1   **ELECTION LAW MODIFICATIONS**

2   2017 GENERAL SESSION

3   STATE OF UTAH

4   **Chief Sponsor: Bruce R. Cutler**

5   Senate Sponsor: _____

6   ═══

7   **LONG TITLE**

8   **General Description:**

9   This bill requires an election officer to complete an unofficial count of certain ballots

10   within three days after an election.

11   **Highlighted Provisions:**

12   This bill:

13   ▸ requires an election officer to complete an unofficial count of all ballots within three

14   days after an election, except:

15   • provisional ballots;

16   • absentee ballots that are required to be duplicated; and

17   • absentee ballots that cannot be initially verified;

18   ▸ makes changes to absentee ballot processing requirements; 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-3-309**, as last amended by Laws of Utah 2016, Chapter 37

27   **20A-4-104**, as last amended by Laws of Utah 2006, Chapter 326

28

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

30   Section 1. Section **20A-3-309** is amended to read:

31   **20A-3-309. Disposition of absentee and provisional ballots -- Counting -- Release**

32   **of number of absentee ballots cast.**

33   [(1) The election officer shall deliver all envelopes containing valid absentee ballots

34   and valid provisional ballots that are in the election officer's custody to the place of the official

35   canvass of the election by noon on the day of the official canvass following the election.]

36   [(2) (a) Valid absentee ballots and]

37   (1) (a) A valid absentee ballot received after election day and a valid provisional

38   [ballots] ballot may be processed and counted:

39   (i) by the election officer before the date of the canvass; [and] or

40   (ii) at the canvass, by the election officer or poll workers, acting under the supervision

41   of the official canvassers of the election.

42   (b) When processing ballots, the election officer and poll workers shall comply with

43   the procedures and requirements of:

44   (i) Section 20A-3-308 in opening envelopes, verifying signatures, confirming

45   eligibility of the ballots, and depositing [them] ballots in a ballot box[.]; and

46   [(3) (a) After all valid absentee ballots and valid provisional ballots have been

47   deposited, the ballots shall be counted in the usual manner.]

48   (ii) Section 20A-4-104 in tabulating official and unofficial election results.

49   [(b)] (2) (a) After the polls close on the date of the election, the election officer shall

50   publicly release the results of those absentee ballots and provisional ballots that have been

51   counted on or before the date of the election.

52   [(c)] (b) Except as provided in Subsection [(3)(d)] (2)(c), on each day, beginning on the

53   day after the date of the election and ending on the day before the date of the canvass, the

54   election officer shall publicly release the results of all absentee ballots and provisional ballots

55   counted on that day.

56   [(d)] (c) (i) If complying with Subsection [(3)(c)] (2)(b) on a particular day will likely

57   result in disclosing a vote cast by an individual voter, the election officer shall request

58   permission from the lieutenant governor to delay compliance for the minimum number of days

59   necessary to protect against disclosure of the voter's vote.

60   (ii) The lieutenant governor shall grant a request made under Subsection [(3)(d)(i)]

61   (2)(c)(i) if the lieutenant governor finds that the delay is necessary to protect against disclosure

62   of a voter's vote.

63   [(e)] (d) On the date of the canvass, the election officer shall provide a tally of all

64   absentee ballots and provisional ballots counted, and the resulting tally shall be added to the

65   official canvass of the election.

66   [(4) (a) On the day after the date of the election, the]

67   (3) (a) Before midnight at the end of the third day after the election, and after

68   completing the unofficial tabulation described in Subsection 20A-4-104(4), an election officer

69   shall determine the number of [absentee] ballots that have been received by the election officer

70   [at that time] that are not included in the unofficial tabulation and shall make that number

71   available to the public.

72   (b) The election officer may elect to publicly release updated totals for the number of

73   absentee ballots received by the election officer up through the date of the canvass.

74   Section 2. Section **20A-4-104** is amended to read:

75   **20A-4-104.   Counting ballots electronically.**

76   (1) (a) Before beginning to count ballot sheets using automatic tabulating equipment,

77   the election officer shall test the automatic tabulating equipment to ensure that [it] the

78   equipment will accurately count the votes cast for all offices and all measures.

79   (b) The election officer shall publish public notice of the time and place of the test at

80   least 48 hours before the test in one or more daily or weekly newspapers of general circulation

81   published in the county, municipality, or jurisdiction where the equipment is used.

82   (c) The election officer shall conduct the test by processing a preaudited group of ballot

83   sheets.

