

HB0264S01 compared with HB0264

~~text~~ shows text that was in HB0264 but was deleted in HB0264S01.

text shows text that was not in HB0264 but was inserted into HB0264S01.

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Representative Douglas R. Welton proposes the following substitute bill:

MUNICIPAL ALTERNATE VOTING METHODS AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Douglas R. Welton

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions relating to the Municipal Alternate Voting Methods Pilot Project.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ replaces references to the "canvassing phase" with the term "ballot-counting phase";
- ▶ modifies provisions for determining a voter's intent on an instant runoff voting ballot;
- ▶ modifies provisions for determining when a vote is valid in an instant runoff race;
- ▶ modifies and clarifies recount procedures and requirements;
- ▶ permits a canvassing deadline extension, when necessary, to conduct a recount; and

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- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

20A-4-101, as last amended by Laws of Utah 2020, Chapter 31

20A-4-102, as last amended by Laws of Utah 2020, Chapters 31 and 49

20A-4-304, as last amended by Laws of Utah 2021, First Special Session, Chapter 15

20A-4-601, as enacted by Laws of Utah 2018, Chapter 187

20A-4-603, as last amended by Laws of Utah 2019, Chapter 305

20A-4-604, as enacted by Laws of Utah 2018, Chapter 187

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

Section 1. Section **20A-4-101** is amended to read:

20A-4-101. Manual ballots cast at a polling place -- Counting manual ballots at polling place on day of election before polls close.

(1) Each county legislative body, municipal legislative body, and each poll worker shall comply with the requirements of this section when counting manual ballots on the day of an election, if:

- (a) the ballots are cast at a polling place; and
- (b) the ballots are counted at the polling place before the polls close.

(2) (a) Each county legislative body or municipal legislative body shall provide:

- (i) two sets of ballot boxes for all voting precincts where both receiving and counting judges have been appointed; and
- (ii) a counting room for the use of the poll workers counting the ballots during the day.

(b) At any election in any voting precinct in which both receiving and counting judges have been appointed, when at least 20 votes have been cast, the receiving judges shall:

- (i) close the first ballot box and deliver it to the counting judges; and
- (ii) prepare and use another ballot box to receive voted ballots.

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(c) Except as provided in Subsection (2)(f), upon receipt of the ballot box, the counting judges shall:

- (i) take the ballot box to the counting room;
- (ii) count the votes on the regular ballots in the ballot box;
- (iii) place the provisional ballot envelopes in the envelope or container provided for them for return to the election officer; and

(iv) when they have finished counting the votes in the ballot box, return the emptied box to the receiving judges.

(d) (i) During the course of election day, whenever there are at least 20 ballots contained in a ballot box, the receiving judges shall deliver that ballot box to the counting judges for counting; and

(ii) the counting judges shall immediately count the regular ballots and segregate the provisional ballots contained in that box.

(e) The counting judges shall continue to exchange the ballot boxes and count ballots until the polls close.

(f) (i) The director of elections within the Office of the Lieutenant Governor shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, describing the procedures that a counting judge is required to follow for counting ballots in an instant runoff voting race under [~~Title 20A, Chapter 4,~~] Part 6, Municipal Alternate Voting Methods Pilot Project.

(ii) When counting ballots in an instant runoff voting race described in [~~Title 20A, Chapter 4,~~] Part 6, Municipal Alternate Voting Methods Pilot Project, a counting judge shall comply with the procedures established under Subsection (2)(f)(i) and [~~Title 20A, Chapter 4,~~] Part 6, Municipal Alternate Voting Methods Pilot Project.

(3) To resolve questions that arise during the counting of ballots, a counting judge shall apply the standards and requirements of:

(a) to the extent applicable, Section 20A-4-105; and

(b) as applicable, for an instant runoff voting race under [~~Title 20A, Chapter 4,~~] Part 6, Municipal Alternate Voting Methods Pilot Project, [~~Subsection 20A-4-603(3)~~] Subsections 20A-4-603(3) through (5).

