

**PROVISIONAL BALLOT**

2002 GENERAL SESSION

STATE OF UTAH

**Sponsor: John W. Hickman**

**This act modifies the Election Code by establishing a procedure for certain persons to vote a provisional ballot in Utah elections. This act changes the date for the local board of canvassers to meet. This act makes technical corrections.**

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

AMENDS:

**20A-1-102**, as last amended by Chapter 241, Laws of Utah 2001

**20A-2-307**, as last amended by Chapter 24, Laws of Utah 1997

**20A-3-101**, as last amended by Chapter 328, Laws of Utah 2000

**20A-3-104**, as enacted by Chapter 1, Laws of Utah 1993

**20A-3-105**, as last amended by Chapter 73, Laws of Utah 2001

**20A-4-101**, as last amended by Chapter 228, Laws of Utah 1993

**20A-4-102**, as last amended by Chapter 3, Laws of Utah 2000

**20A-4-103**, as last amended by Chapter 2, Laws of Utah 1994

**20A-4-104**, as last amended by Chapter 340, Laws of Utah 1995

**20A-4-106**, as last amended by Chapter 75, Laws of Utah 2000

**20A-4-301**, as last amended by Chapter 22, Laws of Utah 1999

**20A-9-806**, as enacted by Chapter 22, Laws of Utah 1999

**20A-9-808**, as enacted by Chapter 22, Laws of Utah 1999

ENACTS:

**20A-3-105.5**, Utah Code Annotated 1953

**20A-4-107**, Utah Code Annotated 1953

**20A-6-105**, Utah Code Annotated 1953

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

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

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

As used in this title:

- (1) "Active voter" means a registered voter who has not been classified as an inactive voter by the county clerk.
- (2) "Automatic tabulating equipment" means apparatus that automatically examines and counts votes recorded on paper ballots or ballot cards and tabulates the results.
- (3) "Ballot" means the cardboard, paper, or other material upon which a voter records his votes and includes ballot cards, paper ballots, and secrecy envelopes.
- (4) "Ballot card" means a ballot that can be counted using automatic tabulating equipment.
- (5) "Ballot label" means the cards, papers, booklet, pages, or other materials that contain the names of offices and candidates and statements of ballot propositions to be voted on and which are used in conjunction with ballot cards.
- (6) "Ballot proposition" means opinion questions specifically authorized by the Legislature, constitutional amendments, initiatives, referenda, and judicial retention questions that are submitted to the voters for their approval or rejection.
- (7) "Board of canvassers" means the entities established by Sections 20A-4-301 and 20A-4-306 to canvass election returns.
- (8) "Bond election" means an election held for the sole purpose of approving or rejecting the proposed issuance of bonds by a government entity.
- (9) "Book voter registration form" means voter registration forms contained in a bound book that are used by election officers and registration agents to register persons to vote.
- (10) "By-mail voter registration form" means a voter registration form designed to be completed by the voter and mailed to the election officer.
- (11) "Canvass" means the review of election returns and the official declaration of election results by the board of canvassers.
- (12) "Canvassing judge" means an election judge designated to assist in counting ballots at the canvass.
- (13) "Convention" means the political party convention at which party officers and delegates are selected.

(14) "Counting center" means one or more locations selected by the election officer in charge of the election for the automatic counting of ballots.

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

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

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

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

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

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

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

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

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

(24) "Election officer" means:

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

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

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

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

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

(26) "Election returns" includes the pollbook, all affidavits of registration, the military and overseas absentee voter registration and voting certificates, one of the tally sheets, any unprocessed

absentee ballots, all counted ballots, all excess ballots, all unused ballots, all spoiled ballots, the ballot disposition form, and the total votes cast form.

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

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

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

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

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

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

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

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

(35) "Municipal executive" means:

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

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

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

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

(37) "Municipal legislative body" means:

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

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

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

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

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

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

(41) "Official endorsement" means:

(a) the information on the ballot that identifies:

(i) the ballot as an official ballot;

(ii) the date of the election; and

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

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

(i) the election judge's initials; and

(ii) the ballot number.

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

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

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

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

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

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

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

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

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

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

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

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

~~[(48)]~~ (50) "Primary convention" means the political party conventions at which nominees for the regular primary election are selected.

~~[(49)]~~ (51) "Protective counter" means a separate counter, which cannot be reset, that is built into a voting machine and records the total number of movements of the operating lever.

~~[(50)]~~ (52) "Qualify" or "qualified" means to take the oath of office and begin performing the duties of the position for which the person was elected.