84   (d) The election officer shall ensure that:

85   (i) a predetermined number of valid votes for each candidate and measure are recorded

86   on the ballot sheets;

87   (ii) for each office, one or more ballot sheets have votes in excess of the number

88   allowed by law in order to test the ability of the automatic tabulating equipment to reject those

89   votes; and

90   (iii) a different number of valid votes are assigned to each candidate for an office, and
91   for and against each measure.
92   (e) If any error is detected, the election officer shall determine the cause of the error
93   and correct [it] the error.
94   (f) The election officer shall ensure that:
95   (i) the automatic tabulating equipment produces an errorless count before beginning
96   the actual counting; and
97   (ii) the automatic tabulating equipment passes the same test at the end of the count
98   before the election returns are approved as official.
99   (2) (a) The election officer or [his] the election officer's designee shall supervise and
100   direct all proceedings at the counting center.
101   (b) (i) Proceedings at the counting center are public and may be observed by interested
102   persons.
103   (ii) Only those persons authorized to participate in the count may touch any ballot,
104   ballot sheet, or return.
105   (c) The election officer shall deputize and administer an oath or affirmation to all
106   [persons] individuals who are engaged in processing and counting the ballots that [they] the
107   individuals will faithfully perform [their] the individuals' assigned duties.
108   (d) (i) Counting poll watchers appointed as provided in Section 20A-3-201 may
109   observe the testing of equipment and actual counting of the ballot sheets.
110   (ii) Those counting poll watchers may make independent tests of the equipment before
111   or after the vote count as long as the testing does not interfere in any way with the official
112   tabulation of the ballot sheets.
113   (3) If any ballot sheet is damaged or defective so that [it] the ballot sheet cannot
114   properly be counted by the automatic tabulating equipment, the election officer shall:
115   (a) cause a true duplicate copy of the ballot sheet to be made with an identifying serial
116   number;
117   (b) substitute the duplicate for the damaged ballot sheet;
118   (c) label the duplicate ballot card "duplicate"; and
119   (d) record the duplicate ballot sheet's serial number on the damaged or defective ballot
120   sheet.

121   [(4) The election officer may: (a) conduct an unofficial count before conducting the

122 official count in order to provide early unofficial returns to the public;]

123   (4) (a) Except as provided in Subsection (4)(c), before midnight at the end of the third

124 day after the election, an election officer shall complete an unofficial tabulation of all ballots,

125 except ballots described in Subsection (4)(b), that are in the election officer's custody by

126 midnight at the end of election day.

127   (b) An election officer may exclude from the unofficial tabulation described in

128 Subsection (4)(a):

129   (i) a provisional ballot;

130   (ii) a ballot that is required to be duplicated under Subsection (3); or

131   (iii) a ballot that does not meet the requirements described in Subsection

132 20A-3-308(2).

133   (c) An election officer is not required to comply with the requirements of this

134 Subsection (4) if:

135   (i) an emergency exists that renders the election officer unable to comply with the

136 requirements of this Subsection (4); and

137   (ii) the election officer obtains approval from the lieutenant governor to be exempted

138 from the requirements of this Subsection (4).

139   (5) An election officer may:

140   [(b)] (a) release unofficial returns from time to time after the polls close; and

141   [(c)] (b) report the progress of the count for each candidate during the actual counting

142 of ballots.

143   [(5)] (6) The election officer shall review and evaluate the provisional ballot envelopes

144 and prepare any valid provisional ballots for counting as provided in Section 20A-4-107.

145   [(6)] (7) (a) The election officer or [his] the election officer's designee shall:

146   (i) separate, count, and tabulate any ballots containing valid write-in votes; and

147   (ii) complete the standard form provided by the clerk for recording valid write-in votes.

148   (b) In counting the write-in votes, if, by casting a valid write-in vote, a voter has cast

149 more votes for an office than that voter is entitled to vote for that office, the poll workers shall

150 count the valid write-in vote as being the obvious intent of the voter.

151   [(7)] (8) (a) The election officer shall certify the return printed by the automatic

152   tabulating equipment, to which have been added write-in and absentee votes, as the official

153   return of each voting precinct.

154   (b) Upon completion of the count, the election officer shall make official returns open

155   to the public.

156   [(8)] (9) If for any reason it becomes impracticable to count all or a part of the [ballot

157   sheets] ballots with tabulating equipment, the election officer may direct that [they] the ballots

158   be counted manually according to the procedures and requirements of this part.

159   [(9)] (10) After the count is completed, the election officer shall seal and retain the

160   programs, test materials, and ballots as provided in Section 20A-4-202.

Legislative Review Note
Office of Legislative Research and General Counsel