

TECHNICAL CHANGES TO ELECTION LAW

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Loraine T. Pace

This act modifies provisions of the Election Code governing prohibited activities at polling places, the duties of boards of canvassers generally and in conjunction with recounts, recount procedures, the duties of the lieutenant governor as chief election officer, and signature requirements for local initiative petitions. This act expands the scope for participation in the Department of Defense's Internet voting pilot project and repeals the repeal date of January 1, 2003 for that section. This act makes other technical corrections.

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

AMENDS:

20A-3-501, as last amended by Chapter 130, Laws of Utah 1997

20A-4-303, as last amended by Chapter 21, Laws of Utah 1994

20A-4-401, as last amended by Chapter 20, Laws of Utah 2001

20A-6-103 (Repealed 01/01/03), as enacted by Chapter 57, Laws of Utah 1998

20A-7-507, as last amended by Chapter 165, Laws of Utah 1995

67-1a-2, as enacted by Chapter 68, Laws of Utah 1984

REPEALS:

67-1a-9, as enacted by Chapter 68, Laws of Utah 1984

This act affects uncodified material as follows:

REPEALS:

Uncodified Section 2, Chapter 57, Laws of Utah 1998

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

Section 1. Section **20A-3-501** is amended to read:

20A-3-501. Polling place -- Prohibited activities.

(1) As used in this section[;]:



28 (a) "electioneering" includes any oral, printed, or written attempt to persuade persons to
29 refrain from voting or to vote for or vote against any candidate or issue[-]; and

30 (b) "polling place" means the physical place where ballots and absentee ballots are cast and
31 includes the county clerk's office during the period in which absentee ballots may be cast there.

32 (2) (a) [~~On the day of any election,~~] A person may not, within a polling place or in any
33 public area within 150 feet of the building where a polling place is located[~~, a person may not~~]:

34 (i) do any electioneering;

35 (ii) circulate cards or handbills of any kind;

36 (iii) solicit signatures to any kind of petition; or

37 (iv) engage in any practice that interferes with the freedom of voters to vote or disrupts the
38 administration of the polling place.

39 (b) A county, municipality, school district, or special district may not prohibit
40 electioneering that occurs more than 150 feet from the building where a polling place is located,
41 but may regulate the place and manner of that electioneering to protect the public safety.

42 (3) (a) A person may not obstruct the doors or entries to a building in which a polling place
43 is located or prevent free access to and from any polling place.

44 (b) A sheriff, deputy sheriff, or municipal law enforcement officer shall prevent the
45 obstruction of the entrance to a polling place and may arrest any person creating an obstruction.

46 (4) A person may not:

47 (a) remove any ballot from the polling place before the closing of the polls, except as
48 provided in Section 20A-4-101; or

49 (b) solicit any voter to show his ballot.

50 (5) A person may not receive a voted ballot from any voter or deliver an unused ballot to
51 a voter unless that person is an election judge.

52 (6) Any person who violates any provision of this section is guilty of a class A
53 misdemeanor.

54 (7) A political subdivision may not prohibit political signs that are located more than 150
55 feet away from a polling place, but may regulate their placement to protect public safety.

56 Section 2. Section **20A-4-303** is amended to read:

57 **20A-4-303. Duties of the board of canvassers -- Canvassing the returns.**

58 (1) (a) The board of canvassers shall canvass the election returns by publicly opening the

59 returns and determining from them the votes of each voting precinct for:

60 (i) each person voted for; and

61 (ii) for and against each ballot proposition voted upon at the election.

62 (b) The board of canvassers shall, once having begun the canvass, continue until it is
63 completed.

64 (2) In canvassing returns, the board of canvassers may not:

65 (a) reject any election returns if the board can determine the number of votes cast for each
66 person from it;

67 (b) reject any election returns if the election returns:

68 (i) do not show who administered the oath to the judges of election;

69 (ii) show that the election judges failed to fill out all the certificates in the pollbooks; or

70 (iii) show that the election judges failed to do or perform any other act in preparing the

71 returns that is not essential to determine for whom the votes were cast; [~~and~~] or

72 (c) reject any returns from any voting precinct that do not conform with the requirements
73 for making, certifying, and returning the returns if those returns are sufficiently explicit to enable
74 the board of canvassers to determine the number of votes cast for each person and for and against
75 each ballot proposition.

76 (3) (a) If it clearly appears to the election officer and board of canvassers that certain
77 matters are omitted or that clerical mistakes exist in election returns received, they shall transmit
78 the election returns to the election judges for correction.

79 (b) Upon receipt of the election returns for correction from the board of canvassers, the
80 election judges shall correct the election returns as required by the facts.

81 (c) The clerk and the board of canvassers may adjourn from day to day to await receipt of
82 corrected election material.

83 (4) If a recount is conducted as authorized by Section 20A-4-401, the board of canvassers
84 shall canvass the results of that recount as provided in this section and Section 20A-4-401.

