

**Representative Craig Hall** proposes the following substitute bill:

**ELECTION REVISIONS**

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Craig Hall**

Senate Sponsor: Wayne A. Harper

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**LONG TITLE**

**General Description:**

This bill modifies the Election Code by amending provisional ballot provisions.

**Highlighted Provisions:**

This bill:

- ▶ amends provisions for a poll worker to provide a provisional ballot to a voter who may not live in the voting precinct but is a resident of the county;
- ▶ amends standards for counting votes on a ballot to provide for a voter using a ballot that is prepared for a different voting precinct;
- ▶ amends provisions that determine when a provisional ballot cast outside of the person's precinct of residence is counted by removing the provision that the provisional ballot is counted only if the entire ballot is identical to the person's precinct of residence and changing the provision to require that the ballot is from the person's county of residence and that specific votes on a provisional ballot that are for candidate races or ballot propositions for which the voter is entitled to vote are counted;
- ▶ amends provisions allowing a voter to have a provisional ballot used as a voter registration form in the voter's county of residence; and
- ▶ makes technical changes.



26 **Money Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 This bill coordinates with H.B. 91, Voter Registration - Election Day Voter  
30 Registration, by providing substantive amendments.

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **20A-3-105.5**, as last amended by Laws of Utah 2010, Chapter 83

34 **20A-4-105**, as last amended by Laws of Utah 1999, Chapter 56

35 **20A-4-107**, as last amended by Laws of Utah 2011, Chapters 291, 335 and last  
36 amended by Coordination Clause, Laws of Utah 2011, Chapter 291

37 **Utah Code Sections Affected by Coordination Clause:**

38 **20A-4-107**, as last amended by Laws of Utah 2011, Chapters 291, 335 and last  
39 amended by Coordination Clause, Laws of Utah 2011, Chapter 291



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

42 Section 1. Section **20A-3-105.5** is amended to read:

43 **20A-3-105.5. Manner of voting -- Provisional ballot.**

44 (1) The poll workers shall follow the procedures and requirements of this section  
45 when:

46 (a) the person's right to vote is challenged as provided in Section 20A-3-202 or  
47 20A-3-202.5;

48 (b) the person's name is not found on the official register; or

49 (c) the poll worker is not satisfied that the voter has provided valid voter identification.

50 (2) When faced with one of the circumstances outlined in Subsection (1)(a) or (b), the  
51 poll worker shall:

52 (a) request that the person provide valid voter identification; and

53 (b) review the identification provided by the person.

54 (3) If the poll worker is satisfied that the person has provided valid voter identification  
55 that establishes the person's identity and residence in the voting precinct or within the county:

56 (a) the poll worker in charge of the official register shall:

57 (i) record in the official register the type of identification that established the person's  
58 identity and place of residence;

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

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

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

63 and

64 (c) the poll worker having charge of the ballots shall:

65 (i) endorse his initials on the stub;

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

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

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

69 (4) If the poll worker is not satisfied that the voter has provided valid voter  
70 identification that establishes the person's identity and residence in the voting precinct or  
71 within the county:

72 (a) the poll worker in charge of the official register shall:

73 (i) record in the official register that the voter did not provide valid voter identification;

74 (ii) record in the official register the type of identification that was provided by the  
75 voter, if any;

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

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

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

80 and

81 (c) the poll worker having charge of the ballots shall:

82 (i) endorse his initials on the stub;

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

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

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

86 (5) Whenever the election officer is required to furnish more than one kind of official  
87 ballot to a voting precinct, the poll workers of that voting precinct shall give the registered

88 voter the kind of ballot that the voter is qualified to vote.

89 Section 2. Section **20A-4-105** is amended to read:

90 **20A-4-105. Standards and requirements for evaluating voter's ballot choices.**

91 (1) Each person counting ballots shall apply the standards and requirements of this  
92 section to resolve any questions that arise as ballots are counted.

93 (2) Except as provided in Subsection (11), if a voter marks more names than there are  
94 persons to be elected to an office, or if for any reason it is impossible to determine the choice  
95 of any voter for any office to be filled, the counter may not count that voter's ballot for that  
96 office.

97 (3) The counter shall count a defective or incomplete mark on any paper ballot if:

98 (a) it is in the proper place; and

99 (b) there is no other mark or cross on the paper ballot indicating the voter's intent to  
100 vote other than as indicated by the defective mark.

101 (4) (a) When the voter has marked the ballot so that it appears that the voter has voted  
102 more than one straight ticket, the election judges may not count any votes for party candidates.

103 (b) The election judges shall count the remainder of the ballot if it is voted correctly.

104 (5) A counter may not reject a ballot marked by the voter because of marks on the  
105 ballot other than those marks allowed by this section unless the extraneous marks on a ballot or  
106 group of ballots show an intent by a person or group to mark their ballots so that their ballots  
107 can be identified.

108 (6) (a) In counting the ballots, the counters shall give full consideration to the intent of  
109 the voter.

