

Representative Mike Schultz proposes the following substitute bill:

1 **ELECTION AUDIT REQUIREMENTS**

2 2023 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Mike Schultz**

5 Senate Sponsor: Daniel McCay

6 **LONG TITLE**

7 **General Description:**

8 This bill requires and addresses a biennial audit of elections, conducted by the Office of
9 the Legislative Auditor General (office).

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ requires the office to conduct a biennial audit of elections and related processes
13 throughout the state that includes regular primary elections and regular general
14 elections;
- 15 ▶ describes the conduct and scope of the audit;
- 16 ▶ addresses the office's authority and access to records, facilities, and equipment to
17 enable the office to conduct the audit;
- 18 ▶ requires compliance by government officials and employees in relation to the audit;
- 19 ▶ preserves the right to a secret ballot; and
- 20 ▶ makes conforming changes.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None



26 Utah Code Sections Affected:

27 AMENDS:

28 **20A-4-102**, as last amended by Laws of Utah 2022, Chapter 342

29 **20A-4-106**, as last amended by Laws of Utah 2020, Chapter 31

30 **20A-4-202**, as last amended by Laws of Utah 2022, Chapter 156

31 ENACTS:

32 **36-12-15.2**, Utah Code Annotated 1953

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

35 Section 1. Section **20A-4-102** is amended to read:

**20A-4-102. Manual ballots cast at a polling place -- Counting manual ballots at
polling place on day of election after polls close.**

38 (1) (a) This section governs counting manual ballots on the day of an election, if:

39 (i) the ballots are cast at a polling place; and

40 (ii) the ballots are counted at the polling place after the polls close.

41 (b) Except as provided in Subsection (2) or a rule made under Subsection

42 20A-4-101(2)(f)(i), as soon as the polls have been closed and the last qualified voter has voted,
43 the election judges shall count the ballots by performing the tasks specified in this section in
44 the order that they are specified.

45 (c) To resolve questions that arise during the counting of ballots, a counting judge shall
46 apply the standards and requirements of:

47 (i) to the extent applicable, Section 20A-4-105; and

48 (ii) as applicable, for an instant runoff voting race under Part 6, Municipal Alternate

49 Voting Methods Pilot Project, Subsections 20A-4-603(3) through (5).

50 (2) (a) First, the election judges shall count the number of ballots in the ballot box.

51 (b) (i) If there are more ballots in the ballot box than there are names

52 pollbook, the judges shall examine the official endorsements on the ballots.

53 (ii) If, in the unanimous opinion of the judges, any of the ballots do not bear the prop
54 official endorsement, the judges shall put those ballots in an excess ballot file and not count
55 them.

56 (c) (i) If, after examining the official endorsements, there are still more ballots in the

57 ballot box than there are names entered in the pollbook, the judges shall place the remaining
58 ballots back in the ballot box.

59 (ii) One of the judges, without looking, shall draw a number of ballots equal to the
60 excess from the ballot box.

61 (iii) The judges shall put those excess ballots into the excess ballot envelope and not
62 count them.

63 (d) When the ballots in the ballot box equal the number of names entered in the
64 pollbook, the judges shall count the votes.

65 (3) The judges shall:

66 (a) place all unused ballots in the envelope or container provided for return to the
67 county clerk or city recorder; and

68 (b) seal that envelope or container.

69 (4) The judges shall:

70 (a) place all of the provisional ballot envelopes in the envelope provided for them for
71 return to the election officer; and

72 (b) seal that envelope or container.

73 (5) (a) In counting the votes, the election judges shall read and count each ballot
74 separately.

75 (b) In regular primary elections the judges shall:

76 (i) count the number of ballots cast for each party;

77 (ii) place the ballots cast for each party in separate piles; and

78 (iii) count all the ballots for one party before beginning to count the ballots cast for
79 other parties.

