

Representative Jason B. Kyle proposes the following substitute bill:

PRIMARY ELECTION REVISIONS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jason B. Kyle

Senate Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill addresses primary elections.

Highlighted Provisions:

This bill:

- ▶ provides that, for certain primary election races, if no candidate receives more than 50% of the votes in the race, the person who wins the nomination will be determined by conducting a runoff election between the two candidates who received the most votes in the initial primary election;
- ▶ describes deadlines, notice requirements, and procedures relating to a runoff election; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

20A-3a-601, as last amended by Laws of Utah 2020, Chapter 95 and renumbered and



26 amended by Laws of Utah 2020, Chapter 31

27 [20A-6-203](#), as last amended by Laws of Utah 2020, Chapter 31

28 [20A-9-403](#), as last amended by Laws of Utah 2022, Chapter 325

29 ENACTS:

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-3a-601](#) is amended to read:

34 **[20A-3a-601](#). Early voting.**

35 (1) Except as provided in Subsection [20A-9-409.1\(4\)\(b\)](#) or Section [20A-7-609.5](#):

36 (a) an individual who is registered to vote may vote at a polling place before the
37 election date in accordance with this section; and

38 (b) except as provided in Subsection [20A-2-207\(6\)](#), an individual who is not registered
39 to vote may register to vote and vote at a polling place before the election date in accordance
40 with this section if the individual:

41 (i) is otherwise legally entitled to vote the ballot; and

42 (ii) casts a provisional ballot in accordance with Section [20A-2-207](#).

43 (2) Except as provided in Section [20A-1-308](#) or Subsection (3), the early voting period:

44 (a) begins on the date that is 14 days before the date of the election; and

45 (b) continues through the Friday before the election if the election date is a Tuesday.

46 (3) (a) An election officer may extend the end of the early voting period to the day
47 before the election date if the election officer provides notice of the extension in accordance
48 with Section [20A-3a-604](#).

49 (b) For a municipal election, the municipal clerk may reduce the early voting period
50 described in this section if:

51 (i) the municipal clerk conducts early voting on at least four days;

52 (ii) the early voting days are within the period beginning on the date that is 14 days
53 before the date of the election and ending on the day before the election; and

54 (iii) the municipal clerk provides notice of the reduced early voting period in
55 accordance with Section [20A-3a-604](#).

56 (c) For a county election, the county clerk may reduce the early voting period described

57 in this section if:

- 58 (i) the county clerk conducts early voting on at least four days;
- 59 (ii) the early voting days are within the period beginning on the date that is 14 days
- 60 before the date of the election and ending on the day before the election; and
- 61 (iii) the county clerk provides notice of the reduced early voting period in accordance
- 62 with Section [20A-3a-604](#).

63 (4) Except as provided in Section [20A-1-308](#), during the early voting period, the
64 election officer:

65 (a) for a local special election, a municipal primary election, and a municipal general
66 election:

- 67 (i) shall conduct early voting on a minimum of four days during each week of the early
- 68 voting period; and
- 69 (ii) shall conduct early voting on the last day of the early voting period; and
- 70 (b) for all other elections:
- 71 (i) shall conduct early voting on each weekday; and
- 72 (ii) may elect to conduct early voting on a Saturday, Sunday, or holiday.

73 (5) Except as specifically provided in this Part 6, Early Voting, or Section [20A-1-308](#),
74 early voting shall be administered in accordance with the requirements of this title.

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

76 **20A-6-203. Ballots for regular primary elections.**

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

- 79 (a) develop ballots to be used in Utah's regular primary election;
- 80 (b) except to the extent otherwise provided in Subsection [20A-9-409.1\(6\)](#), ensure that
- 81 the ballots comply generally, where applicable, with the requirements of [~~Title 20A, Chapter 6,~~
- 82 ~~Part 1, General Requirements for All Ballots]~~ Part 1, General Requirements for All Ballots, and
- 83 this section; and

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

86 (2) (a) Notwithstanding the requirements of Subsections (1)(b) and (c), [~~Title 20A,~~
87 ~~Chapter 6, Part 1, General Requirements for All Ballots]~~ Part 1, General Requirements for All

88 Ballots, and Sections [20A-5-403](#), [20A-6-401](#), and [20A-6-401.1](#), the lieutenant governor,
89 together with county clerks, suppliers of election materials, and representatives of registered
90 political parties shall ensure that the ballots, voting booths, election records and supplies, and
91 ballot boxes:

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

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

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

97 (iv) protect against fraud.

