

1 **PRIMARY ELECTION AMENDMENTS**

2 2023 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Jordan D. Teuscher**

5 Senate Sponsor: Curtis S. Bramble

7 **LONG TITLE**

8 **General Description:**

9 This bill provides for a runoff election, in certain circumstances, for a regular primary
10 election.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ creates a regular primary runoff election process for certain offices to ensure that the
14 nominee is supported by a majority of the voters who vote in the regular primary
15 election;

16 ▶ provides for contingency voting for races where a runoff election may be required;
17 and

18 ▶ makes technical and conforming changes.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **20A-4-401**, as last amended by Laws of Utah 2020, Chapter 31

26 **20A-6-203**, as last amended by Laws of Utah 2020, Chapter 31

27 **20A-9-403**, as last amended by Laws of Utah 2022, Chapter 325



28 ENACTS:

29 [20A-6-203.1](#), Utah Code Annotated 1953

30 [20A-9-409.1](#), Utah Code Annotated 1953

31

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

33 Section 1. Section **20A-4-401** is amended to read:

34 **20A-4-401. Recounts -- Procedure.**

35 (1) (a) This section does not apply to a race conducted by instant runoff voting under
36 Chapter 4, Part 6, Municipal Alternate Voting Methods Pilot Project.

37 (b) Except as provided in Subsection (1)(c)[~~;~~]:

38 (i) for a race between candidates where the total of all votes cast in the race is more
39 than 400, if the difference between the number of votes cast for a winning candidate in the race
40 and a losing candidate in the race is equal to or less than .25% of the total number of votes cast
41 for all candidates in the race, that losing candidate may file a request for a recount in
42 accordance with Subsection (1)(d)[~~;~~]; or

43 [~~(c)~~] (ii) [~~For~~] for a race between candidates where the total of all votes cast in the race
44 is 400 or less, if the difference between the number of votes cast for a winning candidate in the
45 race and a losing candidate in the race is one vote, that losing candidate may file a request for a
46 recount in accordance with Subsection (1)(d).

47 (c) For a race between candidates in a regular primary race conducted by the majority
48 method under Section [20A-9-409.1](#), if, in determining whether a runoff race is required or
49 determining which candidates will advance to the runoff race, a losing candidate, or a candidate
50 that did not receive enough votes to ensure advancement to a runoff election, may file a request
51 for a recount in accordance with Subsection (1)(d) if:

52 (i) where the total of all votes cast in the race is more than 400, the difference between
53 the number of votes cast for that candidate and the candidate who received the highest number
54 of votes in the race is equal to or less than .25% of the total number of votes cast for all
55 candidates in the race; or

56 (ii) where the total of all votes cast in the race is 400 or less, the difference between the
57 number of votes cast for that candidate and the candidate who received the highest number of
58 votes in the race is one vote.

59 (d) A candidate who files a request for a recount under Subsection (1) (b) or (c) shall
60 file the request:

61 (i) for a municipal primary election, with the municipal clerk, before 5 p.m. within
62 three days after the canvass; or

63 (ii) for all other elections, before 5 p.m. within seven days after the canvass with:

64 (A) the municipal clerk, if the election is a municipal general election;

65 (B) the local district clerk, if the election is a local district election;

66 (C) the county clerk, for races voted on entirely within a single county; or

67 (D) the lieutenant governor, for statewide races and multicounty races.

68 (e) The election officer shall:

69 (i) supervise the recount;

70 (ii) recount all ballots cast for that race;

71 (iii) reexamine all uncounted ballots to ensure compliance with Chapter 3a, Part 4,
72 Disposition of Ballots;

73 (iv) except as provided in Subsection (1)(e)(vi), for a race where only one candidate
74 may win, declare elected the candidate who receives the highest number of votes on the
75 recount; [~~and~~]

76 (v) except as provided in Subsection (1)(e)(vi), for a race where multiple candidates
77 may win, declare elected the applicable number of candidates who receive the highest number
78 of votes on the recount[~~;~~]; and

79 (vi) for a recount described in Subsection (1)(c), use the vote totals of the recount to, in
80 accordance with Section 20A-9-409.1, determine whether a runoff race is required and which
81 candidates will advance to the runoff race.