~~[(51)]~~ (53) "Receiving judge" means the election judge that checks the voter's name in the official register, provides the voter with a ballot, and removes the ballot stub from the ballot after the voter has voted.

~~[(52)]~~ (54) "Registration days" means the days designated in Section 20A-2-203 when a voter may register to vote with a satellite registrar.

~~[(53)]~~ (55) "Registration form" means a book voter registration form and a by-mail voter registration form.

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

~~[(54)]~~ (57) "Regular general election" means the election held throughout the state on the

first Tuesday after the first Monday in November of each even-numbered year for the purposes established in Section 20A-1-201.

~~[(55)]~~ (58) "Regular primary election" means the election on the fourth Tuesday of June of each even-numbered year, at which candidates of political parties and nonpolitical groups are voted for nomination.

~~[(56)]~~ (59) "Resident" means a person who resides within a specific voting precinct in Utah.

~~[(57)]~~ (60) "Sample ballot" means a mock ballot similar in form to the official ballot printed and distributed as provided in Section 20A-5-405.

~~[(58)]~~ (61) "Satellite registrar" means a person appointed under Section 20A-5-201 to register voters and perform other duties.

~~[(59)]~~ (62) "Scratch vote" means to mark or punch the straight party ticket and then mark or punch the ballot for one or more candidates who are members of different political parties.

~~[(60)]~~ (63) "Secrecy envelope" means the envelope given to a voter along with the ballot into which the voter places the ballot after he has voted it in order to preserve the secrecy of the voter's vote.

~~[(61)]~~ (64) "Special district" means those local government entities created under the authority of Title 17A.

~~[(62)]~~ (65) "Special district officers" means those special district officers that are required by law to be elected.

~~[(63)]~~ (66) "Special election" means an election held as authorized by Section 20A-1-204.

~~[(64)]~~ (67) "Spoiled ballot" means each ballot that:

- (a) is spoiled by the voter;
- (b) is unable to be voted because it was spoiled by the printer or the election judge; or
- (c) lacks the official endorsement.

~~[(65)]~~ (68) "Statewide special election" means a special election called by the governor or the Legislature in which all registered voters in Utah may vote.

~~[(66)]~~ (69) "Stub" means the detachable part of each ballot.

~~[(67)]~~ (70) "Substitute ballots" means replacement ballots provided by an election officer

to the election judges when the official ballots are lost or stolen.

~~[(68)]~~ (71) "Ticket" means each list of candidates for each political party or for each group of petitioners.

~~[(69)]~~ (72) "Transfer case" means the sealed box used to transport voted ballots to the counting center.

~~[(70)]~~ (73) "Vacancy" means the absence of a person to serve in any position created by statute, whether that absence occurs because of death, disability, disqualification, resignation, or other cause.

~~[(71)]~~ (74) "Valid write-in candidate" means a candidate who has qualified as a write-in candidate by following the procedures and requirements of this title.

~~[(72)]~~ (75) "Voter" means a person who meets the requirements for voting in an election, meets the requirements of election registration, is registered to vote, and is listed in the official register book.

~~[(73)]~~ (76) "Voting area" means the area within six feet of the voting booths, voting machines, and ballot box.

~~[(74)]~~ (77) "Voting booth" means the space or compartment within a polling place that is provided for the preparation of ballots and includes the voting machine enclosure or curtain.

~~[(75)]~~ (78) "Voting device" means:

- (a) an apparatus in which ballot cards are used in connection with a punch device for piercing the ballots by the voter;
- (b) a device for marking the ballots with ink or another substance; or
- (c) any other method for recording votes on ballots so that the ballot may be tabulated by means of automatic tabulating equipment.

~~[(76)]~~ (79) "Voting machine" means a machine designed for the sole purpose of recording and tabulating votes cast by voters at an election.

~~[(77)]~~ (80) "Voting poll watcher" means a person appointed as provided in this title to witness the distribution of ballots and the voting process.

~~[(78)]~~ (81) "Voting precinct" means the smallest voting unit established as provided by law



within which qualified voters vote at one polling place.

~~[(79)]~~ (82) "Watcher" means a voting poll watcher, a counting poll watcher, and an inspecting poll watcher.

~~[(80)]~~ (83) "Western States Presidential Primary" means the election established in Title 20A, Chapter 9, Part 8.

~~[(81)]~~ (84) "Write-in ballot" means a ballot containing any write-in votes.

~~[(82)]~~ (85) "Write-in vote" means a vote cast for a person whose name is not printed on the ballot according to the procedures established in this title.

