and before the primary and general elections, expenditures as of three days before the required filing date of the financial statement.

(c) The corporation need not file a statement under this section if it made no expenditures during the reporting period.

(2) That statement shall include:

(a) the name and address of each individual, entity, or group of individuals or entities that received a political issues expenditure of more than \$50 from the corporation, and the amount of each political issues expenditure;

(b) the total amount of political issues expenditures disbursed by the corporation; and

(c) a paragraph signed by the corporation's treasurer or chief financial officer verifying the accuracy of the verified financial statement.

Section 8. Section **20A-11-802** is amended to read:

20A-11-802. Political issues committees - Financial reporting.

statewide ballot propositions, to influence an incorporation petition or an incorporation election, or on initiative petitions to be submitted to the Legislature, shall file a verified financial statement with the lieutenant governor's office:

(i) on January 5, reporting contributions and expenditures as of December 31 of the

- 10 -

previous year;

(ii) seven days before the date of an incorporation election, if the political issues committee has received donations or made disbursements to affect an incorporation;

(iii) at least three days before the first public hearing held as required by Section 20A-7-204.1;

(iv) at the time the sponsors submit the verified and certified initiative packets to the county clerk as required by Section 20A-7-206;

[~~(iii)~~] (v) on September 15; and

[~~(iv)~~] (vi) seven days before the regular general election.

(b) The political issues committee shall report:

(i) a detailed listing of all contributions received and expenditures made since the last statement; and

(ii) for financial statements filed on September 15 and before the general election, all contributions and expenditures as of three days before the required filing date of the financial statement.

(c) The political issues committee need not file a statement under this section if it received no contributions and made no expenditures during the reporting period.

(2) (a) That statement shall include:

(i) the name, address, and occupation of any individual that makes a political issues contribution to the reporting political issues committee, and the amount of the political issues contribution;

(ii) the identification of any publicly identified class of individuals that makes a political issues contribution to the reporting political issues committee, and the amount of the political issues contribution;

(iii) the name and address of any political issues

entity that makes a political issues

- 11 -

contribution to the reporting political issues committee, and the amount of the political issues contribution;

(v) for each nonmonetary contribution, the fair market value of the contribution;

(vi) except as provided in Subsection (2)(c), the name and address of each individual, entity, or group of individuals or entities that received a political issues expenditure of more than \$50 from the reporting political issues committee, and the amount of each political issues expenditure;

(vii) for each nonmonetary expenditure, the fair market value of the expenditure;

(viii) the total amount of political issues contributions received and political issues expenditures disbursed by the reporting political issues committee;

(ix) a paragraph signed by the political issues committee's treasurer or chief financial officer verifying that, to the best of the signer's knowledge, the financial statement is accurate; and

(x) a summary page in the form required by the lieutenant governor that identifies:

(A) beginning balance;

(B) total contributions during the period since the last statement;

(C) total contributions to date;

(D) total expenditures during the period since the last statement; and

(E) total expenditures to date.

(b) (i) Political issues contributions received by a political issues committee that have a value of \$50 or less need not be reported individually, but shall be listed on the report as an aggregate total.

(ii) Two or more political issues contributions from the same source that have an aggregate total of more than \$50 may not be reported in the aggregate, but shall be reported separately.

(c) When reporting political issue expenditures made to circulators of initiative petitions, the political issues committee:

(ii) need not report the name or address of the circulator.

Section 9. Severability clause.

(1) Except as provided in Subsection (2), it is the intent of the Legislature that if any provision of this act, or the application of any provision of this act to any person or circumstance, is held invalid, the remainder of this act shall be given effect without the invalid provision or application.

(2) It is the intent of the Legislature that:

(a) Subsection 20A-7-201 (1)(a)(ii) is not severable from Subsection 20A-7-201 (1)(a)(i);

and

(b) Subsection 20A-7-201 (2)(a)(ii) is not severable from Subsection 20A-7-201 (2)(a)(i).

- 13 -

[Bill Documents][Bills Directory]

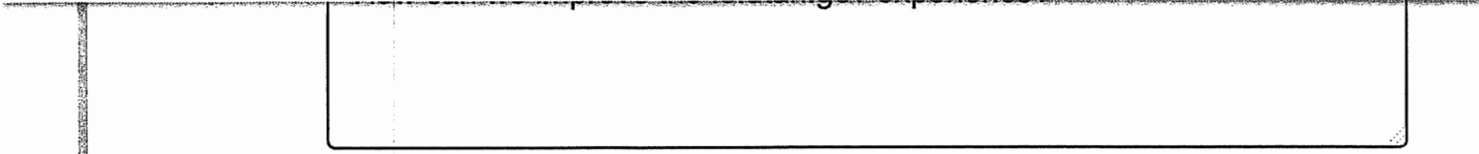
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H.B. 115 Technical Changes to Election Law

Bill Text

Status

Hearings/Debate

Enrolled

H.B. 115

Bill Sponsor:
Rep. Pace,
Lorraine T.

