{deleted text} shows text that was in HB0417 but was deleted in HB0417S01.

inserted text shows text that was not in HB0417 but was inserted into HB0417S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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: _____

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

20A-4-104, as last amended by Laws of Utah 2006, Chapter 326

20A-4-105, as last amended by Laws of Utah 2013, Chapter 390

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

Section 1. Section **20A-2-305** is amended to read:

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

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

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

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

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

(c) the county clerk has:

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

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

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

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

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

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

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

the voter;

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

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

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

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

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

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

(b) An election officer who administers an election entirely by absentee ballot, except for an election conducted under Section 20A-7-609.5, shall, before January 1 of the year in which the election will be held, notify the lieutenant governor that the election will be administered entirely by absentee ballot.

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

(a) an absentee ballot;

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

(c) a courtesy reply mail envelope;

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

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

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

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

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

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

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

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

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

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

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

{ (ii) contains the following statement: "It is unlawful for an individual to willfully falsify an absentee voter affidavit. An individual who willfully falsifies an absentee voter affidavit is guilty of perjury and may be prosecuted and punished under state law.";

} ({iii}ii) informs the voter of how the voter may resolve the issue;

({iv}iii) includes an affidavit that the voter {may}shall sign and return to the election officer attesting that the voter {did not willfully falsify the absentee voter affidavit; and

}voted the absentee ballot;

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

(A) name and date of birth; and

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

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

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

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

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

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

[(ii){] (iii)} disqualify the initial absentee ballot.]

(ii) count the voter's ballot.

(f) An election officer {who}may not count the ballot of a voter to whom the election officer sends the notice described in Subsection (5)(c){, but} if the election officer does not receive a signed affidavit from the voter under Subsection (5)(d){, shall forward information pertaining to the absentee ballot to the county prosecutor of the county in which the voter resides.

(g) An election officer may not send a voter another absentee ballot under this Subsection (5) unless the election officer receives the affidavit described in Subsection (5)(d)} or is not otherwise able to establish contact with the voter to confirm the voter's identity.

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

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

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

(c) {[}is not required to{] shall} pay return postage for an absentee ballot.

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

20A-4-104. Counting ballots electronically.

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

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

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

(d) The election officer shall ensure that:

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

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

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

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

(f) The election officer shall ensure that:

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) The election officer may:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) [A counter] The counting judges may not reject a ballot marked by the voter because of marks on the ballot other than those marks allowed by this section unless the extraneous marks on a ballot or group of ballots show an intent by a person or group to mark

[their] the person's ballot or the group's ballots so that [their] the person's ballot or the group's ballots can be identified.

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

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

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

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

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

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

(9) The [counter] counting judges may not count [any] a ballot proposition vote or candidate vote for which the voter is not ["]legally entitled to vote["], as [used] defined in Section 20A-4-107.

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

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

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

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