Section 2. Section **20A-2-307** is amended to read:

**20A-2-307. County clerks' instructions to election judges.**

(1) Each county clerk shall instruct election judges to allow a voter to vote a regular ballot if:

~~[(1)]~~ (a) the voter has moved from one address within a voting precinct to another address within the same voting precinct ~~[if]; and~~

(b) the voter affirms the change of address orally or in writing before the election judges[;].

(2) Each county clerk shall instruct election judges to allow a person to vote a provisional ballot if:

~~[(2)]~~ (a) the voter ~~[was]~~ is registered to vote in another voting precinct but has changed residence to the election judge's voting precinct ~~[but has changed residence to a new voting precinct that is in the same county and congressional district as the election judge's voting precinct]~~ and has not registered to vote in that ~~[new]~~ voting precinct; ~~[or] and~~

~~[(3)]~~ the official register shows that the voter has moved to a new residence in a different voting precinct, but the voter affirms, orally or in writing, that the voter still resides in the voting precinct.]

(b) the election judge's voting precinct is in the same county and congressional district as the voter's previous voting precinct.

Section 3. Section **20A-3-101** is amended to read:

**20A-3-101. Residency and age requirements of voters.**

(1) A person may vote in any regular general election or statewide special election if that person:

- (a) is a citizen of the United States;
- (b) is a resident of Utah;
- (c) will, on the date of that election:
  - (i) be at least 18 years old; and
  - (ii) have been a resident of Utah for 30 days immediately before that election; and
- (d) has registered to vote.

(2) A person may vote in the Western States Presidential Primary election or a regular primary election if that person:

- (a) is a citizen of the United States;
- (b) is a resident of Utah;
- (c) will, on the date of that election:
  - (i) be at least 18 years old; and
  - (ii) have been a resident of Utah for 30 days immediately before that election;
- (d) has registered to vote; and
- (e) whose political party affiliation, or unaffiliated status, allows the voter to vote in the election.

(3) A person may vote in a municipal general election, municipal primary, in a local special election, in a special district election, and in a bond election if that person:

- (a) is a citizen of the United States;
- (b) is a resident of Utah;
- (c) is a resident of the local entity that is holding the election;
- (d) will, on the date of the election:
  - (i) be at least 18 years old; and
  - (ii) have been a resident of Utah for 30 days immediately before the election; and
- (e) has registered to vote.

~~[(4) If, as of the date of any election, a person has not resided within the voting precinct for~~

~~at least 20 days or has not registered to vote in that voting precinct, the person may vote at the voting precinct in which he resided before he moved to the new voting precinct if:]~~

~~[(a) the person is legally registered in that voting precinct; and]~~

~~[(b) that voting precinct is in the same county and congressional district as the person's new voting precinct.]~~

Section 4. Section **20A-3-104** is amended to read:

**20A-3-104. Manner of voting.**

(1) (a) Any registered voter desiring to vote shall give his name, and, if requested, his residence, to one of the election judges.

(b) If an election judge does not know the person requesting a ballot and has reason to doubt that person's identity, the judge shall request identification or have the voter identified by a known registered voter of the district.

(c) If the ~~[voter]~~ person's right to vote is challenged as provided in Section 20A-3-202, the judge shall ~~[provide a ballot to the voter if the voter takes an oath that the grounds of the challenge are false]~~ follow the procedures and requirements of Section 20A-3-105.5.

(2) (a) When the voter is properly identified, the election judge in charge of the official register shall check the official register to determine whether or not the person is registered to vote.

(b) ~~[(i)]~~ If the voter's name is not found on the official register ~~[and, if it is not unduly disruptive of the election process]~~, the election judge shall ~~[attempt to contact the county clerk's office to request oral verification of the voter's registration]~~ follow the procedures and requirements of Section 20A-3-105.5.

~~[(ii) If oral verification is received from the county clerk's office, the judge shall record the verification on the official register, perform the other administrative steps required by Subsection (3), repeat the voter's name, hand the voter a ballot, and allow the voter to enter the voting booth.]~~

(3) If the election judge determines that the voter is registered:

(a) the election judge in charge of the official register shall:

(i) write the ballot number opposite the name of the voter in the official register; and

(ii) direct the voter to sign his name in the election column in the official register;

- (b) another judge shall list the ballot number and voter's name in the pollbook;
- (c) the election judge having charge of the ballots shall:
  - (i) endorse his initials on the stub;
  - (ii) check the name of the voter on the pollbook list with the number of the stub;
  - (iii) hand the voter a ballot; and
  - (iv) allow the voter to enter the voting booth.

(4) Whenever the election officer is required to furnish more than one kind of official ballot to the voting precinct, the election judges of that voting precinct shall give the registered voter the kind of ballot that the voter is qualified to vote.