Section 2. Section **20A-4-102** is amended to read:

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20A-4-102. Manual ballots cast at a polling place -- Counting manual ballots at polling place on day of election after polls close.

(1) (a) This section governs counting manual ballots on the day of an election, if:

(i) the ballots are cast at a polling place; and

(ii) the ballots are counted at the polling place after the polls close.

(b) Except as provided in Subsection (2) or a rule made under Subsection

20A-4-101(2)(f)(i), as soon as the polls have been closed and the last qualified voter has voted, the election judges shall count the ballots by performing the tasks specified in this section in the order that they are specified.

(c) To resolve questions that arise during the counting of ballots, a counting judge shall apply the standards and requirements of:

(i) to the extent applicable, Section 20A-4-105; and

(ii) as applicable, for an instant runoff voting race under Part 6, Municipal Alternate Voting Methods Pilot Project, [~~Subsection 20A-4-603(3)~~] Subsections 20A-4-603(3) through (5).

(2) (a) First, the election judges shall count the number of ballots in the ballot box.

(b) (i) If there are more ballots in the ballot box than there are names entered in the pollbook, the judges shall examine the official endorsements on the ballots.

(ii) If, in the unanimous opinion of the judges, any of the ballots do not bear the proper official endorsement, the judges shall put those ballots in an excess ballot file and not count them.

(c) (i) If, after examining the official endorsements, there are still more ballots in the ballot box than there are names entered in the pollbook, the judges shall place the remaining ballots back in the ballot box.

(ii) One of the judges, without looking, shall draw a number of ballots equal to the excess from the ballot box.

(iii) The judges shall put those excess ballots into the excess ballot envelope and not count them.

(d) When the ballots in the ballot box equal the number of names entered in the pollbook, the judges shall count the votes.

(3) The judges shall:

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(a) place all unused ballots in the envelope or container provided for return to the county clerk or city recorder; and

(b) seal that envelope or container.

(4) The judges shall:

(a) place all of the provisional ballot envelopes in the envelope provided for them for return to the election officer; and

(b) seal that envelope or container.

(5) (a) In counting the votes, the election judges shall read and count each ballot separately.

(b) In regular primary elections the judges shall:

(i) count the number of ballots cast for each party;

(ii) place the ballots cast for each party in separate piles; and

(iii) count all the ballots for one party before beginning to count the ballots cast for other parties.

(6) (a) In all elections, the counting judges shall, except as provided in Part 6, Municipal Alternate Voting Methods Pilot Project, or a rule made under Subsection 20A-4-101(2)(f)(i):

(i) count one vote for each candidate designated by the marks in the squares next to the candidate's name;

(ii) count each vote for each write-in candidate who has qualified by filing a declaration of candidacy under Section 20A-9-601;

(iii) read every name marked on the ballot and mark every name upon the tally sheets before another ballot is counted;

(iv) evaluate each ballot and each vote based on the standards and requirements of Section 20A-4-105;

(v) write the word "spoiled" on the back of each ballot that lacks the official endorsement and deposit it in the spoiled ballot envelope; and

(vi) read, count, and record upon the tally sheets the votes that each candidate and ballot proposition received from all ballots, except excess or spoiled ballots.

(b) Election judges need not tally write-in votes for fictitious persons, nonpersons, or persons clearly not eligible to qualify for office.

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(c) The judges shall certify to the accuracy and completeness of the tally list in the space provided on the tally list.

(d) When the judges have counted all of the voted ballots, they shall record the results on the total votes cast form.

(7) Only an election judge and a watcher may be present at the place where counting is conducted until the count is completed.

Section 3. Section **20A-4-304** is amended to read:

20A-4-304. Declaration of results -- Canvassers' report.

