Representative Craig Hall proposes the following substitute bill:

1   # VOTE REPORTING REQUIREMENTS

2   ## 2021 GENERAL SESSION

3   ## STATE OF UTAH

4   **Chief Sponsor: Craig Hall**

5   Senate Sponsor: Daniel W. Thatcher

6

7   **LONG TITLE**

8   **General Description:**

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

10   election results.

11   **Highlighted Provisions:**

12   This bill:

13   ‣   in certain circumstances, requires an election officer to report an estimate of the

14   total number of ballots in the election official's custody that remain to be counted;

15   and

16   ‣   makes technical and conforming changes.

17   **Money Appropriated in this Bill:**

18   None

19   **Other Special Clauses:**

20   None

21   **Utah Code Sections Affected:**

22   AMENDS:

23   **20A-3a-402**, as renumbered and amended by Laws of Utah 2020, Chapter 31

24   **20A-4-104**, as last amended by Laws of Utah 2020, Chapter 31

25

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

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

28   **20A-3a-402.   Custody of ballots voted at a polling place -- Disposition -- Counting**

29   **-- 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.