

HB0205S01 compared with HB0205

~~text~~ shows text that was in HB0205 but was deleted in HB0205S01.

text shows text that was not in HB0205 but was inserted into HB0205S01.

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Representative Jordan D. Teuscher proposes the following substitute bill:

PRIMARY ELECTION AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jordan D. Teuscher

Senate Sponsor: ~~_____~~ Curtis S. Bramble

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ creates a regular primary runoff election process for certain offices to ensure that the nominee is supported by a majority of the voters who vote in the regular primary election;
- ▶ provides for contingency voting for races where a runoff election may be required; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

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None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

ENACTS:

20A-6-203.1, Utah Code Annotated 1953

20A-9-409.1, Utah Code Annotated 1953

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

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

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

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

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

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

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

(c) For a race between candidates in a regular primary race conducted by the majority method under Section 20A-9-409.1, if, in determining whether a runoff race is required or determining which candidates will advance to the runoff race, a losing candidate, or a candidate that did not receive enough votes to ensure advancement to a runoff election, may file a request

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for a recount in accordance with Subsection (1)(d) if:

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

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

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

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

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

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

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

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

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

(e) The election officer shall:

(i) supervise the recount;

(ii) recount all ballots cast for that race;

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

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

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

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

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

(b) For a ballot proposition or a bond proposition where the total of all votes cast for or against the proposition is 400 or less, if the difference between the number of votes cast for the proposition and the number of votes cast against the proposition is one vote, any 10 voters who voted in the election where the proposition was on the ballot may file a request for a recount before 5 p.m. within seven days after the day of the canvass with the person described in Subsection (2)(c).

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

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

(d) The election officer shall:

- (i) supervise the recount;
- (ii) recount all ballots cast for that ballot proposition or bond proposition;
- (iii) reexamine all uncounted ballots to ensure compliance with Chapter 3a, Part 4,

Disposition of Ballots; and

(iv) declare the ballot proposition or bond proposition to have "passed" or "failed" based upon the results of the recount.

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

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

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

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

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(b) The board of canvassers shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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(iv) protect against fraud.

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

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

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

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

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

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

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

(2) opposite each candidate's name, including a place where a voter may indicate the voter's vote in the voter's order of preference for ~~each candidate~~ up to five candidates in the race.

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

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

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

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

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a write-in candidate under Section 20A-9-601.

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

~~[(c)]~~ (d) A filing officer may not permit an official ballot at a regular general election to be produced or used if the ballot denotes affiliation between a registered political party or any other political group and a candidate for elective office who is not nominated in the manner prescribed in this section or in Subsection 20A-9-202(4).

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

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

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

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

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

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

(3) (a) Except as provided in Subsection (3)(e), an individual who submits a declaration of candidacy under Section 20A-9-202 shall appear as a candidate for elective office on the regular primary ballot of the registered political party listed on the declaration of

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candidacy only if the individual is certified by the appropriate filing officer as having submitted a nomination petition that was:

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

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

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

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

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

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

(d) The filing officer shall:

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

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

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

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

(v) except as otherwise provided in Section 20A-21-201, utilize procedures described in Section 20A-7-206.3 to verify submitted nomination petition signatures, or use statistical

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sampling procedures to verify submitted nomination petition signatures in accordance with rules made under Subsection (3)(f).

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

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

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

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

(B) reflect a bona fide effort to determine the validity of a candidate's entire submission, using widely recognized statistical sampling techniques; and

(ii) provide for the transparent, orderly, and timely submission, verification, and certification of nomination petition signatures.

(g) The county clerk shall:

(i) review the declarations of candidacy filed by candidates for local boards of education to determine if more than two candidates have filed for the same seat;

(ii) place the names of all candidates who have filed a declaration of candidacy for a local board of education seat on the nonpartisan section of the ballot if more than two candidates have filed for the same seat; and

(iii) determine the order of the local board of education candidates' names on the ballot in accordance with Section 20A-6-305.

(4) (a) Before the deadline described in Subsection 20A-9-409(4)(c), the lieutenant governor shall provide to the county clerks:

(i) a list of the names of all candidates for federal, constitutional, multi-county, single county, and county offices who have received certifications under Subsection (3), along with instructions on how those names shall appear on the primary election ballot in accordance with Section 20A-6-305; and

(ii) a list of unopposed candidates for elective office who have been nominated by a registered political party under Subsection (5)(c) and instruct the county clerks to exclude the unopposed candidates from the primary election ballot.

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(b) A candidate for lieutenant governor and a candidate for governor campaigning as joint-ticket running mates shall appear jointly on the primary election ballot.

(c) After the county clerk receives the certified list from the lieutenant governor under Subsection (4)(a), the county clerk shall post or publish a primary election notice in substantially the following form:

"Notice is given that a primary election will be held Tuesday, June _____, _____ (year), to nominate party candidates for the parties and candidates for nonpartisan local school board positions listed on the primary ballot. The polling place for voting precinct _____ is _____. The polls will open at 7 a.m. and continue open until 8 p.m. of the same day.
Attest: county clerk."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20A-9-409.1. Election by majority method for certain primary races -- Runoff --

Determination of winner.

(1) As used in this section:

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

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

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

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

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

(3) An election officer for a participating county shall conduct a regular primary

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election race, via the majority method described in this section, for all partisan county races where more than two candidates will be placed on the regular primary election ballot for that race and party.

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

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

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

(c) the county legislative body and the county clerk provide written notice to the lieutenant governor that the county legislative body and the county clerk have agreed to become a participating county for the next regular primary election.

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

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

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

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

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

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

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

(i) the election officer;

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

(A) the attorney general;

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(B) the state treasurer; or

(C) the state auditor; or

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

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

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

(b) declare nominated:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) An election officer may not reject a vote in a majority method race based solely on the fact that the voter:

(i) did not rank all candidates;

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

(iii) voted for one candidate by simply marking, but not ranking, the candidate and, for the other candidates, either:

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

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