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

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

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

104 Section 3. Section [20A-9-403](#) is amended to read:

105 **20A-9-403. Regular primary elections -- Candidate nomination process for a**
106 **registered political party that is not a qualified political party -- Determining winning**
107 **nominee for any registered political party, including a qualified political party -- Election**
108 **expenses.**

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

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

118 ~~[(b)]~~ (c) Each registered political party that chooses to have the names of the registered

119 political party's candidates for elective office featured with party affiliation on the ballot at a
120 regular general election shall comply with the requirements of this section and shall nominate
121 the registered political party's candidates for elective office in the manner described in this
122 section.

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

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

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

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

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

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

142 (ii) An organization that is seeking to become a registered political party under Section
143 20A-8-103 shall file the statement described in Subsection (2)(a) at the time that the registered
144 political party files the petition described in Section 20A-8-103.

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

- 150 (i) circulated and completed in accordance with Section 20A-9-405; and
- 151 (ii) signed by at least 2% of the registered political party's members who reside in the
- 152 political division of the office that the individual seeks.
- 153 (b) (i) A candidate for elective office shall submit signatures for a nomination petition
- 154 to the appropriate filing officer for verification and certification no later than 5 p.m. on the final
- 155 day in March.
- 156 (ii) A candidate may supplement the candidate's submissions at any time on or before
- 157 the filing deadline.
- 158 (c) (i) The lieutenant governor shall determine for each elective office the total number
- 159 of signatures that must be submitted under Subsection (3)(a)(ii) or 20A-9-408(8) by counting
- 160 the aggregate number of individuals residing in each elective office's political division who
- 161 have designated a particular registered political party on the individuals' voter registration
- 162 forms on or before November 15 of each odd-numbered year.
- 163 (ii) The lieutenant governor shall publish the determination for each elective office no
- 164 later than November 30 of each odd-numbered year.
- 165 (d) The filing officer shall:
- 166 (i) except as otherwise provided in Section 20A-21-201, verify signatures on
- 167 nomination petitions in a transparent and orderly manner, no later than 14 days after the day on
- 168 which a candidate submits the signatures to the filing officer;
- 169 (ii) for all qualifying candidates for elective office who submit nomination petitions to
- 170 the filing officer, issue certifications referenced in Subsection (3)(a) no later than the deadline
- 171 described in Subsection 20A-9-202(1)(b);
- 172 (iii) consider active and inactive voters eligible to sign nomination petitions;
- 173 (iv) consider an individual who signs a nomination petition a member of a registered
- 174 political party for purposes of Subsection (3)(a)(ii) if the individual has designated that
- 175 registered political party as the individual's party membership on the individual's voter
- 176 registration form; and
- 177 (v) except as otherwise provided in Section 20A-21-201, utilize procedures described
- 178 in Section 20A-7-206.3 to verify submitted nomination petition signatures, or use statistical
- 179 sampling procedures to verify submitted nomination petition signatures in accordance with
- 180 rules made under Subsection (3)(f).

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

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

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

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

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

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

193 (g) The county clerk shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

241 (a) [~~When~~] when a tie vote occurs in any primary election for any national, state, or
242 other office that represents more than one county, the governor, lieutenant governor, and

243 attorney general shall, at a public meeting called by the governor and in the presence of the
244 candidates involved, select the nominee by lot cast in whatever manner the governor
245 determines[-]; and

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

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

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

257 Section 4. Section **20A-9-409.1** is enacted to read:

258 **20A-9-409.1. Determining winner of certain primary election races where a**
259 **candidate does not receive a majority of the votes cast -- Runoff primary election for**
260 **certain races -- Election requirements and notice.**

261 (1) In a regular primary election race for a qualified political party, the election officer
262 shall determine the winning nominee in accordance with Subsection (2) if:

263 (a) the race is to nominate a qualified political party candidate for United States
264 senator, United States representative, governor, attorney general, state treasurer, state auditor,
265 state senator, or state representative; and

266 (b) the candidate who receives the most votes in the initial primary election race does
267 not receive more than 50% of the votes in the race.

268 (2) To determine the winning nominee for a race described in Subsection (1), the
269 election officer shall declare as the nominee for that race the candidate who wins the runoff
270 election, described in Subsection (4), between the two candidates who received the highest
271 number of votes in the initial primary race.