Section 5. Section **20A-3-105** is amended to read:

**20A-3-105. Marking and depositing ballots.**

(1) (a) If paper ballots are used, the voter, upon receipt of the ballot, shall go to a voting booth and prepare the voter's ballot by marking the appropriate position with a mark opposite the name of each candidate of the voter's choice for each office to be filled.

(b) A mark is not required opposite the name of a write-in candidate.

(c) If a ballot proposition is submitted to a vote of the people, the voter shall mark in the appropriate square with a mark opposite the answer the voter intends to make.

(d) ~~[The voter shall fold the ballot before]~~ Before leaving the booth ~~[so], the voter shall:~~

(i) fold the ballot so that its contents are concealed and the stub can be removed[-]; and

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

(2) (a) (i) If ballot cards are used, the voter shall insert the ballot card into the voting device and mark the ballot card according to the instructions provided on the device.

(ii) If the voter is issued a ballot card with a long stub without a secrecy envelope, the voter shall record any write-in votes on the long stub.

(iii) If the voter is issued a ballot card with a secrecy envelope, the voter shall record any write-in votes on the secrecy envelope.

(b) After the voter has marked the ballot card, the voter shall either:

- (i) place the ballot card inside the secrecy envelope, if one is provided; or
- (ii) fold the long stub over the face of the ballot card to maintain the secrecy of the vote if the voter is issued a ballot card with a long stub without a secrecy envelope.

(c) If the ballot is a provisional ballot, the voter shall place the ballot card in the provisional ballot envelope and complete the information printed on the envelope.

(3) (a) After preparation of the ballot, the voter shall:

- (i) leave the voting booth; and
- (ii) announce his name to the election judge in charge of the ballot box.

(b) The election judge in charge of the ballot box shall:

(i) clearly and audibly announce the name of the voter and the number on the stub of the voter's ballot;

(ii) if the stub number on the ballot corresponds with the number previously recorded in the official register, and bears the initials of the election judge, remove the stub from the ballot; and

(iii) return the ballot to the voter.

(c) The voter shall, in full view of the election judges, cast his vote by depositing the ballot in the ballot box.

(d) (i) The election judge may not accept a ballot from which the stub has been detached.

(ii) The election judge shall treat a ballot from which the stub has been detached as a spoiled ballot and shall provide the voter with a new ballot and dispose of the spoiled ballot as provided in Section 20A-3-107.

(4) A voter voting a paper ballot in a regular primary election shall, after marking the ballot:

(a) (i) if the ballot is designed so that the names of all candidates for all political parties are on the same ballot, detach the part of the paper ballot containing the names of the candidates of the party he has voted from the remainder of the paper ballot;

(ii) fold that portion of the paper ballot so that its face is concealed; and

(iii) deposit it in the ballot box; and

(b) (i) fold the remainder of the paper ballot, containing the names of the candidates of the parties that the elector did not vote; and

(ii) deposit it in a separate ballot box that is marked and designated as a blank ballot box.

(5) (a) Each voter shall mark and deposit the ballot without delay and leave the voting area after voting.

(b) A voter may not:

(i) occupy a voting booth occupied by another, except as provided in Section 20A-3-108;

(ii) remain within the voting area more than ten 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 them.

(6) 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.

(7) The election judges may not 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 6. Section **20A-3-105.5** is enacted to read:

**20A-3-105.5. Manner of voting -- Provisional ballot.**

(1) As used in this section:

(a) "Proof of identity" means some form of photo identification, such as a driver license or identification card, that establishes a person's identity.

(b) "Proof of residence" means some official document or form, such as a driver license or utility bill that establishes a person's residence.

(2) The election judges shall follow the procedures and requirements of this section when:

(a) the person's right to vote is challenged as provided in Section 20A-3-202; or

(b) the person's name is not found on the official register.

(3) When faced with one of the circumstances outlined in Subsection (2), the election judge shall:

(a) request that the person provide proof of identity and proof of residency; and

(b) review the proof of identity and proof of residency provided by the person.

(4) If the election judge is satisfied that the person has established their identity and their residence in the voting precinct:

(a) the election judge in charge of the official register shall:

(i) record in the official register the type of source documents that established the person's proof of identity and proof of residency;

(ii) write the provisional ballot envelope number opposite the name of the voter in the official register; and

(iii) direct the voter to sign his name in the election column in the official register;

(b) another judge shall list the ballot number and voter's name in the pollbook; and

(c) the election judge having charge of the ballots shall:

(i) endorse his initials on the stub;

(ii) check the name of the voter on the pollbook list with the number of the stub;

(iii) give the voter a ballot and a provisional ballot envelope; and

(iv) allow the voter to enter the voting booth.

