

1 **POLITICAL ACTIVITIES OF PUBLIC ENTITIES ACT**

2 **AMENDMENTS**

3 2019 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Kim F. Coleman**

6 Senate Sponsor: _____

7

8 **LONG TITLE**

9 **General Description:**

10 This bill amends provisions of the Political Activities of Public Entities Act.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms and modifies and deletes definitions;
- 14 ▶ prohibits a public official or an employee of a public entity from using public funds,
- 15 public resources, public email, or public distribution lists for certain politically-
- 16 related purposes;
- 17 ▶ provides criminal or civil penalties for violating the provisions of this bill;
- 18 ▶ modifies exceptions to the requirements of this bill; and
- 19 ▶ makes technical and conforming changes.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **20A-11-1202**, as last amended by Laws of Utah 2017, Chapter 68

27 **20A-11-1203**, as last amended by Laws of Utah 2015, Chapter 435



28 20A-11-1204, as last amended by Laws of Utah 2015, Chapter 435
29 20A-11-1205, as last amended by Laws of Utah 2018, Chapter 44
30 20A-11-1206, as enacted by Laws of Utah 2015, Chapter 435



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

33 Section 1. Section 20A-11-1202 is amended to read:

34 **20A-11-1202. Definitions.**

35 As used in this part:

36 (1) "Applicable election officer" means:

37 (a) a county clerk, if the email relates only to a local election; or

38 (b) the lieutenant governor, if the email relates to an election other than a local
39 election.

40 (2) "Ballot proposition" means constitutional amendments, initiatives, referenda,
41 judicial retention questions, opinion questions, bond approvals, or other questions submitted to
42 the voters for their approval or rejection.

43 (3) "Campaign contribution" means any of the following when done for a political
44 purpose or to advocate for or against a ballot proposition:

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

47 (b) an express, legally enforceable contract, promise, or agreement to make a gift,
48 subscription, donation, unpaid or partially unpaid loan, advance, deposit of money, or anything
49 of value to a filing entity;

50 (c) any transfer of funds from another reporting entity to a filing entity;

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

53 (e) remuneration from:

54 (i) any organization or the organization's directly affiliated organization that has a
55 registered lobbyist; or

56 (ii) any agency or subdivision of the state, including a school district; or

57 (f) an in-kind contribution.

58 (4) (a) "Commercial interlocal cooperation agency" means an interlocal cooperation

59 agency that receives its revenues from conduct of its commercial operations.

60 (b) "Commercial interlocal cooperation agency" does not mean an interlocal
61 cooperation agency that receives some or all of its revenues from:

62 (i) government appropriations;

63 (ii) taxes;

64 (iii) government fees imposed for regulatory or revenue raising purposes; or

65 (iv) interest earned on public funds or other returns on investment of public funds.

66 (5) "Expenditure" means:

67 (a) a purchase, payment, donation, distribution, loan, advance, deposit, gift of money,
68 or anything of value;

69 (b) an express, legally enforceable contract, promise, or agreement to make any
70 purchase, payment, donation, distribution, loan, advance, deposit, gift of money, or anything of
71 value;

72 (c) a transfer of funds between a public entity and a candidate's personal campaign
73 committee;

74 (d) a transfer of funds between a public entity and a political issues committee; or

75 (e) goods or services provided to or for the benefit of a candidate, a candidate's
76 personal campaign committee, or a political issues committee for a political [~~purposes~~] purpose
77 at less than fair market value.

78 (6) "Filing entity" means the same as that term is defined in Section 20A-11-101.

79 (7) "Governmental interlocal cooperation agency" means an interlocal cooperation
80 agency that receives some or all of its revenues from:

81 (a) government appropriations;

82 (b) taxes;

83 (c) government fees imposed for regulatory or revenue raising purposes; or

84 (d) interest earned on public funds or other returns on investment of public funds.

85 [~~(8) (a) "Influence" means to campaign or advocate for or against a ballot proposition.]~~

86 [~~(b) "Influence" does not mean providing a brief statement about a public entity's
87 position on a ballot proposition and the reason for that position.]~~

88 [~~(9)~~] (8) "Interlocal cooperation agency" means an entity created by interlocal
89 agreement under the authority of Title 11, Chapter 13, Interlocal Cooperation Act.

90 ~~[(10)]~~ (9) "Local district" means an entity under Title 17B, Limited Purpose Local
91 Government Entities - Local Districts, and includes a special service district under Title 17D,
92 Chapter 1, Special Service District Act.

93 ~~[(11)]~~ (10) "Political ~~[purposes]~~ purpose" means an act done with the intent or in a way
94 to influence or intend to influence, directly or indirectly, any person to refrain from voting or to
95 vote for or against any:

96 (a) candidate for public office at any caucus, political convention, primary, or election;
97 or

98 (b) judge standing for retention at any election.

99 ~~[(12)]~~ (11) (a) "Public entity" includes the state, each state agency, each county,
100 municipality, school district, local district, governmental interlocal cooperation agency, and
101 each administrative subunit of each of them.

102 (b) "Public entity" does not include a commercial interlocal cooperation agency.

103 (c) "Public entity" includes local health departments created under Title 26, Chapter 1,
104 Department of Health Organization.