272 (3) If a tie in the number of votes received in the initial primary election race makes it
273 impossible to determine, under Subsection (2), the two candidates who received the highest

274 number of votes in the initial primary race, the tie shall be broken, by lot, in the presence of the
275 tied candidates or representatives of the tied candidates, by:

276 (a) the election officer; or

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

279 (i) the attorney general;

280 (ii) the state treasurer; or

281 (iii) the state auditor.

282 (4) To conduct a runoff election described in Subsection (2), the election officer shall:

283 (a) 35 days after the day of the regular primary election, hold a runoff election between
284 the two candidates identified under Subsection (2);

285 (b) conduct the election in accordance with Section [20A-3a-202](#), except that the
286 election officer may not provide early voting for the runoff election;

287 (c) provide notice of the runoff election by:

288 (i) (A) at least two days before the day of the election, publishing the notice in a
289 newspaper of general circulation in the jurisdiction to which the election pertains;

290 (B) at least two days before the day of the election, posting one copy of the notice, and
291 at least one additional copy per 2,000 population of the jurisdiction, in places within the
292 jurisdiction that are most likely to give notice of the election to the voters in the jurisdiction,
293 subject to a maximum of 10 notices; or

294 (C) at least five days before the day of the election, mailing the notice to each
295 registered voter who resides in the jurisdiction to which the election pertains;

296 (ii) for 14 days before the day of the election, posting the notice on the Utah Public
297 Notice Website, created in Section [63A-16-601](#); and

298 (iii) for 14 days before the day of the election, posting notice on the jurisdiction's
299 website;

300 (d) except as provided in Subsection (5), include in the notice described in Subsection
301 (4)(c):

302 (i) at the top of the notice, the following statement:

303 "NOTICE OF RUNOFF ELECTION

304 Notice is given that a runoff election will be held at the date and times indicated below

305 to nominate the candidate for the [name of registered political party] to run for [name of office]
306 in the upcoming regular general election. The candidates in the runoff election are:

307 [list the names of the two candidates participating in the runoff election, in the same
308 order as the candidates will appear on the ballot]

309 A voter who is eligible to vote in the primary election for the [insert the name of the
310 applicable political party] may cast a vote in the runoff election";

311 (ii) the hours during which the polls will be open;

312 (iii) the polling places for each voting precinct and election day voting center;

313 (iv) the address of the Statewide Electronic Voter Information Website and the election
314 officer's website, with a statement indicating that the election officer will post on the websites
315 any changes to the location of a polling place and the location of any additional polling place;

316 (v) a phone number that a voter may call to obtain information regarding the location
317 of a polling place; and

318 (vi) the qualifications for an individual to vote in the election; and

319 (e) no later than 14 days after the day of the election, declaring nominated by the
320 applicable party:

321 (i) the candidate who receives the highest number of votes in the runoff election; or

322 (ii) in the case of a tie, the candidate selected by lot, in the presence of the tied
323 candidates or representatives of the tied candidates, by the individual described in Subsection
324 (3).

325 (5) Instead of including the information described in Subsection (4)(d) in the notice
326 described in Subsection (4)(c), the election officer may include the following in the notice:

327 (a) the statement described in Subsection (4)(d)(i);

328 (b) the following statement: "The election will be held in [indicate the jurisdiction] on
329 [indicate date of election]. Information relating to the election, including polling places, polling
330 place hours, and qualifications of voters may be obtained from the following sources:"; and

331 (c) a list of the following sources where an individual may view or obtain the
332 information described in Subsections (4)(d)(ii) through (vi):

333 (i) the jurisdiction's website;

334 (ii) the physical address of the jurisdiction offices; and

335 (iii) a mailing address and telephone number.

336 (6) (a) In order to comply with Chapter 16, Uniform Military and Overseas Voters Act,
337 the election officer shall, when sending or providing a ballot under that chapter, provide the
338 ability to rank the candidates in a regular primary election race, in the order the voter prefers
339 the candidates, if the race may result in a runoff election under this section.

340 (b) To count a vote cast in a race described in Subsection (6)(a), where the voter
341 ranked at least two of the candidates, the election officer shall:

342 (i) initially, only count a vote for the candidate the voter ranked highest; and

343 (ii) if the race results in a runoff election under this section, count a vote in the runoff
344 election for the remaining candidate ranked highest by the voter.