82 (2) (a) Except as provided in Subsection (2)(b), for a ballot proposition or a bond
83 proposition, if the proposition passes or fails by a margin that is equal to or less than .25% of
84 the total votes cast for or against the proposition, any 10 voters who voted in the election where
85 the proposition was on the ballot may file a request for a recount before 5 p.m. within seven
86 days after the day of the canvass with the person described in Subsection (2)(c).

87 (b) For a ballot proposition or a bond proposition where the total of all votes cast for or
88 against the proposition is 400 or less, if the difference between the number of votes cast for the
89 proposition and the number of votes cast against the proposition is one vote, any 10 voters who

90 voted in the election where the proposition was on the ballot may file a request for a recount
91 before 5 p.m. within seven days after the day of the canvass with the person described in
92 Subsection (2)(c).

93 (c) The 10 voters who file a request for a recount under Subsection (2)(a) or (b) shall
94 file the request with:

- 95 (i) the municipal clerk, if the election is a municipal election;
- 96 (ii) the local district clerk, if the election is a local district election;
- 97 (iii) the county clerk, for propositions voted on entirely within a single county; or
- 98 (iv) the lieutenant governor, for statewide propositions and multicounty propositions.

99 (d) The election officer shall:

- 100 (i) supervise the recount;
- 101 (ii) recount all ballots cast for that ballot proposition or bond proposition;
- 102 (iii) reexamine all uncounted ballots to ensure compliance with Chapter 3a, Part 4,
103 Disposition of Ballots; and
- 104 (iv) declare the ballot proposition or bond proposition to have "passed" or "failed"
105 based upon the results of the recount.

106 (e) Proponents and opponents of the ballot proposition or bond proposition may
107 designate representatives to witness the recount.

108 (f) The voters requesting the recount shall pay the costs of the recount.

109 (3) Costs incurred by recount under Subsection (1) may not be assessed against the
110 person requesting the recount.

111 (4) (a) Upon completion of the recount, the election officer shall immediately convene
112 the board of canvassers.

113 (b) The board of canvassers shall:

114 (i) canvass the election returns for the race or proposition that was the subject of the
115 recount; and

116 (ii) with the assistance of the election officer, prepare and sign the report required by
117 Section [20A-4-304](#) or [20A-4-306](#).

118 (c) If the recount is for a statewide or multicounty race or for a statewide proposition,
119 the board of county canvassers shall prepare and transmit a separate report to the lieutenant
120 governor as required by Subsection [20A-4-304](#)(7).

121 (d) The canvassers' report prepared as provided in this Subsection (4) is the official
122 result of the race or proposition that is the subject of the recount.

123 Section 2. Section **20A-6-203** is amended to read:

124 **20A-6-203. Ballots for regular primary elections.**

125 (1) The lieutenant governor, together with county clerks, suppliers of election
126 materials, and representatives of registered political parties, shall:

127 (a) develop ballots to be used in Utah's regular primary election;

128 (b) except to the extent otherwise required under Section [20A-6-203.1](#) for a race
129 conducted by contingency voting, ensure that the ballots comply generally, where applicable,
130 with the requirements of Title 20A, Chapter 6, Part 1, General Requirements for All Ballots,
131 and this section; and

132 (c) provide voting booths, election records and supplies, ballot boxes, and as
133 applicable, voting devices, for each voting precinct as required by Section [20A-5-403](#).

134 (2) (a) Notwithstanding the requirements of Subsections (1)(b) and (c), Title 20A,
135 Chapter 6, Part 1, General Requirements for All Ballots, and Sections [20A-5-403](#), [20A-6-401](#),
136 and [20A-6-401.1](#), the lieutenant governor, together with county clerks, suppliers of election
137 materials, and representatives of registered political parties shall ensure that the ballots, voting
138 booths, election records and supplies, and ballot boxes:

139 (i) facilitate the distribution, voting, and tallying of ballots in a primary where not all
140 voters are authorized to vote for a party's candidate;

141 (ii) simplify the task of poll workers, particularly in determining a voter's party
142 affiliation;

143 (iii) minimize the possibility of spoiled ballots due to voter confusion; and

144 (iv) protect against fraud.

