

Request for Utah Election Law Changes

Purpose: *The purpose of this legislative request is to modernize Utah’s election statutes to reflect modern election procedures¹ and to ensure that election officials and the public can verify the integrity and accuracy of Utah’s electoral process.*

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Justification: Utah’s current election procedures and statutes prevent the public from exercising oversight over the integrity of Utah’s electoral process and make most types of accidental vote miscount, ballot substitution, ballot tampering, ballot box stuffing, and voter disenfranchisement undetectable. A brief description of the specific problems with Utah election statutes and procedures that justify this election law change request is posted on-line at:

<http://utahcountvotes.org/legislature/UTLegislativeElectionReformSummary.pdf>

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¹ Much of Utah’s current election statutes are a remnant from when paper ballots were hand-counted in the polls.

Notation:

Text requested to be removed from existing Utah Statute is written in ~~strikeout~~.

Text requested to be added to existing Utah Statute is underlined.

REQUEST I. Increase & Standardize Canvass Periods to Allow for Auditing All Ballot Types

Amends 20A-4-301 to extend the canvass period [Note: These proposed changes increase the canvass period to up to 28 days and makes the canvass time periods consistent for counties and municipalities in order to allow ample time for conducting post-election vote count audits. Twenty-eight (28) days is a common canvass period in other states. Note: League members spoke to Weber and Salt Lake county clerks and election officials and they requested an increase in the canvass periods in order to be able to audit absentee and provisional ballots prior to certifying election results.]

20A-4-301. Board of canvassers.

(1) (a) Each county legislative body is the board of county canvassers for:

(i) the county; and

(ii) each local district whose election is conducted by the county.

(b) ~~(i) Except as provided in Subsection (1)(b)(ii),~~ The board of county canvassers shall meet to canvass the returns at the usual place of meeting of the county legislative body, at a date and time determined by the county clerk that is no sooner than seven days after the election and no later than 14 28 days after the election.

~~(ii) When canvassing returns for the Western States Presidential Primary, the board of county canvassers shall meet to canvass the returns at the usual place of meeting of the county legislative body, at noon on the Tuesday after the election.~~

...

(2) (a) The mayor and the municipal legislative body are the board of municipal canvassers for the municipality.

(b) The board of municipal canvassers shall meet to canvass the returns at the usual place of meeting of the municipal legislative body:

~~—(i) for canvassing of returns from a municipal general election, no sooner than seven five days after the election and no later than 14 28 days after the election; or~~

~~—(ii) for canvassing of returns from a municipal primary election, no sooner than three days after the election and no later than seven days after the election.~~

REQUEST II. Require Preserving all Printed Ballots for Ballot Reconciliation; Require Election Officials to Publicly Post Polling Place Polling Vote Totals and Summary Election Records upon Poll Closing; and Require Public Reporting of

Amends 20A-4-106. Paper ballots Election Records -- Sealing.

[Note: Current Utah law requires the destruction of unused ballots although unused ballots are crucial evidence necessary to reconcile that the number of printed ballots equals the number of voters processed plus the number of spoiled and unused ballots, and must be examined by auditors to assure that the paper ballot box has not been stuffed, and to assure that ballots have not been unlawfully spoiled, substituted, or tampered with before or during an election.. Note: Perhaps this code could be further simplified by making the treatment of ballots and election records consistent in primary and general elections?]

(1) (a) (i) At all elections using paper ballots, as soon as the counting judges have read and tallied the ballots, they shall string group the counted, excess unused, provisional, and spoiled ballots in separate groups on separate strings.

(ii) After the counted, spoiled, and excess unused ballots are separated into groups ~~strung~~, they may not be examined by anyone, except when used by election officials to tally votes or examined during a vote count audit or a recount conducted under the authority of **Section 1. 20A-4-203 [new vote count audit section] or Section 20A-4-401.**

(b) The judges shall carefully seal all of the sorted ~~strung~~ ballots in strong envelopes.

