

1 **WESTERN STATES PRESIDENTIAL PRIMARY**

2 1999 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Raymond W. Short**

5 AN ACT RELATING TO ELECTIONS; ESTABLISHING A WESTERN STATES
6 PRESIDENTIAL PRIMARY FOR UTAH; DEFINING PARTICIPATION REQUIREMENTS
7 AND FILING FEES; ESTABLISHING PROCESSES FOR IDENTIFYING, DECLARING,
8 RECORDING, AND CHANGING PARTY AFFILIATION; PROVIDING DIRECTION ABOUT
9 BALLOT FORM AND ADMINISTRATION OF THE ELECTION; AND MAKING
10 TECHNICAL AND CONFORMING CHANGES.

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

12 AMENDS:

13 **11-14-4**, as last amended by Chapter 261, Laws of Utah 1996

14 **20A-1-204**, as enacted by Chapter 325, Laws of Utah 1996

15 **20A-9-201**, as last amended by Chapters 27 and 40, Laws of Utah 1998

16 ENACTS:

17 **20A-9-202.5**, Utah Code Annotated 1953

18 **20A-9-801**, Utah Code Annotated 1953

19 **20A-9-802**, Utah Code Annotated 1953

20 **20A-9-803**, Utah Code Annotated 1953

21 **20A-9-804**, Utah Code Annotated 1953

22 **20A-9-805**, Utah Code Annotated 1953

23 **20A-9-806**, Utah Code Annotated 1953

24 **20A-9-807**, Utah Code Annotated 1953

25 **20A-9-808**, Utah Code Annotated 1953

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

27 Section 1. Section **11-14-4** is amended to read:

28 **11-14-4. Election procedure -- Time for election -- Equipment -- Election officials --**
29 **Combining precincts.**

30 (1) (a) The governing body shall:

31 (i) designate the voting places to be used;

32 (ii) fix the hours during which the polls are to be open, which, if the election is a special
33 election, shall be those provided by law for the conduct of regular general elections;

34 (iii) cause to be provided the necessary ballot boxes, ballots, paraphernalia, equipment, and
35 supplies needed for the election as determined by the governing body; and

36 (iv) unless the election officials to serve at each voting place are otherwise appointed under
37 the provisions of general law, appoint three election officials, who shall be qualified electors of
38 the municipality or other entity calling the election, to serve at each voting place.

39 (b) The governing body may appoint one or more alternate election officials to so serve
40 in case of the absence for any cause of the designated election officials.

41 (2) (a) (i) A bond election may be held and the proposition for the issuance of bonds may
42 be submitted at any general, primary, or other election held in the municipality or other entity
43 calling the bond election, or at a special election called for the purpose.

44 (ii) A bond election may not be held, nor a proposition for issuance of bonds be submitted,
45 at the Western States Presidential Primary election established in Title 20A, Chapter 9, Part 8,
46 Western States Presidential Primary.

47 (b) A special election may, but need not, be held on the same day as any other election.

48 (c) Where a bond election is being held on the same day as any other election held in the
49 municipality or entity calling the bond election or in some part of that municipality or entity, the
50 election officials serving for the other election may also serve as election officials for the bond
51 election.

52 (3) (a) Voting precincts may be combined for purposes of bond elections.

53 (b) The governing body may designate whatever voting places that it considers best suited,
54 so long as no voter is required to vote outside the county in which he resides.

55 Section 2. Section **20A-1-204** is amended to read:

56 **20A-1-204. Date of special election -- Legal effect.**

57 (1) (a) The governor, Legislature, or the legislative body of a local political subdivision
58 calling a statewide special election or local special election under Section 20A-1-203 shall

59 schedule the special election to be held on:

- 60 (i) the first Tuesday after the first Monday in February;
- 61 (ii) the first Tuesday after the first Monday in May;
- 62 (iii) the fourth Tuesday in June in even-numbered years;
- 63 (iv) the first Tuesday after the first Monday in August; or
- 64 (v) the first Tuesday after the first Monday in November.

