

1 **POLL WATCHER AND PRESERVATION OF**
2 **ELECTION DATE AMENDMENTS**

3 2003 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: J. Morgan Philpot**

6 **This act modifies the Election Code. This act provides that representatives acting as poll**
7 **watchers during specified elections may be present in the counting room or other rooms**
8 **associated with the processing of the votes for counting without restriction as to time,**
9 **place, or distance. This act prohibits poll watchers from touching or causing damage to a**
10 **ballot. This act provides that the election officers shall create read-only electronic copies**
11 **of all electronic information and that those electronic copies be archived for possible**
12 **historical or analytical purposes.**

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

14 AMENDS:

15 **20A-3-201**, as last amended by Chapter 22, Laws of Utah 1999

16 **20A-4-101**, as last amended by Chapter 177, Laws of Utah 2002

17 **20A-4-104**, as last amended by Chapter 177, Laws of Utah 2002

18 **20A-4-202**, as last amended by Chapter 228, Laws of Utah 1993

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

20 Section 1. Section **20A-3-201** is amended to read:

21 **20A-3-201. Watchers.**

22 (1) (a) (i) (A) For each regular general election or statewide special election, and for
23 each regular primary and Western States Presidential Primary, each registered political party
24 and any person interested in a ballot proposition appearing on the ballot may appoint [~~one~~
25 person] a representative to act as a voting poll watcher to observe the casting of ballots,
26 [~~another person~~] a representative to act as a counting poll watcher to observe the counting of
27 ballots, and [~~another person~~] a representative to act as an inspecting poll watcher to inspect the



28 condition and observe the securing of ballot packages.

29 (B) These representatives may be different people, or the same person, as determined
30 by the party or person being represented.

31 (ii) Each party poll watcher shall be designated, and his selection made known to the
32 election judges, by an affidavit made by the county chair of each of the parties.

33 (iii) Each issue poll watcher shall be designated, and his selection made known to the
34 election judges, by an affidavit made by the individual appointing him.

35 (b) (i) (A) For each municipal general election, municipal primary, local special
36 election, or bond election that uses paper ballots, each candidate and any person interested in
37 an issue appearing on the ballot may appoint [~~one person~~] a representative to act as a voting
38 poll watcher to observe the casting of ballots, [~~another person~~] a representative to act as a
39 counting poll watcher to observe the counting of ballots, and [~~another person~~] a representative
40 to act as an inspecting poll watcher to inspect the condition and observe the securing of ballot
41 packages.

42 (B) These representatives may be different people, or the same person, as determined
43 by the candidate or person being represented.

44 (ii) (A) For each municipal general election, municipal primary, local special election,
45 or bond election that uses ballot cards, each candidate and any person interested in an issue
46 appearing on the ballot may appoint [~~one person~~] a representative to act as a voting poll
47 watcher to observe the casting of ballots, [~~another person~~] a representative to act as a counting
48 poll watcher to observe the counting of ballots, and [~~another person~~] a representative to act as
49 an inspecting poll watcher to inspect the condition and observe the securing of ballot packages.

50 (B) These representatives may be different people, or the same person, as determined
51 by the candidate or person being represented.

52 (iii) Each candidate poll watcher shall be designated, and his selection made known to
53 the election judges, by an affidavit made by the candidate appointing him.

54 (iv) Each issue poll watcher shall be designated, and his selection made known to the
55 election judges, by an affidavit made by the individual appointing him.

56 (2) If an appointed poll watcher is temporarily absent for meals, or is sick or otherwise
57 absent, that poll watcher may substitute some other watcher of similar political beliefs by
58 informing the election judges of the substitution by affidavit.

59 (3) Voting poll watchers may watch and observe the voting process, and may make a
60 written memorandum, but they may not interfere in any way with the process of voting except
61 to challenge a voter as provided in this part.

62 (4) ~~[The] (a) Each~~ counting poll watcher shall ~~[remain in]~~ have unrestricted access to
63 the counting room~~[- except in the case of necessity, until the close of the polls and may not~~
64 ~~divulge the progress of the count until the count is completed.]~~ and any other rooms associated
65 with the processing of the votes for counting, without restriction as to time, place, or distance.

66 (b) A counting poll watcher may not:

67 (i) touch any ballot; or

68 (ii) cause any ballot to be damaged.

69 (5) (a) It is unlawful for a counting poll watcher to communicate in any manner,
70 directly or indirectly, by word or sign, the progress of the count, the result so far, or any other
71 information about the count.

72 (b) Any person who violates this subsection is guilty of a third degree felony.

73 (6) The inspecting poll watcher may be present in the office of the clerk or recorder to
74 whom ballots are delivered after elections to:

75 (a) inspect the condition of the packages containing the ballots upon their arrival; and

76 (b) observe the placement of these packages in a safe and secure place.

77 (7) (a) If a voting, counting, or inspecting poll watcher observes actions or processes
78 that could adversely affect the integrity of the vote counting process, the poll watcher shall
79 report those observations to the election officer.

80 (b) The election officer shall include all information reported by poll watchers in the
81 report to the county canvassers.

82 Section 2. Section **20A-4-101** is amended to read:

83 **20A-4-101. Counting paper ballots during election day.**

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

87 (2) (a) Each county legislative body or municipal legislative body shall provide:

88 (i) two sets of ballot boxes for all voting precincts where both receiving and counting
89 judges have been appointed; and

90 (ii) a counting room for the use of the election judges counting the ballots during the
91 day.