145 (b) To accomplish the requirements of this Subsection (2), the lieutenant governor,
146 county clerks, suppliers of election materials, and representatives of registered political parties
147 shall:

148 (i) mark ballots as being for a particular registered political party; and

149 (ii) instruct individuals counting the ballots to count only those votes for candidates
150 from the registered political party whose ballot the voter received.

151 Section 3. Section **20A-6-203.1** is enacted to read:

152 **20A-6-203.1. Ballots for regular primary election races conducted via majority**
153 **method.**

154 If, in a regular primary election, at least one of the races is conducted via the majority
155 method described in Section [20A-9-409.1](#), the ballots shall, on the portion of the ballot relating
156 to that race, provide for contingency voting by:

157 (1) listing each candidate who qualifies to be placed on the regular primary election
158 ballot for that race; and

159 (2) opposite each candidate's name, including a place where a voter may indicate the
160 voter's vote in the voter's order of preference for each candidate.

161 Section 4. Section **20A-9-403** is amended to read:

162 **20A-9-403. Regular primary elections -- Candidate nomination process for a**
163 **registered political party that is not a qualified political party -- Determining winning**
164 **nominee for any registered political party, including a qualified political party -- Election**
165 **expenses.**

166 (1) (a) The candidate nomination process described in Subsections (1) through (4)
167 applies to a registered political party that is not a qualified political party.

168 [~~(a)~~] (b) Candidates for elective office that are to be filled at the next regular general
169 election shall be nominated in a regular primary election by direct vote of the people in the
170 manner [~~prescribed~~] described in this section and, as applicable, Section [20A-9-409.1](#). The
171 regular primary election is held on the date specified in Section [20A-1-201.5](#). Nothing in this
172 section shall affect a candidate's ability to qualify for a regular general election's ballot as an
173 unaffiliated candidate under Section [20A-9-501](#) or to participate in a regular general election as
174 a write-in candidate under Section [20A-9-601](#).

175 [~~(b)~~] (c) Each registered political party that chooses to have the names of the registered
176 political party's candidates for elective office featured with party affiliation on the ballot at a
177 regular general election shall comply with the requirements of this section and shall nominate
178 the registered political party's candidates for elective office in the manner described in this
179 section.

180 [~~(c)~~] (d) A filing officer may not permit an official ballot at a regular general election
181 to be produced or used if the ballot denotes affiliation between a registered political party or
182 any other political group and a candidate for elective office who is not nominated in the manner

183 prescribed in this section or in Subsection 20A-9-202(4).

184 ~~[(d)]~~ (e) Unless noted otherwise, the dates in this section refer to those that occur in
185 each even-numbered year in which a regular general election will be held.

186 (2) (a) Each registered political party, in a statement filed with the lieutenant governor,
187 shall:

188 (i) either declare the registered political party's intent to participate in the next regular
189 primary election or declare that the registered political party chooses not to have the names of
190 the registered political party's candidates for elective office featured on the ballot at the next
191 regular general election; and

192 (ii) if the registered political party participates in the upcoming regular primary
193 election, identify one or more registered political parties whose members may vote for the
194 registered political party's candidates and whether individuals identified as unaffiliated with a
195 political party may vote for the registered political party's candidates.

196 (b) (i) A registered political party that is a continuing political party shall file the
197 statement described in Subsection (2)(a) with the lieutenant governor no later than 5 p.m. on
198 November 30 of each odd-numbered year.

199 (ii) An organization that is seeking to become a registered political party under Section
200 20A-8-103 shall file the statement described in Subsection (2)(a) at the time that the registered
201 political party files the petition described in Section 20A-8-103.