(5) Whenever the election officer is required to furnish more than one kind of official ballot to a voting precinct, the election judges of that voting precinct shall give the registered voter the kind of ballot that the voter is qualified to vote.

Section 7. Section **20A-4-101** is amended to read:

**20A-4-101. Counting paper ballots during election day.**

(1) Each county legislative body or municipal legislative body that has voting precincts that use paper ballots and each election judge in those voting precincts shall comply with the requirements of this section.

(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 election judges 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) 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; [~~and~~]

(iii) place the provisional ballot envelopes in the envelope or container provided for them for return to the election officer; and

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

(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.

(3) Counting poll watchers appointed as provided in Section 20A-3-201 may observe the count.

(4) The counting judges shall apply the standards and requirements of Section 20A-4-104 to resolve any questions that arise as they count the ballots.

Section 8. Section **20A-4-102** is amended to read:

**20A-4-102. Counting paper ballots after the polls close.**

(1) (a) Except as provided in Subsection (2), 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.

(b) The election judges shall apply the standards and requirements of Section 20A-4-105 to resolve any questions that arise as they count the ballots.



(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.

~~[(4)]~~ (5) (a) In counting the votes, the election judges shall read and count each ballot separately.

(b) In regular primary elections the judges shall:

(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.

~~[(5)]~~ (6) (a) In all elections, the counting judges shall:

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

(ii) count one vote for each candidate on the ticket beneath a marked circle, excluding any candidate for an office for which a vote has been cast for a candidate for the same office upon another ticket by the placing of a mark in the square opposite the name of that candidate on the other ticket;

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

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

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

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

(vii) 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.

~~[(6)]~~ (7) Only election judges and counting poll watchers may be present at the place where counting is conducted until the count is completed.

Section 9. Section **20A-4-103** is amended to read:

**20A-4-103. Preparing ballot cards for the counting center.**

(1) (a) In voting precincts using ballot cards, as soon as the polls have been closed and the last qualified voter has voted, the election judges shall prepare the ballot cards for delivery to the counting center as provided in this section.

(b) The election judges, election officers, and other persons may not manually count any votes before delivering the ballots to the counting center.

(2) The judges shall:

(a) place all of the provisional ballot envelopes in the envelope or container provided for them for return to the counting center; and

(b) seal that envelope or container.

~~[(2)]~~ (3) (a) The judges shall check each secrecy envelope to see if either contains any write-in votes.

(b) If a secrecy envelope does not contain any write-in votes, the election judges shall remove the ballot card from the secrecy envelope.

(c) If a secrecy envelope contains any write-in votes, the election judges may not separate the ballot card from the secrecy envelope.

~~[(3)]~~ (4) The election judges shall place:

(a) the voted ballot cards and one copy of the statement of disposition of ballots in the transfer case;

(b) the other copy of the statement of disposition of ballots, the pollbook, any unprocessed absentee ballots, the judges' pay vouchers, the official register, and the spoiled ballot envelope in the carrier envelope provided; and

(c) the other election materials in the election supply box.

Section 10. Section **20A-4-104** is amended to read:

**20A-4-104. Counting ballots electronically.**

(1) (a) Before beginning to count ballot cards using automatic tabulating equipment, the election officer shall test the automatic tabulating equipment to ensure that it will accurately count the votes cast for all offices and all measures.

(b) The election officer shall publish public notice of the time and place of the test at least

48 hours before the test in one or more daily or weekly newspapers of general circulation published in the county, municipality, or jurisdiction where the equipment is used.

(c) The election officer shall conduct the test by processing a preaudited group of ballot cards.

(d) The election officer shall ensure that:

(i) a predetermined number of valid votes for each candidate and measure are recorded on the ballot cards;

(ii) for each office, one or more ballot cards have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment to reject those votes; and

(iii) a different number of valid votes are assigned to each candidate for an office, and for and against each measure.

(e) If any error is detected, the election officer shall determine the cause of the error and correct it.

(f) The election officer shall ensure that:

(i) the automatic tabulating equipment produces an errorless count before beginning the actual counting; and

(ii) the automatic tabulating equipment passes the same test at the end of the count before the election returns are approved as official.

(2) (a) The election officer or his designee shall supervise and direct all proceedings at the counting center.

(b) (i) Proceedings at the counting center are public and may be observed by interested persons.

(ii) Only those persons authorized to participate in the count may touch any ballot, ballot card, or return.