(2) (a) For regular primary elections, after all the ballots have been counted, certified to, and sorted ~~strung~~ by the judges, they shall seal the ballots cast and unused ballots for each of the parties in separate envelopes.

(b) The judges shall:

(i) seal each of the envelopes containing the excess unused, provisional, spoiled, counted ballots and vote tallies of each of the political parties in one large envelope for each political party; and

(ii) return the envelopes to the county clerk.

~~(c) The judges shall:~~

~~(i) destroy the ballots in the blank ballot box; or~~

~~(ii) if directed to do so by the election officer, return them to the election officer for destruction.~~

[Note: destruction of unused ballots prevents proper ballot reconciliation of all printed ballot and would destroy evidence of ballot substitution or ballot box stuffing]

(3) As soon as the judges have counted all the votes and sealed the counted ballots they shall sign and certify the pollbooks.

(4) (a) The judges, before they adjourn, shall:

(i) enclose and seal the official register, the posting book, the pollbook, all affidavits of registration received by them, the ballot disposition form, the military and overseas absentee voter registration and voting certificates, one of the tally sheets, and any excess unused unprocessed, spoiled, absentee or provisional ballots in a strong envelope or pouch;

(ii) publicly post copies of the tally list, ballot disposition form, total votes cast form and other summary records of the numbers of voters, ballots, votes, and voting machine identifiers; and

~~(iii) ensure that all counted ballots, all excess ballots, and all spoiled ballots have been sorted ~~strung~~ and placed in a separate envelope or pouch as required by Subsection (1);~~

~~(iv) place all unused ballots, all spoiled ballots, one tally list, and a copy of the ballot disposition form in a separate envelope or pouch;~~

~~(v) place all provisional ballots in a separate envelope or pouch; and~~

~~(vi) place the total votes cast form and the judges' vouchers requesting compensation for services rendered in a separate pouch.~~

(b) Before enclosing the official register in the envelope or pouch, the election judges shall certify it substantially as follows:

"We, the undersigned, judges of election for precinct _____, (jurisdiction) _____, Utah, certify that the required entries have been made for the election held _____ (month\day\year), including:

a list of the ballot numbers for each voter;

the voters' signatures, except where a judge has signed for the absentee voters;

a list of information surrounding a voter who is challenged,

including any affidavits; and

a notation for each time a voter was assisted with a ballot."

(5) Each judge shall:

(a) write his name across the seal of each envelope or pouch;

(b) mark on the exterior of the envelope or pouch:

(i) the word "ballots" or "spoiled ballots" or "returns" or "unused ballots," or "provisional ballots" or other words plainly indicating the contents of the packages; and

(ii) the number of the voting precinct.

Within 14 days after Election Day, 14 days before the end of the canvass period, County Election Officials shall report to the Chief State Election Office the following information for each precinct or for each batch of absentee ballots.

- a. The number of unofficial votes counted in each election contest, the number of voters registered to vote, the number of voters who are recorded in the poll books and official registry as having mailed in absentee ballots or having signed in to vote at the polls, the number of ballots counted and cast on each ballot type, (early regular, early provisional, Election Day polling place regular, Election Day polling place provisional, absentee/mail-in ballots, etc.) the number of voters who requested mailed or provisional ballots, with the number of ballots cast on each ballot type, and
- b. A reconciliation of all voter-verifiable paper ballot records, including all printed unused, used, cast, spoiled, counted, and uncounted ballots. I.e. the number of any unused, spoiled, cast, counted, and uncounted ballots for each ballot type, and
- c. A list and description of any voter complaints and any voting machine, memory card, or other electronic failures, and
- d. The amount of voting resources and machines allocated, and
- e. The number of under-votes, over-votes for each ballot type, and
- f. Security and chain-of-custody procedures used to protect the integrity of election returns (redacting specific passwords or security keys).
- g. A report on sampled wait times for voters waiting in line to sign in to vote and to vote.