85 Section 3. Section **20A-4-401** is amended to read:

86 **20A-4-401. Recounts -- Procedure.**

87 (1) (a) (i) For any regular primary, regular general, or municipal general election, or the
88 Western States Presidential primary, when any candidate loses by not more than a total of one vote
89 per voting precinct, the candidate may file a request for a recount [~~with the appropriate election~~

90 officer] within seven days after the canvass[-] with:

91 (A) the municipal clerk, if the election is a municipal election;

92 (B) the special district clerk, if the election is a special district election;

93 (C) the county clerk, for races or ballot propositions voted on entirely within a single

94 county; or

95 (D) the lieutenant governor, for statewide races and ballot propositions and for multicounty

96 races and ballot propositions.

97 (ii) For any municipal primary election, when any candidate loses by not more than a total
98 of one vote per voting precinct, the candidate may file a request for a recount with the appropriate
99 election officer within three days after the canvass.

100 (b) The election officer shall:

101 (i) supervise the recount;

102 (ii) recount all ballots cast for that office;

103 (iii) reexamine all unopened absentee ballots to ensure compliance with Chapter 3, Part

104 3, Voting By Absent or Physically Disabled Voters; and

105 (iv) declare elected the person receiving the highest number of votes on the recount.

106 (2) (a) Any ten voters who voted in an election when any ballot proposition was on the
107 ballot may file a request for a recount with the appropriate election officer within seven days of
108 the canvass.

109 (b) The election officer shall:

110 (i) supervise the recount;

111 (ii) recount all ballots cast for that ballot proposition;

112 (iii) reexamine all unopened absentee ballots to ensure compliance with Chapter 3, Part

113 3, Voting By Absent or Physically Disabled Voters; and

114 (iv) declare the ballot proposition to have "passed" or "failed" based upon the results of
115 the recount.

116 (c) Proponents and opponents of the ballot proposition may designate representatives to
117 witness the recount.

118 (d) The person or entity requesting the recount shall pay the costs of the recount.

119 (3) Costs incurred by recount under Subsection (1) may not be assessed against the person
120 requesting the recount.

121 (4) (a) Upon completion of the recount, the election officer shall immediately convene the
122 board of canvassers.

123 (b) The board of canvassers shall:

124 (i) canvass the election returns for the race or ballot proposition that was the subject of the
125 recount; and

126 (ii) with the assistance of the election officer, prepare and sign the report required by
127 Section 20A-4-304 or Section 20A-4-306.

128 (c) If the recount is for a statewide or multicounty race or for a statewide ballot
129 proposition, the board of county canvassers shall prepare and transmit a separate report to the
130 lieutenant governor as required by Subsection 20A-4-304(3).

131 (d) The canvassers' report prepared as provided in this Subsection (4) is the official result
132 of the race or ballot proposition that is the subject of the recount.

133 Section 4. Section **20A-6-103 (Repealed 01/01/03)** is amended to read:

134 **20A-6-103 (Repealed 01/01/03). Internet voting pilot project.**

135 Notwithstanding any other provisions of this title, any [~~second-class~~] county may, if
136 selected by the Department of Defense, participate in the Federal Voting Assistance Program pilot
137 project to allow military and voters overseas as defined by Section 20A-3-403 to register to vote
138 and cast their votes electronically.

139 Section 5. Section **20A-7-507** is amended to read:

140 **20A-7-507. Evaluation by the local clerk.**

141 (1) When each initiative packet is received from a county clerk, the local clerk shall check
142 off from his record the number of each initiative packet filed.

143 (2) (a) After all of the initiative packets have been received by the local clerk, the local
144 clerk shall count the number of the names certified by the county clerk that appear on each verified
145 signature sheet.

146 (b) If the total number of certified names from each verified signature sheet equals or
147 exceeds the number of names required by Section 20A-7-501, the local clerk shall mark upon the
148 front of the petition the word "sufficient."

149 (c) If the total number of certified names from each verified signature sheet does not equal
150 or exceed the number of names required by Section 20A-7-501, the local clerk shall mark upon
151 the front of the petition the word "insufficient."

152 (d) The local clerk shall immediately notify any one of the sponsors of his finding.

153 (3) If the local clerk finds the total number of certified signatures from each verified
154 signature sheet to be insufficient, any sponsor may file a written demand with the local clerk for
155 a recount of the signatures appearing on the initiative petition in the presence of any sponsor.

156 (4) (a) Once a petition is declared insufficient, the sponsors may not submit additional
157 signatures to qualify the petition for the pending election.

158 (b) If the petition is declared insufficient, the petition sponsors may submit additional
159 signatures to qualify the petition for:

160 (i) the next regular general election following the pending regular general election if the
161 petition was a county initiative petition; or

162 (ii) the next municipal general election if the petition was a municipal initiative petition.

163 ~~[(4)]~~ (5) (a) If the local clerk refuses to accept and file any initiative petition, any voter
164 may apply to the supreme court for an extraordinary writ to compel him to do so within ten days
165 after the refusal.

166 (b) If the supreme court determines that the initiative petition is legally sufficient, the local
167 clerk shall file it, with a verified copy of the judgment attached to it, as of the date on which it was
168 originally offered for filing in his office.