(c) The election officer shall deputize and administer an oath or affirmation to all persons who are engaged in processing and counting the ballots that they will faithfully perform their assigned duties.

(d) (i) Counting poll watchers appointed as provided in Section 20A-3-201 may observe the

testing of equipment and actual counting of the ballot cards.

(ii) Those counting poll watchers may make independent tests of the equipment before or after the vote count as long as the testing does not interfere in any way with the official tabulation of the ballot cards.

(3) If any ballot card is damaged or defective so that it cannot properly be counted by the automatic tabulating equipment, the election officer shall:

(a) cause a true duplicate copy of the ballot card to be made with an identifying serial number;

(b) substitute the duplicate for the damaged ballot card;

(c) label the duplicate ballot card "duplicate"; and

(d) record the duplicate ballot card's serial number on the damaged or defective ballot card.

(4) The election officer may:

(a) conduct an unofficial count before conducting the official count in order to provide early unofficial returns to the public;

(b) release unofficial returns from time to time after the polls close; and

(c) report the progress of the count for each candidate during the actual counting of ballots.

(5) The election officer shall review and evaluate the provisional ballot envelopes and prepare any valid provisional ballots for counting as provided in Section 20A-4-107.

~~[(5)]~~ (6) (a) The election officer or his designee shall:

(i) separate, count, and tabulate any ballots containing valid write-in votes; and

(ii) complete the standard form provided by the clerk for recording valid write-in votes.

(b) In counting the write-in votes, if, by casting a valid write-in vote, a voter has cast more votes for an office than that voter is entitled to vote for that office, the judges shall count the valid write-in vote as being the obvious intent of the voter.

~~[(6)]~~ (7) (a) The election officer shall certify the return printed by the automatic tabulating equipment, to which have been added write-in and absentee votes, as the official return of each voting precinct.

(b) Upon completion of the count, the election officer shall make official returns open to the

public.

~~[(7)]~~ (8) If for any reason it becomes impracticable to count all or a part of the ballot cards with tabulating equipment, the election officer may direct that they be counted manually according to the procedures and requirements of this part.

~~[(8)]~~ (9) After the count is completed, the election officer shall seal and retain the programs, test materials, and ballots as provided in Section 20A-4-202.

Section 11. Section **20A-4-106** is amended to read:

**20A-4-106. Paper ballots -- Sealing.**

(1) (a) (i) At all elections using paper ballots, as soon as the counting judges have read and tallied the ballots, they shall string the counted, excess, and spoiled ballots on separate strings.

(ii) After the ballots are strung, they may not be examined by anyone, except when examined during a recount conducted under the authority of Section 20A-4-401.

(b) The judges shall carefully seal all of the strung ballots in a strong envelope.

(2) (a) For regular primary elections, after all the ballots have been counted, certified to, and strung by the judges, they shall seal the ballots cast for each of the parties in separate envelopes.

(b) The judges shall:

(i) seal each of the envelopes containing the votes of each of the political parties in one large envelope; and

(ii) return that envelope to the county clerk.

(c) The judges shall:

(i) destroy the ballots in the blank ballot box; or

(ii) if directed to do so by the election officer, return them to the election officer for destruction.

(3) As soon as the judges have counted all the votes and sealed the ballots they shall sign and certify the pollbooks.

(4) (a) The judges, before they adjourn, shall:

(i) enclose and seal the official register, the posting book, the pollbook, all affidavits of registration received by them, the ballot disposition form, the military and overseas absentee voter

registration and voting certificates, one of the tally sheets, and any unprocessed absentee ballots in a strong envelope or pouch;

(ii) ensure that all counted ballots, all excess ballots, and all spoiled ballots have been strung and placed in a separate envelope or pouch as required by Subsection (1);

(iii) place all unused ballots, all spoiled ballots, one tally list, and a copy of the ballot disposition form in a separate envelope or pouch; ~~and~~

(iv) place all provisional ballots in a separate envelope or pouch; and

~~[(iv)]~~ (v) place the total votes cast form and the judges' vouchers requesting compensation for services rendered in a separate pouch.

(b) Before enclosing the official register in the envelope or pouch, the election judges shall certify it substantially as follows:

"We, the undersigned, judges of election for precinct \_\_\_\_\_, (jurisdiction) \_\_\_\_\_, Utah, certify that the required entries have been made for the election held \_\_\_\_\_(month\day\year), including:

a list of the ballot numbers for each voter;

the voters' signatures, except where a judge has signed for the absentee voters;

a list of information surrounding a voter who is challenged,

including any affidavits; and

a notation for each time a voter was assisted with a ballot."

