

1 **LOCAL GOVERNMENT DISCLOSURE AND CAMPAIGN**

2 **FINANCE AMENDMENTS**

3 2015 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Jack R. Draxler**

6 Senate Sponsor: Margaret Dayton

7

8 **LONG TITLE**

9 **Committee Note:**

10 The Government Operations Interim Committee recommended this bill.

11 **General Description:**

12 This bill amends provisions related to municipal candidate campaign finance
13 disclosures and personal use expenditures.

14 **Highlighted Provisions:**

15 This bill:

- 16 ▶ defines terms;
- 17 ▶ authorizes a municipality to adopt more stringent campaign finance disclosure
18 requirements and definitions;
- 19 ▶ clarifies campaign finance filing deadlines;
- 20 ▶ authorizes a municipality to adopt more stringent personal use expenditure
21 requirements and definitions;
- 22 ▶ prohibits a municipal candidate from making a personal use expenditure;
- 23 ▶ provides that a municipality may adopt an ordinance to identify personal use
24 expenditure violations and enforce prohibitions; and
- 25 ▶ makes technical and conforming amendments.

26 **Money Appropriated in this Bill:**

27 None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **10-3-208**, as last amended by Laws of Utah 2012, Chapters 190, 190, 230, and 230

33 ENACTS:

34 **10-3-209**, Utah Code Annotated 1953

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

37 Section 1. Section **10-3-208** is amended to read:

38 **10-3-208. Campaign finance disclosure in municipal election.**

39 (1) ~~[As used in]~~ Unless a municipality adopts by ordinance more stringent definitions,
40 the following are defined terms for purposes of this section:

41 ~~[(a) "Reporting date" means:]~~

42 ~~[(i) 10 days before a municipal general election, for a campaign finance statement~~
43 ~~required to be filed no later than seven days before a municipal general election; and]~~

44 ~~[(ii) the day of filing, for a campaign finance statement required to be filed no later~~
45 ~~than 30 days after a municipal primary or general election.]~~

46 (a) "Agent of a candidate" means:

47 (i) a person acting on behalf of a candidate at the direction of the reporting entity;

48 (ii) a person employed by a candidate in the candidate's capacity as a candidate;

49 (iii) the personal campaign committee of a candidate;

50 (iv) a member of the personal campaign committee of a candidate in the member's
51 capacity as a member of the personal campaign committee of the candidate; or

52 (v) a political consultant of a candidate.

53 (b) ~~Ĥ~~→ (i) ←~~Ĥ~~ "Candidate" means a person who:

54 ~~Ĥ~~→ ~~[(i)]~~ (A) ←~~Ĥ~~ files a declaration of candidacy for municipal office; or

55 ~~Ĥ~~→ ~~[(iii)]~~ (B) ←~~Ĥ~~ receives contributions, makes expenditures, or gives consent for
55a any other person to

56 receive contributions or make expenditures to bring about the person's nomination or election
57 to a municipal office.

57a ~~Ĥ~~→ (ii) "Candidate" does not mean a person who files for the office of judge. ←~~Ĥ~~

58 (c) (i) "Contribution" means any of the following when done for political purposes:

59 (A) a gift, subscription, donation, loan, advance, or deposit of money or anything of
60 value given to a candidate;

61 (B) an express, legally enforceable contract, promise, or agreement to make a gift,
62 subscription, donation, unpaid or partially unpaid loan, advance, or deposit of money or
63 anything of value to the candidate;

64 (C) any transfer of funds from another reporting entity to the candidate;

65 (D) compensation paid by any person or reporting entity other than the candidate for
66 personal services provided without charge to the candidate;

67 (E) a loan made by a candidate deposited to the candidate's own campaign; and

68 (F) an in-kind contribution.

69 (ii) "Contribution" does not include:

70 (A) services provided by an individual volunteering a portion or all of the individual's
71 time on behalf of the candidate if the services are provided without compensation by the
72 candidate or any other person;

73 (B) money lent to the candidate by a financial institution in the ordinary course of
74 business; or

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

77 (d) "Coordinated with" means that goods or services provided for the benefit of a
78 candidate are provided:

79 (i) with the candidate's prior knowledge, if the candidate does not object;

80 (ii) by agreement with the candidate;

81 (iii) in coordination with the candidate; or

82 (iv) using official logos, slogans, and similar elements belonging to a candidate.

