

Part 4 Recounts and Election Contests

20A-4-401 Recounts -- Procedure.

- (1)
- (a) This section does not apply to a race conducted by instant runoff voting under Chapter 4, Part 6, Municipal Alternate Voting Methods Pilot Project.
 - (b) Except as provided in Subsection (1)(c), for a race between candidates, if the difference between the number of votes cast for a winning candidate in the race and a losing candidate in the race is equal to or less than .25% of the total number of votes cast for all candidates in the race, that losing candidate may file a request for a recount in accordance with Subsection (1)(d).
 - (c) For a race between candidates where the total of all votes cast in the race is 400 or less, if the difference between the number of votes cast for a winning candidate in the race and a losing candidate in the race is one vote, that losing candidate may file a request for a recount in accordance with Subsection (1)(d).
 - (d) A candidate who files a request for a recount under Subsection (1) (b) or (c) shall file the request:
 - (i) for a municipal primary election, with the municipal clerk, before 5 p.m. within three days after the canvass; or
 - (ii) for all other elections, before 5 p.m. within seven days after the canvass with:
 - (A) the municipal clerk, if the election is a municipal general election;
 - (B) the local district clerk, if the election is a local district election;
 - (C) the county clerk, for races voted on entirely within a single county; or
 - (D) the lieutenant governor, for statewide races and multicounty races.
 - (e) The election officer shall:
 - (i) supervise the recount;
 - (ii) recount all ballots cast for that race;
 - (iii) reexamine all uncounted ballots to ensure compliance with Chapter 3a, Part 4, Disposition of Ballots;
 - (iv) for a race where only one candidate may win, declare elected the candidate who receives the highest number of votes on the recount; and
 - (v) for a race where multiple candidates may win, declare elected the applicable number of candidates who receive the highest number of votes on the recount.
- (2)
- (a) Except as provided in Subsection (2)(b), for a ballot proposition or a bond proposition, if the proposition passes or fails by a margin that is equal to or less than .25% of the total votes cast for or against the proposition, any 10 voters who voted in the election where the proposition was on the ballot may file a request for a recount before 5 p.m. within seven days after the day of the canvass with the person described in Subsection (2)(c).
 - (b) For a ballot proposition or a bond proposition where the total of all votes cast for or against the proposition is 400 or less, if the difference between the number of votes cast for the proposition and the number of votes cast against the proposition is one vote, any 10 voters who voted in the election where the proposition was on the ballot may file a request for a recount before 5 p.m. within seven days after the day of the canvass with the person described in Subsection (2)(c).

- (c) The 10 voters who file a request for a recount under Subsection (2)(a) or (b) shall file the request with:
 - (i) the municipal clerk, if the election is a municipal election;
 - (ii) the local district clerk, if the election is a local district election;
 - (iii) the county clerk, for propositions voted on entirely within a single county; or
 - (iv) the lieutenant governor, for statewide propositions and multicounty propositions.
- (d) The election officer shall:
 - (i) supervise the recount;
 - (ii) recount all ballots cast for that ballot proposition or bond proposition;
 - (iii) reexamine all uncounted ballots to ensure compliance with Chapter 3a, Part 4, Disposition of Ballots; and
 - (iv) declare the ballot proposition or bond proposition to have "passed" or "failed" based upon the results of the recount.
- (e) Proponents and opponents of the ballot proposition or bond proposition may designate representatives to witness the recount.
- (f) The voters requesting the recount shall pay the costs of the recount.
- (3) Costs incurred by recount under Subsection (1) may not be assessed against the person requesting the recount.
- (4)
 - (a) Upon completion of the recount, the election officer shall immediately convene the board of canvassers.
 - (b) The board of canvassers shall:
 - (i) canvass the election returns for the race or proposition that was the subject of the recount; and
 - (ii) with the assistance of the election officer, prepare and sign the report required by Section 20A-4-304 or 20A-4-306.
 - (c) If the recount is for a statewide or multicounty race or for a statewide proposition, the board of county canvassers shall prepare and transmit a separate report to the lieutenant governor as required by Subsection 20A-4-304 (7).
 - (d) The canvassers' report prepared as provided in this Subsection (4) is the official result of the race or proposition that is the subject of the recount.

