Representative **Jordan D. Teuscher** proposes the following substitute bill:

1   # PRIMARY ELECTION AMENDMENTS

2   ## 2023 GENERAL SESSION

3   ## STATE OF UTAH

4   ### Chief Sponsor: Jordan D. Teuscher

5   Senate Sponsor: Curtis S. Bramble

6

7   **LONG TITLE**

8   **General Description:**

9   This bill provides for a runoff election, in certain circumstances, for a regular primary

10   election.

11   **Highlighted Provisions:**

12   This bill:

13   ▸   creates a regular primary runoff election process for certain offices to ensure that the

14   nominee is supported by a majority of the voters who vote in the regular primary

15   election;

16   ▸   provides for contingency voting for races where a runoff election may be required;

17   and

18   ▸   makes technical and conforming changes.

19   **Money Appropriated in this Bill:**

20   None

21   **Other Special Clauses:**

22   None

23   **Utah Code Sections Affected:**

24   AMENDS:

25   **20A-4-401**, as last amended by Laws of Utah 2020, Chapter 31

26   **20A-6-203**, as last amended by Laws of Utah 2020, Chapter 31

27   **20A-9-403**, as last amended by Laws of Utah 2022, Chapter 325

28   ENACTS:

29   **20A-6-203.1**, Utah Code Annotated 1953

30   **20A-9-409.1**, Utah Code Annotated 1953

31   ══

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

33   Section 1. Section **20A-4-401** is amended to read:

34   **20A-4-401.   Recounts -- Procedure.**

35   (1) (a) This section does not apply to a race conducted by instant runoff voting under

36   Chapter 4, Part 6, Municipal Alternate Voting Methods Pilot Project.

37   (b) Except as provided in Subsection (1)(c)[.]:

38   (i) for a race between candidates where the total of all votes cast in the race is more

39   than 400, if the difference between the number of votes cast for a winning candidate in the race

40   and a losing candidate in the race is equal to or less than .25% of the total number of votes cast

41   for all candidates in the race, that losing candidate may file a request for a recount in

42   accordance with Subsection (1)(d)[.]; or

43   [(c)] (ii) [For] for a race between candidates where the total of all votes cast in the race

44   is 400 or less, if the difference between the number of votes cast for a winning candidate in the

45   race and a losing candidate in the race is one vote, that losing candidate may file a request for a

46   recount in accordance with Subsection (1)(d).

47   (c) For a race between candidates in a regular primary race conducted by the majority

48   method under Section 20A-9-409.1, if, in determining whether a runoff race is required or

49   determining which candidates will advance to the runoff race, a losing candidate, or a candidate

50   that did not receive enough votes to ensure advancement to a runoff election, may file a request

51   for a recount in accordance with Subsection (1)(d) if:

52   (i) where the total of all votes cast in the race is more than 400, the difference between

53   the number of votes cast for that candidate and the candidate who received the highest number

54   of votes in the race is equal to or less than .25% of the total number of votes cast for all

55   candidates in the race; or

56   (ii) where the total of all votes cast in the race is 400 or less, the difference between the

57   number of votes cast for that candidate and the candidate who received the highest number of

58   votes in the race is one vote.

59   (d) A candidate who files a request for a recount under Subsection (1) (b) or (c) shall

60   file the request:

61   (i) for a municipal primary election, with the municipal clerk, before 5 p.m. within

62   three days after the canvass; or

63   (ii) for all other elections, before 5 p.m. within seven days after the canvass with:

64   (A) the municipal clerk, if the election is a municipal general election;

65   (B) the local district clerk, if the election is a local district election;

66   (C) the county clerk, for races voted on entirely within a single county; or

67   (D) the lieutenant governor, for statewide races and multicounty races.

68   (e) The election officer shall:

69   (i) supervise the recount;

70   (ii) recount all ballots cast for that race;

71   (iii) reexamine all uncounted ballots to ensure compliance with Chapter 3a, Part 4,

72   Disposition of Ballots;

73   (iv) except as provided in Subsection (1)(e)(vi), for a race where only one candidate

74   may win, declare elected the candidate who receives the highest number of votes on the

75   recount; [and]

76   (v) except as provided in Subsection (1)(e)(vi), for a race where multiple candidates

77   may win, declare elected the applicable number of candidates who receive the highest number

78   of votes on the recount[.]; and

79   (vi) for a recount described in Subsection (1)(c), use the vote totals of the recount to, in

80   accordance with Section 20A-9-409.1, determine whether a runoff race is required and which

81   candidates will advance to the runoff race.

