

HB0214S01 compared with HB0214

~~{deleted text}~~ shows text that was in HB0214 but was deleted in HB0214S01.

inserted text shows text that was not in HB0214 but was inserted into HB0214S01.

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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: _____

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 ~~{as follows:~~

~~—• if the candidate who received the most votes in the race also received at least 60% of the delegate votes cast at convention, that candidate wins the nomination; or~~

~~—• if the candidate who received the most votes in the race did not receive at least 60% of the delegate votes cast at convention, } by conducting a runoff election~~

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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 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-9-409.1, Utah Code Annotated 1953

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

Section 1. Section **20A-3a-601** is amended to read:

20A-3a-601. Early voting.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) For a county election, the county clerk may reduce the early voting period described in this section if:

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

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

(iii) the county clerk provides notice of the reduced early voting period in accordance with Section 20A-3a-604.

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

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

(i) shall conduct early voting on a minimum of four days during each week of the early voting period; and

(ii) shall conduct early voting on the last day of the early voting period; and

(b) for all other elections:

(i) shall conduct early voting on each weekday; and

(ii) may elect to conduct early voting on a Saturday, Sunday, or holiday.

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

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

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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 provided in Subsection 20A-9-409.1(6), ensure that the ballots comply generally, where applicable, with the requirements of [~~Title 20A, Chapter 6, Part 1, General Requirements for All Ballots~~] 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~~] 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

(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-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

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nominee for any registered political party, including a qualified political party -- Election expenses.

(1) ~~(a)~~ (a) The candidate nomination process described in this Subsection (1) through Subsection (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 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

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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 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;

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(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 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

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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.

(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)

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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:

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

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

(1) In a regular primary election race for a qualified political party, the election officer

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shall determine the winning nominee in accordance with Subsection (2) if:

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

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

(2) To determine the winning nominee for a race described in Subsection (1), the election officer shall ~~+~~:

~~—— (a) if the candidate who received the most votes in the race also received at least 60% of the delegate votes cast at the convention to qualify for the primary election for that race, declare that candidate the winning nominee; or~~

~~—— (b) if the candidate who received the most votes in the race did not receive at least 60% of the delegate votes cast at the convention to qualify for the primary election for that race,} declare as the nominee for that race the candidate who wins the runoff election, described in Subsection (4), between the two candidates who received the highest number of votes in the initial primary race.~~

(3) ~~{(a)}~~ If a tie in the number of votes received in the initial primary election race makes it impossible to determine, under Subsection (2)~~{(a)}~~, the ~~{candidate}~~ **two candidates** who received the ~~{most}~~ **highest number of** votes in the **initial primary** race, the tie shall be broken, by lot, in the presence of the tied candidates or representatives of the tied candidates, by:

~~{i}~~**a** the election officer; or

~~{ii}~~**b** 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}~~**i** the attorney general;

~~{B}~~**ii** the state treasurer; or

~~{C}~~**iii** the state auditor.

~~{ —— (b) If a tie in the number of votes received in the initial primary election race makes it impossible to determine, under Subsection (2)(b), the two candidates who received the highest number of votes in the initial primary race, the tie shall be broken, by lot, in the presence of the tied candidates or representatives of the tied candidates, by the individual described in~~

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Subsection (3)(a)(i) or (ii), as applicable:

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

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

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

(c) provide notice of the runoff election by:

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

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

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

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

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

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

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

"NOTICE OF RUNOFF ELECTION

Notice is given that a runoff election will be held at the date and times indicated below to nominate the candidate for the [name of registered political party] to run for [name of office] in the upcoming regular general election. The candidates in the runoff election are:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) the jurisdiction's website;

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

(iii) a mailing address and telephone number.

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

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

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- (i) initially, only count a vote for the candidate the voter ranked highest; and
- (ii) if the race results in a runoff election under this section, count a vote in the runoff election for the remaining candidate ranked highest by the voter.