Amended by Chapter 31, 2020 General Session

20A-4-402 Election contests -- Grounds.

- (1) The election or nomination of any person to any public office, and the declared result of the vote on any ballot proposition or bond proposition submitted to a vote of the people may be contested according to the procedures established in this part only:
 - (a) for malconduct, fraud, or corruption on the part of the judges of election at any polling place, or of any board of canvassers, or any judge or member of the board sufficient to change the result;
 - (b) when the person declared elected was not eligible for the office at the time of the election;
 - (c) when the person declared elected has:
 - (i) given or offered to any registered voter, judge, or canvasser of the election any bribe or reward in money, property, or anything of value for the purpose of influencing the election; or
 - (ii) committed any other offense against the elective franchise;

- (d) when illegal votes have been received or legal votes have been rejected at the polls sufficient to change the result;
 - (e) for any error of any board of canvassers or judges of election in counting the votes or declaring the result of the election, if the error would change the result;
 - (f) when the election result would change because a sufficient number of ballots containing uncorrected errors or omissions have been received at the polls;
 - (g) when the candidate declared elected is ineligible to serve in the office to which the candidate was elected;
 - (h) when an election judge or clerk was a party to malconduct, fraud, or corruption sufficient to change the result of the election; and
 - (i) for any other cause that shows that another person was legally elected.
- (2) Any irregularity or improper conduct by the election judges does not void an election unless the irregularity or improper conduct would result in the election of a person who did not receive the highest number of legal votes.
- (3) When any election held for any office is contested because of any irregularity or improper conduct on the part of a judge of any voting precinct, a court, upon proof of the irregularity or improper conduct may not set aside the election unless the irregularity or improper conduct would change the result for that office.

Amended by Chapter 105, 2005 General Session

20A-4-403 Election contest -- Petition and response.

- (1)
- (a) In contesting the results of all elections, except for primary elections and bond elections, a registered voter shall contest the right of any person declared elected to any office by filing a verified written complaint with the district court of the county in which he resides within 40 days after the canvass.
 - (b) The complaint shall include:
 - (i) the name of the party contesting the election;
 - (ii) a statement that the party is a registered voter in the jurisdiction in which the election was held;
 - (iii) the name of the person whose right to the office is contested;
 - (iv) the office to which that person was ostensibly elected;
 - (v) one or more of the grounds for an election contest specified in Section 20A-4-402;
 - (vi) the person who was purportedly elected to the office as respondent; and
 - (vii) if the reception of illegal votes or the rejection of legal votes is alleged as a ground for the contest, the name and address of all persons who allegedly cast illegal votes or whose legal vote was rejected.
 - (c) When the reception of illegal votes or the rejection of legal votes is alleged as a cause of contest, it is sufficient to state generally that:
 - (i) illegal votes were given in one or more specified voting precincts to a person whose election is contested, which, if taken from him, would reduce the number of his legal votes below the number of legal votes given to some other person for the same office; or
 - (ii) that legal votes for another person were rejected, which, if counted, would raise the number of legal votes for that person above the number of legal votes cast for the person whose election is contested.
 - (d)

