

ELECTION LAW MODIFICATIONS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Peter C. Knudson

House Sponsor: Fred R. Hunsaker

LONG TITLE

General Description:

This bill modifies provisions in the Election Code.

Highlighted Provisions:

This bill:

- ▶ permits the election officer to process and count absentee ballots prior to the date of the canvass, provided that the election officer does not release the results of the count until the time of the canvass;

- ▶ requires each election officer to publicly release the results of all absentee ballots counted as of the date of the election;

- ▶ requires each election officer to publicly release, on the date after the election:
 - the number of absentee ballots received by the election officer as of that time;

and

- the number of provisional ballots that were cast in the election within the election officer's jurisdiction;

- ▶ permits the election officer, during the period between the election and the date of the canvass, to publicly update the number of absentee ballots that the election officer has received;

- ▶ requires the lieutenant governor to certify the name of each candidate as it appears on the candidate's declaration of candidacy;

- ▶ prohibits the amendment or modification of a declaration of candidacy or nomination petition after the last date established for filing a declaration of candidacy;

30 ▶ requires election officers that accept declarations of candidacy to inform the
31 candidate that the candidate's name will appear on the ballot as it appears on the
32 declaration of candidacy;

33 ▶ moves the last day to declare candidacy for the Western States Presidential Primary
34 from January 15 to October 15 of the previous year;

35 ▶ amends language relating to the election of members of Congress; and

36 ▶ makes other technical changes.

37 **Monies Appropriated in this Bill:**

38 None

39 **Other Special Clauses:**

40 None

41 **Utah Code Sections Affected:**

42 AMENDS:

43 **20A-3-309**, as enacted by Chapter 1, Laws of Utah 1993

44 **20A-4-202**, as last amended by Chapter 105, Laws of Utah 2005

45 **20A-9-201**, as last amended by Chapter 226, Laws of Utah 2006

46 **20A-9-203**, as last amended by Chapters 28 and 226, Laws of Utah 2006

47 **20A-9-701**, as last amended by Chapter 77, Laws of Utah 2003

48 **20A-9-803**, as last amended by Chapter 355, Laws of Utah 2006

49 **20A-13-101 (Contingently Effective)**, as repealed and reenacted by Chapter 1, Laws of
50 Utah 2006, Fifth Special Session



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

53 Section 1. Section **20A-3-309** is amended to read:

54 **20A-3-309. Absentee ballots in the custody of the election officer -- Disposition --**
55 **Counting -- Release of number of absentee ballots cast.**

56 (1) The election officer shall deliver all envelopes containing valid absentee ballots
57 that are in the election officer's custody to the place of the official canvass of the election by

58 noon on the day of the official canvass following the election.

59 (2) (a) Absentee ballots may be processed and counted:

60 (i) by the election officer before the date of the canvass; and

61 ~~[(2) At]~~ (ii) at the canvass, [election judges] by the election officer or poll workers,
62 acting under the supervision of the official canvassers of the election[;].

63 (b) When processing ballots, the election officer and poll workers shall comply with
64 the procedures and requirements of Section 20A-3-308 in opening envelopes, verifying
65 signatures, confirming eligibility of the ballots, and depositing them in a ballot box.

66 (3) (a) After all valid absentee ballots have been deposited, [they] the absentee ballots
67 shall be counted in the usual manner [~~and~~].

68 (b) After the polls close on the date of the election, the election officer shall publicly
69 release the results of those absentee ballots that have been counted on or before the date of the
70 election.

71 (c) The election officer may not release any results from those absentee ballots that are
72 counted after the date of the election through the date of the canvass.

73 (d) On the date of the canvass, the election officer shall provide a tally of all absentee
74 ballots counted, and the resulting tally shall be added to the official canvass of the election.

75 (4) (a) On the day after the date of the election, the election officer shall determine the
76 number of absentee ballots received by the election officer at that time and shall make that
77 number available to the public.

78 (b) The election officer may elect to publicly release updated totals for the number of
79 absentee ballots received by the election officer up through the date of the canvass.

