

HB0174S01 compared with HB0174

~~text~~ shows text that was in HB0174 but was deleted in HB0174S01.

text shows text that was not in HB0174 but was inserted into HB0174S01.

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Representative Adam Robertson proposes the following substitute bill:

MUNICIPAL INSTANT RUNOFF VOTING AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Adam Robertson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions relating to municipal instant runoff voting.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends provisions relating to marking a ballot for instant runoff voting;
- ▶ gives a participating municipality the option of selecting different methods of conducting an election by instant runoff voting;
- ▶ describes the process of voting and of determining winners in an instant runoff election, depending on the voting method selected by a participating municipality;
- and
- ▶ makes technical and conforming changes.

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Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

20A-3a-204, as enacted by Laws of Utah 2020, Chapter 31

20A-4-101, as last amended by Laws of Utah 2020, Chapter 31

20A-4-102, as last amended by Laws of Utah 2020, Chapters 31 and 49

20A-4-601, as enacted by Laws of Utah 2018, Chapter 187

20A-4-602, as last amended by Laws of Utah 2019, Chapter 305

20A-4-603, as last amended by Laws of Utah 2019, Chapter 305

20A-4-604, as enacted by Laws of Utah 2018, Chapter 187

ENACTS:

20A-4-605, Utah Code Annotated 1953

~~{ **20A-4-606**, Utah Code Annotated 1953~~

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

Section 1. Section **20A-3a-204** is amended to read:

20A-3a-204. Marking and depositing ballots.

(1) To vote by mail:

(a) except as provided in Subsection (6), the voter shall prepare the voter's manual ballot by marking the appropriate space with a mark opposite the name of each candidate of the voter's choice for each office to be filled;

(b) if a ballot proposition is submitted to a vote of the people, the voter shall mark the appropriate space with a mark opposite the answer the voter intends to make;

(c) except as provided in Subsection (6), the voter shall record a write-in vote in accordance with Subsection 20A-3a-206~~(4)~~(4);

(d) except as provided in Subsection (6), a mark is not required opposite the name of a write-in candidate; and

(e) the voter shall:

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- (i) complete and sign the affidavit on the return envelope;
- (ii) place the voted ballot in the return envelope;
- (iii) securely seal the return envelope; and
- (iv) (A) attach postage, if necessary, and deposit the return envelope in the mail; or
(B) place the return envelope in a ballot drop box, designated by the election officer, for the precinct where the voter resides.

(2) (a) Except as otherwise provided in Section 20A-16-404, to be valid, a ballot that is mailed must be:

- (i) clearly postmarked before election day, or otherwise clearly marked by the post office as received by the post office before election day; and

- (ii) received in the office of the election officer before noon on the day of the official canvass following the election.

(b) Except as provided in Subsection (2)(c), to be valid, a ballot shall, before the polls close on election day, be deposited in:

- (i) a ballot box at a polling place; or

- (ii) a ballot drop box designated by an election officer for the jurisdiction to which the ballot relates.

(c) An election officer may, but is not required to, forward a ballot deposited in a ballot drop box in the wrong jurisdiction to the correct jurisdiction.

(d) An election officer shall ensure that a voter who is, at or before 8 p.m., in line at a ballot drop box, with a sealed return envelope containing a ballot in the voter's possession, to deposit the ballot in the ballot drop box.

(3) Except as provided in Subsection (4), to vote at a polling place the voter shall, after complying with Subsections (1)(a) through (d):

- (a) sign the official register or pollbook; and

- (b) (i) place the ballot in the ballot box; or

- (ii) if the ballot is a provisional ballot, place the ballot in the provisional ballot envelope, complete the information printed on the provisional ballot envelope, and deposit the provisional ballot envelope in the provisional ballot box.

(4) (a) An individual with a disability may vote a mechanical ballot at a polling place.

(b) An individual other than an individual with a disability may vote a mechanical

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ballot at a polling place if permitted by the election officer.

(5) To vote a mechanical ballot, the voter shall:

(a) make the selections according to the instructions provided for the voting device;

and

(b) subject to Subsection (6), record a write-in vote by:

(i) selecting the appropriate position for entering a write-in candidate; and

(ii) using the voting device to enter the name of the valid write-in candidate for whom the voter wishes to vote.