- (i) The court may not take or receive evidence of any of the votes described in Subsection (1)(c) unless the party contesting the election delivers to the opposite party, at least three days before the trial, a written list of the number of contested votes and by whom the contested votes were given or offered, which he intends to prove at trial.
 - (ii) The court may not take or receive any evidence of contested votes except those that are specified in that list.
- (2)
- (a) In contesting the results of a primary election, when contesting the petition nominating an independent candidate, or when challenging any person, election officer, election official, board, or convention for failing to nominate a person, a registered voter shall contest the right of any person declared nominated to any office by filing a verified written complaint within 10 days after the date of the canvass for the primary election, after the date of filing of the petition, or after the date of the convention, respectively, with:
 - (i) the district court of the county in which he resides if he is contesting a nomination made only by voters from that county; or
 - (ii) the Utah Supreme Court, if he is contesting a nomination made by voters in more than one county.
 - (b) The complaint shall include:
 - (i) the name of the party contesting the nomination;
 - (ii) a statement that the contesting party is a registered voter in the jurisdiction in which the election was held;
 - (iii) the name of the person whose right to nomination is contested or the name of the person who failed to have their name placed in nomination;
 - (iv) the office to which that person was nominated or should have been nominated;
 - (v) one or more of the grounds for an election contest specified in Subsection (1);
 - (vi) the person who was purportedly nominated to the office as respondent; and
 - (vii) if the reception of illegal votes or the rejection of legal votes is alleged as a ground for the contest, the name and address of all persons who allegedly cast illegal votes or whose legal vote was rejected.
 - (c) When the reception of illegal votes or the rejection of legal votes is alleged as a cause of contest, it is sufficient to state generally that:
 - (i) illegal votes were given to a person whose election is contested, which, if taken from him, would reduce the number of his legal votes below the number of legal votes given to some other person for the same office; or
 - (ii) legal votes for another person were rejected, which, if counted, would raise the number of legal votes for that person above the number of legal votes cast for the person whose election is contested.
 - (d)
 - (i) The court may not take or receive evidence of any the votes described in Subsection (2)(c), unless the party contesting the election delivers to the opposite party, at least three days before the trial, a written list of the number of contested votes and by whom the contested votes were given or offered, which he intends to prove at trial.
 - (ii) The court may not take or receive any evidence of contested votes except those that are specified in that list.
- (3)
- (a) In contesting the results of a bond election, a registered voter shall contest the validity of the declared results by filing a verified written complaint with the district court of the county in

which he resides within 40 days after the date of the official finding entered under Section 11-14-207.

- (b) The complaint shall include:
 - (i) the name of the party contesting the election;
 - (ii) a statement that the party is a registered voter in the jurisdiction in which the election was held;
 - (iii) the bond proposition that is the subject of the contest;
 - (iv) one or more of the grounds for an election contest specified in Section 20A-4-402; and
 - (v) if the reception of illegal votes or the rejection of legal votes is alleged as a ground for the contest, the name and address of all persons who allegedly cast illegal votes or whose legal vote was rejected.
- (c) When the reception of illegal votes or the rejection of legal votes is alleged as a cause of contest, it is sufficient to state generally that:
 - (i) illegal votes were counted in one or more specified voting precincts which, if taken out of the count, would change the declared result of the vote on the proposition; or
 - (ii) legal votes were rejected in one or more specified voting precincts, which, if counted, would change the declared result of the vote on the proposition.
- (d)
 - (i) The court may not take or receive evidence of any of the votes described in Subsection (3) (c) unless the party contesting the election delivers to the opposite party, at least three days before the trial, a written list of the number of contested votes and by whom the contested votes were given or offered, which he intends to prove at trial.
 - (ii) The court may not take or receive any evidence of contested votes except those that are specified in that list.
- (4) The court may not reject any statement of the grounds of contest or dismiss the proceedings because of lack of form, if the grounds of the contest are alleged with such certainty as will advise the defendant of the particular proceeding or cause for which the election is contested.
- (5)
 - (a) The petitioner shall serve a copy of the petition on the respondent.
 - (b)
 - (i) If the petitioner cannot obtain personal service of the petition on the respondent, the petitioner may serve the respondent by leaving a copy of the petition with the clerk of the court with which the petition was filed.
 - (ii) The clerk shall make diligent inquiry and attempt to inform the respondent that he has five days to answer the complaint.
 - (c) The respondent shall answer the petition within five days after the service.
 - (d) If the reception of illegal votes or the rejection of legal votes is alleged as a ground for the contest, the defendant shall set forth in the answer the name and address of all persons whom the defendant believes were properly or improperly admitted or denied the vote.
 - (e) If the answer contains a counterclaim, the petitioner shall file a reply within 10 days after service of the counterclaim.
- (6)
 - (a) The provisions of this Subsection (6) provide additional requirements that apply to municipal election contests that are in addition to the other requirements of this section governing election contest.
 - (b) Municipal election contests shall be filed, tried, and determined in the district court of the county in which the municipality is located.
 - (c)

