

**VOTE REPORTING REQUIREMENTS**

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Craig Hall**

Senate Sponsor: Daniel W. Thatcher

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**LONG TITLE**

**General Description:**

This bill addresses the information to be reported by election officials when tabulating election results.

**Highlighted Provisions:**

This bill:

- ▶ in certain circumstances, requires an election officer to report an estimate of the total number of ballots in the election official's custody that remain to be counted;

and

- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**20A-3a-402**, as renumbered and amended by Laws of Utah 2020, Chapter 31

**20A-4-104**, as last amended by Laws of Utah 2020, Chapter 31

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

Section 1. Section **20A-3a-402** is amended to read:

**20A-3a-402. Custody of ballots voted at a polling place -- Disposition -- Counting -- Release of number of ballots cast.**

30 (1) This section governs ballots voted at a polling place.

31 (2) (a) The election officer shall deliver all return envelopes containing valid ballots  
32 and valid provisional ballots that are in the election officer's custody to the counting center  
33 before noon on the day of the official canvass following the election.

34 (b) Valid ballots, including valid provisional ballots, may be processed and counted:

35 (i) by the election officer, or poll workers acting under the supervision of the election  
36 officer, before the date of the canvass; and

37 (ii) at the canvass, by the election officer or poll workers, acting under the supervision  
38 of the official canvassers of the election.

39 (c) When processing ballots, the election officer and poll workers shall comply with  
40 the procedures and requirements of Section 20A-3a-401 in opening envelopes, verifying  
41 signatures, confirming eligibility of the ballots, and depositing ballots in preparation for  
42 counting.

43 (3) (a) After all valid ballots, including valid provisional ballots have been deposited,  
44 the ballots shall be counted in the usual manner.

45 (b) After the polls close on the date of the election, the election officer shall publicly  
46 release the results of those ballots, including provisional ballots, that have been counted on or  
47 before the date of the election.

48 (c) Except as provided in Subsection (3)(d), on each day, beginning on the day after the  
49 date of the election and ending on the day before the date of the canvass, the election officer  
50 shall publicly release:

51 (i) the results of all ballots, including provisional ballots, counted on that day[-]; and

52 (ii) an estimate of the total number of voted ballots in the custody of the election  
53 officer that have not yet been counted.

54 (d) (i) If complying with Subsection (3)(c) on a particular day will likely result in  
55 disclosing a vote cast by an individual voter, the election officer shall request permission from  
56 the lieutenant governor to delay compliance for the minimum number of days necessary to  
57 protect against disclosure of the voter's vote.

58           (ii) The lieutenant governor shall grant a request made under Subsection (3)(d)(i) if the  
59 lieutenant governor finds that the delay is necessary to protect against disclosure of a voter's  
60 vote.

61           (e) On the date of the canvass, the election officer shall provide a tally of all ballots,  
62 including provisional ballots, counted, and the resulting tally shall be added to the official  
63 canvass of the election.

64           (4) (a) On the day after the date of the election, the election officer shall determine the  
65 number of ballots received by the election officer at that time and shall make that number  
66 available to the public.

67           (b) The election officer may elect to publicly release updated totals for the number of  
68 ballots received by the election officer up through the date of the canvass.

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

70           **20A-4-104. Counting ballots electronically.**

71           (1) (a) Before beginning to count ballots using automatic tabulating equipment, the  
72 election officer shall test the automatic tabulating equipment to ensure that it will accurately  
73 count the votes cast for all offices and all measures.

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

75           (i) (A) at least 48 hours before the test in one or more daily or weekly newspapers of  
76 general circulation in the county, municipality, or jurisdiction where the equipment is used;

77           (B) if there is no daily or weekly newspaper of general circulation in the county,  
78 municipality, or jurisdiction where the equipment is used, at least 10 days before the day of the  
79 test, by posting one notice, and at least one additional notice per 2,000 population of the  
80 county, municipality, or jurisdiction, in places within the county, municipality, or jurisdiction  
81 that are most likely to give notice to the voters in the county, municipality, or jurisdiction; or

82           (C) at least 10 days before the day of the test, by mailing notice to each registered voter  
83 in the county, municipality, or jurisdiction where the equipment is used;

84           (ii) on the Utah Public Notice Website created in Section [63F-1-701](#), for four weeks  
85 before the day of the test;

86 (iii) in accordance with Section 45-1-101, for at least 10 days before the day of the test;  
87 and

88 (iv) if the county, municipality, or jurisdiction has a website, on the website for four  
89 weeks before the day of the test.