(5) Each judge shall:

(a) write his name across the seal of each envelope or pouch;

(b) mark on the exterior of the envelope or pouch:

(i) the word "ballots" or "returns" or "unused ballots," or "provisional ballots" or other words plainly indicating the contents of the packages; and

(ii) the number of the voting precinct.

Section 12. Section **20A-4-107** is enacted to read:

**20A-4-107. Review and disposition of provisional ballot envelopes.**

(1) (a) Upon receipt of provisional ballot envelopes, the election officer shall review the

affirmation on the face of each provisional ballot envelope and determine if the person signing the affirmation is a registered voter and legally entitled to vote the ballot that the voter voted.

(b) If the election officer determines that the person is not a registered voter or is not legally entitled to vote the ballot that the voter voted, the election officer shall retain the ballot envelope, unopened, for the period specified in Section 20A-4-202 unless ordered by a court to produce or count it.

(c) If the election officer determines that the person is a registered voter and is legally entitled to vote the ballot that the voter voted, the election officer shall remove the ballot from the provisional ballot envelope and place the ballot with the absentee ballots to be counted with those ballots at the canvass.

(2) If the election officer determines that the person is a registered voter, the election officer shall ensure that the voter registration records are updated to reflect the information provided on the provisional ballot envelope.

Section 13. Section **20A-4-301** is amended to read:

**20A-4-301. Board of canvassers.**

(1) (a) Each county legislative body is the board of county canvassers for the county and for each special district whose election is conducted by the county.

(b) (i) Except as provided in Subsection (1)(b)(ii), the board of county canvassers shall meet to canvass the returns at the usual place of meeting of the county legislative body, at noon on the ~~Monday~~ second Friday after the election.

(ii) When canvassing returns for the Western States Presidential Primary, the board of county canvassers shall meet to canvass the returns at the usual place of meeting of the county legislative body, at noon on the Thursday after the election.

(c) If one or more of the county legislative body fails to attend the meeting of the board of county canvassers, the remaining members shall replace the absent member by appointing in the order named:

- (i) the county treasurer;
- (ii) the county assessor; or



(iii) the county sheriff.

(d) The board of county canvassers shall always consist of three acting members.

(e) The county clerk is the clerk of the board of county canvassers.

(2) (a) The mayor and the municipal legislative body are the board of municipal canvassers for the municipality.

(b) The board of municipal canvassers shall meet to canvass the returns at the usual place of meeting of the municipal legislative body no sooner than three days and no later than seven days after the election.

(3) (a) This part does not apply to bond elections.

(b) Persons responsible for canvassing bond elections shall comply with the canvassing procedures and requirements of Title 11, Chapter 14, Utah Municipal Bond Act.

Section 14. Section **20A-6-105** is enacted to read:

**20A-6-105. Provisional ballot envelopes.**

Each election officer shall ensure that provisional ballot envelopes are printed in substantially the following form:

"AFFIRMATION

Name of Voter \_\_\_\_\_

First

Middle

Last

Driver License or Identification Card Number \_\_\_\_\_

Date of Birth \_\_\_\_\_

Street Address of Principal Place of Residence \_\_\_\_\_

City

County

State

Zip Code

Telephone Number (optional) \_\_\_\_\_

Last four digits of Social Security Number (optional) \_\_\_\_\_

Place of Birth \_\_\_\_\_

Last former address at which I was registered to vote (if known) \_\_\_\_\_



Requirements for All Ballots; and

(c) provide voting booths, election records and supplies, and ballot boxes for each voting precinct as required by Section 20A-5-403.

(2) (a) Notwithstanding the requirements of Subsections (1)(b) and (c), Title 20A, Chapter 6, Part 1, General Requirements for All Ballots, and Section 20A-5-403, the lieutenant governor, together with county clerks, suppliers of election materials, and representatives of registered political parties shall ensure that the paper ballots, ballot labels, ballot cards, provisional ballot envelopes, and voting booths, election records and supplies, and ballot boxes:

- (i) facilitate the distribution, voting, and tallying of ballots in a closed primary;
- (ii) simplify the task of election judges, particularly in determining a voter's party affiliation;
- (iii) minimize the possibility of spoiled ballots due to voter confusion; and
- (iv) protect against fraud.

(b) To accomplish the requirements of this Subsection (2), the lieutenant governor, county clerks, suppliers of election materials, and representatives of registered political parties shall:

(i) mark, prepunch, or otherwise identify ballot cards as being for a particular registered political party; and

(ii) instruct persons counting the ballots to count only those votes for candidates from the registered political party whose ballot the voter received.

