

ELECTION LAW REVISIONS

2002 THIRD SPECIAL SESSION

STATE OF UTAH

Sponsor: Curtis S. Bramble

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This act modifies Title 20A, Election Code, by modifying certain candidate and election requirements for the 2002 election to address the possibility that Utah may receive a fourth Congressional seat. This act modifies definitions, changes the primary election date for Congressional candidates if certain contingencies are not met, modifies requirements for filling candidate vacancies, extends the date for allowing unaffiliated voters to affiliate at the polls, makes an exception to the prohibition against filing for more than one office in an election year; expresses legislative intent to make other changes if necessary in a subsequent special session; and makes technical corrections. This act repeals sections unique to the 2002 election cycle on January 1, 2003. This act makes an appropriation of \$600,000 to pay for a second primary if one is needed. This act has an immediate effective date.

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

AMENDS:

20A-1-102, as last amended by Chapter 177, Laws of Utah 2002

20A-2-107.1, as enacted by Chapter 328, Laws of Utah 2000

20A-9-403, as last amended by Chapters 75 and 328, Laws of Utah 2000

63-55b-120, as last amended by Chapter 136, Laws of Utah 2002

ENACTS:

20A-1-201.6, Utah Code Annotated 1953

20A-1-501.1, Utah Code Annotated 1953

20A-9-201.1, Utah Code Annotated 1953

This act enacts uncodified material.

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



28 Section 1. Section **20A-1-102** is amended to read:

29 **20A-1-102. Definitions.**

30 As used in this title:

31 (1) "Active voter" means a registered voter who has not been classified as an inactive voter
32 by the county clerk.

33 (2) "Automatic tabulating equipment" means apparatus that automatically examines and
34 counts votes recorded on paper ballots or ballot cards and tabulates the results.

35 (3) "Ballot" means the cardboard, paper, or other material upon which a voter records his
36 votes and includes ballot cards, paper ballots, and secrecy envelopes.

37 (4) "Ballot card" means a ballot that can be counted using automatic tabulating equipment.

38 (5) "Ballot label" means the cards, papers, booklet, pages, or other materials that contain
39 the names of offices and candidates and statements of ballot propositions to be voted on and which
40 are used in conjunction with ballot cards.

41 (6) "Ballot proposition" means opinion questions specifically authorized by the
42 Legislature, constitutional amendments, initiatives, referenda, and judicial retention questions that
43 are submitted to the voters for their approval or rejection.

44 (7) "Board of canvassers" means the entities established by Sections 20A-4-301 and
45 20A-4-306 to canvass election returns.

46 (8) "Bond election" means an election held for the sole purpose of approving or rejecting
47 the proposed issuance of bonds by a government entity.

48 (9) "Book voter registration form" means voter registration forms contained in a bound
49 book that are used by election officers and registration agents to register persons to vote.

50 (10) "By-mail voter registration form" means a voter registration form designed to be
51 completed by the voter and mailed to the election officer.

52 (11) "Canvass" means the review of election returns and the official declaration of election
53 results by the board of canvassers.

54 (12) "Canvassing judge" means an election judge designated to assist in counting ballots
55 at the canvass.

56 (13) "Convention" means the political party convention at which party officers and
57 delegates are selected.

58 (14) "Counting center" means one or more locations selected by the election officer in

59 charge of the election for the automatic counting of ballots.

60 (15) "Counting judge" means a judge designated to count the ballots during election day.

61 (16) "Counting poll watcher" means a person selected as provided in Section 20A-3-201
62 to witness the counting of ballots.

63 (17) "Counting room" means a suitable and convenient private place or room, immediately
64 adjoining the place where the election is being held, for use by the counting judges to count ballots
65 during election day.

66 (18) "County executive" has the meaning as provided in Subsection 68-3-12(2).

67 (19) "County legislative body" has the meaning as provided in Subsection 68-3-12(2).

68 (20) "County officers" means those county officers that are required by law to be elected.