80 Section 2. Section **20A-4-202** is amended to read:

81 **20A-4-202. Election officers -- Disposition of ballots -- Release of number of**
82 **provisional ballots cast.**

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

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

- 86 (ii) inspect the ballots and election returns to ensure that they are sealed;
- 87 (iii) (A) for paper ballots, deposit and lock the ballots and election returns in a safe and
- 88 secure place; or
- 89 (B) for punch card ballots:
- 90 (I) count the ballots; and
- 91 (II) deposit and lock the ballots and election returns in a safe and secure place; and
- 92 (iv) for bond elections, provide a copy of the election results to the board of canvassers
- 93 of the local political subdivision that called the bond election.
- 94 (b) Inspecting poll watchers appointed as provided in Section 20A-3-201 may be
- 95 present and observe the election officer's receipt, inspection, and deposit of the ballots and
- 96 election returns.
- 97 (2) Each election officer shall:
- 98 (a) no later than 5 p.m. on the day after the date of the election, determine the number
- 99 of provisional ballots cast within the election officer's jurisdiction and make that number
- 100 available to the public;
- 101 [~~(a)~~] (b) preserve ballots for 22 months after the election or until the time has expired
- 102 during which the ballots could be used in an election contest;
- 103 [~~(b)~~] (c) package and seal a true copy of the ballot label used in each voting precinct;
- 104 [~~(c)~~] (d) preserve all other official election returns for at least 22 months after an
- 105 election; and
- 106 [~~(d)~~] (e) after that time, destroy them without opening or examining them.
- 107 (3) (a) The election officer shall package and retain all tabulating cards and other
- 108 materials used in the programming of the automatic tabulating equipment.
- 109 (b) The election officer:
- 110 (i) may access these tabulating cards and other materials;
- 111 (ii) may make copies of these materials and make changes to the copies;
- 112 (iii) may not alter or make changes to the materials themselves; and
- 113 (iv) within 22 months after the election in which they were used, may dispose of those

114 materials or retain them.

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

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

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

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

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

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

126 Section 3. Section **20A-9-201** is amended to read:

127 **20A-9-201. Declarations of candidacy -- Candidacy for more than one office or of**
128 **more than one political party prohibited with exceptions -- General filing and form**
129 **requirements.**

130 (1) Before filing a declaration of candidacy for election to any office, a person shall:

131 (a) be a United States citizen; and

132 (b) meet the legal requirements of that office.

133 (2) (a) Except as provided in Subsection (2)(b), a person may not:

134 (i) file a declaration of candidacy for, or be a candidate for, more than one office in
135 Utah during any election year; or

136 (ii) appear on the ballot as the candidate of more than one political party.

137 (b) A person may file a declaration of candidacy for, or be a candidate for, President or
138 Vice President of the United States and another office, if the person resigns the person's
139 candidacy for the other office after the person is officially nominated for President or Vice
140 President of the United States.

141 (3) If the final date established for filing a declaration of candidacy is a Saturday or

142 Sunday, the filing time shall be extended until 5 p.m. on the following business day.

143 (4) (a) (i) Except for presidential candidates, before the filing officer may accept any
144 declaration of candidacy, the filing officer shall:

145 (A) read to the prospective candidate the constitutional and statutory qualification
146 requirements for the office that the candidate is seeking; and

147 (B) require the candidate to state whether or not the candidate meets those
148 requirements.

149 (ii) Before accepting a declaration of candidacy for the office of county attorney, the
150 county clerk shall ensure that the person filing that declaration of candidacy is:

151 (A) a United States citizen;

152 (B) an attorney licensed to practice law in Utah who is an active member in good
153 standing of the Utah State Bar;

154 (C) a registered voter in the county in which he is seeking office; and

155 (D) a current resident of the county in which he is seeking office and either has been a
156 resident of that county for at least one year or was appointed and is currently serving as county
157 attorney and became a resident of the county within 30 days after appointment to the office.

158 (iii) Before accepting a declaration of candidacy for the office of district attorney, the
159 county clerk shall ensure that, as of the date of the election, the person filing that declaration of
160 candidacy is:

161 (A) a United States citizen;

162 (B) an attorney licensed to practice law in Utah who is an active member in good
163 standing of the Utah State Bar;

164 (C) a registered voter in the prosecution district in which he is seeking office; and

165 (D) a current resident of the prosecution district in which he is seeking office and either
166 will have been a resident of that prosecution district for at least one year as of the date of the
167 election or was appointed and is currently serving as district attorney and became a resident of
168 the prosecution district within 30 days after receiving appointment to the office.