Floor Sponsor:



Sen. Hillyard,
Lyle W.

Printer Friendly

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H.B. 115 Enrolled

Drafting Attorney:
John L. Fellows

TECHNICAL CHANGES TO ELECTION LAW

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Lorraine T. Pace

This act modifies provisions of the Election Code governing prohibited activities at polling places, the duties of boards of canvassers generally and in conjunction with recounts, recount procedures, the duties of the lieutenant governor as chief election officer, and signature requirements for local initiative

Bill Text

Introduced

Enrolled (Currently Displayed)

Related Documents

Information

Last Action: 18 Mar 2002, Governor Signed

~~repeal date of January 1, 2005 for that~~
section. This act makes other technical corrections.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

20A-3-501 , as last amended by Chapter 130, Laws of Utah 1997

20A-4-303 , as last amended by Chapter 21, Laws of Utah 1994

20A-4-401 , as last amended by Chapter 20, Laws of Utah 2001

20A-6-103 (Repealed 01/01/03) , as enacted by Chapter 57, Laws of Utah 1998

20A-7-507 , as last amended by Chapter 165, Laws of Utah 1995

67-1a-2 , as enacted by Chapter 68, Laws of Utah 1984

REPEALS:

67-1a-9 , as enacted by Chapter 68, Laws of Utah 1984

This act affects uncodified material as follows:

REPEALS:

Uncodified Section 2, Chapter 57, Laws of Utah 1998

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

Section 1. Section **20A-3-501** is amended to read:

20A-3-501. Polling place -- Prohibited activities.

(1) As used in this section[;] :

(a) "electioneering" includes any oral, printed, or written attempt to persuade persons to refrain from voting or to vote for or vote against any candidate or issue[;] ;and

(b) "polling place" means the physical place where ballots and absentee ballots are cast and includes the county clerk's office during the period in which absentee ballots may be cast there.

(2) (a) [~~On the day of any election,~~] A person may not, within a polling place or in any public area within 150 feet of the building where a polling place is located[, ~~a person may not~~]:

- (i) do any electioneering;
- (ii) circulate cards or handbills of any kind;
- (iii) solicit signatures to any kind of petition; or
- (iv) engage in any practice that interferes with

the freedom of voters to vote or disrupts the administration of the polling place.

Effective Date: 6

May 2002

**Session Law
Chapter: 133**

Similar Bills

Elections

Government

Operations (State
Issues)

the place and manner of that electioneering to protect the public safety.

(3) (a) A person may not obstruct the doors or entries to a building in which a polling place is located or prevent free access to and from any polling place.

(b) A sheriff, deputy sheriff, or municipal law enforcement officer shall prevent the obstruction of the entrance to a polling place and may arrest any person creating an obstruction.

(4) A person may not:

(a) remove any ballot from the polling place before the closing of the polls, except as provided in Section 20A-4-101 ; or

(b) solicit any voter to show his ballot.

(5) A person may not receive a voted ballot from any voter or deliver an unused ballot to a voter unless that person is an election judge.

(6) Any person who violates any provision of this section is guilty of a class A misdemeanor.

(7) A political subdivision may not prohibit political signs that are located more than 150 feet away from a polling place, but may regulate their placement to protect public safety.

Section 2. Section **20A-4-303** is amended to read:

20A-4-303. Duties of the board of canvassers -- Canvassing the returns.

(1) (a) The board of canvassers shall canvass the election returns by publicly opening the

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returns and determining from them the votes of each voting precinct for:

(i) each person voted for; and

(ii) for and against each ballot proposition voted upon at the election.

(b) The board of canvassers shall, once having begun the canvass, continue until it is completed.

(2) In canvassing returns, the board of canvassers may not:

(a) reject any election returns if the board can determine the number of votes cast for each person from it;

(b) reject any election returns if the election returns:

(i) do not show who administered the oath to the judges of election;

returns that is not essential to determine for whom the votes were cast; [~~and~~] or

(c) reject any returns from any voting precinct that do not conform with the requirements for making, certifying, and returning the returns if those returns are sufficiently explicit to enable the board of canvassers to determine the number of votes cast for each person and for and against each ballot proposition.

(3) (a) If it clearly appears to the election officer and board of canvassers that certain matters are omitted or that clerical mistakes exist in election returns received, they shall transmit the election returns to the election judges for correction.

(b) Upon receipt of the election returns for correction from the board of canvassers, the election judges shall correct the election returns as required by the facts.