83 (e) (i) "Expenditure" means any of the following made by a candidate or an agent of
84 the candidate on behalf of the candidate:

85 (A) any disbursement from contributions, receipts, or from an account described in
86 Subsection (3)(a)(i);

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

89 (C) an express, legally enforceable contract, promise, or agreement to make any

90 purchase, payment, donation, distribution, loan, advance, deposit, gift of money, or anything of
91 value for a political purpose;

92 (D) compensation paid by a candidate for personal services rendered by a person
93 without charge to a reporting entity;

94 (E) a transfer of funds between the candidate and a candidate's personal campaign
95 committee as defined in Section 20A-11-101; or

96 (F) goods or services provided by a reporting entity to or for the benefit of the
97 candidate for political purposes at less than fair market value.

98 (ii) "Expenditure" does not include:

99 (A) services provided without compensation by an individual volunteering a portion or
100 all of the individual's time on behalf of a candidate; or

101 (B) money lent to a candidate by a financial institution in the ordinary course of
102 business.

103 (f) "In-kind contribution" means anything of value other than money, that is accepted
104 by or coordinated with a candidate.

105 (g) (i) "Political consultant" means a person who is paid by a candidate, or paid by
106 another person on behalf of and with the knowledge of the candidate, to provide political
107 advice to the candidate.

108 (ii) "Political consultant" includes a circumstance described in Subsection (1)(g)(i),
109 where the person:

110 (A) has already been paid, with money or other consideration;

111 (B) expects to be paid in the future, with money or other consideration; or

112 (C) understands that the person may, in the discretion of the candidate or another
113 person on behalf of and with the knowledge of the candidate, be paid in the future, with money
114 or other consideration.

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

119 (i) "Reporting entity" means:

120 (i) a candidate;

- 121 (ii) a committee appointed by a candidate to act for the candidate;
- 122 ~~H→ [(iii) a judge;~~
- 123 ~~———— (iv) a judge's personal campaign committee as defined in Section 20A-11-101;~~
- 124 ~~———— (v) [(iii) ←H a person who holds an elected municipal office;~~
- 125 ~~H→ [(vi) (iv) ←H a party committee as defined in Section 20A-11-101;~~
- 126 ~~H→ [(vii) (v) ←H a political action committee as defined in Section 20A-11-101;~~
- 127 ~~H→ [(viii) (vi) ←H a political issues committee as defined in Section 20A-11-101;~~
- 128 ~~H→ [(ix) (vii) ←H a corporation as defined in Section 20A-11-101; or~~
- 129 ~~H→ [(x) (viii) ←H a labor organization as defined in Section 20A-11-1501.~~
- 130 [(b)] (j) "Reporting limit" means for each calendar year:
- 131 (i) \$50; or
- 132 (ii) an amount lower than \$50 that is specified in an ordinance of the municipality.
- 133 (2) (a) A municipality may adopt an ordinance establishing campaign finance
- 134 disclosure requirements for a candidate that are more stringent than the requirements provided
- 135 in Subsections (3) and (4).
- 136 (b) The municipality may adopt definitions that are more stringent than those provided
- 137 in Subsection (1).
- 138 (c) If a municipality fails to adopt a campaign finance disclosure ordinance described
- 139 in Subsection (2)(a), a candidate shall comply with financial reporting requirements contained
- 140 in Subsections (3) and (4).
- 141 ~~[(2)] (3) (a) [(†)] Each candidate [for municipal office]:~~
- 142 ~~[(A)] (i) shall deposit a [campaign] contribution in a separate campaign account in a~~
- 143 ~~financial institution; and~~
- 144 ~~[(B)] (ii) may not deposit or mingle any campaign contributions received into a~~
- 145 ~~personal or business account.~~
- 146 ~~[(†)] (b) Each candidate [for municipal office] who is not eliminated at a municipal~~
- 147 ~~primary election shall file with the municipal clerk or recorder a campaign finance statement:~~
- 148 ~~[(A)] (i) no later than seven days before the [date of] day on which the municipal~~
- 149 ~~general election is held; and~~
- 150 ~~[(B)] (ii) no later than 30 days after the [date of] day on which the municipal general~~
- 151 ~~election is held.~~

152 ~~[(iii)]~~ (c) Each candidate for municipal office who is eliminated at a municipal primary
 153 election shall file with the municipal clerk or recorder a campaign finance statement [~~no later~~
 154 ~~than~~] 30 days after the [~~date of~~] day on which the municipal primary election is held.