169 (iv) Before accepting a declaration of candidacy for the office of county sheriff, the

170 county clerk shall ensure that the person filing the declaration of candidacy:

171 (A) as of the date of filing:

172 (I) is a United States citizen;

173 (II) is a registered voter in the county in which the person seeks office;

174 (III) (Aa) has successfully met the standards and training requirements established for
175 law enforcement officers under Title 53, Chapter 6, Part 2, Peace Officer Training and
176 Certification Act; or

177 (Bb) has passed a certification examination as provided in Section 53-6-206; and

178 (IV) is qualified to be certified as a law enforcement officer, as defined in Section
179 53-13-103; and

180 (B) as of the date of the election, shall have been a resident of the county in which the
181 person seeks office for at least one year.

182 (b) If the prospective candidate states that he does not meet the qualification
183 requirements for the office, the filing officer may not accept the prospective candidate's
184 declaration of candidacy.

185 (c) If the candidate states that he meets the requirements of candidacy, the filing officer
186 shall:

187 (i) inform the candidate that the candidate's name will appear on the ballot as it is
188 written on the declaration of candidacy;

189 [~~(i)~~] (ii) provide the candidate with a copy of the pledge of fair campaign practices
190 described under Section 20A-9-206 and inform the candidate that:

191 (A) signing the pledge is voluntary; and

192 (B) signed pledges shall be filed with the filing officer;

193 [~~(ii)~~] (iii) accept the candidate's declaration of candidacy; and

194 [~~(iii)~~] (iv) if the candidate has filed for a partisan office, provide a certified copy of the
195 declaration of candidacy to the chair of the county or state political party of which the
196 candidate is a member.

197 (d) If the candidate elects to sign the pledge of fair campaign practices, the filing

198 officer shall:

199 (i) accept the candidate's pledge; and

200 (ii) if the candidate has filed for a partisan office, provide a certified copy of the
201 candidate's pledge to the chair of the county or state political party of which the candidate is a
202 member.

203 (5) Except for presidential candidates, the form of the declaration of candidacy shall be
204 substantially as follows:

205 "State of Utah, County of _____

206 I, _____, declare my intention of becoming a candidate for the office of
207 _____ as a candidate for the _____ party. I do solemnly swear that: I can qualify to hold that
208 office, both legally and constitutionally, if selected; I reside at _____ in the City or
209 Town of _____, Utah, Zip Code _____ Phone No. _____; I will not knowingly violate any law
210 governing campaigns and elections; and I will qualify for the office if elected to it. The
211 mailing address that I designate for receiving official election notices is
212 _____.

213 _____

214 Subscribed and sworn before me this _____(month\day\year).

215 _____ Notary Public (or other officer qualified to administer oath.)"

216 (6) (a) Except for presidential candidates, the fee for filing a declaration of candidacy
217 is:

218 (i) \$25 for candidates for the local school district board; and

219 (ii) 1/8 of 1% of the total salary for the full term of office legally paid to the person
220 holding the office, but not less than \$5, for all other federal, state, and county offices.

221 (b) Except for presidential candidates, the filing officer shall refund the filing fee to
222 any candidate:

223 (i) who is disqualified; or

224 (ii) who the filing officer determines has filed improperly.

225 (c) (i) The county clerk shall immediately pay to the county treasurer all fees received

226 from candidates.

227 (ii) The lieutenant governor shall:

228 (A) apportion to and pay to the county treasurers of the various counties all fees
229 received for filing of nomination certificates or acceptances; and

230 (B) ensure that each county receives that proportion of the total amount paid to the
231 lieutenant governor from the congressional district that the total vote of that county for all
232 candidates for representative in Congress bears to the total vote of all counties within the
233 congressional district for all candidates for representative in Congress.