69 (21) "Election" means a regular general election, a municipal general election, a statewide
70 special election, a local special election, a regular primary election, a municipal primary election,
71 and a special district election.

72 (22) "Election cycle" means the period beginning on the first day persons are eligible to
73 file declarations of candidacy and ending when the canvass is completed.

74 (23) "Election judge" means each canvassing judge, counting judge, and receiving judge.

75 (24) "Election officer" means:

76 (a) the lieutenant governor, for all statewide ballots;

77 (b) the county clerk or clerks for all county ballots and for certain special district and
78 school district ballots as provided in Section 20A-5-400.5;

79 (c) the municipal clerk for all municipal ballots and for certain special district and school
80 district ballots as provided in Section 20A-5-400.5; and

81 (d) the special district clerk or chief executive officer for all special district ballots that are
82 not part of a statewide, county, or municipal ballot.

83 (25) "Election official" means any election officer, election judge, or satellite registrar.

84 (26) "Election returns" includes the pollbook, all affidavits of registration, the military and
85 overseas absentee voter registration and voting certificates, one of the tally sheets, any unprocessed
86 absentee ballots, all counted ballots, all excess ballots, all unused ballots, all spoiled ballots, the
87 ballot disposition form, and the total votes cast form.

88 (27) "Electronic voting system" means a system in which a voting device is used in
89 conjunction with ballots so that votes recorded by the voter are counted and tabulated by automatic

90 tabulating equipment.

91 (28) "Inactive voter" means a registered voter who has been sent the notice required by
92 Section 20A-2-306 and who has failed to respond to that notice.

93 (29) "Inspecting poll watcher" means a person selected as provided in this title to witness
94 the receipt and safe deposit of voted and counted ballots.

95 (30) "Judicial office" means the office filled by any judicial officer.

96 (31) "Judicial officer" means any justice or judge of a court of record or any county court
97 judge.

98 (32) "Local election" means a regular municipal election, a local special election, a special
99 district election, and a bond election.

100 (33) "Local political subdivision" means a county, a municipality, a special district, or a
101 local school district.

102 (34) "Local special election" means a special election called by the governing body of a
103 local political subdivision in which all registered voters of the local political subdivision may vote.

104 (35) "Municipal executive" means:

105 (a) the city commission, city council, or town council in the traditional management
106 arrangement established by Title 10, Chapter 3, Part 1, Governing Body;

107 (b) the mayor in the council-mayor optional form of government defined in Section
108 10-3-1209; and

109 (c) the manager in the council-manager optional form of government defined in Section
110 10-3-1209.

111 (36) "Municipal general election" means the election held in municipalities and special
112 districts on the first Tuesday after the first Monday in November of each odd-numbered year for
113 the purposes established in Section 20A-1-202.

114 (37) "Municipal legislative body" means:

115 (a) the city commission, city council, or town council in the traditional management
116 arrangement established by Title 10, Chapter 3, Part 1, Governing Body;

117 (b) the municipal council in the council-mayor optional form of government defined in
118 Section 10-3-1209; and

119 (c) the municipal council in the council-manager optional form of government defined in
120 Section 10-3-1209.

121 (38) "Municipal officers" means those municipal officers that are required by law to be
122 elected.

123 (39) "Municipal primary election" means an election held to nominate candidates for
124 municipal office.

125 (40) "Official ballot" means the ballots distributed by the election officer to the election
126 judges to be given to voters to record their votes.

127 (41) "Official endorsement" means:

128 (a) the information on the ballot that identifies:

129 (i) the ballot as an official ballot;

130 (ii) the date of the election; and

131 (iii) the facsimile signature of the election officer; and

132 (b) the information on the ballot stub that identifies:

133 (i) the election judge's initials; and

134 (ii) the ballot number.

135 (42) "Official register" means the book furnished election officials by the election officer
136 that contains the information required by Section 20A-5-401.