65 (b) Except as provided in Subsection (1)(c), the governor, Legislature, or the legislative
66 body of a local political subdivision calling a statewide special election or local special election
67 under Section 20A-1-203 may not schedule a special election to be held on any other date.

68 (c) (i) Notwithstanding the requirements of Subsection (1)(b), the legislative body of a
69 local political subdivision may call a local special election on a date other than those specified in
70 this section if the legislative body:

71 [(i)] (A) determines and declares that there is an emergency requiring that a special
72 election be held on a date other than the ones authorized in statute;

73 [(ii)] (B) identifies specifically the nature of the emergency and the reasons for holding the
74 special election on that other date; and

75 [(iii)] (C) votes unanimously to hold the special election on that other date.

76 (ii) The legislative body of a local political subdivision may not call a local special election
77 for the date established in Title 20A, Chapter 9, Part 8, Western States Presidential Primary, for
78 Utah's Western States Presidential Primary.

79 (d) Nothing in this section prohibits:

80 (i) the governor or Legislature from submitting a matter to the voters at the regular general
81 election if authorized by law; or

82 (ii) a local government from submitting a matter to the voters at the regular municipal
83 election if authorized by law.

84 (2) If two or more entities hold a special election within a county on the same day, those
85 entities shall, to the extent practicable, coordinate:

86 (a) polling places;

87 (b) ballots;

88 (c) election officials; and

89 (d) other administrative and procedural matters connected with the election.

90 Section 3. Section **20A-9-201** is amended to read:

91 **20A-9-201. Declarations of candidacy -- Candidacy for more than one office or of**
92 **more than one political party prohibited -- General filing and form requirements.**

93 (1) Before filing a declaration of candidacy for election to any office, a person shall:

94 (a) be a United States citizen; and

95 (b) meet the legal requirements of that office.

96 (2) A person may not:

97 (a) file a declaration of candidacy for, or be a candidate for, more than one office in Utah

98 during any election year; or

99 (b) appear on the ballot as the candidate of more than one political party.

100 (3) If the final date established for filing a declaration of candidacy is a Saturday or
101 Sunday, the filing time shall be extended until 5 p.m. on the following Monday.

102 (4) (a) (i) [~~Before~~] Except for presidential candidates, before the filing officer may accept
103 any declaration of candidacy, the filing officer shall:

104 (A) read to the prospective candidate the constitutional and statutory qualification
105 requirements for the office that the candidate is seeking; and

106 (B) require the candidate to state whether or not the candidate meets those requirements.

107 (ii) Before accepting a declaration of candidacy for the office of county attorney, the
108 county clerk shall ensure that the person filing that declaration of candidacy is:

109 (A) a United States citizen;

110 (B) an attorney licensed to practice law in Utah who is an active member in good standing
111 of the Utah State Bar;

112 (C) a registered voter in the county in which he is seeking office; and

113 (D) a current resident of the county in which he is seeking office and either has been a
114 resident of that county for at least one year or was appointed and is currently serving as county
115 attorney and became a resident of the county within 30 days after appointment to the office.

116 (iii) Before accepting a declaration of candidacy for the office of district attorney, the
117 county clerk shall ensure that, as of the date of the election, the person filing that declaration of
118 candidacy is:

119 (A) a United States citizen;

120 (B) an attorney licensed to practice law in Utah who is an active member in good standing

121 of the Utah State Bar;

122 (C) a registered voter in the prosecution district in which he is seeking office; and

123 (D) a current resident of the prosecution district in which he is seeking office and either

124 will have been a resident of that prosecution district for at least one year as of the date of the

125 election or was appointed and is currently serving as district attorney and became a resident of the

126 prosecution district within 30 days after receiving appointment to the office.