(1) Each board of canvassers shall:

(a) except as provided in Part 6, Municipal Alternate Voting Methods Pilot Project, declare "elected" or "nominated" those persons who:

(i) had the highest number of votes; and

(ii) sought election or nomination to an office completely within the board's jurisdiction;

(b) declare:

(i) "approved" those ballot propositions that:

(A) had more "yes" votes than "no" votes; and

(B) were submitted only to the voters within the board's jurisdiction; or

(ii) "rejected" those ballot propositions that:

(A) had more "no" votes than "yes" votes or an equal number of "no" votes and "yes" votes; and

(B) were submitted only to the voters within the board's jurisdiction;

(c) certify the vote totals for persons and for and against ballot propositions that were submitted to voters within and beyond the board's jurisdiction and transmit those vote totals to the lieutenant governor; and

(d) if applicable, certify the results of each local district election to the local district clerk.

(2) As soon as the result is declared, the election officer shall prepare a report of the result, which shall contain:

(a) the total number of votes cast in the board's jurisdiction;

(b) the names of each candidate whose name appeared on the ballot;

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- (c) the title of each ballot proposition that appeared on the ballot;
 - (d) each office that appeared on the ballot;
 - (e) from each voting precinct:
 - (i) the number of votes for each candidate;
 - (ii) for each race conducted by instant runoff voting under Part 6, Municipal Alternate Voting Methods Pilot Project, the number of valid votes cast for each candidate for each potential ballot-counting phase and the name of the candidate excluded in each [~~canvassing~~] ballot-counting phase; and
 - (iii) the number of votes for and against each ballot proposition;
 - (f) the total number of votes given in the board's jurisdiction to each candidate, and for and against each ballot proposition;
 - (g) the number of ballots that were rejected; and
 - (h) a statement certifying that the information contained in the report is accurate.
- (3) The election officer and the board of canvassers shall:
- (a) review the report to ensure that it is correct; and
 - (b) sign the report.
- (4) The election officer shall:
- (a) record or file the certified report in a book kept for that purpose;
 - (b) prepare and transmit a certificate of nomination or election under the officer's seal to each nominated or elected candidate;
 - (c) publish a copy of the certified report in accordance with Subsection (5); and
 - (d) file a copy of the certified report with the lieutenant governor.
- (5) Except as provided in Subsection (6), the election officer shall, no later than seven days after the day on which the board of canvassers declares the election results, publicize the certified report described in Subsection (2):
- (a) (i) by publishing notice at least once in a newspaper of general circulation within the jurisdiction;
 - (ii) by posting one notice, and at least one additional notice per 2,000 population of the jurisdiction, in places within the jurisdiction that are most likely to give notice to the residents of the jurisdiction, subject to a maximum of 10 notices; or
 - (iii) by mailing notice to each residence within the jurisdiction;

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(b) by posting notice on the Utah Public Notice Website, created in Section 63A-16-601, for one week; and

(c) if the jurisdiction has a website, by posting notice on the jurisdiction's website for one week.

(6) Instead of including a copy of the entire certified report, a notice required under Subsection (5) may contain a statement that:

(a) includes the following: "The Board of Canvassers for [indicate name of jurisdiction] has prepared a report of the election results for the [indicate type and date of election]."; and

(b) specifies the following sources where an individual may view or obtain a copy of the entire certified report:

(i) if the jurisdiction has a website, the jurisdiction's website;

(ii) the physical address for the jurisdiction; and

(iii) a mailing address and telephone number.

(7) When there has been a regular general or a statewide special election for statewide officers, for officers that appear on the ballot in more than one county, or for a statewide or two or more county ballot proposition, each board of canvassers shall:

(a) prepare a separate report detailing the number of votes for each candidate and the number of votes for and against each ballot proposition; and

(b) transmit the separate report by registered mail to the lieutenant governor.

(8) In each county election, municipal election, school election, local district election, and local special election, the election officer shall transmit the reports to the lieutenant governor within 14 days after the date of the election.

(9) In a regular primary election and in a presidential primary election, the board shall transmit to the lieutenant governor:

(a) the county totals for multi-county races, to be telephoned or faxed to the lieutenant governor not later than the second Tuesday after the election; and

(b) a complete tabulation showing voting totals for all primary races, precinct by precinct, to be mailed to the lieutenant governor on or before the third Friday following the primary election.