90 (c) The election officer shall conduct the test by processing a preaudited group of  
91 ballots.

92 (d) The election officer shall ensure that:

93 (i) a predetermined number of valid votes for each candidate and measure are recorded  
94 on the ballots;

95 (ii) for each office, one or more ballots have votes in excess of the number allowed by  
96 law in order to test the ability of the automatic tabulating equipment to reject those votes; and

97 (iii) a different number of valid votes are assigned to each candidate for an office, and  
98 for and against each measure.

99 (e) If any error is detected, the election officer shall determine the cause of the error  
100 and correct it.

101 (f) The election officer shall ensure that:

102 (i) the automatic tabulating equipment produces an errorless count before beginning  
103 the actual counting; and

104 (ii) the automatic tabulating equipment passes the same test at the end of the count  
105 before the election returns are approved as official.

106 (2) (a) The election officer or the election officer's designee shall supervise and direct  
107 all proceedings at the counting center.

108 (b) (i) Proceedings at the counting center are public and may be observed by interested  
109 persons.

110 (ii) Only those persons authorized to participate in the count may touch any ballot or  
111 return.

112 (c) The election officer shall deputize and administer an oath or affirmation to all  
113 persons who are engaged in processing and counting the ballots that they will faithfully

114 perform their assigned duties.

115 (3) If any ballot is damaged or defective so that it cannot properly be counted by the  
116 automatic tabulating equipment, the election officer shall ensure that two counting judges  
117 jointly:

- 118 (a) make a true replication of the ballot with an identifying serial number;
- 119 (b) substitute the replicated ballot for the damaged or defective ballot;
- 120 (c) label the replicated ballot "replicated"; and
- 121 (d) record the replicated ballot's serial number on the damaged or defective ballot.

122 (4) The election officer may:

- 123 (a) conduct an unofficial count before conducting the official count in order to provide  
124 early unofficial returns to the public;
- 125 (b) release unofficial returns from time to time after the polls close; and
- 126 (c) report the progress of the count for each candidate during the actual counting of  
127 ballots.

128 (5) Beginning on the day after the date of the election, if an election officer releases  
129 early unofficial returns or reports the progress of the count for each candidate under Subsection  
130 (4), the election officer shall, with each release or report, disclose an estimate of the total  
131 number of voted ballots in the election officer's custody that have not yet been counted.

132 [~~5~~] (6) The election officer shall review and evaluate the provisional ballot envelopes  
133 and prepare any valid provisional ballots for counting as provided in Section 20A-4-107.

134 [~~6~~] (7) (a) The election officer or the election officer's designee shall:

- 135 (i) separate, count, and tabulate any ballots containing valid write-in votes; and
  - 136 (ii) complete the standard form provided by the clerk for recording valid write-in votes.
- 137 (b) In counting the write-in votes, if, by casting a valid write-in vote, a voter has cast  
138 more votes for an office than that voter is entitled to vote for that office, the poll workers shall  
139 count the valid write-in vote as being the obvious intent of the voter.

140 [~~7~~] (8) (a) The election officer shall certify the return printed by the automatic  
141 tabulating equipment, to which have been added write-in and absentee votes, as the official

142 return of each voting precinct.

143 (b) Upon completion of the count, the election officer shall make official returns open  
144 to the public.

145 [~~8~~] (9) If for any reason it becomes impracticable to count all or a part of the ballots  
146 with tabulating equipment, the election officer may direct that they be counted manually  
147 according to the procedures and requirements of this part.

148 [~~9~~] (10) After the count is completed, the election officer shall seal and retain the  
149 programs, test materials, and ballots as provided in Section [20A-4-202](#).