82   (2) (a) Except as provided in Subsection (2)(b), for a ballot proposition or a bond

83   proposition, if the proposition passes or fails by a margin that is equal to or less than .25% of

84   the total votes cast for or against the proposition, any 10 voters who voted in the election where

85   the proposition was on the ballot may file a request for a recount before 5 p.m. within seven

86   days after the day of the canvass with the person described in Subsection (2)(c).

87   (b) For a ballot proposition or a bond proposition where the total of all votes cast for or

88 against the proposition is 400 or less, if the difference between the number of votes cast for the

89 proposition and the number of votes cast against the proposition is one vote, any 10 voters who

90 voted in the election where the proposition was on the ballot may file a request for a recount

91 before 5 p.m. within seven days after the day of the canvass with the person described in

92 Subsection (2)(c).

93   (c) The 10 voters who file a request for a recount under Subsection (2)(a) or (b) shall

94 file the request with:

95   (i) the municipal clerk, if the election is a municipal election;

96   (ii) the local district clerk, if the election is a local district election;

97   (iii) the county clerk, for propositions voted on entirely within a single county; or

98   (iv) the lieutenant governor, for statewide propositions and multicounty propositions.

99   (d) The election officer shall:

100   (i) supervise the recount;

101   (ii) recount all ballots cast for that ballot proposition or bond proposition;

102   (iii) reexamine all uncounted ballots to ensure compliance with Chapter 3a, Part 4,

103 Disposition of Ballots; and

104   (iv) declare the ballot proposition or bond proposition to have "passed" or "failed"

105 based upon the results of the recount.

106   (e) Proponents and opponents of the ballot proposition or bond proposition may

107 designate representatives to witness the recount.

108   (f) The voters requesting the recount shall pay the costs of the recount.

109   (3) Costs incurred by recount under Subsection (1) may not be assessed against the

110 person requesting the recount.

111   (4) (a) Upon completion of the recount, the election officer shall immediately convene

112 the board of canvassers.

113   (b) The board of canvassers shall:

114   (i) canvass the election returns for the race or proposition that was the subject of the

115 recount; and

116   (ii) with the assistance of the election officer, prepare and sign the report required by

117 Section 20A-4-304 or 20A-4-306.

118   (c) If the recount is for a statewide or multicounty race or for a statewide proposition,

119   the board of county canvassers shall prepare and transmit a separate report to the lieutenant

120   governor as required by Subsection 20A-4-304(7).

121   (d) The canvassers' report prepared as provided in this Subsection (4) is the official

122   result of the race or proposition that is the subject of the recount.

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

124   **20A-6-203.   Ballots for regular primary elections.**

125   (1) The lieutenant governor, together with county clerks, suppliers of election

126   materials, and representatives of registered political parties, shall:

127   (a) develop ballots to be used in Utah's regular primary election;

128   (b) except to the extent otherwise required under Section 20A-6-203.1 for a race

129   conducted by contingency voting, ensure that the ballots comply generally, where applicable,

130   with the requirements of Title 20A, Chapter 6, Part 1, General Requirements for All Ballots,

131   and this section; and

132   (c) provide voting booths, election records and supplies, ballot boxes, and as

133   applicable, voting devices, for each voting precinct as required by Section 20A-5-403.

134   (2) (a) Notwithstanding the requirements of Subsections (1)(b) and (c), Title 20A,

135   Chapter 6, Part 1, General Requirements for All Ballots, and Sections 20A-5-403, 20A-6-401,

136   and 20A-6-401.1, the lieutenant governor, together with county clerks, suppliers of election

137   materials, and representatives of registered political parties shall ensure that the ballots, voting

138   booths, election records and supplies, and ballot boxes:

139   (i) facilitate the distribution, voting, and tallying of ballots in a primary where not all

140   voters are authorized to vote for a party's candidate;

141   (ii) simplify the task of poll workers, particularly in determining a voter's party

142   affiliation;

143   (iii) minimize the possibility of spoiled ballots due to voter confusion; and

144   (iv) protect against fraud.