127 (b) If the prospective candidate states that he does not meet the qualification requirements
128 for the office, the filing officer may not accept the prospective candidate's declaration of candidacy.

129 (c) If the candidate states that he meets the requirements of candidacy, the filing officer
130 shall:

131 (i) accept the candidate's declaration of candidacy; and

132 (ii) if the candidate has filed for a partisan office, provide a certified copy of the
133 declaration of candidacy to the chair of the county or state political party of which the candidate
134 is a member.

135 (5) [The] Except for presidential candidates, the form of the declaration of candidacy shall
136 be substantially as follows:

137 "State of Utah, County of _____

138 I, _____, declare my intention of becoming a candidate for the office of _____
139 as a candidate for the _____ party. I do solemnly swear that: I can qualify to hold that office, both
140 legally and constitutionally, if selected; I reside at _____ in the City or Town of _____,
141 Utah, Zip Code _____ Phone No. _____; I will not knowingly violate any law governing campaigns
142 and elections; and I will qualify for the office if elected to it. The mailing address that I designate
143 for receiving official election notices is _____.

144 _____

145 Subscribed and sworn before me this _____ day of _____, 19__.

146 _____

147 Notary Public (or other officer qualified to administer oath.)"

148 (6) (a) [The] Except for presidential candidates, the fee for filing a declaration of
149 candidacy is:

150 (i) \$25 for candidates for the local school district board; and

151 (ii) 1/8 of 1% of the total salary for the full term of office legally paid to the person holding

152 the office, but not less than \$5, for all other federal, state, and county offices.

153 (b) [The] Except for presidential candidates, the filing officer shall refund the filing fee
154 to any candidate:

155 (i) who is disqualified; or

156 (ii) who the filing officer determines has filed improperly.

157 (c) (i) The county clerk shall immediately pay to the county treasurer all fees received from
158 candidates.

159 (ii) The lieutenant governor shall:

160 (A) apportion to and pay to the county treasurers of the various counties all fees received
161 for filing of nomination certificates or acceptances; and

162 (B) ensure that each county receives that proportion of the total amount paid to the
163 lieutenant governor from the congressional district that the total vote of that county for all
164 candidates for representative in Congress bears to the total vote of all counties within the
165 congressional district for all candidates for representative in Congress.

166 (d) (i) Each person who is unable to pay the filing fee may file a declaration of candidacy
167 without payment upon a prima facie showing of impecuniosity as evidenced by an affidavit of
168 impecuniosity filed with the filing officer.

169 (ii) The filing officer shall ensure that the affidavit of impecuniosity is printed in
170 substantially the following form:

171 "Affidavit of Impecuniosity

172 Individual Name _____ Address _____

173 Phone Number _____

174 I, _____ (name), do solemnly [swear] [affirm] that, owing to my poverty,
175 I am unable to pay the filing fee required by law.

176 Date _____ Signature _____

177 Affiant

178 Subscribed and sworn to before me on _____ (date)

179 _____
180 (signature)

181 Name and Title of Officer Authorized to Administer Oath:"

182 (7) Any person who fails to file a declaration of candidacy or certificate of nomination

183 within the time provided in this chapter is ineligible for nomination to office.

184 Section 4. Section **20A-9-202.5** is enacted to read:

185 **20A-9-202.5. Declaration of candidacy -- Western States Presidential Primary.**

186 (1) As used in this section:

187 (a) "Presidential candidate" means a person seeking nomination for President of the United
188 States from a Utah registered political party.

189 (b) "Utah registered political party" means a political party that has complied with the
190 requirements of Title 20A, Chapter 8, Political Party Formation and Procedures, to become a
191 political party officially recognized by the state.

192 (2) Each presidential candidate, or the candidate's designated agent, shall file a declaration
193 of candidacy with the lieutenant governor as provided in Section 20A-9-803.