110 (b) The counters may not invalidate a ballot because of mechanical and technical  
111 defects in voting or failure on the part of the voter to follow strictly the rules for balloting  
112 required by Chapter 3.

113 (7) The counters may not reject a ballot because of any error in:

114 (a) stamping or writing any official endorsement; or

115 (b) delivering the wrong ballots to any polling place.

116 (8) The counter may not count any paper ballot that does not have the official  
117 endorsement by an election officer.

118 (9) The counter may not count any ballot proposition vote or candidate vote for which

119 the voter is not "legally entitled to vote" as used in Section 20A-4-107.

120       ~~[(9)]~~ (10) If the counter discovers that the name of a candidate voted for is misspelled  
121 or that the initial letters of a candidate's given name are transposed or omitted in part or  
122 altogether, the counter shall count the voter's vote for that candidate if it is apparent that the  
123 voter intended to vote for that candidate.

124       ~~[(10)]~~ (11) The counter shall count a vote for the president and the vice president of  
125 any political party as a vote for the presidential electors selected by the political party.

126       ~~[(11)]~~ (12) In counting the valid write-in votes, if, by casting a valid write-in vote, a  
127 voter has cast more votes for an office than that voter is entitled to vote for that office, the  
128 judges shall count the valid write-in vote as being the obvious intent of the voter.

129       Section 3. Section **20A-4-107** is amended to read:

130       **20A-4-107. Review and disposition of provisional ballot envelopes.**

131       (1) As used in this section, a person is "legally entitled to vote" if:

132       (a) the person:

133       (i) is registered to vote in the state;

134       (ii) votes the ballot for the voting precinct in which the person resides; and

135       (iii) provided valid voter identification to the poll worker;

136       (b) the person:

137       (i) is registered to vote in the state;

138       (ii) (A) provided valid voter identification to the poll worker; or

139       (B) either failed to provide valid voter identification or the documents provided as  
140 valid voter identification were inadequate and the poll worker recorded that fact in the official  
141 register but the county clerk verifies the person's identity and residence through some other  
142 means; and

143       (iii) did not vote in the person's precinct of residence, but the ballot that the person  
144 voted ~~[is identical to]~~ was from the person's county of residence and includes one or more  
145 candidates or ballot propositions on the ballot voted in the person's precinct of residence; or

146       (c) the person:

147       (i) is registered to vote in the state;

148       (ii) either failed to provide valid voter identification or the documents provided as  
149 valid voter identification were inadequate and the poll worker recorded that fact in the official

150 register; and

151 (iii) (A) the county clerk verifies the person's identity and residence through some other  
152 means as reliable as photo identification; or

153 (B) the person provides valid voter identification to the county clerk or an election  
154 officer who is administering the election by the close of normal office hours on Monday after  
155 the date of the election.

156 (2) (a) Upon receipt of provisional ballot envelopes, the election officer shall review  
157 the affirmation on the face of each provisional ballot envelope and determine if the person  
158 signing the affirmation is;

159 (i) registered to vote in this state; and

160 (ii) legally entitled to vote;

161 (A) the ballot that the person voted[-]; or

162 (B) if the ballot is from the person's county of residence, for at least one ballot  
163 proposition or candidate on the ballot that the person voted.

164 (b) If the election officer determines that the person is not registered to vote in this  
165 state or is not legally entitled to vote in the county or for any of the ballot propositions or  
166 candidates on the ballot that the person voted, the election officer shall retain the ballot  
167 envelope, unopened, for the period specified in Section 20A-4-202 unless ordered by a court to  
168 produce or count it.

169 (c) If the election officer determines that the person is registered to vote in this state  
170 and is legally entitled to vote in the county and for at least one of the ballot propositions or  
171 candidates on the ballot that the person voted, the election officer shall remove the ballot from  
172 the provisional ballot envelope and place the ballot with the absentee ballots to be counted with  
173 those ballots at the canvass.

174 (d) The election officer may not count, or allow to be counted a provisional ballot  
175 unless the person's identity and residence is established by a preponderance of the evidence.

176 (3) If the election officer determines that the person is registered to vote in this state,  
177 the election officer shall ensure that the voter registration records are updated to reflect the  
178 information provided on the provisional ballot envelope.

179 (4) If the election officer determines that the person is not registered to vote in this  
180 state and the information on the provisional ballot envelope is complete, the election officer

181 shall:

182 (a) consider the provisional ballot envelope a voter registration form for the person's  
183 county of residence; and

184 (b) (i) register the person[-] if the voter's county of residence is within the county; or

185 (ii) forward the voter registration form to the election officer of the person's county of  
186 residence, which election officer shall register the person.

187 Section 4. **Coordinating H.B. 378 with H.B. 91 -- Substantive amendments.**

188 If this H.B. 378 and H.B. 91, Voter Registration - Election Day Voter Registration, both  
189 pass and become law, it is the intent of the Legislature that the Office of Legislative Research  
190 and General Counsel in preparing the Utah Code database for publication, delete Subsection  
191 20A-4-107(4) entirely.