

Representative Brad M. Daw proposes the following substitute bill:

VOTE BY MAIL REVISIONS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad M. Daw

Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:

This bill changes processes related to conducting an election entirely by mail.

Highlighted Provisions:

This bill:

- ▶ creates requirements for an election officer who receives an invalid absentee ballot;
- ▶ changes the time by which a county clerk is required to remove a deceased individual's name from the official register;
- ▶ makes changes to the process by which a paper ballot is adjudicated when a question arises regarding a vote recorded on the paper ballot; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

20A-2-305, as last amended by Laws of Utah 2012, Chapters 33 and 52

20A-3-302, as last amended by Laws of Utah 2015, Chapter 173



26 [20A-4-104](#), as last amended by Laws of Utah 2006, Chapter 326

27 [20A-4-105](#), as last amended by Laws of Utah 2013, Chapter 390

28

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

30 Section 1. Section [20A-2-305](#) is amended to read:

31 **20A-2-305. Removing names from the official register -- General requirements.**

32 (1) The county clerk may not remove a voter's name from the official register because
33 the voter has failed to vote in an election.

34 (2) The county clerk shall remove a voter's name from the official register if:

35 (a) the voter dies and the requirements of Subsection (3) are met;

36 (b) the county clerk, after complying with the requirements of Section [20A-2-306](#),
37 receives written confirmation from the voter that the voter no longer resides within the county
38 clerk's county;

39 (c) the county clerk has:

40 (i) obtained evidence that the voter's residence has changed;

41 (ii) mailed notice to the voter as required by Section [20A-2-306](#);

42 (iii) (A) received no response from the voter; or

43 (B) not received information that confirms the voter's residence; and

44 (iv) the voter has failed to vote or appear to vote in an election during the period
45 beginning on the date of the notice described in Section [20A-2-306](#) and ending on the day after
46 the date of the second regular general election occurring after the date of the notice;

47 (d) the voter requests, in writing, that the voter's name be removed from the official
48 register;

49 (e) the county clerk receives a returned voter identification card, determines that there
50 was no clerical error causing the card to be returned, and has no further information to contact
51 the voter;

52 (f) the county clerk receives notice that a voter has been convicted of any felony or a
53 misdemeanor for an offense under this title and the voter's right to vote has not been restored as
54 provided in Section [20A-2-101.3](#) or [20A-2-101.5](#); or

55 (g) the county clerk receives notice that a voter has registered to vote in another state
56 after the day on which the voter registered to vote in this state.

57 (3) The county clerk shall remove a voter's name from the [~~registration list within 21~~
58 ~~days of receipt of~~] list of registered voters within five business days after the day on which the
59 county clerk receives confirmation from the Department of Health's Bureau of Vital Records
60 that a voter is deceased.

61 Section 2. Section **20A-3-302** is amended to read:

62 **20A-3-302. Conducting entire election by absentee ballot.**

63 (1) (a) Notwithstanding Section **17B-1-306**, an election officer may administer an
64 election entirely by absentee ballot.

65 (b) An election officer who administers an election entirely by absentee ballot, except
66 for an election conducted under Section **20A-7-609.5**, shall ~~H→~~ **;** before January 1 of the year in
67 which the election will be held, ~~←H~~ notify the lieutenant governor that the election will be
68 administered entirely by absentee ballot ~~H→~~ before:

68a (i) **February 1 of an even-numbered year if the election is held during a regular**
68b **general election; or**

68c (ii) **May 1 of an odd-numbered year if the election is held during a municipal**
68d **general election** ~~←H~~ .

69 (2) If the election officer decides to administer an election entirely by absentee ballot,
70 the election officer shall mail to each registered voter within that voting precinct:

71 (a) an absentee ballot;

72 (b) for an election administered by a county clerk, information regarding the location
73 and hours of operation of any election day voting center at which the voter may vote;

74 (c) a courtesy reply mail envelope;

75 (d) instructions for returning the ballot that include an express notice about any
76 relevant deadlines that the voter must meet in order for the voter's vote to be counted; and

77 (e) for an election administered by an election officer other than a county clerk, if the
78 election officer does not operate a polling location or an election day voting center, a warning,
79 on a separate page of colored paper in bold face print, indicating that if the voter fails to follow
80 the instructions included with the absentee ballot, the voter will be unable to vote in that
81 election because there will be no polling place in the voting precinct on the day of the election.