194 Section 5. Section **20A-9-801** is enacted to read:

195 **Part 8. Western States Presidential Primary**

196 **20A-9-801. Definitions.**

197 As used in this part, "registered political party" means a political party that has complied
198 with the requirements of Title 20A, Chapter 8, Political Party Formation and Procedures, to
199 become a political party officially recognized by the state.

200 Section 6. Section **20A-9-802** is enacted to read:

201 **20A-9-802. Western States Presidential Primary established -- Participating political**
202 **parties bound by results -- Other ballot issues prohibited.**

203 (1) (a) There is established a Western States Presidential Primary election to be held the
204 first Friday after the first Monday in March in the year in which a presidential election will be held.

205 (b) Except as otherwise specifically provided in this chapter, county clerks shall administer
206 the Western States Presidential Primary according to the provisions of Title 20A, Election Code,
207 including:

208 (i) Title 20A, Chapter 1, General Provisions;

209 (ii) Title 20A, Chapter 2, Voter Registration;

210 (iii) Title 20A, Chapter 3, Voting;

211 (iv) Title 20A, Chapter 4, Election Returns and Election Contests;

212 (v) Title 20A, Chapter 5, Election Administration; and

213 (vi) Title 20A, Chapter 6, Ballot Form.

214 (c) (i) The county clerks shall ensure that the ballot voted by the voters at the Western
215 States Presidential Primary contains only the names of candidates for President of the United
216 States who have qualified as provided in this part.

217 (ii) The county clerks may not present any other items to the voters to be voted upon at this
218 election.

219 (2) Registered political parties, and candidates for President of the United States who are
220 affiliated with a registered political party, may participate in the Western States Presidential
221 Primary established by this part.

222 (3) As a condition for using the state's election system, each registered political party
223 wishing to participate in Utah's Western States Presidential Primary shall:

224 (a) declare their intent to participate in the Western States Presidential Primary;

225 (b) identify one or more registered political parties whose members may vote for the
226 registered political party's candidates and whether or not persons identified as unaffiliated with a
227 political party may vote for the registered political party's candidates; and

228 (c) certify that information to the lieutenant governor no later than 5:00 p.m. on the June
229 30 of the year before the year in which the presidential primary will be held.

230 Section 7. Section **20A-9-803** is enacted to read:

231 **20A-9-803. Declaration of candidacy -- Filing fee -- Form.**

232 (1) (a) Candidates for President of the United States who are affiliated with a registered
233 political party in Utah that has elected to participate in Utah's Western States Presidential Primary
234 and who wish to participate in the primary shall:

235 (i) except as provided in Subsection (1)(b), file a declaration of candidacy, in person or
236 via a designated agent, with the lieutenant governor between July 1 of the year before the primary
237 election will be held and 5 p.m. on January 15 of the year in which the primary election will be
238 held;

239 (ii) identify the registered political party whose nomination the candidate is seeking;

240 (iii) provide a letter from the registered political party certifying that the candidate may
241 participate as a candidate for that party in that party's presidential primary election; and

242 (iv) pay the filing fee of \$500.

243 (b) If January 15 is a Saturday or Sunday, the filing time shall be extended until 5 p.m.
244 on the following Monday.

245 (2) The lieutenant governor shall develop a declaration of candidacy form for presidential
246 candidates participating in the primary.

247 Section 8. Section **20A-9-804** is enacted to read:

248 **20A-9-804. Closed primary -- Determining party affiliation -- Changing party**
249 **affiliation.**

250 (1) If a registered political party has restricted voting for its presidential candidates as
251 authorized by Subsection 20A-9-802(3)(a), the lieutenant governor shall direct the county clerks
252 and other election officials to allow only those voters meeting the registered political party's
253 criteria to vote for that party's presidential candidates.

254 (2) (a) For each person who registers to vote on or after July 1, 1999, the county clerk
255 shall:

256 (i) record the party affiliation designated by the voter on the voter registration form as the
257 voter's party affiliation; or

258 (ii) if no political party affiliation is designated by the voter on the voter registration form,
259 record the voter's party affiliation as "unaffiliated."