169 (c) If the supreme court determines that any petition filed is not legally sufficient, the
170 supreme court may enjoin the local clerk and all other officers from certifying or printing the ballot
171 title and numbers of that measure on the official ballot for the next election.

172 Section 6. Section **67-1a-2** is amended to read:

173 **67-1a-2. Duties enumerated.**

174 (1) The ~~[duties of the]~~ lieutenant governor ~~[are]~~ shall:

175 ~~[(1)]~~ (a) ~~[to]~~ perform ~~[such]~~ duties ~~[as may be]~~ delegated by the governor, including ~~[but~~
176 ~~not limited to]~~ assignments to serve in any of the following capacities:

177 ~~[(a)]~~ (i) as the head of any one department, if so qualified, with the advice and consent of
178 the Senate, and, upon ~~[such an]~~ appointment~~[, the lieutenant governor shall serve]~~ at the pleasure
179 of the governor and without additional compensation;

180 ~~[(b)]~~ (ii) as the chairperson of any cabinet group organized by the governor or authorized
181 by law for the purpose of advising the governor or coordinating intergovernmental or
182 interdepartmental policies or programs;

183 ~~[(e)]~~ (iii) as liaison between the governor and the state Legislature to coordinate and
184 facilitate the governor's programs and budget requests;

185 ~~[(d)]~~ (iv) as liaison between the governor and other officials of local, state, federal, and
186 international governments or any other political entities to coordinate, facilitate, and protect the
187 interests of the state ~~[of Utah]~~;

188 ~~[(e)]~~ (v) as personal advisor to the governor, including advice on policies, programs,
189 administrative and personnel matters, and fiscal or budgetary matters; and

190 ~~[(f)]~~ (vi) as chairperson or member of any temporary or permanent boards, councils,
191 commissions, committees, task forces, or other group appointed by the governor;

192 ~~[(2) to]~~ (b) serve on all boards and commissions in lieu of the governor, whenever so
193 designated by the governor;

194 ~~[(3) to]~~ (c) serve as the chief election officer of the state as required by Subsection (2)~~[-~~
195 ~~As the chief election officer, the lieutenant governor shall not assume the responsibilities assigned~~
196 ~~to the county clerks, city recorders, town clerks, or other local election officials by the Legislature,~~
197 ~~nor become involved with the procurement of ballots. The county clerks, city recorders, town~~
198 ~~clerks, or other election officials shall determine the listing of the political parties on their local~~
199 ~~ballots. The lieutenant governor shall perform the following duties:]~~;

200 ~~[(a) assist county clerks in unifying the election ballot;]~~

201 ~~[(b) prepare election information for the public and make such information available to~~
202 ~~the news media;]~~

203 ~~[(c) receive and answer election questions and maintain an election file on opinions~~
204 ~~received from the attorney general;]~~

205 ~~[(d) maintain election returns and statistics;]~~

206 ~~[(e) certify to the governor the names of those persons who have received in any election~~
207 ~~the highest number of votes for any office, the incumbent of which is commissioned by the~~
208 ~~governor;]~~

209 ~~[(f) perform any other election duties formerly assigned to the secretary of state;]~~

210 ~~[(4) to]~~ (d) keep custody of the Great Seal of ~~[the state of]~~ Utah; ~~[to]~~

211 (e) keep a register of, and attest, the official acts of the governor; ~~[and to]~~

212 (f) affix the Great Seal, with an attestation, to all official documents and instruments to
213 which the official signature of the governor is required; and

214 ~~[(5) to] (g)~~ furnish ~~[on request, to any person paying the fees therefor,]~~ a certified copy
 215 of all or any part of any law, record, or other instrument filed, deposited, or recorded in the office
 216 of the lieutenant governor to any person who requests it and pays the fee.

217 (2) (a) As the chief election officer, the lieutenant governor shall:

218 (i) exercise general supervisory authority over all elections;

219 (ii) exercise direct authority over the conduct of elections for federal, state, and
 220 multicounty officers and statewide or multicounty ballot propositions and any recounts involving
 221 those races;

222 (iii) assist county clerks in unifying the election ballot;

223 (iv) prepare election information for the public and make that information available to the
 224 news media;

225 (v) receive and answer election questions and maintain an election file on opinions
 226 received from the attorney general;

227 (vi) maintain election returns and statistics;

228 (vii) certify to the governor the names of those persons who have received the highest
 229 number of votes for any office; and

230 (viii) perform other election duties as provided in Title 20A, Election Code.

231 (b) As chief election officer, the lieutenant governor may not assume the responsibilities
 232 assigned to the county clerks, city recorders, town clerks, or other local election officials by Title
 233 20A, Election Code.

234 Section 7. **Repealer.**

235 This act repeals:

236 Section **67-1a-9, County officers -- Report forms -- Records.**

237 **Uncodified Section 2, Chapter 57, Laws of Utah 1998, Repeal Date.** This uncodified
 238 section affects Section 20A-6-103.

Legislative Review Note
as of 1-8-02 10:57 AM

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

Office of Legislative Research and General Counsel