(6) To vote in an instant runoff voting race under Title 20A, Chapter 4, Part 6, Municipal Alternate Voting Methods Pilot Project~~[-, a voter]~~:

(a) for a municipality using the candidate elimination voting method described in Sections 20A-4-603 and 20A-4-604, a voter:

(i) shall indicate, as directed on the ballot, the name of the candidate who is the voter's first preference for the office; and

~~[(b)]~~ (ii) may indicate, as directed on the ballot, the names of the remaining candidates in order of the voter's preference~~[-];~~ or

(b) for a municipality using the approval voting method described in Section 20A-4-605, a voter shall, as directed on the ballot, indicate one or more names of candidates whom the voter approves for the office, without stating an order of preference~~[-]; or~~.

~~{~~ ~~(c) for a municipality using the star voting method described in Section 20A-4-606, a voter shall, as directed on the ballot, rate each candidate by giving the candidate a rating of zero, one, two, three, four, or five, with five being the highest rating.~~

~~}~~ (7) A voter who votes at a polling place:

(a) shall mark and cast or deposit the ballot without delay and shall leave the voting area after voting; and

(b) may not:

(i) occupy a voting booth occupied by another, except as provided in Section 20A-3a-208;

(ii) remain within the voting area more than 10 minutes; or

(iii) occupy a voting booth for more than five minutes if all booths are in use and other voters are waiting to occupy a voting booth.

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(8) If the official register shows any voter as having voted, that voter may not reenter the voting area during that election unless that voter is an election official or watcher.

(9) A poll worker may not, at a polling place, allow more than four voters more than the number of voting booths into the voting area at one time unless those excess voters are:

- (a) election officials;
- (b) watchers; or
- (c) assisting voters with a disability.

Section 2. Section **20A-4-101** is amended to read:

20A-4-101. Manual ballots cast at a polling place -- Counting manual ballots at polling place on day of election before polls close.

(1) Each county legislative body, municipal legislative body, and each poll worker shall comply with the requirements of this section when counting manual ballots on the day of an election, if:

- (a) the ballots are cast at a polling place; and
- (b) the ballots are counted at the polling place before the polls close.

(2) (a) Each county legislative body or municipal legislative body shall provide:

- (i) two sets of ballot boxes for all voting precincts where both receiving and counting judges have been appointed; and
 - (ii) a counting room for the use of the poll workers counting the ballots during the day.
- (b) At any election in any voting precinct in which both receiving and counting judges have been appointed, when at least 20 votes have been cast, the receiving judges shall:

- (i) close the first ballot box and deliver it to the counting judges; and
- (ii) prepare and use another ballot box to receive voted ballots.

(c) Except as provided in Subsection (2)(f), upon receipt of the ballot box, the counting judges shall:

- (i) take the ballot box to the counting room;
- (ii) count the votes on the regular ballots in the ballot box;
- (iii) place the provisional ballot envelopes in the envelope or container provided for them for return to the election officer; and

(iv) when they have finished counting the votes in the ballot box, return the emptied box to the receiving judges.

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(d) (i) During the course of election day, whenever there are at least 20 ballots contained in a ballot box, the receiving judges shall deliver that ballot box to the counting judges for counting; and

(ii) the counting judges shall immediately count the regular ballots and segregate the provisional ballots contained in that box.

(e) The counting judges shall continue to exchange the ballot boxes and count ballots until the polls close.

(f) (i) The director of elections within the Office of the Lieutenant Governor shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, describing the procedures that a counting judge is required to follow for counting ballots in an instant runoff voting race under Title 20A, Chapter 4, Part 6, Municipal Alternate Voting Methods Pilot Project.

(ii) When counting ballots in an instant runoff voting race described in Title 20A, Chapter 4, Part 6, Municipal Alternate Voting Methods Pilot Project, a counting judge shall comply with the procedures established under Subsection (2)(f)(i) and Title 20A, Chapter 4, Part 6, Municipal Alternate Voting Methods Pilot Project.

(3) To resolve questions that arise during the counting of ballots, a counting judge shall apply the standards and requirements of:

(a) to the extent applicable, Section 20A-4-105; and

(b) as applicable, for an instant runoff voting race under Title 20A, Chapter 4, Part 6, Municipal Alternate Voting Methods Pilot Project, Subsection 20A-4-603~~(3)~~(4).

Section 3. Section **20A-4-102** is amended to read:

20A-4-102. Manual ballots cast at a polling place -- Counting manual ballots at polling place on day of election after polls close.