Section 4. Section **20A-4-601** is amended to read:

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20A-4-601. Definitions.

As used in this part:

(1) "Candidate amplifier" means the product of:

(a) two less than the total number of candidates in a given [~~canvassing~~] ballot-counting phase of a multi-candidate race; and

(b) .02%.

(2) "First preference ranking" means the candidate selected as the candidate most preferred by a voter, as indicated by:

(a) the number one; or

(b) if the voter does not assign the number one to any candidate, the number two.

~~(2)~~ (3) "Multi-candidate race" means a nonpartisan municipal race where:

(a) for the election of at-large officers, the number of candidates who qualify for the race exceeds the total number of seats to be filled; or

(b) for the election of an officer other than an at-large officer, more than two candidates qualify to run for one office.

~~(3)~~ (4) "Participating municipality" means a municipality that is participating in the pilot project, in accordance with Subsection 20A-4-602(3).

~~(4)~~ (5) "Pilot project" means the Municipal Alternate Voting Methods Pilot Project created in Section 20A-4-602.

~~(5)~~ (6) "Recount threshold" means the sum of the candidate amplifier and the following:

(a) for a [~~canvassing~~] ballot-counting phase in which fewer than 100 valid [~~votes~~] rankings are counted, 0.21%;

(b) for a [~~canvassing~~] ~~ballot-counting~~ phase in which at least 100, but fewer than 500, valid [~~votes~~] ~~rankings~~ are counted, 0.19%;

(c) for a [~~canvassing~~] ~~ballot-counting~~ phase in which at least 500, but fewer than 1,000, valid [~~votes~~] ~~rankings~~ are counted, 0.17%;

(d) for a [~~canvassing~~] ballot-counting phase in which at least 1,000, but fewer than 5,000, valid [~~votes~~] rankings are counted, 0.15%;

(e) for a [~~canvassing~~] ballot-counting phase in which at least 5,000, but fewer than 10,000, valid [~~votes~~] ~~rankings~~ are counted, 0.13%; and

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(f) for a [~~canvassing~~] ~~1~~ ballot-counting phase in which 10,000 or more valid [~~votes~~] rankings are counted, 0.11%.

~~[(6)] (7)~~ "Valid" means that the ballot is marked in a manner that permits the [~~vote~~] ranking to be counted during the applicable ballot-counting phase.

Section 5. Section **20A-4-603** is amended to read:

20A-4-603. Instant runoff voting.

(1) In a multi-candidate race, the election officer for a participating municipality shall:

(a) (i) conduct the first ballot-counting phase by counting the valid first preference [~~votes~~] rankings for each candidate; and

(ii) if, ~~after complying with Subsection (5),~~ one of the candidates receives more than 50% of the valid first preference [~~votes~~] rankings counted, declare that candidate elected;

(b) if, after counting the valid first preference [~~votes~~] rankings for each candidate, ~~and complying with Subsection (5),~~ no candidate receives more than 50% of the valid first preference [~~votes~~] rankings counted, conduct the second ballot-counting phase by:

(i) excluding from the multi-candidate race:

(A) the candidate who received the fewest valid first preference [~~votes~~] rankings counted; or

(B) in the event of a tie for the fewest valid first preference [~~votes~~] rankings counted, one of the tied candidates, determined by the [~~tied~~] election officer by lot, in accordance with Subsection (6);

(ii) adding, to the valid first preference [~~votes~~] rankings counted for the remaining candidates, the next valid [~~second~~] preference [~~votes~~] rankings cast for the remaining candidates by the voters who cast a valid first preference [~~vote~~] ranking for the excluded candidate; and

(iii) if, after adding the [~~votes~~] rankings in accordance with Subsection (1)(b)(ii) ~~and complying with Subsection (5),~~ one candidate receives more than 50% of the valid [~~votes~~] rankings counted, declaring that candidate elected; and