145   (b) To accomplish the requirements of this Subsection (2), the lieutenant governor,

146   county clerks, suppliers of election materials, and representatives of registered political parties

147   shall:

148   (i) mark ballots as being for a particular registered political party; and

149   (ii) instruct individuals counting the ballots to count only those votes for candidates

150   from the registered political party whose ballot the voter received.

151   Section 3. Section **20A-6-203.1** is enacted to read:

152   **20A-6-203.1. Ballots for regular primary election races conducted via majority**

153   **method.**

154   If, in a regular primary election, at least one of the races is conducted via the majority

155   method described in Section 20A-9-409.1, the ballots shall, on the portion of the ballot relating

156   to that race, provide for contingency voting by:

157   (1) listing each candidate who qualifies to be placed on the regular primary election

158   ballot for that race; and

159   (2) opposite each candidate's name, including a place where a voter may indicate the

160   voter's vote in the voter's order of preference for up to five candidates in the race.

161   Section 4. Section **20A-9-403** is amended to read:

162   **20A-9-403. Regular primary elections -- Candidate nomination process for a**

163   **registered political party that is not a qualified political party -- Determining winning**

164   **nominee for any registered political party, including a qualified political party -- Election**

165   **expenses.**

166   (1) (a) The candidate nomination process described in Subsections (1) through (4)

167   applies to a registered political party that is not a qualified political party.

168   [(a)] (b) Candidates for elective office that are to be filled at the next regular general

169   election shall be nominated in a regular primary election by direct vote of the people in the

170   manner [prescribed] described in this section and, as applicable, Section 20A-9-409.1. The

171   regular primary election is held on the date specified in Section 20A-1-201.5. Nothing in this

172   section shall affect a candidate's ability to qualify for a regular general election's ballot as an

173   unaffiliated candidate under Section 20A-9-501 or to participate in a regular general election as

174   a write-in candidate under Section 20A-9-601.

175   [(b)] (c) Each registered political party that chooses to have the names of the registered

176   political party's candidates for elective office featured with party affiliation on the ballot at a

177   regular general election shall comply with the requirements of this section and shall nominate

178   the registered political party's candidates for elective office in the manner described in this

179   section.

180   [(c)] (d) A filing officer may not permit an official ballot at a regular general election

181   to be produced or used if the ballot denotes affiliation between a registered political party or

182   any other political group and a candidate for elective office who is not nominated in the manner

183   prescribed in this section or in Subsection 20A-9-202(4).

184   [(d)] (e) Unless noted otherwise, the dates in this section refer to those that occur in

185   each even-numbered year in which a regular general election will be held.

186   (2) (a) Each registered political party, in a statement filed with the lieutenant governor,

187   shall:

188   (i) either declare the registered political party's intent to participate in the next regular

189   primary election or declare that the registered political party chooses not to have the names of

190   the registered political party's candidates for elective office featured on the ballot at the next

191   regular general election; and

192   (ii) if the registered political party participates in the upcoming regular primary

193   election, identify one or more registered political parties whose members may vote for the

194   registered political party's candidates and whether individuals identified as unaffiliated with a

195   political party may vote for the registered political party's candidates.

196   (b) (i) A registered political party that is a continuing political party shall file the

197   statement described in Subsection (2)(a) with the lieutenant governor no later than 5 p.m. on

198   November 30 of each odd-numbered year.

199   (ii) An organization that is seeking to become a registered political party under Section

200   20A-8-103 shall file the statement described in Subsection (2)(a) at the time that the registered

201   political party files the petition described in Section 20A-8-103.

202   (3) (a) Except as provided in Subsection (3)(e), an individual who submits a

203   declaration of candidacy under Section 20A-9-202 shall appear as a candidate for elective

204   office on the regular primary ballot of the registered political party listed on the declaration of

205   candidacy only if the individual is certified by the appropriate filing officer as having submitted

206   a nomination petition that was:

207   (i) circulated and completed in accordance with Section 20A-9-405; and

208   (ii) signed by at least 2% of the registered political party's members who reside in the

209   political division of the office that the individual seeks.

210   (b) (i) A candidate for elective office shall submit signatures for a nomination petition

211   to the appropriate filing officer for verification and certification no later than 5 p.m. on the final

212   day in March.

213   (ii) A candidate may supplement the candidate's submissions at any time on or before

214   the filing deadline.