137 (43) "Paper ballot" means a paper that contains:

138 (a) the names of offices and candidates and statements of ballot propositions to be voted
139 on; and

140 (b) spaces for the voter to record his vote for each office and for or against each ballot
141 proposition.

142 (44) "Political party" means an organization of registered voters that has qualified to
143 participate in an election by meeting the requirements of Title 20A, Chapter 8, Political Party
144 Formation and Procedures.

145 (45) "Polling place" means the building where residents of a voting precinct vote.

146 (46) "Position" means a square, circle, rectangle, or other geometric shape on a ballot in
147 which the voter marks his choice.

148 (47) "Posting list" means a list of registered voters within a voting precinct.

149 (48) "Provisional ballot" means a ballot voted provisionally by a person:

150 (a) whose name is not listed on the official register at the polling place; or

151 (b) whose legal right to vote is challenged as provided in this title.

152 (49) "Provisional ballot envelope" means an envelope printed in the form required by
153 Section 20A-6-105 that is used to identify provisional ballots and to provide information to verify
154 a person's legal right to vote.

155 (50) "Primary convention" means the political party conventions at which nominees for
156 the regular primary election are selected.

157 (51) "Protective counter" means a separate counter, which cannot be reset, that is built into
158 a voting machine and records the total number of movements of the operating lever.

159 (52) "Qualify" or "qualified" means to take the oath of office and begin performing the
160 duties of the position for which the person was elected.

161 (53) "Receiving judge" means the election judge that checks the voter's name in the official
162 register, provides the voter with a ballot, and removes the ballot stub from the ballot after the voter
163 has voted.

164 (54) "Registration days" means the days designated in Section 20A-2-203 when a voter
165 may register to vote with a satellite registrar.

166 (55) "Registration form" means a book voter registration form and a by-mail voter
167 registration form.

168 (56) "Regular ballot" means a ballot that is not a provisional ballot.

169 (57) "Regular general election" means the election held throughout the state on the first
170 Tuesday after the first Monday in November of each even-numbered year for the purposes
171 established in Section 20A-1-201.

172 (58) (a) Except as provided in Subsection (58)(b), "Regular primary election" means the
173 election on the fourth Tuesday of June of each even-numbered year, at which candidates of
174 political parties and nonpolitical groups are voted for nomination.

175 (b) For 2002 only, "regular primary election" means:

176 (i) the election on the fourth Tuesday of June at which candidates of political parties and
177 nonpolitical groups are voted for nomination; and

178 (ii) any other primary election established by the Legislature for that year at which
179 candidates of political parties are voted for nomination.

180 (59) "Resident" means a person who resides within a specific voting precinct in Utah.

181 (60) "Sample ballot" means a mock ballot similar in form to the official ballot printed and
182 distributed as provided in Section 20A-5-405.

183 (61) "Satellite registrar" means a person appointed under Section 20A-5-201 to register
184 voters and perform other duties.

185 (62) "Scratch vote" means to mark or punch the straight party ticket and then mark or
186 punch the ballot for one or more candidates who are members of different political parties.

187 (63) "Secrecy envelope" means the envelope given to a voter along with the ballot into
188 which the voter places the ballot after he has voted it in order to preserve the secrecy of the voter's
189 vote.

190 (64) "Special district" means those local government entities created under the authority
191 of Title 17A.

192 (65) "Special district officers" means those special district officers that are required by law
193 to be elected.

194 (66) "Special election" means an election held as authorized by Section 20A-1-204.

195 (67) "Spoiled ballot" means each ballot that:

196 (a) is spoiled by the voter;

197 (b) is unable to be voted because it was spoiled by the printer or the election judge; or

198 (c) lacks the official endorsement.

199 (68) "Statewide special election" means a special election called by the governor or the
200 Legislature in which all registered voters in Utah may vote.

201 (69) "Stub" means the detachable part of each ballot.