(c) if, after adding the next valid [~~second~~] preference [~~votes~~] rankings in accordance with Subsection (1)(b)(ii) ~~and complying with Subsection (5),~~ no candidate receives more than 50% of the valid [~~votes~~] rankings counted, conduct subsequent ballot-counting phases by continuing the process described in Subsection (1)(b) until a candidate receives more than 50%

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of the valid ~~[votes]~~ rankings counted, as follows:

(i) ~~[after complying with Subsection (5);]~~ excluding from consideration the candidate who has the fewest valid ~~[votes]~~ rankings counted or, in the event of a tie for the fewest valid ~~[votes]~~ rankings counted, excluding one of the tied candidates, by lot, in accordance with Subsection (6); and

(ii) adding the next valid preference ~~[vote]~~ ranking cast by each voter whose ~~[vote]~~ ranking was counted for the last excluded candidate to one of the remaining candidates, in the order of the next preference indicated by the voter.

(2) The election officer shall declare elected the first candidate who receives more than 50% of the valid ~~[votes]~~ rankings counted under the process described in Subsection (1).

(3) ~~[(a)]~~ A ~~[vote]~~ ranking is valid for a particular ballot-counting phase of a multi-candidate race ~~[only]~~ if:

~~(a)~~ the voter indicates the voter's preference for that ballot-counting phase and all previous ballot-counting phases~~[-]; or~~

~~(b)~~ in the event that the voter skips a number in filling out the rankings on a ballot:

~~(i)~~ the voter clearly indicates an order of preference for the candidates;

~~(ii)~~ the voter does not skip two or more consecutive numbers at any point before the preference ranking that would otherwise be counted for the current ballot-counting phase;

~~(iii)~~ the candidate next preferred by the voter is clearly indicated by a subsequent number that most closely follows the number assigned by the voter for the previously-ranked candidate; and

~~(iv)~~ the voter did not give the same rank to more than one candidate for the applicable ballot-counting phase or a previous ballot-counting phase.

~~[(b)]~~ (4) A ~~[vote]~~ ranking is not valid for a particular ballot-counting phase of a multi-candidate race, and for all subsequent ballot-counting phases, if:

~~(a)~~ the voter indicates the same rank for more than one candidate for that ballot-counting phase~~[-]; or~~

~~[(4)]~~ The election officer shall order a recount of the valid votes in the applicable ballot-counting phase if one candidate appears to have received at least 50% of the vote, and the difference between the number of votes counted for the candidate who received the most valid votes for the applicable ballot-counting phase and any other candidate in the race is equal

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~~to or less than the product of the following, rounded up to the nearest whole number:]~~

~~[(a) the total number of voters who cast a valid vote that is counted in the applicable ballot-counting phase of the race; and]~~

~~[(b) the recount threshold. (5) Before excluding a candidate from a multi-candidate race under Subsection (1), the election officer shall order a recount of the valid votes counted in the applicable ballot-counting phase if the difference between the number of votes counted for the candidate who received the fewest valid votes in the applicable ballot-counting phase of the race and any other candidate in the race is equal to or less than the product of the following, rounded up to the nearest whole number:]~~

~~[(a) the total number of voters who cast a valid vote counted in that ballot-counting phase; and]~~

~~[(b) the recount threshold.]~~

~~(b) the voter skips two or more consecutive numbers before ranking another candidate.~~

(5) If, for a ballot-counting phase, a voter ranks a candidate who has withdrawn from the race, the next-ranked candidate who has not withdrawn from the race will be counted for that ballot-counting phase.

(6) For each ballot-counting phase after the first phase, if ~~after a recount is completed under Subsection (5);~~ two or more candidates tie as having received the fewest valid ~~[votes]~~ rankings counted at that point in the ballot count, the election officer shall eliminate one of those candidates from consideration, by lot, in the following manner:

(a) determine the names of the candidates who tie as having received the fewest valid ~~[votes]~~ rankings for that ballot-counting phase;

(b) cast the lot in the presence of at least two election officials and any counting poll watchers who are present and desire to witness the casting of the lot; and

(c) sign a public document that:

(i) certifies the method used for casting the lot and the result of the lot; and

(ii) includes the name of each individual who witnessed the casting of the lot.

