

Utah Legislative Request – PUBLIC ACCESS TO ELECTION RECORDS

To Increase Public Transparency and Verifiability of Elections

Amends 20A-1-102 (28) (possibly) *[Note: Together, the definition and treatment of “Election returns” in Utah violates the National Voter Registration Act (NVRA) which requires that the materials necessary to maintain the accuracy and currency of voter registration records “ are to be publicly available. In addition, the use of the word “includes” in the definition of “Election return” is being used by Utah election officials to justify keeping virtually all records having to do with elections secret from the public, preventing the public from being able to verify the integrity of the electoral process, voter registration records, and election results.]*

"Election returns" includes the pollbook, all affidavits of registration, the military and overseas absentee voter registration and voting certificates, one of the tally sheets, any unprocessed absentee ballots, all counted ballots, all excess ballots, all unused ballots, all spoiled ballots, the ballot disposition form, and the total votes cast form.

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

[Note: Currently Utah law requires the destruction of unused ballots during primary elections although unused ballots are crucial evidence to account for all ballots, and must be examined by auditors to assure that the ballot box has not been stuffed and to assure that ballots have not been maliciously spoiled, substituted, or tampered with before or during an election.

Question: This statute requires a list of the ballot numbers for each voter. If the same ballot number is still affixed to the ballots after voters cast ballots, then it is a violation of Utah’s ballot secrecy requirement. Note: These suggestions must be reviewed by state and county election officials. Note: Perhaps this code could be further simplified by making the treatment of ballots and election records more consistent in primary and general elections? This poll closing procedure seems out of date with today’s voting system and poll closing procedures.]

(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 ~~string~~, they may not be examined by anyone, ~~except when~~ until examined during **a vote count audit or** a recount conducted under the authority of **Section 1. 20A-4-203 or Section 20A-4-401**.

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

(2) (a) For regular primary elections, after all the ballots have been counted, certified to, and sorted ~~string~~ by the judges, they shall seal the ballots cast 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.~~

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

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

(iv) 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

(iv) 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.

Amends 20A-4-201. Delivery of election returns.

(2) (b) That poll worker or those poll workers shall:

(i) deliver the unopened envelopes or pouches to the election officer or counting center immediately but no later than 24 4 hours after the polls close;

Amends 20A-4-202. Election officers -- Disposition of ballots.

(1) (a) Upon receipt of the election returns from an election judge, the election officer shall:

(i) ensure that the election judge 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 5 p.m. on the day after the date of the election, verify the legality of the voter if necessary, including for provisional ballots, and tally the votes on the ballots of all legal voters, and then deposit and lock the ballots, voter registration records, and election returns in separate group for both counted and uncounted paper ballots for each precinct or polling location in a safe and secure place;

(B) 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, voter legality verification, counting, and deposit of the ballots and election returns.

(2) Each election officer shall:

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- (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: Need a definition of "official election returns" because the lack of an existing definition allows the county clerks to define anything as an "official election return".]

(3) (a) The election officer shall package and retain all tabulating cards, **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 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~~ 24 months after the election in which they were used, may ~~dispose of those materials, retain them,~~ **or turn them over to the state archives or to a library facility which may make these materials available for research purposes or dispose of them.**

(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 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 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 needs to 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.]

1. PUBLICLY POST POLLING PLACE VOTE COUNTS & POLLING PLACE REPORTS WHEN POLLS CLOSE; AND PUBLICLY RELEASE COPIES OF ELECTION DAY, EARLY VOTING, MAIL-IN, & PROVISIONAL BALLOTING REPORTS AND RECORDS

Polling place vote totals and copies of any summary data reports that are created at poll closing by poll workers including the number of total voters who cast ballots, the number of total voters using provisional ballots, the number of voting machines at that polling location, the number of voting equipment breakdowns, failures, or malfunctions, and the vote counts on each voting machine shall be publicly posted. I.e. require the public posting of copies [hand-written copies are fine] of any summary vote tallies and election records that are produced at that polling location when polls close; and also publicly release and post all similar records of early voting and mail-in ballot handling and counts.

Justification: Public posting of polling place vote totals deters any tampering with or loss of vote counts or election records created at the polls by enabling the public to verify that vote counts were not altered or lost in transit to, or at, the central election jurisdiction location; and enables the public to accurately gauge voter service levels and the accuracy of the voter registration records as required by the National Voter Registration Act which requires public access to voter registration records such as poll books.

2. PUBLICLY RELEASE CHAIN-OF-CUSTODY AND SECURITY PROCEDURES FOR VOTING SYSTEMS, PAPER BALLOT RECORDS, ELECTION RECORDS; AND BALLOT DEFINITIONS.

At least thirty (30) days prior to a General or Primary Election, county election officials shall publicly release and accept public input on:

- 1) All written procedures for between-election, pre-election, during election, and post-election chain of custody and security procedures for the security of voting equipment, and also for the security of paper ballots and paper voter registration and election records. Specific passwords and security keys shall be redacted; and
- 2) Ballot definition files used by voting machines to tally cast votes (for public audit); and
- 3) Instructions for how the public and political parties may participate in auditing ballot definitions, and how to observe, or participate in, the chain of custody and security procedures.

After the General or Primary Election and prior to its certification, county election officials shall publicly release copies of all election records released to the vote count auditors to verify the integrity of the vote count audit. [See the legislative proposal for mandatory vote count audits Section 2 (3):

<http://utahcountvotes.org/legislature/VoteCountAudit-UT.pdf>]

After the 22 month retention period publicly release all used, unused, and spoiled ballots to university or public libraries wishing to preserve them for research.

Funding: Provide funding to each county which administers separate elections of \$10,000 to purchase one high-quality, high-speed scanner/copier that can be used to quickly scan all types of election records into electronic and paper forms; and upload electronic copies to the Internet if desired. Total fiscal note would be approximately \$290 Thousand to facilitate the public release of all election records needed to publicly verify the integrity of the independent manual election audits.

Justification: Chain of custody (and security procedures with details such as password values redacted) must be disclosed to the public to facilitate public scrutiny and oversight of ballot and voting system security procedures. The concept of "Security by Obscurity" is a discredited concept that, according to security experts, gives opportunity by insiders within any system to manipulate the system. Pre-election public scrutiny of ballot definition files could reduce or eliminate mistakes in ballot definitions which have caused voter disenfranchisement or egregious vote miscounts in the past.