

AMENDMENTS TO ELECTION LAW

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Brent H. Goodfellow

This act modifies the Election Code. This act amends the definition of polling place to include a location where absentee voting is conducted. This act also amends the qualifications for municipal candidates.

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-3-501, as last amended by Chapter 133, Laws of Utah 2002

20A-9-203, as last amended by Chapters 3 and 75, Laws of Utah 2000

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 or where absentee voting is conducted.

(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.

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

(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.

(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.

(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.

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

(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.

(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.

(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.

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

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

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

(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.

(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.

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

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

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

(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.

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

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

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

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

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

(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.

(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.

(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.

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

(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.

(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.

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

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

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

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

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

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

(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-3-501** is amended to read:

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

(1) As used in this section:

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

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

(2) (a) A person may not, within a polling place or in any public area within 150 feet of the building where a polling place is located:

(i) do any electioneering;

(ii) circulate cards or handbills of any kind;

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

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

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

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

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

(4) A person may not:

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

(b) solicit any voter to show his ballot.

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

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

(7) A political subdivision may not prohibit political signs that are located more than 150

feet away from a polling place, but may regulate their placement to protect public safety.

Section 3. Section **20A-9-203** is amended to read:

20A-9-203. Declarations of candidacy -- Municipal general elections.

(1) (a) A person may become a candidate for any municipal office if the person is a registered voter and:

(i) the person has resided within the municipality in which that person seeks to hold elective office for the 12 consecutive months immediately before the date of the election; or

(ii) if the territory in which the person resides was annexed into the municipality, the person has resided within the annexed territory or the municipality for 12 months.

(b) In addition to the requirements of Subsection (1)(a), candidates for a municipal council position under the council-mayor or council-manager alternative forms of municipal government shall, if elected from districts, be residents of the council district from which they are elected.

(c) Pursuant to Utah Constitution Article IV, Section 6, any mentally incompetent person, any person convicted of a felony, or any person convicted of treason or a crime against the elective franchise may not hold office in this state until the right to vote or hold elective office is restored as provided by statute.

(2) (a) Each person seeking to become a candidate for a municipal office shall file a declaration of candidacy in person with the city recorder or town clerk during office hours and not later than 5 p.m. between July 15 and August 15 of any odd numbered year and pay the filing fee, if one is required by municipal ordinance.

(b) Any resident of a municipality may nominate a candidate for a municipal office by filing a nomination petition with the city recorder or town clerk during office hours but not later than 5 p.m. between July 15 and August 15 of any odd numbered year and pay the filing fee, if one is required by municipal ordinance.

(c) When August 15 is a Saturday or Sunday, the filing time shall be extended until 5 p.m. on the following Monday.

(3) (a) Before the filing officer may accept any declaration of candidacy or nomination

petition, the filing officer shall:

(i) read to the prospective candidate or person filing the petition the constitutional and statutory qualification requirements for the office that the candidate is seeking; and

(ii) require the candidate or person filing the petition to state whether or not the candidate meets those requirements.

(b) If the prospective candidate does not meet the qualification requirements for the office, the filing officer may not accept the declaration of candidacy or nomination petition.

(c) If it appears that the prospective candidate meets the requirements of candidacy, the filing officer shall accept the declaration of candidacy or nomination petition.

(4) The declaration of candidacy shall substantially comply with the following form:

"I, (print name) ____, being first sworn, say that I reside at ____ Street, City of ____, County of ____, state of Utah, Zip Code ____, Telephone Number (if any) ____; that I am a registered voter; and that I am a candidate for the office of ____ (stating the term). I request that my name be printed upon the applicable official ballots. (Signed) _____

Subscribed and sworn to (or affirmed) before me by ____ on this _____(month\day\year).

(Signed) _____ (Clerk or other officer qualified to administer oath)"

(5) (a) Any registered voter may be nominated for municipal office by submitting a petition signed by:

- (i) 25 residents of the municipality who are at least 18 years old; or
- (ii) 20% of the residents of the municipality who are at least 18 years old.

(b) (i) The petition shall substantially conform to the following form:

"NOMINATION PETITION

The undersigned residents of (name of municipality) being 18 years old or older nominate (name of nominee) to the office of ____ for the (two or four-year term, whichever is applicable)."

(ii) The remainder of the petition shall contain lines and columns for the signatures of persons signing the petition and their addresses and telephone numbers.

(c) If the declaration of candidacy or nomination petition fails to state whether the

nomination is for the two or four-year term, the clerk shall consider the nomination to be for the four-year term.

(d) (i) The clerk shall verify with the county clerk that all candidates are registered voters.

(ii) Any candidate who is not registered to vote is disqualified and the clerk may not print the candidate's name on the ballot.

(6) Immediately after expiration of the period for filing a declaration of candidacy, the clerk shall:

(a) cause the names of the candidates as they will appear on the ballot to be published in at least two successive publications of a newspaper with general circulation in the municipality; and

(b) notify the lieutenant governor of the names of the candidates as they will appear on the ballot.

(7) (a) A declaration of candidacy or nomination petition filed under this section is valid unless a written objection is filed with the clerk within five days after the last day for filing.

(b) If an objection is made, the clerk shall:

(i) mail or personally deliver notice of the objection to the affected candidate immediately; and

(ii) decide any objection within 48 hours after it is filed.

(c) If the clerk sustains the objection, the candidate may correct the problem by amending the declaration or petition within three days after the objection is sustained or by filing a new declaration within three days after the objection is sustained.

(d) (i) The clerk's decision upon objections to form is final.

(ii) The clerk's decision upon substantive matters is reviewable by a district court if prompt application is made to the district court.

(iii) The decision of the district court is final unless the Supreme Court, in the exercise of its discretion, agrees to review the lower court decision.

(8) Any person who filed a declaration of candidacy and was nominated, and any person

who was nominated by a nomination petition, may, any time up to 23 days before the election, withdraw the nomination by filing a written affidavit with the clerk.