The State Election Office shall within 16 days after Election Day, 12 days before the end of the canvass period, publicly post a state-wide report of the above information to its web site and shall report any voting system problems experienced to the United States Election Assistance Commission Voting System Reports Clearinghouse.²

² See <http://www.eac.gov/News/press/eac-kicks-off-voting-system-reports-clearinghouse>

REQUEST III. Require Securing All Election Materials for 24 months to Conform with Federal Statute (NVRA), and Allow Access to the Election Materials Needed to Tally Votes and to Verify the Accuracy of Election Outcomes

Amends 20A-4-202. Election officers -- Disposition of ballots. [*Text added to existing statute is in orange.*]

(1) (a) Upon receipt of the election returns from a poll worker, the election officer shall:

(i) ensure that the poll worker has provided all of the ballots, election records, and election returns;

(ii) inspect the ballots, election records, and election returns to ensure that they are sealed;

(iii) (A) for paper ballots, deposit and lock the ballots and election returns in a safe and secure place;

(B) for paper ballots which have not been tallied at the polls, no later than 14 days after the date of the election, verify the legality of the voter if necessary, and tally the votes on the ballots of all legal voters, and then deposit and lock all unused, spoiled, counted, and uncounted ballots, voter registration records, and election returns for each batch count, precinct or polling location in a safe and secure place;

(BC) for punch card ballots:

(I) count the ballots; and

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

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

...

(b) Inspecting poll watchers appointed as provided in Section **20A-3-201** may be present and observe the election officer's receipt, inspection, counting, and deposit of the ballots and election returns and may be present and observe the verification of voter legality, receipt, inspection, and counting for provisional and absentee ballots.

(2) Each election officer shall:

(a) no later than 5 p.m. on the day after the date of the election, determine the number of provisional ballots cast within the election officer's jurisdiction and make that number available to the public;

(b) preserve ballots for ~~22~~ 24 months after the election or until the time has expired during which the ballots could be used in an election contest;

(c) package and seal a true copy of the ballot label used in each voting precinct;

(d) preserve all other official election returns for at least ~~22~~ 24 months after an election; and

~~(e) after that time, destroy them without opening or examining them.~~

[Note: For clarity, a definition of "official election returns" may be needed because the lack of an existing definition allows the county clerks to define virtually anything as an "official election return" and keep it secret from the public. Alternatively, official election returns should be required to be subjected to public scrutiny.]

(3) (a) The election officer shall package and retain all tabulating cards, unused, used, spoiled, and cast ballots, ballot definition files, voting system memory cards, computer log files, and other materials used in the casting, counting, or programming of electronic ballots or paper ballots or the automatic tabulating equipment.

(b) The election officer and vote count auditors:

(i) may access these ballot definitions, voting system memory cards, computer log files, or tabulating cards and other election materials;

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

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

(iv) ~~within 22 months after the election in which they were used, may dispose of those materials, retain them~~

(c) 24 months after the election in which they were used, the election officer shall turn these materials over to the state archives or to a publicly-owned library facility which may make these materials available for research purposes and may destroy them after 48 months after the election date.

(4) The election officer and vote count auditors:

(a) may access election returns and electronic and paper election records as necessary to carry out their duties under 20A;

(b) may make copies, may make copies available to the public as long as ballot privacy is preserved, and may make changes to the copies;

(c) may redact date of birth and substitute age in years when publicly releasing voter registration records; and

(d) may not alter or make changes to the materials themselves.

(4) (a) If an election contest is begun within 12 months, the election officer shall:

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

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

(b) When all election contests arising from an election are complete, the election officer shall ~~either:~~

~~(i) retain the paper and electronic ballots, election records, and election returns until the time for preserving them under this section has run; or~~

~~(ii) destroy the ballots and election returns remaining in his custody without opening or examining them if the time for preserving them under this section has run.~~

[Note: the 22 month preservation period must be changed to 24 months to conform to the public access requirements of the NVRA. The State Archive or libraries can make objective decisions regarding whether to retain ballot and election records.]