- (i) As a condition precedent to filing a municipal election contest, the petitioner shall file a written affidavit of intention to contest the election with the clerk of the court within seven days after the votes are canvassed.
- (ii) The affidavit shall include:
 - (A) the petitioner's name;
 - (B) the fact that the petitioner is a qualified voter of the municipality;
 - (C) the respondent's name;
 - (D) the elective office contested;
 - (E) the time of election; and
 - (F) the grounds for the contest.
- (d)
 - (i) Before the district court takes jurisdiction of a municipal election contest, the petitioner shall file a bond with the clerk of the court with the sureties required by the court.
 - (ii) The bond shall name the respondent as obligee and be conditioned for the payment of all costs incurred by the respondent if the respondent prevails.

Amended by Chapter 238, 2007 General Session

20A-4-404 Election contest -- Calendaring and disposition.

- (1)
 - (a) Upon receipt of the petition, the clerk shall inform the chief judge of the court having jurisdiction.
 - (b) The chief judge shall issue an order:
 - (i) assigning the case to a district court judge, if the district court has jurisdiction; and
 - (ii) setting a date and time, not less than 10 nor more than 30 days from the date the petition was filed to hear and determine the contest.
 - (c) The clerk shall:
 - (i) issue a subpoena for the person whose right to the office is contested to appear at the time and place specified in the order; and
 - (ii) cause the subpoena to be served.
- (2) The court shall meet at the time and place designated to determine the contest.
- (3)
 - (a) If it is necessary for the court to inspect the ballots of any voting precinct in order to determine any election contest the judge may order the proper officer to produce them.
 - (b) The judge shall:
 - (i) open and inspect the ballots in open court in the presence of the parties or their attorneys; and
 - (ii) immediately after the inspection, seal them in an envelope and return them, by mail or otherwise, to their legal custodian.
- (4)
 - (a) If the petition, response, or counterclaim alleges an error in the canvass sufficient to change the result, the court may order and conduct a recount of the ballots or vote tabulation.
 - (b) The court may also require the production of any documents, records, and other evidence necessary to enable it to determine the legality or illegality of any vote cast or counted.
 - (c)
 - (i) After all the evidence in the contest is submitted, the court shall enter its judgment, either confirming the election result or annulling and setting aside the election.

- (ii) If the court determines that a person other than the one declared elected received the highest number of legal votes, the court shall declare that person elected.

Enacted by Chapter 1, 1993 General Session

20A-4-405 Election contests -- Costs.

- (1) The court shall enter judgment for costs against the party contesting the election if:
 - (a) the proceedings are dismissed for:
 - (i) insufficiency of pleading or proof; or
 - (ii) want of prosecution; or
 - (b) the election is confirmed by the court.
- (2) The court shall enter judgment for costs against the party whose election was contested if the election is annulled and set aside.
- (3)
 - (a) Each party is liable for the costs of the officers and witnesses that appeared on his behalf.
 - (b) The party may pay, and the officers and witnesses may collect, those costs in the same manner as similar costs are paid and collected in other cases.

Enacted by Chapter 1, 1993 General Session

20A-4-406 Election contests -- Appeal.

- (1)
 - (a) Either party may appeal the district court's judgment to the Supreme Court as in other cases of appeal from the district court.
 - (b) When an appeal is taken, the district court may not stay execution or proceedings, except execution for costs.
- (2) Whenever an election is annulled or set aside by the judgment of a court and no appeal is taken within 10 days, the certificate of election, if any has been issued, is void, and the office is vacant.

Enacted by Chapter 1, 1993 General Session