(7) In a multi-candidate race for an at-large office, where the number of candidates who qualify for the race exceeds the total number of at-large seats to be filled for the office, the election officer shall count the ~~[votes]~~ rankings by:

(a) except as provided in Subsection (8), counting ~~[votes]~~ rankings in the same manner

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as described in Subsections (1) through (6), until a candidate is declared elected;

(b) repeating the process described in Subsection (7)(a) for all candidates that are not declared elected until another candidate is declared elected; and

(c) continuing the process described in Subsection (7)(b) until all at-large seats in the race are filled.

(8) After a candidate is declared elected under Subsection (7), the election officer shall, in repeating the process described in Subsections (1) through (6) to declare the next candidate elected, add to the [vote] ranking totals the next valid preference vote of each voter whose [vote] ranking was counted for a candidate already declared elected.

(9) An election officer for a participating municipality may choose to conduct a primary election by using instant runoff voting in the manner described in Subsections (1) through (6), except that:

(a) instead of determining whether a candidate receives more than 50% of the valid preference [votes] rankings for a particular ballot-counting phase, the election officer shall proceed to a subsequent ballot-counting stage, and exclude the candidate who receives the fewest valid preference [votes] rankings in that phase, until twice the number of seats to be filled in the race remain; and

(b) after complying with Subsection (9)(a), the election officer shall declare the remaining candidates nominated to participate in the municipal general election.

(10) After completing all ballot-counting phases in a multi-candidate race, the election officer shall order a full recount of the ballots cast for that race if, in one or more of the ballot-counting phases:

(a) the difference between the number of rankings counted for a candidate who is declared elected and the number of rankings counted for any other candidate in the same ballot-counting phase is equal to or less than the product of the following, rounded up to the nearest whole number:

(i) the total number of voters who cast a valid ranking counted in that ballot-counting phase; and

(ii) the recount threshold; or

(b) the difference between the number of rankings counted for the candidate who received the fewest valid rankings in a ballot-counting phase and the number of rankings

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counted for any other candidate in the same ballot-counting phase is equal to or less than the product of the following, rounded up to the nearest whole number:

~~(a)~~(i) the total number of voters who cast a valid ranking counted in that ballot-counting phase; and

~~(b)~~(ii) the recount threshold.

(11) A recount described in Subsection (10):

(a) requires rescanning and tabulating all valid ballots; and

(b) provides for only one recount.

(12) Notwithstanding Section 20A-4-301, a board of municipal canvassers may extend the canvass deadline by up to seven additional days, if necessary, to conduct a recount required under Subsection (10).

Section 6. Section **20A-4-604** is amended to read:

20A-4-604. Batch elimination.

~~(1)~~ In any ballot count conducted under Section 20A-4-603, the election officer may exclude candidates through batch elimination by, instead of excluding only one candidate in a ballot-counting phase, excluding each candidate:

~~(a)~~ (1) for which the number of remaining candidates with more valid ~~[votes]~~ rankings than that candidate is greater than or equal to the number of offices to be filled; and

~~(b)~~(i) (2) (a) for which the number of valid ~~[votes]~~ rankings counted for the candidate in the ballot-counting phase plus the number of ~~[votes counting]~~ rankings counted for all candidates with fewer valid ~~[votes]~~ rankings in the ballot-counting phase is less than the number of valid ~~[votes]~~ rankings for the candidate with the next highest amount of valid ~~[votes]~~ rankings in the ballot-counting phase; or

~~(ii)~~ (b) who has fewer valid ~~[votes]~~ rankings in the ballot-counting phase than a candidate who is excluded under Subsection ~~(1)(b)(i)~~ (2)(a).

~~(2) The requirements for a recount before excluding a candidate under Subsection 20A-4-603(5) do not apply to candidates who are excluded through batch elimination.~~