155 ~~[(b)]~~ (4) Each campaign finance statement under Subsection [~~(2)(a)]~~ (3)(b) or (c) shall:

156 ~~[(i)]~~ (a) except as provided in Subsection [~~(2)(b)(ii)]~~ (4)(b):

157 ~~[(A)]~~ (i) report all of the candidate's itemized and total:

158 ~~[(F) campaign]~~ (A) contributions, including in-kind and other nonmonetary
 159 contributions, received [~~before the close of the reporting date~~] up to and including five days
 160 before the campaign finance statement is due, excluding a contribution previously reported;
 161 and

162 ~~[(H) campaign]~~ (B) expenditures made [~~through the close of the reporting date~~] up to
 163 and including five days before the campaign finance statement is due, excluding an expenditure
 164 previously reported; and

165 ~~[(B)]~~ (ii) identify:

166 ~~[(F)]~~ (A) for each contribution that exceeds the reporting limit, the amount of the
 167 contribution and the name of the [~~donor~~] contributor;

168 ~~[(H)]~~ (B) the aggregate total of all contributions that individually do not exceed the
 169 reporting limit; and

170 ~~[(H)]~~ (C) for each [~~campaign]~~ expenditure, the amount of the expenditure and the
 171 name of the recipient of the expenditure; or

172 ~~[(i)]~~ (b) report the total amount of all [~~campaign]~~ contributions and expenditures if the
 173 candidate receives \$500 or less in [~~campaign]~~ contributions and spends \$500 or less on the
 174 candidate's campaign.

175 ~~[(3) (a) As used in this Subsection (3), "account" means an account in a financial~~
 176 ~~institution:]~~

177 ~~[(i) that is not described in Subsection (2)(a)(i)(A); and]~~

178 ~~[(ii) into which or from which a person who, as a candidate for an office, other than a~~
 179 ~~municipal office for which the person files a declaration of candidacy or federal office, or as a~~
 180 ~~holder of an office, other than a municipal office for which the person files a declaration of~~
 181 ~~candidacy or federal office, deposits a contribution or makes an expenditure.]~~

182 ~~[(b) A municipal office candidate shall include on any campaign finance statement~~

183 ~~filed in accordance with this section:]~~

184 ~~[(i) a contribution deposited in an account:]~~

185 ~~[(A) since the last campaign finance statement was filed; or]~~

186 ~~[(B) that has not been reported under a statute or ordinance that governs the account;~~

187 ~~or]~~

188 ~~[(ii) an expenditure made from an account:]~~

189 ~~[(A) since the last campaign finance statement was filed; or]~~

190 ~~[(B) that has not been reported under a statute or ordinance that governs the account.]~~

191 ~~[(4)]~~ (5) (a) A municipality may, by ordinance:

192 (i) provide a reporting limit lower than \$50;

193 (ii) require greater disclosure of ~~[campaign]~~ contributions ~~[and]~~ or expenditures than is
194 required in this section; and

195 (iii) impose additional penalties on candidates who fail to comply with the applicable
196 requirements beyond those imposed by this section.

197 (b) A candidate ~~[for municipal office]~~ is subject to the provisions of this section and
198 not the provisions of an ordinance adopted by the municipality under Subsection ~~[(4)]~~ (5)(a) if:

199 (i) the municipal ordinance establishes requirements or penalties that differ from those
200 established in this section; and

201 (ii) the municipal clerk or recorder fails to notify the candidate of the provisions of the
202 ordinance as required in Subsection ~~[(5)]~~ (6).

203 ~~[(5)]~~ (6) Each municipal clerk or recorder shall, at the time the candidate for municipal
204 office files a declaration of candidacy, and again 14 days before each municipal general
205 election, notify the candidate in writing of:

206 (a) the provisions of statute or municipal ordinance governing the disclosure of
207 ~~[campaign]~~ contributions and expenditures;

208 (b) the dates when the candidate's campaign finance statement is required to be filed;
209 and

210 (c) the penalties that apply for failure to file a timely campaign finance statement,
211 including the statutory provision that requires removal of the candidate's name from the ballot
212 for failure to file the required campaign finance statement when required.