234 (d) (i) Each person who is unable to pay the filing fee may file a declaration of
235 candidacy without payment upon a prima facie showing of impecuniosity as evidenced by an
236 affidavit of impecuniosity filed with the filing officer.

237 (ii) The filing officer shall ensure that the affidavit of impecuniosity is printed in
238 substantially the following form:

239 "Affidavit of Impecuniosity

240 Individual Name

241 _____ Address _____

242 Phone Number _____

243 I, _____ (name), do solemnly [swear] [affirm] that, owing to my
244 poverty, I am unable to pay the filing fee required by law.

245 Date _____ Signature _____

246 Affiant

247 Subscribed and sworn to before me on _____ (month\day\year)

248 _____
249 (signature)

250 Name and Title of Officer Authorized to Administer Oath _____"

251 (7) Any person who fails to file a declaration of candidacy or certificate of nomination
252 within the time provided in this chapter is ineligible for nomination to office.

253 (8) A declaration of candidacy filed under this section may not be amended or

254 modified after the final date established for filing a declaration of candidacy.

255 Section 4. Section **20A-9-203** is amended to read:

256 **20A-9-203. Declarations of candidacy -- Municipal general elections.**

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

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

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

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

267 (c) In accordance with Utah Constitution Article IV, Section 6, any mentally
268 incompetent person, any person convicted of a felony, or any person convicted of treason or a
269 crime against the elective franchise may not hold office in this state until the right to hold
270 elective office is restored under Section 20A-2-101.5.

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

276 (b) (i) As used in this Subsection (2)(b), "registered voters" means the number of
277 persons registered to vote in the municipality on the January 1 of the municipal election year.

278 (ii) A third, fourth, or fifth class city that used the convention system to nominate
279 candidates in the last municipal election as authorized by Subsection 20A-9-404(3) or used the
280 process contained in this Subsection (2)(b) in the last municipal election or a town that used the
281 convention system to nominate candidates in the last municipal election as authorized by

282 Subsection 20A-9-404(3) or used the process contained in this Subsection (2)(b) in the last
283 municipal election may, by ordinance, require, in lieu of the convention system, that candidates
284 for municipal office file a nominating petition signed by a percentage of registered voters at the
285 same time that the candidate files a declaration of candidacy.

286 (iii) The ordinance shall specify the number of signatures that the candidate must
287 obtain on the nominating petition in order to become a candidate for municipal office under
288 this Subsection (2), but that number may not exceed 5% of registered voters.

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

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

295 (3) (a) Before the filing officer may accept any declaration of candidacy or nomination
296 petition, the filing officer shall:

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

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

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

303 (c) If it appears that the prospective candidate meets the requirements of candidacy, the
304 filing officer shall:

305 (i) inform the candidate that the candidate's name will appear on the ballot as it is
306 written on the declaration of candidacy;

307 [(†)] (ii) provide the candidate with a copy of the pledge of fair campaign practices
308 described under Section 20A-9-206 and inform the candidate that:

309 (A) signing the pledge is voluntary; and

310 (B) signed pledges shall be filed with the filing officer; and
311 [~~(ii)~~] (iii) accept the declaration of candidacy or nomination petition.

312 (d) If the candidate elects to sign the pledge of fair campaign practices, the filing
313 officer shall:

- 314 (i) accept the candidate's pledge; and
- 315 (ii) if the candidate has filed for a partisan office, provide a certified copy of the
316 candidate's pledge to the chair of the county or state political party of which the candidate is a
317 member.

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

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

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

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

326 (5) (a) In all first and second class cities, and in third, fourth, or fifth class cities that
327 have not passed the ordinance authorized by Subsection (2)(b) and in towns that have not
328 passed the ordinance authorized by Subsection (2)(b), any registered voter may be nominated
329 for municipal office by submitting a petition signed by:

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

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

333 "NOMINATION PETITION

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

337 (ii) The remainder of the petition shall contain lines and columns for the signatures of

338 persons signing the petition and their addresses and telephone numbers.

339 (6) (a) In third, fourth, and fifth class cities that have passed the ordinance authorized
340 by Subsection (2)(b), and in towns that have passed the ordinance authorized by Subsection
341 (2)(b), any registered voter may be nominated for municipal office by submitting a petition
342 signed by the same percentage of registered voters in the municipality as required by the
343 ordinance passed under authority of Subsection (2)(b).