92 (b) At any election in any voting precinct in which both receiving and counting judges
93 have been appointed, when at least 20 votes have been cast, the receiving judges shall:

94 (i) close the first ballot box and deliver it to the counting judges; and

95 (ii) prepare and use another ballot box to receive voted ballots.

96 (c) Upon receipt of the ballot box, the counting judges shall:

97 (i) take the ballot box to the counting room;

98 (ii) count the votes on the regular ballots in the ballot box;

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

101 (iv) when they have finished counting the votes in the ballot box, return the emptied
102 box to the receiving judges.

103 (d) (i) During the course of election day, whenever there are at least 20 ballots
104 contained in a ballot box, the receiving judges shall deliver that ballot box to the counting
105 judges for counting; and

106 (ii) the counting judges shall immediately count the regular ballots and segregate the
107 provisional ballots contained in that box.

108 (e) The counting judges shall continue to exchange the ballot boxes and count ballots
109 until the polls close.

110 (3) (a) Counting poll watchers appointed as provided in Section 20A-3-201 may
111 observe the count without restriction as to time, place, or distance.

112 (b) Counting poll watchers may not:

113 (i) touch any ballot; or

114 (ii) cause any ballot to be damaged.

115 (4) The counting judges shall apply the standards and requirements of Section
116 20A-4-104 to resolve any questions that arise as they count the ballots.

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

118 **20A-4-104. Counting ballots electronically.**

119 (1) (a) Before beginning to count ballot cards using automatic tabulating equipment,
120 the election officer shall test the automatic tabulating equipment to ensure that it will

121 accurately count the votes cast for all offices and all measures.

122 (b) The election officer shall publish public notice of the time and place of the test at
123 least 48 hours before the test in one or more daily or weekly newspapers of general circulation
124 published in the county, municipality, or jurisdiction where the equipment is used.

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

127 (d) The election officer shall ensure that:

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

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

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

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

137 (f) The election officer shall ensure that:

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

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

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

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

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

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

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

152 observe the testing of equipment and actual counting of the ballot cards without restriction as
153 to time, place, or distance.

154 (B) A counting poll watcher may not:

155 (I) touch any ballot; or

156 (II) cause any ballot to be damaged.

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

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

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

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

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

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

168 (4) The election officer may:

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

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

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

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

176 (6) (a) The election officer or his designee shall:

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

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

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

182 (7) (a) The election officer shall certify the return printed by the automatic tabulating

183 equipment, to which have been added write-in and absentee votes, as the official return of each
184 voting precinct.

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

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

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

192 Section 4. Section **20A-4-202** is amended to read:

193 **20A-4-202. Election officers -- Disposition of ballots.**

194 (1) (a) Upon receipt of the election returns from an election judge, the election officer
195 shall:

196 (i) ensure that the election judge has provided all of the ballots and election returns;

197 (ii) inspect the ballots and election returns to ensure that they are sealed; and

198 (iii) (A) for paper ballots, deposit and lock the ballots and election returns in a safe and
199 secure place; or

200 (B) for punch card ballots, count the ballots and deposit and lock the ballots and
201 election returns in a safe and secure place.

202 (b) Inspecting poll watchers appointed as provided in Section 20A-3-201 may be
203 present and observe the election officer's receipt, inspection, and deposit of the ballots and
204 election returns without restriction as to time, place, or distance.

205 (c) Inspecting poll watchers may not:

206 (i) touch any ballot; or

207 (ii) cause any ballot to be damaged.

208 (2) Each election officer shall:

209 (a) preserve ballots for 22 months after the election or until the time has expired during
210 which the ballots could be used in an election contest;

211 (b) package and seal a true copy of the ballot label used in each voting precinct;

212 (c) except for the electronic copies required in Subsection (2)(d), preserve all other
213 official election returns for at least 22 months after an election; [~~and~~]

214 (d) create read-only electronic copies of all electronic information pertaining to the
215 election; and

216 [~~(d)~~] (e) (i) after [that time] 22 months, destroy [them] the nonelectronic information
217 without opening or examining [them.] the nonelectronic information; and

218 (ii) archive the electronic information for possible future historical or analytical
219 purposes.

220 (3) (a) The election officer shall package and retain all tabulating cards and other
221 materials used in the programming of the automatic tabulating equipment;

222 (b) The election officer:

223 (i) may access these tabulating cards and other materials;

224 (ii) may make copies of these materials and make changes to the copies;

225 (iii) may not alter or make changes to the materials themselves; and

226 (iv) within 22 months after the election in which they were used, may dispose of those
227 materials or retain them.

228 (4) (a) If an election contest is begun within 12 months, the election officer shall:

229 (i) keep the ballots and election returns unopened and unaltered until the contest is
230 complete; or

231 (ii) surrender the ballots and election returns to the custody of the court having
232 jurisdiction of the contest when ordered or subpoenaed to do so by that court.

233 (b) When all election contests arising from an election are complete, the election
234 officer shall either:

235 (i) retain the ballots and election returns until the time for preserving them under this
236 section has run; or

237 (ii) destroy the ballots and election returns remaining in his custody without opening or
238 examining them if the time for preserving them under this section has run.

Legislative Review Note
as of 1-28-03 3:48 PM

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

Office of Legislative Research and General Counsel

Fiscal Note**Poll Watcher and Preservation of Election Date Amendments***04-Feb-03***Bill Number HB0150***2:44 PM*

State Impact

It is estimated that provisions of this bill can be implemented with existing resources.

Individual and Business Impact

No significant fiscal impact.

Office of the Legislative Fiscal Analyst