213 ~~[(6)]~~ (7) Notwithstanding any provision of Title 63G, Chapter 2, Government Records

214 Access and Management Act, the municipal clerk or recorder shall:

215 (a) make each campaign finance statement filed by a candidate available for public
216 inspection and copying no later than one business day after the statement is filed; and

217 (b) make the campaign finance statement filed by a candidate available for public
218 inspection by:

219 (i) (A) posting an electronic copy or the contents of the statement on the municipality's
220 website no later than seven business days after the statement is filed; and

221 (B) verifying that the address of the municipality's website has been provided to the
222 lieutenant governor in order to meet the requirements of Subsection 20A-11-103(5); or

223 (ii) submitting a copy of the statement to the lieutenant governor for posting on the
224 website established by the lieutenant governor under Section 20A-11-103 no later than two
225 business days after the statement is filed.

226 [~~(7)~~] (8) (a) If a candidate fails to file a campaign finance statement before the
227 municipal general election by the deadline specified in Subsection [~~(2)(a)(ii)(A)~~] (3)(b)(i), the
228 municipal clerk or recorder shall inform the appropriate election official who:

229 (i) shall:

230 (A) if practicable, remove the candidate's name from the ballot by blacking out the
231 candidate's name before the ballots are delivered to voters; or

232 (B) if removing the candidate's name from the ballot is not practicable, inform the
233 voters by any practicable method that the candidate has been disqualified and that votes cast for
234 the candidate will not be counted; and

235 (ii) may not count any votes for that candidate.

236 (b) Notwithstanding Subsection [~~(7)~~] (8)(a), a candidate who files a campaign finance
237 statement seven days before a municipal general election is not disqualified if:

238 (i) the statement details accurately and completely the information required under
239 Subsection [~~(2)(b)~~] (4), except for inadvertent omissions or insignificant errors or inaccuracies;
240 and

241 (ii) the omissions, errors, or inaccuracies are corrected in an amended report or in the
242 next scheduled report.

243 [~~(8)~~] (9) A campaign finance statement required under this section is considered filed if
244 it is received in the municipal clerk or recorder's office by 5 p.m. on the date that [~~is it~~] it is

245 due.

246 ~~[(9)]~~ (10) (a) A private party in interest may bring a civil action in district court to
247 enforce the provisions of this section or an ordinance adopted under this section.

248 (b) In a civil action under Subsection ~~[(9)]~~ (10)(a), the court may award costs and
249 attorney fees to the prevailing party.

250 Section 2. Section **10-3-209** is enacted to read:

251 **10-3-209. Personal use expenditure -- Authorized and prohibited uses of**
252 **campaign funds -- Enforcement -- Penalties.**

253 (1) Unless a municipality adopts by ordinance more stringent definitions, the following
254 are defined terms for the purposes of this section:

255 (a) "Candidate" means a person who:

256 (i) files a declaration of candidacy for municipal office; or

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

260 (b) "Officeholder" means a person who is elected to and currently holds a municipal
261 office.

262 (c) (i) "Personal use expenditure" means an expenditure that:

263 (A) is not excluded from the definition of personal use expenditure by Subsection (2)
264 and primarily furthers a personal interest of a candidate or officeholder or a candidate's or
265 officeholder's family, which interest is not connected with the performance of an activity as a
266 candidate or an activity or duty of an officeholder; or

267 (B) would cause the candidate or officeholder to recognize the expenditure as taxable
268 income under federal law.