80 (6) (a) In all elections, the counting judges shall, except as provided in Part 6,
81 Municipal Alternate Voting Methods Pilot Project, or a rule made under Subsection
82 [20A-4-101\(2\)\(f\)\(i\)](#):

83 (i) count one vote for each candidate designated by the marks in the squares next to the
84 candidate's name;

85 (ii) count each vote for each write-in candidate who has qualified by filing a
86 declaration of candidacy under Section [20A-9-601](#);

87 (iii) read every name marked on the ballot and mark every name upon the tally sheets

88 before another ballot is counted;

89 (iv) evaluate each ballot and each vote based on the standards and requirements of
90 Section 20A-4-105;

91 (v) write the word "spoiled" on the back of each ballot that lacks the official
92 endorsement and deposit it in the spoiled ballot envelope; and

93 (vi) read, count, and record upon the tally sheets the votes that each candidate and
94 ballot proposition received from all ballots, except excess or spoiled ballots.

95 (b) Election judges need not tally write-in votes for fictitious persons, nonpersons, or
96 persons clearly not eligible to qualify for office.

97 (c) The judges shall certify to the accuracy and completeness of the tally list in the
98 space provided on the tally list.

99 (d) When the judges have counted all of the voted ballots, they shall record the results
100 on the total votes cast form.

101 (7) (a) [Only] Except as provided in Subsection(7)(b), only an election judge and a
102 watcher may be present at the place where counting is conducted until the count is completed.

103 (b) An auditor conducting an audit described in Section 36-12-15.2 may be present at
104 the place where counting is conducted, regardless of whether the count is completed.

105 Section 2. Section 20A-4-106 is amended to read:

106 **20A-4-106. Manual ballots -- Sealing.**

107 (1) After the official canvas of an election, the election officer shall store all election
108 returns in containers that identify the containers' contents.

109 (2) After the ballots are stored under Subsection (1), the ballots may not be examined
110 by anyone, except as follows:

111 (a) when examined during a recount conducted under the authority of Section
112 20A-4-401 or Title 20A, Chapter 4, Part 6, Municipal Alternate Voting Methods Pilot
113 Project[-]; or

114 (b) an auditor conducting an audit described in Section 36-12-15.2 may examine the
115 ballots:

116 (i) if the audit uncovers evidence that raises a substantial doubt regarding the accuracy
117 of the results of an election, the auditor may examine the ballots until the later of:

118 (A) the end of the calendar year in which the election was held; or

- 119 (B) if the election is contested, when the contest is resolved; or
120 (ii) at any time via a subpoena or other legal process.

121 Section 3. Section **20A-4-202** is amended to read:

122 **20A-4-202. Election officers -- Disposition of ballots -- Release of number of
123 provisional ballots cast.**

124 (1) Upon receipt of the election returns from the poll workers, the election officer shall:

125 (a) ensure that the poll workers have provided all of the ballots and election returns;

126 (b) inspect the ballots and election returns to ensure that they are sealed;

127 (c) for manual ballots, deposit and lock the ballots and election returns in a safe and
128 secure place;

129 (d) for mechanical ballots:

130 (i) count the ballots; and

131 (ii) deposit and lock the ballots and election returns in a safe and secure place; and

132 (e) for bond elections, provide a copy of the election results to the board of canvassers
133 of the local political subdivision that called the bond election.

134 (2) Each election officer shall:

135 (a) before 5 p.m. on the day after the date of the election, determine the number of
136 provisional ballots cast within the election officer's jurisdiction and make that number available
137 to the public;

138 (b) preserve ballots for 22 months after the election or until the time has expired during
139 which the ballots could be used in an election contest;

140 (c) preserve all other official election returns for at least 22 months after an election;

141 and

142 (d) after that time, destroy them without opening or examining them.

143 (3) (a) The election officer shall package and retain all tabulating cards and other
144 materials used in the programming of the automatic tabulating equipment.

145 (b) The election officer:

146 (i) may access these tabulating cards and other materials;

147 (ii) may make copies of these materials and make changes to the copies;

148 (iii) may not alter or make changes to the materials themselves; and

149 (iv) within 22 months after the election in which they were used, may dispose of those

150 materials or retain them.

151 (4) (a) If an election contest is begun within 12 months, the election officer shall,
152 except as provided in Subsection (4)(c):

153 (i) keep the ballots and election returns unopened and unaltered until the contest is
154 complete; or

155 (ii) surrender the ballots and election returns to the custody of the court having
156 jurisdiction of the contest when ordered or subpoenaed to do so by that court.

