

HB0387S04 compared with HB0387S03

~~{deleted text}~~ shows text that was in HB0387S03 but was deleted in HB0387S04.

inserted text shows text that was not in HB0387S03 but was inserted into HB0387S04.

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~~{Representative Mark}~~Senator Wayne A. {Strong}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

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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-3a-402, as last amended by Laws of Utah 2021, Chapter 62

20A-3a-801, as renumbered and amended by Laws of Utah 2020, Chapter 31

20A-4-104, as last amended by Laws of Utah 2021, First Special Session, Chapter 15

20A-4-105, as last amended by Laws of Utah 2020, Chapters 31 and 49

ENACTS:

20A-3a-404, Utah Code Annotated 1953

20A-3a-807, Utah Code Annotated 1953

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

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

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

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

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

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

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

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

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

~~[(c)]~~ (d) ~~[When]~~ when processing ballots, the election officer and poll workers shall

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comply with the procedures and requirements of Section 20A-3a-401 in opening envelopes, verifying signatures, confirming eligibility of the ballots, and depositing ballots in preparation for counting~~[-]; and~~

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

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

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

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

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

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

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

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

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

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

20A-3a-404. Ballot statistics.

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

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

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

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

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

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

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

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

(ii) the number of ballots in process; and

(iii) the number of ballots processed.

(3) Except as provided in Subsection (5)(b), an election officer shall post and update the data described in Subsection (4) on the election officer's website {at 5 p.m.} on the following days:

(a) the {day} ~~Friday~~ after the day of the election;

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

(c) on the last day of the canvass.

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

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

(b) the number of ballots in possession of the election officer that have been rejected and are not yet cured;

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

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

(e) the number of ballots awaiting replication; and

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

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

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

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

20A-3a-801. Watchers.

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

(a) the election officer; or

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

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

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

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

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

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

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

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

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

(b) A watcher who is certified by a person under Subsection (3)(a) may not perform the

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same function described in Subsection (4) at the same time and in the same location as another watcher who is certified by that person.

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

(4) A watcher may:

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

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

(c) observe the collection, receipt, and processing of a ballot, including a provisional ballot or a ballot cast by a covered voter as defined in Section 20A-16-102;

(d) observe the transport or transmission of a ballot that is in an election official's custody;

(e) observe the opening and inspection of a manual ballot;

(f) observe ballot ~~[duplication]~~ replication;

(g) observe the conduct of logic and accuracy testing described in Section 20A-5-802;

(h) observe ballot tabulation;

(i) observe the process of storing and securing a ballot;

(j) observe a post-election audit;

(k) observe a canvassing board meeting described in Title 20A, Chapter 4, Part 3,

Canvassing Returns;

(l) observe the certification of the results of an election; ~~[or]~~

(m) observe a recount~~[;]~~ or

(n) observe signature verification.

(5) An administering election officer shall:

(a) permit uniform, nondiscriminatory access for a watcher to observe each stage of an election process;

(b) establish locations for a watcher to observe an event described in Subsection (4), other than an event described in Subsection (4)(d) or (k), from no further than six feet away; and

(c) except for a county of the fourth, fifth, or sixth class, for any ballot adjudication, or upload of votes from a voting machine or scanner, that is conducted on a computer screen,

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project the activity onto a screen that is large enough to be viewed by each watcher.

~~[(5)]~~ (6) (a) A watcher may not:

(i) [~~electronically~~] record an activity described in Subsection (4) if the recording would reveal a vote or otherwise violate a voter's privacy or a voter's right to cast a secret ballot;

(ii) interfere with an activity described in Subsection (4), except to challenge an individual's eligibility to vote under Section 20A-3a-803; or

(iii) divulge information related to the number of votes counted, tabulated, or cast for a candidate or ballot proposition until after the election officer makes the information public.

(b) A person who violates Subsection ~~[(5)]~~ (6)(a)(iii) is guilty of a third degree felony.

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

(i) limit the number of watchers at a single location;

(ii) remove a watcher for violating a provision of this section;

(iii) remove a watcher for interfering with an activity described in Subsection (4);

(iv) designate areas for a watcher to reasonably observe the activities described in Subsection (4); or

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

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

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

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

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

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

(a) signature verification;

(b) opening ballots;

(c) scanning ballots;

(d) adjudicating ballots;

(e) replicating damaged or defective ballots; or

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(f) tabulating votes.

(2) A county clerk shall:

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

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

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

20A-4-104. Counting ballots electronically.

(1) (a) Before beginning to count ballots 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 provide public notice of the time and place of the test:

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

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

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

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

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

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

(d) The election officer shall ensure that:

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

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(ii) for each office, one or more ballots 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 the election officer's 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 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.

(3) (a) If any ballot 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)~~ (i) make a true replication of the ballot with an identifying serial number;

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

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

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

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

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- (i) the serial number described in Subsection (3)(a);
- (ii) the identification of the individuals who replicated the ballot;
- (iii) the reason for the replication; and
- (iv) any other information required by the lieutenant governor.

(c) An election officer shall:

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

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

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

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

(6) 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.

(7) (a) The election officer or the election officer's 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.

(8) (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.

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

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

(10) 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 6. Section **20A-4-105** is amended to read:

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

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

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

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

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

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

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

(4) Except as otherwise provided in Part 6, Municipal Alternate Voting Methods Pilot Project, 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 show an intent by an individual to mark the individual's ballot so that the individual's ballot can be identified.

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

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

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

(a) stamping or writing an official endorsement; or

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

(7) The counting judges may not count a manual ballot that does not have the official endorsement by an election officer.

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

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

(10) The 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.

(11) Except as otherwise provided in Part 6, Municipal Alternate Voting Methods Pilot Project, 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.