202 (70) "Substitute ballots" means replacement ballots provided by an election officer to the
203 election judges when the official ballots are lost or stolen.

204 (71) "Ticket" means each list of candidates for each political party or for each group of
205 petitioners.

206 (72) "Transfer case" means the sealed box used to transport voted ballots to the counting
207 center.

208 (73) "Vacancy" means the absence of a person to serve in any position created by statute,
209 whether that absence occurs because of death, disability, disqualification, resignation, or other
210 cause.

211 (74) "Valid write-in candidate" means a candidate who has qualified as a write-in
212 candidate by following the procedures and requirements of this title.

213 (75) "Voter" means a person who meets the requirements for voting in an election, meets

214 the requirements of election registration, is registered to vote, and is listed in the official register
215 book.

216 (76) "Voting area" means the area within six feet of the voting booths, voting machines,
217 and ballot box.

218 (77) "Voting booth" means the space or compartment within a polling place that is
219 provided for the preparation of ballots and includes the voting machine enclosure or curtain.

220 (78) "Voting device" means:

221 (a) an apparatus in which ballot cards are used in connection with a punch device for
222 piercing the ballots by the voter;

223 (b) a device for marking the ballots with ink or another substance; or

224 (c) any other method for recording votes on ballots so that the ballot may be tabulated by
225 means of automatic tabulating equipment.

226 (79) "Voting machine" means a machine designed for the sole purpose of recording and
227 tabulating votes cast by voters at an election.

228 (80) "Voting poll watcher" means a person appointed as provided in this title to witness
229 the distribution of ballots and the voting process.

230 (81) "Voting precinct" means the smallest voting unit established as provided by law
231 within which qualified voters vote at one polling place.

232 (82) "Watcher" means a voting poll watcher, a counting poll watcher, and an inspecting
233 poll watcher.

234 (83) "Western States Presidential Primary" means the election established in Title 20A,
235 Chapter 9, Part 8.

236 (84) "Write-in ballot" means a ballot containing any write-in votes.

237 (85) "Write-in vote" means a vote cast for a person whose name is not printed on the ballot
238 according to the procedures established in this title.

239 Section 2. Section **20A-1-201.6** is enacted to read:

240 **20A-1-201.6. 2002 Primary election dates.**

241 Notwithstanding Section 20A-1-201.5, for 2002 only:

242 (1) Except as provided in Subsection (2), a regular primary election shall be held
243 throughout the state on June 25, 2002 as provided in Title 20A, Chapter 9, Part 4, Primary
244 Elections, to nominate persons for national, state, school board, and county offices.

245 (2) (a) If the United States Supreme Court has not issued its ruling in the State of Utah v.
246 Evans case by May 15, 2002, the regular primary election to select party nominees to serve in the
247 United States House of Representatives may not be held on June 25, 2002.

248 (b) If the United States Supreme Court has not issued its ruling in the State of Utah v.
249 Evans case by August 1, 2002, the regular primary election to select party nominees to serve in the
250 United States House of Representatives shall be held on September 10, 2002, as provided in
251 Section 20A-9-403.

252 (c) If the United States Supreme Court issues its ruling in the State of Utah v. Evans case
253 after May 15, 2002 and before August 1, 2002, the regular primary election to select party
254 nominees to serve in the United States House of Representatives shall be held on the date specified
255 by the Legislature in subsequent legislation.

256 Section 3. Section **20A-1-501.1** is enacted to read:

257 **20A-1-501.1. Candidate vacancies -- Procedure for filling -- 2002 election only.**
258 Notwithstanding Section 20A-1-501, for 2002 only:

259 (1) A political party may certify the name of another candidate to the appropriate election
260 officer if the candidate vacancy is created because the candidate who created the vacancy resigned
261 as a candidate for a non-United States House of Representatives office to file a declaration of
262 candidacy for the United States House of Representatives.

263 (2) Each replacement candidate shall file a declaration of candidacy as required by Title
264 20A, Chapter 9, Part 2, Candidate Qualifications and Declarations of Candidacy.