(1) (a) This section governs counting manual ballots on the day of an election, if:

(i) the ballots are cast at a polling place; and

(ii) the ballots are counted at the polling place after the polls close.

(b) Except as provided in Subsection (2) or a rule made under Subsection 20A-4-101(2)(f)(i), as soon as the polls have been closed and the last qualified voter has voted, the election judges shall count the ballots by performing the tasks specified in this section in the order that they are specified.

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(c) To resolve questions that arise during the counting of ballots, a counting judge shall apply the standards and requirements of:

(i) to the extent applicable, Section 20A-4-105; and

(ii) as applicable, for an instant runoff voting race under Part 6, Municipal Alternate Voting Methods Pilot Project, Subsection 20A-4-603[~~(3)~~](4).

(2) (a) First, the election judges shall count the number of ballots in the ballot box.

(b) (i) If there are more ballots in the ballot box than there are names entered in the pollbook, the judges shall examine the official endorsements on the ballots.

(ii) If, in the unanimous opinion of the judges, any of the ballots do not bear the proper official endorsement, the judges shall put those ballots in an excess ballot file and not count them.

(c) (i) If, after examining the official endorsements, there are still more ballots in the ballot box than there are names entered in the pollbook, the judges shall place the remaining ballots back in the ballot box.

(ii) One of the judges, without looking, shall draw a number of ballots equal to the excess from the ballot box.

(iii) The judges shall put those excess ballots into the excess ballot envelope and not count them.

(d) When the ballots in the ballot box equal the number of names entered in the pollbook, the judges shall count the votes.

(3) The judges shall:

(a) place all unused ballots in the envelope or container provided for return to the county clerk or city recorder; and

(b) seal that envelope or container.

(4) The judges shall:

(a) place all of the provisional ballot envelopes in the envelope provided for them for return to the election officer; and

(b) seal that envelope or container.

(5) (a) In counting the votes, the election judges shall read and count each ballot separately.

(b) In regular primary elections the judges shall:

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(i) count the number of ballots cast for each party;
(ii) place the ballots cast for each party in separate piles; and
(iii) count all the ballots for one party before beginning to count the ballots cast for other parties.

(6) (a) In all elections, the counting judges shall, except as provided in Part 6, Municipal Alternate Voting Methods Pilot Project, or a rule made under Subsection 20A-4-101(2)(f)(i):

(i) count one vote for each candidate designated by the marks in the squares next to the candidate's name;

(ii) count each vote for each write-in candidate who has qualified by filing a declaration of candidacy under Section 20A-9-601;

(iii) read every name marked on the ballot and mark every name upon the tally sheets before another ballot is counted;

(iv) evaluate each ballot and each vote based on the standards and requirements of Section 20A-4-105;

(v) write the word "spoiled" on the back of each ballot that lacks the official endorsement and deposit it in the spoiled ballot envelope; and

(vi) read, count, and record upon the tally sheets the votes that each candidate and ballot proposition received from all ballots, except excess or spoiled ballots.

(b) Election judges need not tally write-in votes for fictitious persons, nonpersons, or persons clearly not eligible to qualify for office.

(c) The judges shall certify to the accuracy and completeness of the tally list in the space provided on the tally list.

(d) When the judges have counted all of the voted ballots, they shall record the results on the total votes cast form.

(7) Only an election judge and a watcher may be present at the place where counting is conducted until the count is completed.

Section 4. Section **20A-4-601** is amended to read:

20A-4-601. Definitions.

As used in this part:

(1) "Candidate amplifier" means the product of:

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(a) two less than the total number of candidates in a given canvassing phase of a multi-candidate race; and

(b) .02%.

(2) "Multi-candidate race" means a nonpartisan municipal race where:

(a) for the election of at-large officers, the number of candidates who qualify for the race exceeds the total number of seats to be filled; or

(b) for the election of an officer other than an at-large officer, more than two candidates qualify to run for one office.

(3) "Participating municipality" means a municipality that is participating in the pilot project, in accordance with Subsection 20A-4-602(3).

(4) "Pilot project" means the Municipal Alternate Voting Methods Pilot Project created in Section 20A-4-602.