202 (3) (a) Except as provided in Subsection (3)(e), an individual who submits a
203 declaration of candidacy under Section 20A-9-202 shall appear as a candidate for elective
204 office on the regular primary ballot of the registered political party listed on the declaration of
205 candidacy only if the individual is certified by the appropriate filing officer as having submitted
206 a nomination petition that was:

207 (i) circulated and completed in accordance with Section 20A-9-405; and

208 (ii) signed by at least 2% of the registered political party's members who reside in the
209 political division of the office that the individual seeks.

210 (b) (i) A candidate for elective office shall submit signatures for a nomination petition
211 to the appropriate filing officer for verification and certification no later than 5 p.m. on the final
212 day in March.

213 (ii) A candidate may supplement the candidate's submissions at any time on or before

214 the filing deadline.

215 (c) (i) The lieutenant governor shall determine for each elective office the total number
216 of signatures that must be submitted under Subsection (3)(a)(ii) or 20A-9-408(8) by counting
217 the aggregate number of individuals residing in each elective office's political division who
218 have designated a particular registered political party on the individuals' voter registration
219 forms on or before November 15 of each odd-numbered year.

220 (ii) The lieutenant governor shall publish the determination for each elective office no
221 later than November 30 of each odd-numbered year.

222 (d) The filing officer shall:

223 (i) except as otherwise provided in Section 20A-21-201, verify signatures on
224 nomination petitions in a transparent and orderly manner, no later than 14 days after the day on
225 which a candidate submits the signatures to the filing officer;

226 (ii) for all qualifying candidates for elective office who submit nomination petitions to
227 the filing officer, issue certifications referenced in Subsection (3)(a) no later than the deadline
228 described in Subsection 20A-9-202(1)(b);

229 (iii) consider active and inactive voters eligible to sign nomination petitions;

230 (iv) consider an individual who signs a nomination petition a member of a registered
231 political party for purposes of Subsection (3)(a)(ii) if the individual has designated that
232 registered political party as the individual's party membership on the individual's voter
233 registration form; and

234 (v) except as otherwise provided in Section 20A-21-201, utilize procedures described
235 in Section 20A-7-206.3 to verify submitted nomination petition signatures, or use statistical
236 sampling procedures to verify submitted nomination petition signatures in accordance with
237 rules made under Subsection (3)(f).

238 (e) Notwithstanding any other provision in this Subsection (3), a candidate for
239 lieutenant governor may appear on the regular primary ballot of a registered political party
240 without submitting nomination petitions if the candidate files a declaration of candidacy and
241 complies with Subsection 20A-9-202(3).

242 (f) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
243 director of elections, within the Office of the Lieutenant Governor, may make rules that:

244 (i) provide for the use of statistical sampling procedures that:

245 (A) filing officers are required to use to verify signatures under Subsection (3)(d); and

246 (B) reflect a bona fide effort to determine the validity of a candidate's entire

247 submission, using widely recognized statistical sampling techniques; and

248 (ii) provide for the transparent, orderly, and timely submission, verification, and

249 certification of nomination petition signatures.

250 (g) The county clerk shall:

251 (i) review the declarations of candidacy filed by candidates for local boards of

252 education to determine if more than two candidates have filed for the same seat;

253 (ii) place the names of all candidates who have filed a declaration of candidacy for a

254 local board of education seat on the nonpartisan section of the ballot if more than two

255 candidates have filed for the same seat; and

256 (iii) determine the order of the local board of education candidates' names on the ballot

257 in accordance with Section [20A-6-305](#).

258 (4) (a) Before the deadline described in Subsection [20A-9-409\(4\)\(c\)](#), the lieutenant

259 governor shall provide to the county clerks:

260 (i) a list of the names of all candidates for federal, constitutional, multi-county, single

261 county, and county offices who have received certifications under Subsection (3), along with

262 instructions on how those names shall appear on the primary election ballot in accordance with

263 Section [20A-6-305](#); and

264 (ii) a list of unopposed candidates for elective office who have been nominated by a

265 registered political party under Subsection (5)(c) and instruct the county clerks to exclude the

266 unopposed candidates from the primary election ballot.

267 (b) A candidate for lieutenant governor and a candidate for governor campaigning as

268 joint-ticket running mates shall appear jointly on the primary election ballot.