265 Section 4. Section **20A-2-107.1** is amended to read:

266 **20A-2-107.1. Designating or changing party affiliation -- June 2002 primary.**

267 (1) At [~~the~~] each primary election held [~~June 24,~~] in 2002:

268 (a) each county clerk shall provide change of party affiliation forms to the election judges
269 for each voting precinct within the county;

270 (b) any registered voter who is classified as "unaffiliated" may affiliate with a political
271 party by completing the form and giving it to the election judge.

272 (2) An unaffiliated voter who affiliates with a political party as provided in Subsection
273 (1)(b) may vote in that party's primary election [~~on June 24, 2002~~].

274 (3) This section is repealed [~~July 1, 2002~~] January 1, 2003.

275 Section 5. Section **20A-9-201.1** is enacted to read:

276 **20A-9-201.1. Candidates for more than one office -- 2002 exception.**

277 Notwithstanding Subsection 20A-9-201(2), for 2002 only:

278 (1) A person who has filed a declaration of candidacy to be a candidate for an office other
279 than United States House of Representatives may, if a statute provides an additional period for
280 filing a declaration of candidacy for United States House of Representatives:

281 (a) resign as a candidate for that other office; and

282 (b) file a declaration of candidacy for the United States House of Representatives.

283 (2) A person who has filed a declaration of candidacy to be a candidate for the United
284 States House of Representatives may file a new declaration of candidacy to be a candidate for the
285 United States House of Representatives in any Congressional District, if a statute provides an
286 additional period for filing a declaration of candidacy for United States House of Representatives.

287 Section 6. Section **20A-9-403** is amended to read:

288 **20A-9-403. Regular primary elections.**

289 (1) (a) ~~[The]~~ (i) Except as provided in Subsection (1)(a)(ii), the fourth Tuesday of June of
290 each even-numbered year is designated as regular primary election day.

291 (ii) For 2002 only, the regular primary election date is the date established by the
292 Legislature in Section 20A-1-201.6.

293 (b) Each registered political party that chooses to use the primary election process to
294 nominate some or all of its candidates shall comply with the requirements of this section.

295 (2) (a) As a condition for using the state's election system, each registered political party
296 that wishes to participate in the primary election shall:

297 (i) declare their intent to participate in the primary election;

298 (ii) identify one or more registered political parties whose members may vote for the
299 registered political party's candidates and whether or not persons identified as unaffiliated with a
300 political party may vote for the registered political party's candidates; and

301 (iii) certify that information to the lieutenant governor no later than 5 p.m. on March 1 of
302 each even-numbered year.

303 (b) As a condition for using the state's election system, each registered political party that
304 wishes to participate in the primary election shall:

305 (i) certify the name and office of all of the registered political party's candidates to the
306 lieutenant governor no later than 5 p.m. on May 13 of each even-numbered year; and

307 (ii) certify the name and office of each of its county candidates to the county clerks by 5
308 p.m. on May 13 of each even-numbered year.

309 (c) By 5 p.m. on May 16 of each even-numbered year, the lieutenant governor shall send
310 the county clerks a certified list of the names of all statewide or multicounty candidates that must
311 be printed on the primary ballot.

312 (d) (i) Except as provided in Subsection (2)(d)(ii), if a registered political party does not
313 wish to participate in the primary election, it shall submit the names of its county candidates to the
314 county clerks and the names of all of its candidates to the lieutenant governor by 5 p.m. on May
315 30 of each even-numbered year.

316 (ii) A registered political party's candidates for President and Vice-President of the United
317 States shall be certified to the lieutenant governor as provided in Subsection 20A-9-202(4).

318 (e) Each political party shall certify the names of its presidential and vice-presidential
319 candidates and presidential electors to the lieutenant governor's office by August 30 of each
320 presidential election year.