269 (ii) "Personal use expenditure" includes:

270 (A) a mortgage, rent, utility, or vehicle payment;

271 (B) a household food item or supply;

272 (C) clothing, except for clothing bearing the candidate's name or campaign slogan or
273 logo and that is used in the candidate's campaign;

274 (D) an admission to a sporting, artistic, or recreational event or other form of
275 entertainment;

- 276 (E) dues, fees, or gratuities at a country club, health club, or recreational facility;
277 (F) a salary payment made to a candidate, officeholder, or a person who has not
278 provided a bona fide service to a candidate or officeholder;
279 (G) a vacation;
280 (H) a vehicle expense;
281 (I) a meal expense;
282 (J) a travel expense;
283 (K) a payment of an administrative, civil, or criminal penalty;
284 (L) a satisfaction of a personal debt;
285 (M) a personal service, including the service of an attorney, accountant, physician, or
286 other professional person;
287 (N) a membership fee for a professional or service organization; and
288 (O) a payment in excess of the fair market value of the item or service purchased.
289 (2) As used in this section, "personal use expenditure" does not mean an expenditure
290 made:
291 (a) for a political purpose;
292 (b) for candidacy for public office;
293 (c) to fulfill a duty or activity of an officeholder;
294 (d) for a donation to a registered political party;
295 (e) for a contribution to another candidate's campaign account, including sponsorship
296 of or attendance at an event, the primary purpose of which is to solicit a contribution for
297 another candidate's campaign account;
298 (f) to return all or a portion of a contribution to a contributor;
299 (g) for the following items, if made in connection with the candidacy for public office
300 or an activity or duty of an officeholder:
301 (i) (A) a mileage allowance at the rate established by the Division of Finance under
302 Section [63A-3-107](#); or
303 (B) for motor fuel or special fuel, as defined in Section [59-13-102](#);
304 (ii) a meal expense;
305 (iii) a travel expense, including an expense incurred for airfare or a rental vehicle;
306 (iv) a payment for a service provided by an attorney or accountant;

- 307 (v) a tuition payment or registration fee for participation in a meeting or conference;
308 (vi) a gift;
309 (vii) a payment for the following items in connection with an office space:
310 (A) rent;
311 (B) utilities;
312 (C) a supply; or
313 (D) furnishing;
314 (viii) a booth at a meeting or event; or
315 (ix) educational material;
316 (h) to purchase or mail informational material, a survey, or a greeting card;
317 (i) for a donation to a charitable organization, as defined by Section 13-22-2, including
318 admission to or sponsorship of an event, the primary purpose of which is charitable solicitation,
319 as defined in Section 13-22-2;
320 (j) to repay a loan a candidate makes from the candidate's personal account to the
321 candidate's campaign account;
322 (k) to pay membership dues to a national organization whose primary purpose is to
323 address general public policy;
324 (l) for admission to or sponsorship of an event, the primary purpose of which is to
325 promote the social, educational, or economic well-being of the state or the candidate's or
326 officeholder's community; or
327 (m) for one or more guests of an officeholder or candidate to attend an event, meeting,
328 or conference described in this Subsection (2).
329 (3) (a) A municipality may adopt an ordinance prohibiting a personal use expenditure
330 by a candidate with requirements that are more stringent than the requirements provided in
331 Subsection (4).
332 (b) The municipality may adopt definitions that are more stringent than those provided
333 in Subsection (1) or (2).
334 (c) If a municipality fails to adopt a personal use expenditure ordinance described in
335 Subsection (3)(a), a candidate shall comply with the requirements contained in Subsection (4).
336 (4) A candidate or an officeholder may not use money deposited into a campaign
337 account for:

- 338 (a) a personal use expenditure; or
339 (b) an expenditure prohibited by law.
340 (5) A municipality may enforce this section by adopting an ordinance:
341 (a) to provide for the evaluation of a campaign finance statement to identify a personal
342 use expenditure; and
343 (b) to commence informal adjudicative proceedings if, after an evaluation described in
344 Subsection (5)(a), there is probable cause to believe that a candidate or officeholder has made a
345 personal use expenditure.
346 (6) If, in accordance with the proceedings described in Subsection (5)(b) established in
347 municipal ordinance, a municipality determines that a candidate or officeholder has made a
348 personal use expenditure, the municipality:
349 (a) may require the candidate or officeholder to:
350 (i) remit an administrative penalty of an amount equal to 50% of the personal use
351 expenditure to the municipality; and
352 (ii) deposit the amount of the personal use expenditure into the campaign account from
353 which the personal use expenditure was disbursed; and
354 (b) shall deposit the money received under Subsection (6)(a)(i) into the municipal
355 general fund.

Legislative Review Note
as of 11-20-14 11:41 AM

Office of Legislative Research and General Counsel