

Senator Wayne A. Harper proposes the following substitute bill:

BALLOT PROCESSING AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mark A. Strong

Senate Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill amends provisions relating to the administration and security of the election process.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires the posting of certain statistics relating to ballots and the schedule for processing ballots;
- ▶ modifies the qualifications for, and the access provided to, a poll watcher;
- ▶ requires the logging of certain information relating to replicated ballots;
- ▶ requires the separate storage of adjudicated ballots; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



26 **20A-3a-402**, as last amended by Laws of Utah 2021, Chapter 62
 27 **20A-3a-801**, as renumbered and amended by Laws of Utah 2020, Chapter 31
 28 **20A-4-104**, as last amended by Laws of Utah 2021, First Special Session, Chapter 15
 29 **20A-4-105**, as last amended by Laws of Utah 2020, Chapters 31 and 49

30 ENACTS:

31 **20A-3a-404**, Utah Code Annotated 1953
 32 **20A-3a-807**, Utah Code Annotated 1953

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

35 Section 1. Section **20A-3a-402** is amended to read:

36 **20A-3a-402. Custody of ballots voted at a polling place -- Disposition -- Counting**
 37 **ballots -- Release of tally.**

38 [~~(1)~~ This section governs ballots voted at a polling place.]

39 (1) (a) For ballots voted at a polling place:

40 [~~(2)~~(a)] (b) [~~The~~] the election officer shall deliver all return envelopes containing valid
 41 ballots and valid provisional ballots that are in the election officer's custody to the counting
 42 center before noon on the day of the official canvass following the election[-];

43 [~~(b)~~] (c) [~~Valid~~] valid ballots, including valid provisional ballots, may be processed and
 44 counted:

45 (i) by the election officer, or poll workers acting under the supervision of the election
 46 officer, before the date of the canvass; and

47 (ii) at the canvass, by the election officer or poll workers, acting under the supervision
 48 of the official canvassers of the election[-];

49 [~~(c)~~] (d) [~~When~~] when processing ballots, the election officer and poll workers shall
 50 comply with the procedures and requirements of Section **20A-3a-401** in opening envelopes,
 51 verifying signatures, confirming eligibility of the ballots, and depositing ballots in preparation
 52 for counting[-]; and

53 [~~(3)~~(a) ~~After~~] (e) all valid ballots, including valid provisional ballots have been
 54 deposited, the ballots shall be counted in the usual manner.

55 [~~(b)~~] (2) (a) After the polls close on the date of the election, the election officer shall
 56 publicly release the results of [~~those~~] all ballots, including provisional ballots, that have been

57 counted on or before the date of the election.

58 ~~[(e)]~~ (b) Except as provided in Subsection ~~[(3)(d)]~~ (2)(c), on each day, beginning on the
59 day after the date of the election and ending on the day before the date of the canvass, the
60 election officer shall publicly release~~[(i)]~~ the results of all ballots, including provisional
61 ballots, counted on that day~~[-and]~~.

62 ~~[(ii) an estimate of the total number of voted ballots in the custody of the election
63 officer that have not yet been counted.]~~

64 ~~[(d)]~~ (c) (i) If complying with Subsection ~~[(3)(e)]~~ (2)(b) on a particular day will likely
65 result in disclosing a vote cast by an individual voter, the election officer shall request
66 permission from the lieutenant governor to delay compliance for the minimum number of days
67 necessary to protect against disclosure of the voter's vote.

68 (ii) The lieutenant governor shall grant a request made under Subsection ~~[(3)(d)(i)]~~
69 (2)(c)(i) if the lieutenant governor finds that the delay is necessary to protect against disclosure
70 of a voter's vote.

71 ~~[(e)]~~ (d) On the date of the canvass, the election officer shall provide a tally of all
72 ballots, including provisional ballots, counted, and the resulting tally shall be added to the
73 official canvass of the election.

74 ~~[(4)(a) On the day after the date of the election, the election officer shall determine the
75 number of ballots received by the election officer at that time and shall make that number
76 available to the public.]~~

77 ~~[(b) The election officer may elect to publicly release updated totals for the number of
78 ballots received by the election officer up through the date of the canvass.]~~

79 Section 2. Section **20A-3a-404** is enacted to read:

80 **20A-3a-404. Ballot statistics.**

81 (1) An election officer shall post and update the data described in Subsection (2) on the
82 election officer's website, on the following days, after the election officer finishes processing
83 ballots on that day:

84 (a) the day on which the election officer begins mailing ballots;

85 (b) except as provided in Subsection (5)(a), until the day described in Subsection
86 (1)(c), each Monday, Wednesday, and Friday after the day described in Subsection (1)(a); and

87 (c) the Friday before the day of the election.