(5) "Recount threshold" means the sum of the candidate amplifier and the following:

(a) for a canvassing phase in which fewer than 100 valid votes are counted, 0.21%;

(b) for a canvassing phase in which at least 100, but fewer than 500, valid votes are counted, 0.19%;

(c) for a canvassing phase in which at least 500, but fewer than 1,000, valid votes are counted, 0.17%;

(d) for a canvassing phase in which at least 1,000, but fewer than 5,000, valid votes are counted, 0.15%;

(e) for a canvassing phase in which at least 5,000, but fewer than 10,000, valid votes are counted, 0.13%; and

(f) for a canvassing phase in which 10,000 or more valid votes are counted, 0.11%.

(6) "Valid" means that the ballot is marked in a manner that permits the vote to be counted during the applicable ballot-counting phase.

(7) "Voting method" means:

(a) the candidate elimination voting method described in Sections 20A-4-603 and 20A-4-604; or

(b) the approval voting method described in Section 20A-4-605 ~~{, or}~~;

~~{ (c) the star voting method described in Section 20A-4-606.~~

~~‡~~ Section 5. Section **20A-4-602** is amended to read:

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20A-4-602. Municipal Alternate Voting Methods Pilot Project -- Creation -- Participation.

(1) There is created the Municipal Alternate Voting Methods Pilot Project.

(2) The pilot project begins on January 1, 2019, and ends on January 1, 2026.

(3) (a) A municipality may participate in the pilot project, in accordance with the requirements of this section and all other applicable provisions of law, during any odd-numbered year that the pilot project is in effect, if, before April 15 of the odd-numbered year, the municipality provides written notice to the lieutenant governor:

(i) stating that the municipality intends to participate in the pilot project for the year specified in the notice; [~~and~~]

(ii) specifying the voting method that the municipality will use; and

~~(iii)~~ (iii) that includes a document, signed by the election officer of the municipality, stating that the municipality has the resources and capability necessary to participate in the pilot project.

(b) A municipality that provides the notice of intent described in Subsection (3)(a) may:

(i) withdraw the notice of intent, and not participate in the pilot project, if the municipality provides written notice of withdrawal to the lieutenant governor before April 15~~[-];~~ or

(ii) change the voting method specified under Subsection (3)(a)(ii) to another voting method, if the municipality provides written notice of the change to the lieutenant governor before April 15.

(4) The lieutenant governor shall maintain, in a prominent place on the lieutenant governor's website, a current list of the municipalities that are participating in the pilot project.

(5) (a) An election officer of a participating municipality shall, in accordance with the provisions of this part, conduct a multi-candidate race during the municipal general election using the voting method of instant runoff voting most recently specified in accordance with Subsection (3).

(b) Except as provided in Subsection 20A-4-603~~(9)~~(10) or 20A-4-605~~(6)~~, an election officer of a participating municipality that will conduct a multi-candidate race under Subsection (5)(a) may not conduct a municipal primary election relating to that race.

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(c) A municipality that has in effect an ordinance described in Subsection 20A-9-404(3) or (4) may not participate in the pilot project.

(6) Except for an election described in Subsection 20A-4-603~~(9)~~(10) or 20A-4-605(6), an individual who files a declaration of candidacy or a nomination petition, for a candidate who will run in an election described in this part, shall file the declaration of candidacy or nomination petition during the office hours described in Section 10-3-301 and not later than the close of those office hours, no sooner than the second Tuesday in August and no later than the third Tuesday in August of an odd-numbered year.

Section 6. Section **20A-4-603** is amended to read:

20A-4-603. Instant runoff voting -- Candidate elimination voting method.

(1) This section applies to a participating municipality that, under Subsection 20A-4-602(3), specifies the candidate elimination voting method as the method that the municipality will use.

~~(1)~~ (2) In a multi-candidate race, the election officer ~~[for a participating municipality]~~ shall:

(a) (i) conduct the first ballot-counting phase by counting the valid first preference votes for each candidate; and

(ii) if, after complying with Subsection ~~(5)~~ (6), one of the candidates receives more than 50% of the valid first preference votes counted, declare that candidate elected;

(b) if, after counting the valid first preference votes for each candidate, and complying with Subsection ~~(5)~~ (6), no candidate receives more than 50% of the valid first preference votes counted, conduct the second ballot-counting phase by:

(i) excluding from the multi-candidate race:

(A) the candidate who received the fewest valid first preference votes counted; or

(B) in the event of a tie for the fewest valid first preference votes counted, one of the tied candidates, determined by the tied election officer by lot, in accordance with Subsection ~~(6)~~ (7);