105 ~~[(13)]~~ (12) (a) "Public funds" means any money received by a public entity from
106 appropriations, taxes, fees, interest, or other returns on investment.

107 (b) "Public funds" does not include money donated to a public entity by a person or
108 entity.

109 ~~[(14)]~~ (13) (a) "Public official" means an elected or appointed member of government
110 with authority to make or determine public policy.

111 (b) "Public official" includes the person or group that:

112 (i) has supervisory authority over the personnel and affairs of a public entity; and

113 (ii) approves the expenditure of funds for the public entity.

114 (14) "Public resources" means resources owned or paid for by a public entity, including
115 computer equipment, office equipment, office space, consumable resources, or paid employee
116 time.

117 (15) "Reporting entity" means the same as that term is defined in Section [20A-11-101](#).

118 (16) (a) "State agency" means each department, commission, board, council, agency,
119 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,
120 unit, bureau, panel, or other administrative unit of the state.

121 (b) "State agency" includes the legislative branch, the Board of Regents, the
 122 institutional councils of each higher education institution, and each higher education
 123 institution.

124 Section 2. Section **20A-11-1203** is amended to read:

125 **20A-11-1203. Public entity prohibited from expending public funds or using**
 126 **public resources on certain electoral matters.**

127 (1) Unless specifically required by law, and except as provided in Section
 128 [20A-11-1206](#), a public entity, a public official, or an employee of a public entity may not make
 129 an expenditure from public funds [~~for political purposes or to influence a ballot proposition.~~] or
 130 use a public resource:

131 (a) for a political purpose; or

132 (b) to influence, directly or indirectly, an individual to:

133 (i) sign or refuse to sign a petition for an initiative or referendum;

134 (ii) remove or not remove an individual's signature from a petition for an initiative or
 135 referendum; or

136 (iii) vote for or against a ballot proposition.

137 (2) An individual does not violate this section if the lieutenant governor finds that the
 138 individual inadvertently used the public resource in a manner prohibited by this section.

139 [~~(2)~~] (3) A violation of this section does not invalidate an otherwise valid election.

140 Section 3. Section **20A-11-1204** is amended to read:

141 **20A-11-1204. Criminal penalty.**

142 [~~Each~~] A public official or an employee of a public entity who violates Section
 143 [20A-11-1203](#) is guilty of a class B misdemeanor.

144 Section 4. Section **20A-11-1205** is amended to read:

145 **20A-11-1205. Use of public email or distribution lists for a political purpose.**

146 (1) Except as provided in Subsection (5), a person may not send an email using the
 147 email of a public entity, or use a public entity's email distribution list, phone number
 148 distribution list, or text distribution list:

149 (a) for a political purpose;

150 [~~(b) to advocate for or against a ballot proposition; or~~]

151 [~~(c)~~] (b) to solicit a campaign contribution[-]; or

- 152 (c) to influence, directly or indirectly, an individual to:
- 153 (i) sign or refuse to sign a petition for an initiative or referendum;
- 154 (ii) remove or not remove an individual's signature from a petition for an initiative or
- 155 referendum; or
- 156 (iii) vote for or against a ballot proposition.

157 (2) The applicable election officer shall impose a civil fine against a person who
158 violates Subsection (1) as follows:

- 159 (a) up to \$250 for a first violation; and
- 160 (b) except as provided in Subsection (3), for each subsequent violation committed after
- 161 any applicable election officer imposes a fine against the person for a first violation, \$1,000
- 162 multiplied by the number of violations committed by the person.

163 (3) The applicable election officer shall consider a violation of this section as a first
164 violation if the violation is committed more than seven years after the day on which the person
165 last committed a violation of this section.

166 (4) For purposes of this section, one violation means one act of sending an email,
167 regardless of the number of recipients of the email.

168 (5) A person does not violate this section if the lieutenant governor finds that the email
169 described in Subsection (1) was inadvertently sent by the person described in Subsection (1),
170 using the email of a public entity.

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

172 (7) An email sent in violation of Subsection (1), as determined by the records officer,
173 constitutes a record, as defined in Section 63G-2-103, that is subject to the provisions of Title
174 63G, Chapter 2, Government Records Access and Management Act, notwithstanding any
175 applicability of Subsection 63G-2-103(22)(b)(i).

176 Section 5. Section 20A-11-1206 is amended to read:

177 **20A-11-1206. Exclusions.**

178 (1) Nothing in this chapter prohibits a public official or an employee of a public entity
179 from speaking, campaigning, contributing personal money, or otherwise exercising the public
180 official's individual First Amendment rights for a political [purposes] purpose if the public
181 official or employee exercises those rights using money or resources that are not public funds
182 or public resources.

183 (2) Nothing in this chapter prohibits a public entity from providing factual information
184 about a ballot proposition to the public~~[, so long as the information grants equal access to both~~
185 ~~the opponents and proponents of the ballot proposition]~~ to comply with the requirements of
186 Title 20A, Chapter 7, Issues Submitted to the Voters, Title 59, Revenue and Taxation, or any
187 other requirement of law.

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

190 (4) Nothing in this chapter prohibits an elected official from campaigning or
191 advocating for or against a ballot proposition using the public official's personal or campaign
192 funds or resources.