88 (2) The data that an election officer is required to post under Subsection (1) includes:

89 (a) the number of ballots in the county clerk's possession; and

90 (b) of the number of ballots described in Subsection (2)(a):

91 (i) the number of ballots that have not yet begun processing;

92 (ii) the number of ballots in process; and

93 (iii) the number of ballots processed.

94 (3) Except as provided in Subsection (5)(b), an election officer shall post and update

95 the data described in Subsection (4) on the election officer's website on the following days:

96 (a) the Friday after the day of the election;

97 (b) until the day described in Subsection (3)(c), each Monday, Wednesday, and Friday

98 after the day described in Subsection (3)(a); and

99 (c) on the last day of the canvass.

100 (4) The data that an election officer is required to post under Subsection (3) includes:

101 (a) a best estimate of the number of ballots received, to date, by the election officer;

102 (b) the number of ballots in possession of the election officer that have been rejected

103 and are not yet cured;

104 (c) the number of provisional ballots in the possession of the election officer that have
105 not been processed;

106 (d) the number of ballots that need to be adjudicated, but have not yet been
107 adjudicated;

108 (e) the number of ballots awaiting replication; and

109 (f) the number of ballots that have been replicated.

110 (5) (a) Except for the Monday described in Subsection (1)(c), an election officer is not
111 required to update the data described in Subsection (2) on a Monday if the election officer does
112 not process any ballots the preceding Saturday or Sunday.

113 (b) An election officer is not required to update the data described in Subsection (4) on
114 a Monday if the election officer does not process any ballots the preceding Saturday or Sunday.

115 Section 3. Section **20A-3a-801** is amended to read:

116 **20A-3a-801. Watchers.**

117 (1) As used in this section, "administering election officer" means:

118 (a) the election officer; or

119 (b) if the election officer is the lieutenant governor, the county clerk of the county in
120 which an individual will act as a watcher.

121 (2) (a) Any individual who is registered or preregistered to vote in Utah may become a
122 watcher in an election at any time by registering as a watcher with the administering election
123 officer.

124 (b) An individual who registers under Subsection (2)(a) is not required to be certified
125 by a person under Subsection (3) in order to act as a watcher.

126 (c) An individual who registers as a watcher shall notify the administering election
127 officer of the dates, times, and locations that the individual intends to act as a watcher.

128 (d) An election official may not prohibit a watcher from performing a function
129 described in Subsection (4) because the watcher did not provide the notice described in
130 Subsection (2)(c).

131 (e) An administering election officer shall provide a copy of this section, or
132 instructions on how to access an electronic copy of this section, to a watcher at the time the
133 watcher registers under this Subsection (2).

134 (3) (a) A person that is a candidate whose name will appear on the ballot, a qualified
135 write-in candidate for the election, a registered political party, or a political issues committee
136 may certify an individual as an official watcher for the person:

137 (i) by filing an affidavit with the administering election officer responsible to designate
138 an individual as an official watcher for the certifying person; and

139 (ii) if the individual registers as a watcher under Subsection (2)(a).

140 (b) A watcher who is certified by a person under Subsection (3)(a) may not perform the
141 same function described in Subsection (4) at the same time and in the same location as another
142 watcher who is certified by that person.

143 (c) A watcher who is certified by a person under Subsection (3)(a) may designate
144 another individual to serve in the watcher's stead during the watcher's temporary absence by
145 filing with a poll worker an affidavit that designates the individual as a temporary replacement.

146 (4) A watcher may:

147 (a) observe the setup or takedown of a polling location;

148 (b) observe a voter checking in at a polling location;

149 (c) observe the collection, receipt, and processing of a ballot, including a provisional