(ii) adding, to the valid first preference votes counted for the remaining candidates, the valid second preference votes cast for the remaining candidates by the voters who cast a valid first preference vote for the excluded candidate; and

(iii) if, after adding the votes in accordance with Subsection ~~(1)~~ (2)(b)(ii) and

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complying with Subsection [~~(5)~~] (6), one candidate receives more than 50% of the valid votes counted, declaring that candidate elected; and

(c) if, after adding the valid second preference votes in accordance with Subsection [~~(1)~~] (2)(b)(ii) and complying with Subsection [~~(5)~~] (6), no candidate receives more than 50% of the valid votes counted, conduct subsequent ballot-counting phases by continuing the process described in Subsection [~~(1)~~] (2)(b) until a candidate receives more than 50% of the valid votes counted, as follows:

(i) after complying with Subsection [~~(5)~~] (6), excluding from consideration the candidate who has the fewest valid votes counted or, in the event of a tie for the fewest valid votes counted, excluding one of the tied candidates, by lot, in accordance with Subsection [~~(6)~~] (7); and

(ii) adding the next valid preference vote cast by each voter whose vote was counted for the last excluded candidate to one of the remaining candidates, in the order of the next preference indicated by the voter.

[~~(2)~~] (3) The election officer shall declare elected the first candidate who receives more than 50% of the valid votes counted under the process described in Subsection [~~(1)~~] (2).

[~~(3)~~] (4) (a) A vote is valid for a particular phase of a multi-candidate race only if the voter indicates the voter's preference for that phase and all previous phases.

(b) A vote is not valid for a particular phase of a multi-candidate race, and for all subsequent phases, if the voter indicates the same rank for more than one candidate for that phase.

[~~(4)~~] (5) The election officer shall, before declaring a candidate elected, order a recount of the valid votes in the applicable ballot-counting phase if one candidate appears to have received at least 50% of the vote, and the difference between the number of votes counted for the candidate who received the most valid votes for the applicable ballot-counting phase and any other candidate in the race is equal to or less than the product of the following, rounded up to the nearest whole number:

(a) the total number of voters who cast a valid vote that is counted in the applicable ballot-counting phase of the race; and

(b) the recount threshold.

[~~(5)~~] (6) Before excluding a candidate from a multi-candidate race under Subsection

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~~[(1)]~~ (2), the election officer shall order a recount of the valid votes counted in the applicable ballot-counting phase if the difference between the number of votes counted for the candidate who received the fewest valid votes in the applicable ballot-counting phase of the race and any other candidate in the race is equal to or less than the product of the following, rounded up to the nearest whole number:

(a) the total number of voters who cast a valid vote counted in that ballot-counting phase; and

(b) the recount threshold.

~~[(6)]~~ (7) For each ballot-counting phase after the first phase, if, after a recount is completed under Subsection ~~[(5)]~~ (6), two or more candidates tie as having received the fewest valid votes counted at that point in the ballot count, the election officer shall eliminate one of those candidates from consideration, by lot, in the following manner:

(a) determine the names of the candidates who tie as having received the fewest valid votes for that ballot-counting phase;

(b) cast or draw the lot in the presence of at least two election officials and any counting poll watchers who are present and desire to witness the casting or drawing of the lot; and

(c) sign a public document that:

(i) certifies the method used for casting or drawing the lot and the result of the lot; and

(ii) includes the name of each individual who witnessed the casting or drawing of the lot.

~~[(7)]~~ (8) In a multi-candidate race for an at-large office, ~~[where the number of candidates who qualify for the race exceeds the total number of at-large seats to be filled for the office;]~~ the election officer shall count the votes by:

(a) except as provided in Subsection ~~[(8)]~~ (9), counting votes in the same manner as described in Subsections ~~[(1)]~~ (2) through ~~[(6)]~~ (7), until a candidate is declared elected;

(b) repeating the process described in Subsection ~~[(7)]~~ (8)(a) for all candidates that are not declared elected until another candidate is declared elected; and

(c) continuing the process described in Subsection ~~[(7)]~~ (8)(b) until all at-large seats in the race are filled.

~~[(8)]~~ (9) After a candidate is declared elected under Subsection ~~[(7)]~~ (8), the election

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officer shall, in repeating the process described in Subsections [~~(1)~~] (2) through [~~(6)~~] (7) to declare the next candidate elected, add to the vote totals the next valid preference vote of each voter whose vote was counted for a candidate already declared elected.