269 (c) After the county clerk receives the certified list from the lieutenant governor under

270 Subsection (4)(a), the county clerk shall post or publish a primary election notice in

271 substantially the following form:

272 "Notice is given that a primary election will be held Tuesday, June ____,

273 ____ (year), to nominate party candidates for the parties and candidates for nonpartisan

274 local school board positions listed on the primary ballot. The polling place for voting precinct

275 ____ is _____. The polls will open at 7 a.m. and continue open until 8 p.m. of the same day.

276 Attest: county clerk."

277 (5) (a) A candidate who, at the regular primary election, receives the highest number of
278 votes cast for the office sought by the candidate is:

279 (i) except as otherwise provided in Section 20A-9-409.1, nominated for that office by
280 the candidate's registered political party; or

281 (ii) for a nonpartisan local school board position, nominated for that office.

282 (b) If two or more candidates are to be elected to the office at the regular general
283 election, those party candidates equal in number to positions to be filled who receive the
284 highest number of votes at the regular primary election are the nominees of the candidates'
285 party for those positions.

286 (c) (i) As used in this Subsection (5)(c), a candidate is "unopposed" if:

287 (A) no individual other than the candidate receives a certification under Subsection (3)
288 for the regular primary election ballot of the candidate's registered political party for a
289 particular elective office; or

290 (B) for an office where more than one individual is to be elected or nominated, the
291 number of candidates who receive certification under Subsection (3) for the regular primary
292 election of the candidate's registered political party does not exceed the total number of
293 candidates to be elected or nominated for that office.

294 (ii) A candidate who is unopposed for an elective office in the regular primary election
295 of a registered political party is nominated by the party for that office without appearing on the
296 primary election ballot.

297 (6) Except as otherwise provided in Section 20A-9-409.1:

298 (a) [~~When~~] when a tie vote occurs in any primary election for any national, state, or
299 other office that represents more than one county, the governor, lieutenant governor, and
300 attorney general shall, at a public meeting called by the governor and in the presence of the
301 candidates involved, select the nominee by lot cast in whatever manner the governor
302 determines[-]; and

303 (b) [~~When~~] when a tie vote occurs in any primary election for any county office, the
304 district court judges of the district in which the county is located shall, at a public meeting
305 called by the judges and in the presence of the candidates involved, select the nominee by lot
306 cast in whatever manner the judges determine.

307 (7) The expense of providing all ballots, blanks, or other supplies to be used at any
308 primary election provided for by this section, and all expenses necessarily incurred in the
309 preparation for or the conduct of that primary election shall be paid out of the treasury of the
310 county or state, in the same manner as for the regular general elections.

311 (8) An individual may not file a declaration of candidacy for a registered political party
312 of which the individual is not a member, except to the extent that the registered political party
313 permits otherwise under the registered political party's bylaws.

314 Section 5. Section **20A-9-409.1** is enacted to read:

315 **20A-9-409.1. Election by majority method for certain primary races -- Runoff --**
316 **Determination of winner.**

317 (1) As used in this section:

318 (a) "Majority method" means the method described in this section ensuring that an
319 individual nominated by a registered political party via a regular primary election race is
320 supported by a majority of the voters voting in that race.

321 (b) "Participating county" means a county that timely complies with Subsection (4).

322 (2) An election officer shall conduct a regular primary election partisan race, via the
323 majority method described in this section if:

324 (a) the race is to nominate a party's candidate for Congress, state legislative office,
325 governor, attorney general, state treasurer, or state auditor; and

326 (b) more than two candidates will be placed on the regular primary election ballot for
327 that race and party.

328 (3) An election officer for a participating county shall conduct a regular primary
329 election race, via the majority method described in this section, for all partisan county races
330 where more than two candidates will be placed on the regular primary election ballot for that
331 race and party.

332 (4) A county is a participating county if, before December 1 of an odd-numbered year:

333 (a) the county legislative body votes to become a participating county for the next
334 regular primary election;

335 (b) the county clerk agrees with the vote of the county legislative body; and

336 (c) the county legislative body and the county clerk provide written notice to the
337 lieutenant governor that the county legislative body and the county clerk have agreed to

338 become a participating county for the next regular primary election.