(c) The clerk and the board of canvassers may adjourn from day to day to await receipt of corrected election material.

(4) If a recount is conducted as authorized by Section 20A-4-401, the board of canvassers shall canvass the results of that recount as provided in this section and Section 20A-4-401.

Section 3. Section **20A-4-401** is amended to read:

20A-4-401. Recounts -- Procedure.

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(1) (a) (i) For any regular primary, regular general, or municipal general election, or the Western States Presidential primary, when any candidate loses by not more than a total of one vote per voting precinct, the candidate may file a request for a recount [~~with the appropriate election officer~~] within seven days after the canvass[:] with:

(A) the municipal clerk, if the election is a municipal election;

(B) the special district clerk, if the election is a special district election;

(C) the county clerk, for races or ballot propositions voted on entirely within a single county;

or

(D) the lieutenant governor, for statewide races and ballot propositions and for multicounty races and ballot propositions.

(ii) For any municipal primary election, when

canvass.

(b) The election officer shall:

- (i) supervise the recount;
- (ii) recount all ballots cast for that office;
- (iii) reexamine all unopened absentee ballots

to ensure compliance with Chapter 3, Part 3 ,

Voting By Absent or Physically Disabled

Voters ; and

(iv) declare elected the person receiving the highest number of votes on the recount.

(2) (a) Any ten voters who voted in an election when any ballot proposition was on the ballot

may file a request for a recount with the appropriate election officer within seven days of the canvass.

(b) The election officer shall:

- (i) supervise the recount;
- (ii) recount all ballots cast for that ballot

proposition;

- (iii) reexamine all unopened absentee ballots

to ensure compliance with Chapter 3, Part 3 ,

Voting By Absent or Physically Disabled

Voters ; and

(iv) declare the ballot proposition to have "passed" or "failed" based upon the results of the

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recount.

(c) Proponents and opponents of the ballot proposition may designate representatives to witness the recount.

(d) The person or entity requesting the recount shall pay the costs of the recount.

(3) Costs incurred by recount under Subsection (1) may not be assessed against the person requesting the recount.

(4)(a) Upon completion of the recount, the election officer shall immediately convene the board of canvassers.

(b) The board of canvassers shall:

(i) canvass the election returns for the race or ballot proposition that was the subject of the recount; and

(ii) with the assistance of the election officer, prepare and sign the report required by Section 20A-4-304 or Section 20A-4-306.

(c) If the recount is for a statewide or multicounty race or for a statewide ballot proposition, the board of county canvassers shall prepare

~~provided in this subsection (4) is the official result of the race or ballot proposition that is the subject of the recount.~~

Section 4. Section **20A-6-103 (Repealed 01/01/03)** is amended to read:

20A-6-103 (Repealed 01/01/03).

Internet voting pilot project.

Notwithstanding any other provisions of this title, any [~~second-class~~] county may, if selected by the Department of Defense, participate in the Federal Voting Assistance Program pilot project to allow military and voters overseas as defined by Section 20A-3-403 to register to vote and cast

their votes electronically.

Section 5. Section **20A-7-507** is amended to read:

20A-7-507. Evaluation by the local clerk.

(1) When each initiative packet is received from a county clerk, the local clerk shall check off from his record the number of each initiative packet filed.

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(2) (a) After all of the initiative packets have been received by the local clerk, the local clerk shall count the number of the names certified by the county clerk that appear on each verified signature sheet.

(b) If the total number of certified names from each verified signature sheet equals or exceeds the number of names required by Section 20A-7-501, the local clerk shall mark upon the front of the petition the word "sufficient."

(c) If the total number of certified names from each verified signature sheet does not equal or exceed the number of names required by Section 20A-7-501, the local clerk shall mark upon the front of the petition the word "insufficient."

(d) The local clerk shall immediately notify any one of the sponsors of his finding.

(3) If the local clerk finds the total number of certified signatures from each verified signature sheet to be insufficient, any sponsor may file a written demand with the local clerk for a recount of the signatures appearing on the initiative petition in the presence of any sponsor.

(4) (a) Once a petition is declared insufficient,

~~petition sponsors may submit additional~~
signatures to qualify the petition for:
(i) the next regular general election following
the pending regular general election if the
petition was a county initiative petition; or
(ii) the next municipal general election if the
petition was a municipal initiative petition.

[~~(4)~~] (5) (a) If the local clerk refuses to accept and file any initiative petition, any voter may apply to the supreme court for an extraordinary writ to compel him to do so within ten days after the refusal.

(b) If the supreme court determines that the initiative petition is legally sufficient, the local clerk shall file it, with a verified copy of the judgment attached to it, as of the date on which it was originally offered for filing in his office.