[~~(9)~~] (10) An election officer for a participating municipality may choose to conduct a primary election by using instant runoff voting in the manner described in Subsections [~~(1)~~] (2) through [~~(6)~~] (7), except that:

(a) instead of determining whether a candidate receives more than 50% of the valid preference votes for a particular ballot-counting phase, the election officer shall proceed to a subsequent ballot-counting stage, and exclude the candidate who receives the fewest valid preference votes in that phase, until twice the number of seats to be filled in the race remain; and

(b) after complying with Subsection [~~(9)~~] (10)(a), the election officer shall declare the remaining candidates nominated to participate in the municipal general election.

Section 7. Section **20A-4-604** is amended to read:

20A-4-604. Batch elimination for candidate elimination voting method.

(1) In any ballot count conducted under Section 20A-4-603, the election officer may exclude candidates through batch elimination by, instead of excluding only one candidate in a ballot-counting phase, excluding each candidate:

(a) for which the number of remaining candidates with more valid votes than that candidate is greater than or equal to the number of offices to be filled; and

(b) (i) for which the number of valid votes counted for the candidate in the phase plus the number of votes counting for all candidates with fewer valid votes in the phase is less than the number of valid votes for the candidate with the next highest amount of valid votes in the phase; or

(ii) who has fewer valid votes in the phase than a candidate who is excluded under Subsection (1)(b)(i).

(2) The requirements for a recount before excluding a candidate under Subsection 20A-4-603[~~(5)~~](6) do not apply to candidates who are excluded through batch elimination.

Section 8. Section **20A-4-605** is enacted to read:

20A-4-605. Instant runoff voting -- Approval voting method.

(1) This section applies to a participating municipality that, under Subsection

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20A-4-602(3), specifies the approval voting method as the method that the municipality will use.

(2) In a multi-candidate race, the election officer shall:

(a) for each candidate, calculate the number of valid ballots on which the candidate is marked as approved; and

(b) subject to Subsection (3), declare elected the candidate who receives the highest number of approvals.

(3) The election officer shall order a recount of the valid ballots if the difference between the candidate who receives the highest number of approvals and any other candidate in the race is equal to or less than the product of the following, rounded up to the nearest whole number:

(a) the combined number of approvals for the two candidates; and

(b) the recount threshold.

(4) If, after complying with Subsection (3), two or more candidates tie with the highest number of approvals, the election officer shall:

(a) break the tie by lot, cast or drawn in the presence of at least two election officials and any counting poll watchers who are present and desire to witness the casting or drawing of the lot; and

(b) sign a public document that:

(i) certifies the method used for casting or drawing the lot and the result of the lot; and

(ii) includes the name of each individual who witnessed the casting or drawing of the lot.

(5) In a multi-candidate race for an at-large office, the election officer shall:

(a) for each candidate, calculate the number of valid ballots on which the candidate is marked as approved;

(b) subject to Subsection (5)(c), declare elected the number of candidates, equal to the number of positions to be filled, who receive the highest number of approvals;

(c) order a recount of the valid ballots if the difference between the number of approvals received by the candidate to be declared elected with the fewest number of approvals and any candidate with fewer approvals is equal to or less than the product of the following, rounded up to the nearest whole number:

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- (i) the combined number of approvals for the two candidates; and
- (ii) the recount threshold; and
- (d) break a tie, if necessary, in accordance with Subsection (4).

(6) An election officer for a participating municipality may choose to conduct a primary election by using instant runoff voting in the manner described in Subsections (1) through (4), except that, after complying with Subsections (3) and (4), if applicable, the election officer shall declare the top two candidates nominated to participate in the municipal general election.

~~{ Section 9. Section 20A-4-606 is enacted to read:~~

~~**20A-4-606. Instant runoff voting -- Star voting method.**~~

~~(1) This section applies to a participating municipality that, under Subsection 20A-4-602(3), specifies the star voting method as the method that the municipality will use.~~

~~(2) In a multi-candidate race, the election officer shall:~~

~~(a) for the first ballot-counting phase:~~

~~(i) determine the sum of the ratings given to each candidate on all valid ballots; and~~

~~(ii) subject to Subsection (3), exclude from the multi-candidate race all candidates other than the candidates who receive the two highest rating sums; and~~

~~(b) subject to Subsection (4), for the second ballot-counting phase, of the two candidates described in Subsection (2)(a)(ii), declare elected the candidate who receives a higher rating on the greater number of valid ballots.~~