321 (3) The county clerk shall:

322 (a) review the declarations of candidacy filed by candidates for local boards of education
323 to determine if more than two candidates have filed for the same seat;

324 (b) place the names of all candidates who have filed a declaration of candidacy for a local
325 board of education seat on the nonpartisan section of the ballot if more than two candidates have
326 filed for the same seat; and

327 (c) conduct a lottery to determine the order of the candidates' names on the ballot.

328 (4) After the county clerk receives the certified list from a registered political party, the
329 county clerk shall post or publish a primary election notice in substantially the following form:

330 "Notice is given that a primary election will be held Tuesday, June ____, ____ (year),
331 to nominate party candidates for the parties and nonpartisan offices listed on the primary ballot.
332 The polling place for voting precinct ____ is _____. The polls will open at 7 a.m. and continue
333 open until 8 p.m. of the same day. Attest: county clerk".

334 (5) (a) Candidates receiving the highest number of votes cast for each office at the regular
335 primary election are nominated by their party or nonpartisan group for that office.

336 (b) If two or more candidates are to be elected to the office at the regular general election,
337 those party candidates equal in number to positions to be filled who receive the highest number

338 of votes at the regular primary election are the nominees of their party for those positions.

339 (6) (a) When a tie vote occurs in any primary election for any national, state, or other office
340 that represents more than one county, the governor, lieutenant governor, and attorney general shall,
341 at a public meeting called by the governor and in the presence of the candidates involved, select
342 the nominee by lot cast in whatever manner the governor determines.

343 (b) When a tie vote occurs in any primary election for any county office, the district court
344 judges of the district in which the county is located shall, at a public meeting called by the judges
345 and in the presence of the candidates involved, select the nominee by lot cast in whatever manner
346 the judges determine.

347 (7) The expense of providing all ballots, blanks, or other supplies to be used at any primary
348 election provided for by this section, and all expenses necessarily incurred in the preparation for
349 or the conduct of that primary election shall be paid out of the treasury of the county or state, in
350 the same manner as for the regular general elections.

351 Section 7. Section **63-55b-120** is amended to read:

352 **63-55b-120. Repeal dates, Title 20A.**

353 (1) Section 20A-1-205 is repealed January 1, 2003.

354 (2) Section 20A-2-107.1 is repealed [~~July~~] January 1, [2002] 2003.

355 (3) Section 20A-1-201.6 is repealed January 1, 2003.

356 (4) Section 20A-1-501.1 is repealed January 1, 2003.

357 (5) Section 20A-9-201.1 is repealed January 1, 2003.

358 Section 8. **Legislative intent.**

359 It is the intent of the Legislature that, if the United States Supreme Court issues its ruling
360 in the State of Utah v. Evans case after May 15, 2002, the governor shall, as quickly as possible,
361 convene the Legislature into a special session to:

362 (1) realign the boundaries of the four member Congressional plan adopted by the
363 Legislature in October, 2001, if necessary, making as minimal adjustments to the existing plan as
364 practicable;

365 (2) establish declaration of candidacy dates for Congressional candidates, if necessary;

366 (3) establish dates by which political parties must certify their candidates for primary and
367 general elections, if necessary;

368 (4) establish the earliest date practicable for a primary election to select party

369 Congressional candidate nominees, if necessary; and
370 (5) make other amendments to the election process to facilitate speedy selection of party
371 Congressional candidate nominees.
372 **Section 9. Appropriation.**
373 If the primary election date for Congressional races is postponed until after June 25, 2002,
374 there is appropriated \$600,000 from the General Fund for fiscal year 2002-2003 to the lieutenant
375 governor to be used to pay for the second primary election.
376 **Section 10. Effective date.**
377 If approved by two-thirds of all the members elected to each house, this act takes effect
378 upon approval by the governor, or the day following the constitutional time limit of Utah
379 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the
380 date of veto override.

Legislative Review Note
as of 4-25-02 3:27 PM

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

Office of Legislative Research and General Counsel