(c) If the supreme court determines that any petition filed is not legally sufficient, the supreme court may enjoin the local clerk and all other officers from certifying or printing the ballot

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title and numbers of that measure on the official ballot for the next election.

Section 6. Section **67-1a-2** is amended to read:

67-1a-2. Duties enumerated.

(1) The [~~duties of the~~] lieutenant governor [~~are~~] shall :

[~~(1)~~] (a) [~~to~~] perform [~~such~~] duties [~~as may be~~] delegated by the governor, including [~~but not~~

~~limited to~~] assignments to serve in any of the following capacities:

[~~(a)~~] (i) as the head of any one department, if so qualified, with the advice and consent of the Senate, and , upon [~~such an~~] appointment [~~, the lieutenant governor shall serve~~] at the pleasure of

the governor and without additional compensation;

[~~(b)~~] (ii) as the chairperson of any cabinet group organized by the governor or authorized by law for the purpose of advising the governor or coordinating intergovernmental or interdepartmental policies or programs;

[~~(c)~~] (iii) as liaison between the governor and the state Legislature to coordinate and

~~international governments or any other political entities to coordinate, facilitate, and protect the interests of the state [of Utah];~~

~~[(e)] (v) as personal advisor to the governor, including advice on policies, programs, administrative and personnel matters, and fiscal or budgetary matters; *and*~~

~~[(f)] (vi) as chairperson or member of any temporary or permanent boards, councils, commissions, committees, task forces, or other group appointed by the governor;~~

~~[(2) to] (b) serve on all boards and commissions in lieu of the governor, whenever so designated by the governor;~~

~~[(3) to] (c) serve as the chief election officer of the state *as required by Subsection (2)* [~~As the chief election officer, the lieutenant governor shall not assume the responsibilities assigned to~~~~

~~the county clerks, city recorders, town clerks, or other local election officials by the Legislature, nor become involved with the procurement of ballots. The county clerks, city recorders, town clerks, or other election officials shall determine the listing of the political parties on their local ballots. The~~

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~~lieutenant governor shall perform the following duties:] ;~~

~~[(a) assist county clerks in unifying the election ballot;]~~

~~[(b) prepare election information for the public and make such information available to the news media;]~~

~~[(c) receive and answer election questions and maintain an election file on opinions received from the attorney general;]~~

~~[(d) maintain election returns and statistics;]~~

~~[(e) certify to the governor the names of those persons who have received in any election the highest number of votes for any office, the incumbent of which is commissioned by the governor;]~~

~~[(f) perform any other election duties formerly assigned to the secretary of state;]~~

~~[(4) to] (d) keep custody of the Great Seal of [the state of] Utah; [to]~~

~~(e) keep a register of, and attest, the official acts of the governor; [and to]~~

~~[(5) to] (g) furnish [on request, to any person paying the fees therefor,] a certified copy of all or any part of any law, record, or other instrument filed, deposited, or recorded in the office of the lieutenant governor to any person who requests it and pays the fee .~~

(2)(a) As the chief election officer, the lieutenant governor shall:

(i) exercise general supervisory authority over all elections;

(ii) exercise direct authority over the conduct of elections for federal, state, and multicounty

officers and statewide or multicounty ballot propositions and any recounts involving those races;

(iii) assist county clerks in unifying the election ballot;

(iv) prepare election information for the public and make that information available to the news media;

(v) receive and answer election questions and maintain an election file on opinions received from the attorney general;

(vi) maintain election returns and statistics;

(vii) certify to the governor the names of those persons who have received the highest

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number of votes for any office; and
(viii) perform other election duties as provided in Title 20A, Election Code.

(b) As chief election officer, the lieutenant governor may not assume the responsibilities assigned to the county clerks, city recorders, town clerks, or other local election officials by Title 20A, Election Code.

Section 7. Repealer.

This act repeals:

Section **67-1a-9, County officers -- Report forms -- Records.**

Uncodified Section 2, Chapter 57, Laws of Utah 1998, Repeal Date. This uncodified section affects Section 20A-6-103 .

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Grant v. Gov. Herbert-20180997-SC

1 message

Bart Grant <bgrant17@gmail.com>

Wed, Dec 19, 2018 at 4:02 PM

To: supremecourt@utcourts.gov, suew@utcourts.gov, eweeks@le.utah.gov, tylergreen@agutah.gov, spurser@agutah.gov, Steve Maxfield <me@stevemaxfield.com>, Bart Grant <bgrant17@gmail.com>, Daniel Newby <daniel@helmsmansociety.com>

Please find my memorandum of support, request for hearing, and additional briefing, and certificate of service attached, with exhibits.

Bart Grant

16 attachments **Bart Grant Memorandum-in-Support-of-Petition.pdf**
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