260 (b) (i) Any registered voter may designate or change the voter's political party affiliation
261 by complying with the procedures and requirements of this Subsection (2)(b).

262 (ii) A registered voter may change the voter's political party affiliation by filing a signed
263 form with the county clerk that identifies the registered political party with which the voter chooses
264 to affiliate.

265 (iii) Before changing the voter's party registration, the county clerk shall verify the
266 signature on the form by comparing it to the voter's signature on an existing record.

267 (iv) The lieutenant governor, after consultation with the county clerks, shall develop a
268 form for designating or changing a voter's party affiliation.

269 Section 9. Section **20A-9-805** is enacted to read:

270 **20A-9-805. Ballots.**

271 (1) The lieutenant governor, together with county clerks, suppliers of election materials,
272 and representatives of registered political parties, shall:

273 (a) develop paper ballots, ballot labels, and ballot cards to be used in Utah's Western States
274 Presidential Primary;

275 (b) ensure that the paper ballots, ballot labels, and ballot cards comply generally with the

276 requirements of Title 20A, Chapter 6, Part 1, General Requirements for All Ballots; and

277 (c) provide voting booths, election records and supplies, and ballot boxes for each voting
278 precinct as required by Section 20A-5-403.

279 (2) (a) Notwithstanding the requirements of Subsections (1)(b) and (c), Title 20A, Chapter
280 6, Part 1, General Requirements for All Ballots, and Section 20A-5-403, the lieutenant governor,
281 together with county clerks, suppliers of election materials, and representatives of registered
282 political parties shall ensure that the paper ballots, ballot labels, ballot cards, and voting booths,
283 election records and supplies, and ballot boxes:

284 (i) facilitate the distribution, voting, and tallying of ballots in a closed primary;

285 (ii) simplify the task of election judges, particularly in determining a voter's party
286 affiliation;

287 (iii) minimize the possibility of spoiled ballots due to voter confusion; and

288 (iv) protect against fraud.

289 (b) To accomplish the requirements of this Subsection (2), the lieutenant governor, county
290 clerks, suppliers of election materials, and representatives of registered political parties shall:

291 (i) mark, prepunch, or otherwise identify ballot cards as being for a particular registered
292 political party; and

293 (ii) instruct persons counting the ballots to count only those votes for candidates from the
294 registered political party whose ballot the voter received.

295 (c) To accomplish the requirements of this Subsection (2), the lieutenant governor, county
296 clerks, suppliers of election materials, and representatives of registered political parties may:

297 (i) use different colored ballot cards for each registered political party;

298 (ii) place ballot labels for each registered political party in different voting booths and
299 direct voters to the particular voting booth for the political party whose ballot they are voting; or

300 (iii) consider other means of accomplishing the objectives outlined in Subsection (2)(a).

301 Section 10. Section **20A-9-806** is enacted to read:

302 **20A-9-806. Combining voting precincts.**

303 (1) The county legislative body may combine voting precincts for Utah's Western States
304 Presidential Primary by following the procedures and requirements of Section 20A-5-303.

305 (2) The county legislative body may not combine voting precincts if the voting precincts
306 are in different congressional districts as established by Section 20A-13-102.

307 Section 11. Section **20A-9-807** is enacted to read:

308 **20A-9-807. Voting.**

309 (1) (a) Any registered voter desiring to vote at the Western States Presidential Primary
310 shall give his name, the name of the registered political party whose ballot the voter wishes to vote,
311 and, if requested, his residence, to one of the election judges.

312 (b) If an election judge does not know the person requesting a ballot and has reason to
313 doubt that person's identity, the judge shall request identification or have the voter identified by
314 a known registered voter of the district.

315 (c) If the voter is challenged as provided in Section 20A-3-202, the judge shall provide a
316 ballot to the voter if the voter takes an oath that the grounds of the challenge are false.