82 (3) A voter who votes by absentee ballot under this section is not required to apply for
83 an absentee ballot as required by this part.

84 (4) An election officer who administers an election entirely by absentee ballot shall:

85 (a) (i) obtain, in person, the signatures of each voter within that voting precinct before
86 the election; or

87 (ii) obtain the signature of each voter within the voting precinct from the county clerk;

88 and

89 (b) maintain the signatures on file in the election officer's office.

90 (5) (a) Upon receiving the returned absentee ballots, the election officer shall compare
91 the signature on each absentee ballot with the voter's signature that is maintained on file and
92 verify that the signatures are the same.

93 (b) If the election officer questions the authenticity of the signature on the absentee
94 ballot, the election officer shall immediately contact the voter to verify the signature.

95 (c) If the election ~~[official]~~ officer determines that the signature on the absentee ballot
96 does not match the voter's signature that is maintained on file, the election officer shall mail the
97 voter a notice that:

98 (i) informs the voter that the voter's signature is in question;

99 (ii) informs the voter of how the voter may resolve the issue;

100 (iii) includes an affidavit that the voter shall sign and return to the election officer
101 attesting that the voter voted the absentee ballot;

102 (iv) requires the voter to provide the voter's:

103 (A) name and date of birth; and

104 (B) driver license number or the last four digits of the voter's social security number;

105 and

106 (v) informs the voter that by signing the absentee voter affidavit, the voter authorizes
107 the lieutenant governor's and county clerk's use of the applicant's signature on the affidavit for
108 voter identification purposes.

109 (d) A voter who receives a notice under Subsection (5)(c) shall return the affidavit
110 described in Subsection (5)(c)(iv) to the election officer.

111 (e) An election officer who receives a signed affidavit under Subsection (5)(d) shall
112 immediately:

113 (i) scan the signature on the affidavit electronically and keep the signature on file in the
114 statewide voter registration database developed under Section [20A-2-109](#); and

115 ~~[(i) unless the absentee ballot application deadline described in Section [20A-3-304](#) has~~
116 ~~passed, immediately send another absentee ballot and other voting materials as required by this~~
117 ~~section to the voter; and]~~

118 ~~[(ii) disqualify the initial absentee ballot.]~~

119 (ii) count the voter's ballot.

120 (f) An election officer may not count the ballot of a voter to whom the election officer
121 sends the notice described in Subsection (5)(c) if the election officer does not receive a signed
122 affidavit from the voter under Subsection (5)(d) or is not otherwise able to establish contact
123 with the voter to confirm the voter's identity.

124 (6) A county that administers an election entirely by absentee ballot:

125 (a) shall provide at least one election day voting center in accordance with Title 20A,
126 Chapter 3, Part 7, Election Day Voting Center;

127 (b) shall ensure that an election day voting center operated by the county has at least
128 one voting device that is accessible, in accordance with the Help America Vote Act of 2002,
129 Pub. L. No. 107-252, for individuals with disabilities; and

130 (c) is not required to pay return postage for an absentee ballot.

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

132 **20A-4-104. Counting ballots electronically.**

133 (1) (a) Before beginning to count ballot sheets using automatic tabulating equipment,
134 the election officer shall test the automatic tabulating equipment to ensure that it will
135 accurately count the votes cast for all offices and all measures.

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

139 (c) The election officer shall conduct the test by processing a preaudited group of ballot
140 sheets.

141 (d) The election officer shall ensure that:

142 (i) a predetermined number of valid votes for each candidate and measure are recorded
143 on the ballot sheets;

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

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

149 (e) If any error is detected, the election officer shall determine the cause of the error

150 and correct it.

151 (f) The election officer shall ensure that:

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

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

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

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

160 (ii) Only those persons authorized to participate in the count may touch any ballot,
161 ballot sheet, or return.

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

165 (d) (i) Counting poll watchers appointed as provided in Section [20A-3-201](#) may
166 observe the testing of equipment and actual counting of the ballot sheets.

