

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



- 28 nomination petition after the last date established for filing a declaration of candidacy;
- 29 ▶ requires election officers that accept declarations of candidacy to inform the
- 30 candidate that the candidate's name will appear on the ballot as it appears on the
- 31 declaration of candidacy;
- 32 ▶ moves the last day to declare candidacy for the Western States Presidential Primary
- 33 from January 15 to October 15 of the previous year; and
- 34 ▶ makes technical changes.

35 **Monies Appropriated in this Bill:**

36 None

37 **Other Special Clauses:**

38 None

39 **Utah Code Sections Affected:**

40 AMENDS:

- 41 **20A-3-309**, as enacted by Chapter 1, Laws of Utah 1993
- 42 **20A-4-202**, as last amended by Chapter 105, Laws of Utah 2005
- 43 **20A-9-201**, as last amended by Chapter 226, Laws of Utah 2006
- 44 **20A-9-203**, as last amended by Chapters 28 and 226, Laws of Utah 2006
- 45 **20A-9-701**, as last amended by Chapter 77, Laws of Utah 2003
- 46 **20A-9-803**, as last amended by Chapter 355, Laws of Utah 2006



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

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

50 **20A-3-309. Absentee ballots in the custody of the election officer -- Disposition --**
51 **Counting -- Release of total number canvass.**

52 (1) The election officer shall deliver all envelopes containing valid absentee ballots
53 that are in the election officer's custody to the place of the official canvass of the election by
54 noon on the day of the official canvass following the election.

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

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

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

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

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

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

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

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

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

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

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

77 **20A-4-202. Election officers -- Disposition of ballots.**

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

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

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

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

84 (B) for punch card ballots:

85 (I) count the ballots; and

86 (II) deposit and lock the ballots and election returns in a safe and secure place; and

87 (iv) for bond elections, provide a copy of the election results to the board of canvassers
88 of the local political subdivision that called the bond election.

89 (b) Inspecting poll watchers appointed as provided in Section 20A-3-201 may be

90 present and observe the election officer's receipt, inspection, and deposit of the ballots and
91 election returns.

92 (2) Each election officer shall:

93 (a) no later than 5 p.m. on the day after the date of the election, determine the number
94 of provisional ballots cast within the election officer's jurisdiction and make that number
95 available to the public;

96 [~~(b)~~] (b) preserve ballots for 22 months after the election or until the time has expired
97 during which the ballots could be used in an election contest;

98 [~~(c)~~] (c) package and seal a true copy of the ballot label used in each voting precinct;

99 [~~(d)~~] (d) preserve all other official election returns for at least 22 months after an
100 election; and

101 [~~(e)~~] (e) after that time, destroy them without opening or examining them.

102 (3) (a) The election officer shall package and retain all tabulating cards and other
103 materials used in the programming of the automatic tabulating equipment.

104 (b) The election officer:

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

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

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

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

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

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

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

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

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

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

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

122 **20A-9-201. Declarations of candidacy -- Candidacy for more than one office or of**
123 **more than one political party prohibited with exceptions -- General filing and form**
124 **requirements.**

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

126 (a) be a United States citizen; and

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

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

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

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

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

136 (3) If the final date established for filing a declaration of candidacy is a Saturday or
137 Sunday, the filing time shall be extended until 5 p.m. on the following business day.

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

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

142 (B) require the candidate to state whether or not the candidate meets those
143 requirements.

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

146 (A) a United States citizen;

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

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

150 (D) a current resident of the county in which he is seeking office and either has been a
151 resident of that county for at least one year or was appointed and is currently serving as county

152 attorney and became a resident of the county within 30 days after appointment to the office.

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

156 (A) a United States citizen;

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

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

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

164 (iv) Before accepting a declaration of candidacy for the office of county sheriff, the
165 county clerk shall ensure that the person filing the declaration of candidacy:

166 (A) as of the date of filing:

167 (I) is a United States citizen;

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

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

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

173 (IV) is qualified to be certified as a law enforcement officer, as defined in Section
174 53-13-103; and

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

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

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

182 (i) inform the candidate that the candidate's name will appear on the ballot as it is

183 written on the declaration of candidacy;

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

186 (A) signing the pledge is voluntary; and

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

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

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

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

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

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

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

200 "State of Utah, County of ____

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

208 _____

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

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

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

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

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

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

218 (i) who is disqualified; or

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

220 (c) (i) The county clerk shall immediately pay to the county treasurer all fees received
221 from candidates.

222 (ii) The lieutenant governor shall:

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

225 (B) ensure that each county receives that proportion of the total amount paid to the
226 lieutenant governor from the congressional district that the total vote of that county for all
227 candidates for representative in Congress bears to the total vote of all counties within the
228 congressional district for all candidates for representative in Congress.

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

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

234 "Affidavit of Impecuniosity

235 Individual Name

236 _____ Address _____

237 Phone Number _____

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

240 Date _____ Signature _____

241 Affiant

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

243 _____
244 (signature)

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

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

248 (8) A declaration of candidacy filed under this section may not be amended or
249 modified after the final date established for filing a declaration of candidacy.

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

251 **20A-9-203. Declarations of candidacy -- Municipal general elections.**

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

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

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

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

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

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

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

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

276 convention system to nominate candidates in the last municipal election as authorized by
277 Subsection 20A-9-404(3) or used the process contained in this Subsection (2)(b) in the last
278 municipal election may, by ordinance, require, in lieu of the convention system, that candidates
279 for municipal office file a nominating petition signed by a percentage of registered voters at the
280 same time that the candidate files a declaration of candidacy.

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

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

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

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

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

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

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

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

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

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

304 (A) signing the pledge is voluntary; and

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

306 [~~(i)~~] (iii) accept the declaration of candidacy or nomination petition.

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

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

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

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

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

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

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

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

325 (i) 25 residents of the municipality who are at least 18 years old; or

326 (ii) 20% of the residents of the municipality who are at least 18 years old.

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

328 "NOMINATION PETITION

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

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

334 (6) (a) In third, fourth, and fifth class cities that have passed the ordinance authorized
335 by Subsection (2)(b), and in towns that have passed the ordinance authorized by Subsection
336 (2)(b), any registered voter may be nominated for municipal office by submitting a petition
337 signed by the same percentage of registered voters in the municipality as required by the

338 ordinance passed under authority of Subsection (2)(b).

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

340 "NOMINATION PETITION

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

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

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

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

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

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

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

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

360 (10) A declaration of candidacy or nomination petition filed under this section may not
361 be amended after the expiration of the period for filing a declaration of candidacy.

362 [~~(10)~~] (11) (a) A declaration of candidacy or nomination petition filed under this
363 section is valid unless a written objection is filed with the clerk within five days after the last
364 day for filing.

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

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

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

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

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

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

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

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

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

381 **20A-9-701. Certification of party candidates to county clerks.**

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

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

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

389 **20A-9-803. Declaration of candidacy -- Filing fee -- Form.**

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

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

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

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

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

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

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

Legislative Review Note

as of 2-7-07 1:02 PM

Office of Legislative Research and General Counsel

S.B. 241 - Election Law Modifications

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