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

345 "NOMINATION PETITION

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

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

351 (7) If the declaration of candidacy or nomination petition fails to state whether the
352 nomination is for the two or four-year term, the clerk shall consider the nomination to be for
353 the four-year term.

354 (8) (a) The clerk shall verify with the county clerk that all candidates are registered
355 voters.

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

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

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

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

365 (10) A declaration of candidacy or nomination petition filed under this section may not

366 be amended after the expiration of the period for filing a declaration of candidacy.

367 ~~[(10)]~~ (11) (a) A declaration of candidacy or nomination petition filed under this
368 section is valid unless a written objection is filed with the clerk within five days after the last
369 day for filing.

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

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

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

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

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

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

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

382 ~~[(11)]~~ (12) Any person who filed a declaration of candidacy and was nominated, and
383 any person who was nominated by a nomination petition, may, any time up to 23 days before
384 the election, withdraw the nomination by filing a written affidavit with the clerk.

385 Section 5. Section **20A-9-701** is amended to read:

386 **20A-9-701. Certification of party candidates to county clerks.**

387 (1) By September 3 of each regular general election year, the lieutenant governor shall
388 certify to each county clerk the names of each candidate, including candidates for president and
389 vice president, certified by each registered political party as that party's nominees for offices to
390 be voted upon at the regular general election in that county clerk's county.

391 (2) The names shall be certified by the lieutenant governor and shall be displayed on
392 the ballot as they are provided on the candidate's declaration of candidacy.

393 Section 6. Section **20A-9-803** is amended to read:

394 **20A-9-803. Declaration of candidacy -- Filing fee -- Form.**

395 (1) (a) Candidates for President of the United States who are affiliated with a registered
396 political party in Utah that has elected to participate in Utah's Western States Presidential
397 Primary and who wish to participate in the primary shall:

398 (i) except as provided in Subsection (1)(b), file a declaration of candidacy, in person or
399 via a designated agent, with the lieutenant governor between July 1 of the year before the
400 primary election will be held and 5 p.m. on [~~January~~] October 15 of the year [~~in which~~] before
401 the primary election will be held;

402 (ii) identify the registered political party whose nomination the candidate is seeking;

403 (iii) provide a letter from the registered political party certifying that the candidate may
404 participate as a candidate for that party in that party's presidential primary election; and

405 (iv) pay the filing fee of \$500.

406 (b) If [~~January~~] October 15 falls on a Saturday, Sunday, or holiday, the filing time shall
407 be extended until 5 p.m. on the following business day.

408 (2) The lieutenant governor shall develop a declaration of candidacy form for
409 presidential candidates participating in the primary.

410 Section 7. Section **20A-13-101 (Contingently Effective)** is amended to read:

411 **20A-13-101 (Contingently Effective). Representatives to the United States**
412 **Congress -- Four representative districts -- When elected -- District boundaries.**

413 (1) (a) Utah is divided into four districts for the election of representatives to the
414 Congress of the United States, with one member to be elected from each Congressional district.

415 ~~[(b) At each general election held after December 5, 2006, and at any special election~~
416 ~~called by the governor to elect one or more members of Congress held within one year after~~
417 ~~December 5, 2006, one representative from each Congressional district shall be elected to serve~~
418 ~~in the Congress of the United States.]~~

419 (b) (i) At the general election to be held in 2008, and biennially thereafter, one
420 representative from each Congressional district shall be elected to serve in the Congress of the
421 United States.

422 (ii) At any special election called by the governor to elect one or more members of
423 Congress held within one year after December 5, 2006, one representative from each
424 Congressional district designated in the special election declaration shall be elected to serve in
425 the Congress of the United States.

426 (2) (a) The Legislature adopts the official census population figures and maps of the
427 Bureau of the Census of the United States Department of Commerce developed in connection
428 with the taking of the 2000 national decennial census as the official data for establishing
429 Congressional district boundaries.

430 (b) The numbers and boundaries of the Congressional districts are designated and
431 established by the maps attached to the bill that enacts this section.