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

170 (3) If any ballot sheet is damaged or defective so that it cannot properly be counted by
171 the automatic tabulating equipment, the election officer shall ensure that two counting judges
172 jointly:

173 (a) [~~cause~~] create a true duplicate copy of the ballot sheet [~~to be made~~] with an
174 identifying serial number;

175 (b) substitute the duplicate ballot sheet for the damaged or defective ballot sheet;

176 (c) label the duplicate ballot [~~card~~] sheet "duplicate"; and

177 (d) record the duplicate ballot sheet's serial number on the damaged or defective ballot
178 sheet.

179 (4) The election officer may:

180 (a) conduct an unofficial count before conducting the official count in order to provide

181 early unofficial returns to the public;

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

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

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

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

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

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

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

193 (7) (a) The election officer shall certify the return printed by the automatic tabulating
194 equipment, to which have been added write-in and absentee votes, as the official return of each
195 voting precinct.

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

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

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

203 Section 4. Section 20A-4-105 is amended to read:

204 **20A-4-105. Standards and requirements for evaluating voter's ballot choices.**

205 ~~[(1) Each person counting ballots shall apply the standards and requirements of this~~
206 ~~section to resolve any questions that arise as ballots are counted.]~~

207 (1) (a) An election officer shall ensure that when a question arises regarding a vote
208 recorded on a paper ballot, two counting judges jointly adjudicate the ballot in accordance with
209 the requirements of this section.

210 (b) If the counting judges disagree on the disposition of a vote recorded on a ballot that
211 is adjudicated under this section, the counting judges may not count the vote.

212 (2) Except as provided in Subsection (11), if a voter marks more names than there are
213 persons to be elected to an office, or if for any reason it is impossible to determine the choice
214 of any voter for any office to be filled, the ~~[counter]~~ counting judges may not count that voter's
215 ballot for that office.

216 (3) The ~~[counter]~~ counting judges shall count a defective or incomplete mark on any
217 paper ballot if:

218 (a) ~~[it]~~ the defective or incomplete mark is in the proper place; and

219 (b) there is no other mark or cross on the ~~[paper]~~ ballot indicating the voter's intent to
220 vote other than as indicated by the incomplete or defective mark.

221 (4) (a) When the voter has marked the ballot so that it appears that the voter has voted
222 more than one straight ticket, the ~~[election]~~ counting judges may not count any votes for party
223 candidates.

224 (b) The ~~[election]~~ counting judges shall count the remainder of the ballot if ~~[it]~~ the
225 ballot is voted correctly.

226 (5) ~~[A counter]~~ The counting judges may not reject a ballot marked by the voter
227 because of marks on the ballot other than those marks allowed by this section unless the
228 extraneous marks on a ballot or group of ballots show an intent by a person or group to mark
229 ~~[their]~~ the person's ballot or the group's ballots so that ~~[their]~~ the person's ballot or the group's
230 ballots can be identified.

231 (6) (a) In counting the ballots, the ~~[counters]~~ counting judges shall give full
232 consideration to the intent of the voter.

233 (b) The ~~[counters]~~ counting judges may not invalidate a ballot because of mechanical
234 ~~[and]~~ or technical defects in voting or failure on the part of the voter to follow strictly the rules
235 for balloting required by Chapter 3, Voting.

236 (7) The ~~[counters]~~ counting judges may not reject a ballot because of ~~[any]~~ an error in:

237 (a) stamping or writing ~~[any]~~ an official endorsement; or

238 (b) delivering the wrong ballots to ~~[any]~~ a polling place.

239 (8) The ~~[counter]~~ counting judges may not count ~~[any]~~ a paper ballot that does not have
240 the official endorsement by an election officer.

241 (9) The ~~[counter]~~ counting judges may not count ~~[any]~~ a ballot proposition vote or
242 candidate vote for which the voter is not ^[u]legally entitled to vote^[u], as ~~[used]~~ defined in

243 Section [20A-4-107](#).

244 (10) If the [~~counter discovers~~] counting judges discover that the name of a candidate
245 voted for is misspelled or that the initial letters of a candidate's given name are transposed or
246 omitted in part or altogether, the [~~counter~~] counting judges shall count the voter's vote for [~~that~~]
247 the candidate if it is apparent that the voter intended to vote for [~~that~~] the candidate.

248 (11) The [~~counter~~] counting judges shall count a vote for the president and the vice
249 president of any political party as a vote for the presidential electors selected by the political
250 party.

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