

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; to ensure that the public and election officials can verify the integrity and accuracy of Utah’s election outcomes; to require voting systems which meet Utah’s constitutional requirement to preserve ballot privacy; and to improve Utah’s voting and election systems.*

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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, voter disenfranchisement, and ballot box stuffing 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>

This document is posted on-line at: <http://utahcountvotes.org/legislature/UTLegislativeElectionReform.pdf>

The vote count audit portion of this legislative request is posted on-line at:

<http://electionarchive.org/ucvAnalysis/US/paper-audits/legislative/VoteCountAuditBillRequest.pdf>

If you would like to be emailed a copy of any of these documents, please email kathy.dopp@gmail.com

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.

Text requested to be added as new statute is written in plain text sections.

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 and Require Election Officials to Publicly Post Polling Place Polling Vote Totals and Summary Election Records upon Poll Closing

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.

Poll workers shall report to County Election Officials, and County Election Officials shall report to the Chief State Election Office the following information.

- a. The number of voters registered to vote, the number of voters who are recorded in the poll books and official registry as having signed in to vote, the number of ballots cast on each ballot type the number of voters who requested mailed or provisional ballots, with the number of ballots cast for each ballot types, 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, including early, ballots cast in the polling places on Election Day, absentee and provisional ballots, 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.
- f. A report on sampled wait times for voters waiting in line to sign in to vote and to vote.

The State Election Office shall publicly post a state-wide report shall report any problems experienced to the United States Election Assistance Commission Voting System Reports Clearinghouse.²

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 16 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,

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

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 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 Post-Election Vote Count Audits to Verify the Accuracy of Election Outcomes; Public Oversight of Ballot Security Procedures; and Post-Election Ballot Reconciliation

This request proposes an all new election statute requiring an independent post-election scientific audit procedure. The purpose is to verify the accuracy of election outcomes by conducting manual recounts of randomly selected unofficially reported vote counts during the canvass period in a manner that the public can observe and understand.

The legislative request for election audit requirements and procedures, which was written and reviewed by experts in election auditing, and in election and voting systems, is posted on-line at:

<http://electionarchive.org/ucvAnalysis/US/paper-audits/legislative/VoteCountAuditBillRequest.pdf>

REQUEST V. Fund a Study of Utah's Voting and Election Systems

The Utah Election Audit and Recount Committee (EARC) shall write a request for proposal (RFP) for the study of Utah's voting and election systems (See Request IV above describing the formation of a Utah EARC.) The expert teams who conduct the study shall be led by independent computer scientists or computer engineers or independent voting system experts having a Masters or a Ph.D. degree in computer science or computer engineering.

The study of Utah's voting and election systems, including electronic pollbooks, electronic voter registration rolls, mail-in, provisional, election day and early voting shall evaluate and make recommendations on:

- a. electronic vote casting, vote transfer, and vote tabulation equipment
- b. ballot privacy/secretcy
- c. ballot and election records security, including paper ballots
- d. security
- e. reliability

- f. accountability
- g. accuracy
- h. open election data standards such as Election Markup Language (EML)
- i. voter access and convenience
- j. administrative efficiency
- k. risks of electronic failure, power outages, programming failures, or other machine failures
- l. accessibility and user friendliness for voters
- m. auditability and software independence
- n. Utah's process for selecting and certifying voting equipment
- o. legal, procedural, or statutory impediments to good voting and election systems
- p. costs
- q. federal voting system standards and Help America Vote Act requirements
- r. best recommendations for course of action for Utah's future voting and election systems

The study may involve a literature review of prior studies of the same make and model of voting system as Utah uses and a literature review of prior studies which concern the same topics as well as an in-depth study of Utah's voting and election systems, including its procedures and voting equipment.

\$500,000 shall be allocated to pay for this study.

Kathy Dopp, M.S. Mathematics, is an expert in post- election auditing; and in exit poll discrepancy analysis and has written many papers on voting systems, exit poll analysis, and election auditing with Ph.D. co-authors. Additional information is posted on-line at: <http://utahcountvotes.org> and <http://electionmathematics.org> and <http://electionarchive.org> and <http://electionarchive.org/ucvAnalysis/US/paper-audits/legislative/VoteCountAuditBillRequest.pdf>

Acknowledgements: Thanks to Utah Representative Eric Hutchings who suggested creating this document and made suggestions for its organization. Thanks to Joycelynn Straight, a former Utahn and League of Women Voters member for the many hours spent studying and discussing Utah election statutes. Thanks to Alice Steiner, Co-President of the League of Women Voters of Utah, for reviewing and making suggestions to this proposal. Thanks to Mark Jarmen for reviewing this document and providing suggestions. Thanks to the many persons who have contributed to my understanding of voting and election systems and to the many people who reviewed and contributed to our post-election vote count audit proposal.