REQUEST IV. Require that any Post-Election Audits Conducted by Election Officials Do Check the Accuracy of the Publicly Reported Election Results

Purpose: to verify the accuracy of election results by conducting manual recounts of randomly selected publicly reported initial vote counts during the canvass period in a manner that checks the accuracy of the publicly reported unofficial election results in a way that the public can observe and understand.

Definition: “Auditable Vote Count” means a tally of votes that is publicly reported for an auditable election contest obtained from counting a group of one or more ballots that are counted at one place and time or by one electronic voting device. Auditable vote counts can be precinct or polling location vote counts made by any voting system, including electronic voting devices, automatic tabulating equipment,

optical scanning equipment, or hand-counted, or can be electronic voting device counts, or batches of ballots counted by hand or by automatic tabulating equipment where each vote count is associated with a number of ballots maintained as a group. An auditable vote count may be an individual ballot if the voting system produces an auditable report of vote counts with humanly readable identifiers for individual ballots and preserves ballot privacy.

Any post-election audits conducted by Utah election officials shall be required to follow the following procedures³:

1. Auditable vote counts to be manually audited shall be randomly selected or randomly drawn after the votes for the auditable vote counts are counted and publicly reported, using statistically valid probability sampling methods that are observable to the public. [Note: Auditable vote counts selected for auditing shall first be publicly reported and shown to tally to the reported results for each election contest prior to random selection so that the public can verify that the auditable vote counts add up to the publicly reported totals for each candidate or election contest and that the central tabulation process has included all the auditable vote counts and has correctly tallied the auditable vote counts.]

3. All ballot types shall be subjected to auditing, including votes cast at the precinct or equivalent location on or before the date of the auditable election, and votes cast by absentee voters, absent uniformed services voters, overseas voters, and votes cast by provisional ballot.

4. Election audit records shall be made available to vote count auditors and to official canvassers including voting machine testing plans and results, electronic voting device and automatic tabulating equipment audit and system log files, ballot definition files used by voting machines to cast or tally votes, voter-verifiable paper records and paper ballots, vote totals tapes, zero tapes, unused and spoiled ballots, provisional and absentee and provisional ballot envelopes and related applications including for ballots judged to be ineligible, digital storage devices that store ballot information and/or voting results information in a non-volatile form, records of purchased material and services including purchase orders and incoming inspection records on purchased parts and services, voting system redundant vote data, election data media devices, polling place event logs, precinct tally results, central count tally results, consolidated results, records created at the polling places or county election office, written procedures provided to poll workers and election judges, pollbooks and voter registration materials, written chain of custody and security procedures for regulating access to paper and electronic ballot records, and for regulating access to electronic voting devices and automatic tabulating equipment, chain of custody logs containing signatures for documenting access and the reasons for it, logs of security seals and access to election-related storage areas, video records of surveillance cameras. Specific passwords and security keys used for chain of custody or security shall be redacted. Date of birth may be redacted from voter registration records if age in years, accurate to within one year, is included.

5. A report of the results of the manual audits shall be submitted from each County Election Official to the Utah State Election Office, including any discrepancies found and any explanations for the discrepancies; and a state-wide report of the results of the manual audits shall be publicly posted on the Utah State Election Office web site.

6. The public shall be able to observe all facets of the post-election audits.

³ Note that some of the language in this section was borrowed from *The California Secretary of State, under the authority vested in the Secretary by Section 15601 of the Elections Code proposes to adopt regulations in Title 2, Division 7, Chapter 8 of the California Code of Regulations governing the conduct of election recounts.* <http://www.sos.ca.gov/elections/ccrov/pdf/2008/december/083311f.pdf> and *Principles and Best-Practices for Post-Election Audits -- Statistical portions*, (principles 5–7 and their best practices were endorsed by the American Statistical Association) http://electionaudits.org/files/bestpracticesfinal_0.pdf