- 150 ballot or a ballot cast by a covered voter as defined in Section [20A-16-102](#);
- 151 (d) observe the transport or transmission of a ballot that is in an election official's
152 custody;
- 153 (e) observe the opening and inspection of a manual ballot;
- 154 (f) observe ballot [~~duplication~~] replication;
- 155 (g) observe the conduct of logic and accuracy testing described in Section [20A-5-802](#);
- 156 (h) observe ballot tabulation;
- 157 (i) observe the process of storing and securing a ballot;
- 158 (j) observe a post-election audit;
- 159 (k) observe a canvassing board meeting described in Title 20A, Chapter 4, Part 3,
160 Canvassing Returns;
- 161 (l) observe the certification of the results of an election; [~~or~~]
- 162 (m) observe a recount[-]; or
- 163 (n) observe signature verification.
- 164 (5) An administering election officer shall:
- 165 (a) permit uniform, nondiscriminatory access for a watcher to observe each stage of an
166 election process;
- 167 (b) establish locations for a watcher to observe an event described in Subsection (4),
168 other than an event described in Subsection (4)(d) or (k), from no further than six feet away;
169 and
- 170 (c) except for a county of the fourth, fifth, or sixth class, for any ballot adjudication, or
171 upload of votes from a voting machine or scanner, that is conducted on a computer screen,
172 project the activity onto a screen that is large enough to be viewed by each watcher.
- 173 [~~(5)~~] (6) (a) A watcher may not:
- 174 (i) [~~electronically~~] record an activity described in Subsection (4) if the recording would
175 reveal a vote or otherwise violate a voter's privacy or a voter's right to cast a secret ballot;
- 176 (ii) interfere with an activity described in Subsection (4), except to challenge an
177 individual's eligibility to vote under Section [20A-3a-803](#); or
- 178 (iii) divulge information related to the number of votes counted, tabulated, or cast for a
179 candidate or ballot proposition until after the election officer makes the information public.
- 180 (b) A person who violates Subsection [~~(5)~~] (6)(a)(iii) is guilty of a third degree felony.

181 ~~[(6)]~~ (7) (a) Notwithstanding Subsection (2)(a) or (4), in order to maintain a safe
182 working environment for an election official or to protect the safety or security of a ballot, an
183 administering election officer may take reasonable action to:

- 184 (i) limit the number of watchers at a single location;
- 185 (ii) remove a watcher for violating a provision of this section;
- 186 (iii) remove a watcher for interfering with an activity described in Subsection (4);
- 187 (iv) designate areas for a watcher to reasonably observe the activities described in
188 Subsection (4); or

189 (v) ensure that a voter's ballot secrecy is protected throughout the watching process.

190 (b) If an administering election officer limits the number of watchers at a single
191 location under Subsection (6)(a)(i), the administering election officer shall give preferential
192 access to the location to a watcher designated under Subsection (3).

193 (c) An administering election officer may provide a watcher a badge that identifies the
194 watcher and require the watcher to wear the badge while acting as a watcher.

195 Section 4. Section **20A-3a-807** is enacted to read:

196 **20A-3a-807. Notification of ballot processes.**

197 (1) As used in this section, "ballot process" includes:

- 198 (a) signature verification;
- 199 (b) opening ballots;
- 200 (c) scanning ballots;
- 201 (d) adjudicating ballots;
- 202 (e) replicating damaged or defective ballots; or
- 203 (f) tabulating votes.

204 (2) A county clerk shall:

205 (a) beginning at least three days before the day on which the county clerk begins
206 mailing ballots for an election, and ending on the first day of the canvass, post on the county
207 clerk's website a schedule of the hours, over the next three days, during which the county clerk
208 plans to conduct one or more ballot processes; and

209 (b) update any changes to the schedule at least 24 hours before the clerk modifies the
210 hours.

211 Section 5. Section **20A-4-104** is amended to read:

212 **20A-4-104. Counting ballots electronically.**

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

216 (b) The election officer shall provide public notice of the time and place of the test:

217 (i) (A) by publishing notice at least 48 hours before the test in a newspaper of general
218 circulation in the county, municipality, or jurisdiction where the equipment is used;

219 (B) at least 10 days before the day of the test, by posting one notice, and at least one
220 additional notice per 2,000 population of the county, municipality, or jurisdiction, in places
221 within the county, municipality, or jurisdiction that are most likely to give notice to the voters
222 in the county, municipality, or jurisdiction, subject to a maximum of 10 notices; or

223 (C) at least 10 days before the day of the test, by mailing notice to each registered voter
224 in the county, municipality, or jurisdiction where the equipment is used;

225 (ii) by posting notice on the Utah Public Notice Website, created in Section
226 [63A-16-601](#), for four weeks before the day of the test; and

227 (iii) if the county, municipality, or jurisdiction has a website, by posting notice on the
228 website for four weeks before the day of the test.

229 (c) The election officer shall conduct the test by processing a preaudited group of
230 ballots.