339 (5) To conduct a regular primary election partisan race via the majority method, the
340 election officer shall:

341 (a) on the ballot, provide for contingency voting for the race;

342 (b) initially, count only the first preference vote indicated on each ballot;

343 (c) (i) if the candidate who receives the highest number of votes under Subsection
344 (5)(b) receives more than 50% of all votes counted in the race, declare that candidate the
345 winner of the nomination; or

346 (ii) if the candidate who receives the highest number of votes under Subsection (5)(b)
347 receives 50% or fewer of all votes counted in the race, conduct a runoff for that race in
348 accordance with Subsections (6) and (7).

349 (6) (a) Subject to Subsection (8), if required under Subsection (5)(c)(ii), the election
350 officer shall conduct a runoff election for the race between the two candidates who received the
351 highest number of votes under Subsection (5).

352 (b) If a tie in the number of votes received makes it impossible to determine the two
353 candidates who receive the highest number of votes under Subsection (5), the tie shall be
354 broken, by lot, in the presence of the tied candidates or representatives of the tied candidates,
355 by:

356 (i) the election officer;

357 (ii) if the election officer is the lieutenant governor and the race is for governor, one of
358 the following, as designated by the lieutenant governor:

359 (A) the attorney general;

360 (B) the state treasurer; or

361 (C) the state auditor; or

362 (iii) if the election officer is a county clerk and the race is for county clerk, an
363 individual designated by the lieutenant governor.

364 (7) To conduct a runoff election described in Subsection (6)(a), the election officer
365 shall:

366 (a) award a vote in the runoff election to the candidate in the runoff race whom, via
367 contingency voting, the voter ranked higher for that race;

368 (b) declare nominated;

369 (i) the candidate who receives the highest number of votes under Subsection (7)(a); or

370 (ii) in the case of a tie, the candidate who wins by lot, cast in the presence of the tied
371 candidates or representatives of the tied candidates, by the individual described in Subsection
372 (6)(b).

373 (8) If the initial vote count described in Subsection (5) is eligible for a recount request
374 under Subsection 20A-4-401(1)(c), the election officer may not conduct the runoff election
375 until after:

376 (a) the deadline for requesting a recount has passed without a candidate filing a valid
377 request for a recount; or

378 (b) if a candidate timely files a valid recount request, the recount and the canvass of the
379 recount are complete.

380 (9) (a) To comply with Subsection (5)(b), the election officer shall count as the first
381 preference vote:

382 (i) the candidate whom the voter ranks as number one;

383 (ii) the candidate whom the voter ranks the highest, if the voter does not rank any
384 candidate as number one;

385 (iii) the candidate for whom the voter voted, if the voter only ranks or otherwise marks
386 one candidate and does not rank or mark any other candidate; or

387 (iv) the candidate whom the voter marks but does not rank, if the voter simply marks
388 but does not rank one candidate, and, for the remaining candidates, either:

389 (A) ranks the candidate with a ranking other than number one; or

390 (B) does not rank or otherwise mark the candidate.

391 (b) To comply with Subsection (7)(a), the election officer shall:

392 (i) if the voter ranks one of the two candidates higher than the other candidate, count a
393 vote for the higher ranked candidate;

394 (ii) if the voter only votes for one of the two candidates, by ranking or otherwise
395 marking the candidate, count a vote for that candidate; or

396 (iii) if the voter simply marks, but does not rank, one of the two candidates, and ranks
397 the other candidate with a ranking other than number one, count a vote for the candidate
398 marked but not ranked.

399 (c) An election officer may not reject a vote in a majority method race based solely on

400 the fact that the voter:

401 (i) did not rank all candidates;

402 (ii) voted for only one candidate, by simply marking but not ranking the candidate; or

403 (iii) voted for one candidate by simply marking, but not ranking, the candidate and, for

404 the other candidates, either:

405 (A) ranked the candidate with a ranking other than number one; or

406 (B) did not rank or otherwise mark the candidate.