317 (2) (a) (i) When the voter is properly identified, the election judge in charge of the official
318 register shall check the official register to determine:

319 (A) whether or not the person is registered to vote; and

320 (B) whether or not the person's party affiliation designation in the official register allows
321 the voter to vote the ballot that the voter requested.

322 (ii) If the official register does not affirmatively identify the voter as being affiliated with
323 a registered political party or as being "unaffiliated," the voter shall be considered to be
324 "unaffiliated."

325 (b) (i) If the voter's name is not found on the official register and, if it is not unduly
326 disruptive of the election process, the election judge shall attempt to contact the county clerk's
327 office to request oral verification of the voter's registration.

328 (ii) If oral verification is received from the county clerk's office, the judge shall record the
329 verification on the official register, determine the voter's party affiliation and the ballot that the
330 voter is qualified to vote, and perform the other administrative steps required by Subsection (3).

331 (c) (i) Except as provided in Subsection (c)(ii), if the voter's political party affiliation listed
332 in the official register does not allow the voter to vote the ballot that the voter requested, the
333 election judge shall inform the voter of that fact and inform the voter of the ballot or ballots that
334 the voter's party affiliation does allow the voter to vote.

335 (ii) (A) If the voter is listed in the official register as "unaffiliated," or if the official register
336 does not affirmatively identify the voter as either "unaffiliated" or affiliated with a registered
337 political party, and the voter, as an "unaffiliated" voter is not authorized to vote the ballot that the

338 voter requests, the election judge shall ask the voter if the voter wishes to affiliate with the
339 registered political party whose ballot the voter requested, vote another registered political party
340 ballot that the voter, as "unaffiliated" is authorized to vote, or remain "unaffiliated."

341 (B) If the voter wishes to affiliate with the registered political party whose ballot the voter
342 requested, the election judge shall enter in the official register the voter's new party affiliation and
343 proceed as required by Subsection (3).

344 (C) If the voter wishes to vote another registered political party ballot that the unaffiliated
345 voter is authorized to vote, the election judge shall proceed as required by Subsection (3).

346 (D) If the voter wishes to remain unaffiliated and does not wish to vote another ballot that
347 unaffiliated voters are authorized to vote, the election judge shall instruct the voter that the voter
348 may not vote.

349 (3) If the election judge determines that the voter is registered and eligible, under
350 Subsection (2), to vote the ballot that the voter requested:

351 (a) the election judge in charge of the official register shall:

352 (i) write the ballot number opposite the name of the voter in the official register; and

353 (ii) direct the voter to sign his name in the election column in the official register;

354 (b) another judge shall list the ballot number and voter's name in the pollbook; and

355 (c) the election judge having charge of the ballots shall:

356 (i) endorse his initials on the stub;

357 (ii) check the name of the voter on the pollbook list with the number of the stub;

358 (iii) hand the voter the ballot for the registered political party that the voter requested and
359 for which the voter is authorized to vote; and

360 (iv) allow the voter to enter the voting booth.

361 (4) Whenever the election officer is required to furnish more than one kind of official
362 ballot to the voting precinct, the election judges of that voting precinct shall give the registered
363 voter the kind of ballot that the voter is qualified to vote.

364 Section 12. Section **20a-9-808** is enacted to read:

365 **20A-9-808. Counting votes -- Canvass -- Certification of results.**

366 (1) Votes shall be counted, results tabulated, returns transmitted, ballots reviewed and
367 retained, returns canvassed, and recounts and election contests conducted as provided in Title 20A,
368 Chapter 4, Election Returns and Election Contests.

369 (2) After the canvass is complete and the report prepared, the lieutenant governor shall
370 transmit a copy of the report to each registered political party that participated in Utah's Western
371 States Presidential Primary.

Legislative Review Note

as of 1-21-99 12:54 PM

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

Office of Legislative Research and General Counsel