231 (d) The election officer shall ensure that:

232 (i) a predetermined number of valid votes for each candidate and measure are recorded
233 on the ballots;

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

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

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

240 (f) The election officer shall ensure that:

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

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

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

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

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

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

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

257 [~~(a)~~] (i) make a true replication of the ballot with an identifying serial number;

258 [~~(b)~~] (ii) substitute the replicated ballot for the damaged or defective ballot;

259 [~~(c)~~] (iii) label the replicated ballot "replicated"; and

260 [~~(d)~~] (iv) record the replicated ballot's serial number on the damaged or defective
261 ballot.

262 (b) The lieutenant governor shall provide to each election officer a standard form on
263 which the election officer shall maintain a log of all replicated ballots, that includes, for each
264 ballot:

265 (i) the serial number described in Subsection (3)(a);

266 (ii) the identification of the individuals who replicated the ballot;

267 (iii) the reason for the replication; and

268 (iv) any other information required by the lieutenant governor.

269 (c) An election officer shall:

270 (i) maintain the log described in Subsection (3)(b) in a complete and legible manner, as
271 ballots are replicated;

272 (ii) at the end of each day during which one or more ballots are replicated, make an
273 electronic copy of the log; and

274 (iii) keep each electronic copy made under Subsection (3)(c)(ii) for at least 22 months.

275 (4) The election officer may:

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

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

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

281 (5) Beginning on the day after the date of the election, if an election officer releases
282 early unofficial returns or reports the progress of the count for each candidate under Subsection
283 (4), the election officer shall, with each release or report, disclose an estimate of the total
284 number of voted ballots in the election officer's custody that have not yet been counted.

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

287 (7) (a) The election officer or the election officer's designee shall:

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

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

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

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

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

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

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

303 Section 6. Section 20A-4-105 is amended to read:

304 **20A-4-105. Standards and requirements for evaluating voter's ballot choice.**

305 (1) (a) An election officer shall ensure that when a question arises regarding a vote
306 recorded on a manual ballot, two counting judges jointly adjudicate the ballot, except as
307 otherwise provided in Part 6, Municipal Alternate Voting Methods Pilot Project, in accordance
308 with the requirements of this section.

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

311 (c) An election officer shall store adjudicated ballots separately from other ballots to
312 enable a court to review the ballots if the election is challenged in court.

313 (2) Except as provided in Subsection (10), Subsection 20A-3a-204(6), or Part 6,
314 Municipal Alternate Voting Methods Pilot Project, if a voter marks more names than there are
315 individuals to be elected to an office, or if the counting judges cannot determine a voter's
316 choice for an office, the counting judges may not count the voter's vote for that office.

317 (3) Except as otherwise provided in Part 6, Municipal Alternate Voting Methods Pilot
318 Project, the counting judges shall count a defective or incomplete mark on a manual ballot if:

319 (a) the defective or incomplete mark is in the proper place; and

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

322 (4) Except as otherwise provided in Part 6, Municipal Alternate Voting Methods Pilot
323 Project, the counting judges may not reject a ballot marked by the voter because of marks on
324 the ballot other than those marks allowed by this section unless the extraneous marks on a
325 ballot show an intent by an individual to mark the individual's ballot so that the individual's
326 ballot can be identified.

327 (5) (a) In counting the ballots, the counting judges shall give full consideration to the
328 intent of the voter.

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

332 (6) The counting judges may not reject a ballot because of an error in:

333 (a) stamping or writing an official endorsement; or

334 (b) delivering the wrong ballots to a polling place.

335 (7) The counting judges may not count a manual ballot that does not have the official

336 endorsement by an election officer.

337 (8) The counting judges may not count a ballot proposition vote or candidate vote for
338 which the voter is not legally entitled to vote, as defined in Section [20A-4-107](#).

339 (9) If the counting judges discover that the name of a candidate is misspelled on a
340 ballot, or that the initial letters of a candidate's given name are transposed or omitted in whole
341 or in part on a ballot, the counting judges shall count a voter's vote for the candidate if it is
342 apparent that the voter intended to vote for the candidate.

343 (10) The counting judges shall count a vote for the president and the vice president of
344 any political party as a vote for the presidential electors selected by the political party.

345 (11) Except as otherwise provided in Part 6, Municipal Alternate Voting Methods Pilot
346 Project, in counting the valid write-in votes, if, by casting a valid write-in vote, a voter has cast
347 more votes for an office than that voter is entitled to vote for that office, the counting judges
348 shall count the valid write-in vote as being the obvious intent of the voter.