~~(3) The election officer shall order a recount of the valid ballots in the first ballot-counting phase, under Subsection (2)(a), if the difference between the rating sum for the candidate who receives the highest rating sum and any other candidate in the race is equal to or less than the product of the following, rounded up to the nearest whole number:~~

~~(a) the combined rating sum of the two candidates; and~~

~~(b) the recount threshold.~~

~~(4) The election officer shall order a recount of the valid votes in the second ballot-counting phase, under Subsection (2)(b), if the difference between the number of ballots on which one candidate receives a higher rating and the number of ballots on which the other candidate receives a higher rating is equal to or less than the product of the following, rounded up to the nearest whole number:~~

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- ~~—— (a) the combined rating sum of the two candidates; and~~
- ~~—— (b) the recount threshold.~~
- ~~—— (5) If, after complying with Subsection (2)(a) and Subsection (3), if applicable, a tie occurs for the highest or second-highest rating sum, the tie shall be broken by lot, in accordance with Subsection (7):~~
- ~~—— (6) If, after complying with Subsection (2)(b) and Subsection (4), if applicable, a tie occurs between the two remaining candidates, the tie shall be broken:~~
 - ~~—— (a) by declaring elected, out of the two remaining candidates, the candidate who receives the highest rating sum; or~~
 - ~~—— (b) if the two candidates receive the same rating sum, by lot, in accordance with Subsection (7):~~
- ~~—— (7) If a tie that is required to be broken by lot under Subsection (5), (6)(b), or (8), the election officer shall:~~
 - ~~—— (a) cast or draw the lot in the presence of at least two election officials and any counting poll watchers who are present and desire to witness the casting or drawing of the lot; and~~
 - ~~—— (b) sign a public document that:~~
 - ~~—— (i) certifies the method used for casting or drawing the lot and the result of the lot; and~~
 - ~~—— (ii) includes the name of each individual who witnessed the casting or drawing of the lot.~~
- ~~—— (8) Subject to Subsection (9), in a multi-candidate race for an at-large office, the election officer shall:~~
 - ~~—— (a) for the first ballot-counting phase:~~
 - ~~—— (i) determine the sum of the rating given to each candidate on all valid ballots; and~~
 - ~~—— (ii) (A) declare the candidate with the highest rating sum elected;~~
 - ~~—— (B) if more than one candidate ties with the highest rating sum and the number of tied candidates does not exceed the number of positions to be filled, declare each of the candidates who tied with the highest rating sum elected; or~~
 - ~~—— (C) if more than one candidate ties with the highest rating sum and the number of tied candidates exceeds the number of positions to be filled, break the tie by lot in accordance with Subsection (7) and, after breaking the tie so that the number of remaining candidates equals the~~

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~~number of positions to be filled, declaring the remaining candidates elected;~~

~~—— (b) if, at the end of the first ballot-counting phase, all positions have not been filled, for the second ballot-counting phase:~~

~~—— (i) declare the remaining candidate with the highest rating sum elected;~~

~~—— (ii) if more than one remaining candidate ties with the highest rating sum and the number of tied remaining candidates does not exceed the number of remaining positions to be filled, declare each of the remaining candidates who tied with the highest rating sum elected; or~~

~~—— (iii) if more than one remaining candidate ties with the highest rating sum and the number of tied remaining candidates exceeds the number of positions to be filled, break the tie by lot in accordance with Subsection (7) and, after breaking the tie so that the number of remaining candidates equals the number of remaining positions to be filled, declare the remaining candidates elected; and~~

~~—— (c) conduct subsequent ballot counting phases in accordance with Subsection (8)(b) until all remaining positions are filled.~~

~~—— (9) The election officer shall order a recount of the valid ballots in a ballot-counting phase described in Subsection (8) if the difference between the rating sum for the candidate who will be eliminated and the candidate with the next highest rating sum is equal to or less than the product of the following, rounded up to the nearest whole number:~~

~~—— (a) the combined rating sum of the two candidates; and~~

~~—— (b) the recount threshold.~~

~~—— (10) (a) If the voter leaves the space next to a candidate's name blank or enters a number other than zero, one, two, three, four, or five for the candidate, the candidate receives a score of zero for that ballot.~~

~~—— (b) A voter is not required to enter a different score for each candidate and may award the same score for more than one candidate.~~

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