(c) To accomplish the requirements of this Subsection (2), the lieutenant governor, county clerks, suppliers of election materials, and representatives of registered political parties may:

(i) notwithstanding the requirements of Sections 20A-6-101 and 20A-6-102, use different colored ballot cards for each registered political party;

(ii) place ballot labels for each registered political party in different voting booths and direct voters to the particular voting booth for the political party whose ballot they are voting; or

(iii) consider other means of accomplishing the objectives outlined in Subsection (2)(a).

Section 16. Section **20A-9-808** is amended to read:

**20A-9-808. Voting.**

(1) As used in this section:

(a) "Proof of identity" means some form of photo identification, such as a driver license or identification card, that establishes a person's identity.

(b) "Proof of residence" means some official document or form, such as a driver license or utility bill that establishes a person's residence.

~~[(+)]~~ (2) (a) Any registered voter desiring to vote at the Western States Presidential Primary shall give his name, the name of the registered political party whose ballot the voter wishes to vote, and, if requested, his residence, to one of the election judges.

(b) If an election judge does not know the person requesting a ballot and has reason to doubt that person's identity, the judge shall request identification or have the voter identified by a known registered voter of the district.

(c) If the ~~[voter]~~ person's right to vote is challenged as provided in Section 20A-3-202, the judge shall ~~[provide a ballot to the voter if the voter takes an oath that the grounds of the challenge are false]~~ follow the procedures and requirements of Section 20A-3-105.5.

~~[(2)]~~ (3) (a) (i) When the voter is properly identified, the election judge in charge of the official register shall check the official register to determine:

(A) whether or not the person is registered to vote; and

(B) whether or not the person's party affiliation designation in the official register allows the voter to vote the ballot that the voter requested.

(ii) If the official register does not affirmatively identify the voter as being affiliated with a registered political party or if the official register identifies the voter as being "unaffiliated," the voter shall be considered to be "unaffiliated."

(b) ~~[(+)]~~ If the voter's name is not found on the official register ~~[and, if it is not unduly disruptive of the election process]~~, the election judge shall ~~[attempt to contact the county clerk's office to request oral verification of the voter's registration]~~ follow the procedures and requirements of Section 20A-3-105.5.

~~[(ii) If oral verification is received from the county clerk's office, the judge shall record the verification on the official register, determine the voter's party affiliation and the ballot that the voter is qualified to vote, and perform the other administrative steps required by Subsection (3).]~~

(c) (i) Except as provided in Subsection (3)(c)(ii), if the voter's political party affiliation listed in the official register does not allow the voter to vote the ballot that the voter requested, the election judge shall inform the voter of that fact and inform the voter of the ballot or ballots that the voter's party affiliation does allow the voter to vote.

(ii) (A) If the voter is listed in the official register as "unaffiliated," or if the official register does not affirmatively identify the voter as either "unaffiliated" or affiliated with a registered political party, and the voter, as an "unaffiliated" voter, is not authorized to vote the ballot that the voter requests, the election judge shall ask the voter if the voter wishes to affiliate with the registered political party whose ballot the voter requested, vote another registered political party ballot that the voter, as "unaffiliated," is authorized to vote, or remain "unaffiliated."

(B) If the voter wishes to affiliate with the registered political party whose ballot the voter requested, the election judge shall enter in the official register the voter's new party affiliation and proceed as required by Subsection [~~(3)~~] (4).

(C) If the voter wishes to vote another registered political party ballot that the unaffiliated voter is authorized to vote, the election judge shall proceed as required by Subsection [~~(3)~~] (4).

(D) If the voter wishes to remain unaffiliated and does not wish to vote another ballot that unaffiliated voters are authorized to vote, the election judge shall instruct the voter that the voter may not vote.

[~~(3)~~] (4) If the election judge determines that the voter is registered and eligible, under Subsection [~~(2)~~] (3), to vote the ballot that the voter requested:

(a) the election judge in charge of the official register shall:

(i) write the ballot number and the name of the registered political party whose ballot the voter voted opposite the name of the voter in the official register; and

(ii) direct the voter to sign his name in the election column in the official register;

(b) another judge shall list the ballot number and voter's name in the pollbook; and

(c) the election judge having charge of the ballots shall:

(i) endorse his initials on the stub;

(ii) check the name of the voter on the pollbook list with the number of the stub;

(iii) hand the voter the ballot for the registered political party that the voter requested and for which the voter is authorized to vote; and

(iv) allow the voter to enter the voting booth.

~~[(4)]~~ (5) Whenever the election officer is required to furnish more than one kind of official ballot to the voting precinct, the election judges of that voting precinct shall give the registered voter the kind of ballot that the voter is qualified to vote.