157 (b) [When] Except as provided in Subsection (4)(c), when all election contests arising
158 from an election are complete, the election officer shall either:

159 (i) retain the ballots and election returns until the time for preserving them under this
160 section has run; or

161 (ii) destroy the ballots and election returns remaining in the election officer's custody
162 without opening or examining them if the time for preserving them under this section has run.

163 (c) An auditor conducting an audit described in Section 36-12-15.2 may examine the
164 ballots and election returns described in this Subsection (4).

165 (5) (a) Notwithstanding the provisions of this section, the legislative auditor general:

166 (i) may make and keep copies of ballots or election returns as part of a legislative audit;
167 and

168 (ii) may not examine, make copies, or keep copies, of a ballot in a manner that
169 identifies a ballot with the voter who casts the ballot.

170 (b) A copy described in Subsection (5)(a) is not a record, and not subject to disclosure,
171 under Title 63G, Chapter 2, Government Records Access and Management Act.

172 Section 4. Section **36-12-15.2** is enacted to read:

173 **36-12-15.2. Elections audit.**

174 (1) As used in this section, "office" means the Office of the Legislative Auditor
175 General.

176 (2) In addition to other audits performed by the office, the office shall, each
177 even-numbered year, in accordance with this section and under the direction of the Legislative
178 Audit Subcommittee, conduct a comprehensive performance audit of the state's election system
179 and controls.

180 (3) The audit may include the entire election process for the elections held in

181 an-even-numbered year, including:

182 (a) procedures and practices that occur before or after the beginning of the year to
183 prepare for the elections; and

184 (b) procedures, practices, and standards relating to:

185 (i) voter registration;

186 (ii) candidate filing and selection;

187 (iii) the preparation, printing, distribution, handling, examining, counting, and all other
188 handling of ballots; and

189 (iv) the entire election process, including the regular primary election, the regular
190 general election, and the determination of election results.

191 (4) The audit extends to the functions of all persons involved in the election process,
192 including the Office of the Lieutenant Governor, each county clerk's office, and each board of
193 canvassers.

194 (5) At a minimum, the office shall conduct a survey to audit the work of Office of the
195 Lieutenant Governor and each county election office.

196 (6) Based on the results of the survey described in Subsection (5), the office shall
197 conduct a more comprehensive audit of the jurisdictions or practices that, in the opinion of the
198 office, present the highest risk.

199 (7) In addition to auditing the jurisdictions and practices described in Subsection (6),
200 the office may audit any other jurisdictions or entities, or any practices or procedures, that the
201 office determines necessary to ensure the success of a comprehensive performance audit of the
202 election system.

203 (8) To conduct an audit described in this section, the office has the full authority
204 described in Section 36-12-15, including:

205 (a) full access to closely observe, examine, and copy all records, documents,
206 recordings, and other information the office determines to be useful in conducting an audit
207 described in this section;

208 (b) full access to closely observe, examine, and copy ballots, ballot envelopes, vote
209 tallies, canvassing records, and voter registration records;

210 (c) full access to closely observe and examine all facilities, storage areas, and
211 equipment, and to closely observe, examine, or copy all materials, that the office determines to

212 be useful in conducting an audit described in this section;
213 (d) full access to all staff, including full-time, part-time, and volunteer staff;
214 (e) full access to closely observe, examine, and copy all records and information
215 relating to election audits that are conducted by the Office of the Lieutenant Governor, a county
216 clerk, or any other person;
217 (f) the right to, within the scope of the audit, attend any meeting, including a closed
218 meeting;
219 (g) the right to, within the scope of the audit, closely observe and examine any work or
220 other process; and
221 (h) all other authority described in Section 36-12-15.
222 (9) As with any audit conducted under the authority described in Section 36-12-15, all
223 officials and staff shall fully assist, and cooperate with, the office in conducting an audit
224 described in this section.
225 (10) In conducting an audit described in this section, the office:
226 (a) shall preserve the right of a voter to a secret ballot;
227 (b) shall, when examining election returns, allow the election officer or a designee of
228 the election officer to be present to ensure the chain of custody of the election returns; and
229 (c) may not, while votes are being counted, communicate in any manner, directly or
230 indirectly, by word or sign, the progress of the vote, the current result of the vote count, or any
231 other information about the vote count.
232 (11) An election officer, or an election officer's designee, who is present under
233 Subsection (10)(b) may not interfere with the performance of the audit.