215   (c) (i) The lieutenant governor shall determine for each elective office the total number

216   of signatures that must be submitted under Subsection (3)(a)(ii) or 20A-9-408(8) by counting

217   the aggregate number of individuals residing in each elective office's political division who

218   have designated a particular registered political party on the individuals' voter registration

219   forms on or before November 15 of each odd-numbered year.

220   (ii) The lieutenant governor shall publish the determination for each elective office no

221   later than November 30 of each odd-numbered year.

222   (d) The filing officer shall:

223   (i) except as otherwise provided in Section 20A-21-201, verify signatures on

224   nomination petitions in a transparent and orderly manner, no later than 14 days after the day on

225   which a candidate submits the signatures to the filing officer;

226   (ii) for all qualifying candidates for elective office who submit nomination petitions to

227   the filing officer, issue certifications referenced in Subsection (3)(a) no later than the deadline

228   described in Subsection 20A-9-202(1)(b);

229   (iii) consider active and inactive voters eligible to sign nomination petitions;

230   (iv) consider an individual who signs a nomination petition a member of a registered

231   political party for purposes of Subsection (3)(a)(ii) if the individual has designated that

232   registered political party as the individual's party membership on the individual's voter

233   registration form; and

234   (v) except as otherwise provided in Section 20A-21-201, utilize procedures described

235   in Section 20A-7-206.3 to verify submitted nomination petition signatures, or use statistical

236   sampling procedures to verify submitted nomination petition signatures in accordance with

237   rules made under Subsection (3)(f).

238   (e) Notwithstanding any other provision in this Subsection (3), a candidate for

239   lieutenant governor may appear on the regular primary ballot of a registered political party

240   without submitting nomination petitions if the candidate files a declaration of candidacy and

241   complies with Subsection 20A-9-202(3).

242   (f) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

243   director of elections, within the Office of the Lieutenant Governor, may make rules that:

244   (i) provide for the use of statistical sampling procedures that:

245   (A) filing officers are required to use to verify signatures under Subsection (3)(d); and

246   (B) reflect a bona fide effort to determine the validity of a candidate's entire

247   submission, using widely recognized statistical sampling techniques; and

248   (ii) provide for the transparent, orderly, and timely submission, verification, and

249   certification of nomination petition signatures.

250   (g) The county clerk shall:

251   (i) review the declarations of candidacy filed by candidates for local boards of

252   education to determine if more than two candidates have filed for the same seat;

253   (ii) place the names of all candidates who have filed a declaration of candidacy for a

254   local board of education seat on the nonpartisan section of the ballot if more than two

255   candidates have filed for the same seat; and

256   (iii) determine the order of the local board of education candidates' names on the ballot

257   in accordance with Section 20A-6-305.

258   (4) (a) Before the deadline described in Subsection 20A-9-409(4)(c), the lieutenant

259   governor shall provide to the county clerks:

260   (i) a list of the names of all candidates for federal, constitutional, multi-county, single

261   county, and county offices who have received certifications under Subsection (3), along with

262   instructions on how those names shall appear on the primary election ballot in accordance with

263   Section 20A-6-305; and

264   (ii) a list of unopposed candidates for elective office who have been nominated by a

265   registered political party under Subsection (5)(c) and instruct the county clerks to exclude the

266   unopposed candidates from the primary election ballot.

267   (b) A candidate for lieutenant governor and a candidate for governor campaigning as

268   joint-ticket running mates shall appear jointly on the primary election ballot.

269   (c) After the county clerk receives the certified list from the lieutenant governor under

270   Subsection (4)(a), the county clerk shall post or publish a primary election notice in

271   substantially the following form:

272   "Notice is given that a primary election will be held Tuesday, June ____,

273   _____(year), to nominate party candidates for the parties and candidates for nonpartisan

274   local school board positions listed on the primary ballot. The polling place for voting precinct

275   ____ is ____. The polls will open at 7 a.m. and continue open until 8 p.m. of the same day.

276   Attest: county clerk."

277   (5) (a) A candidate who, at the regular primary election, receives the highest number of

278   votes cast for the office sought by the candidate is:

279   (i) except as otherwise provided in Section 20A-9-409.1, nominated for that office by

280   the candidate's registered political party; or

281   (ii) for a nonpartisan local school board position, nominated for that office.

282   (b) If two or more candidates are to be elected to the office at the regular general

283   election, those party candidates equal in number to positions to be filled who receive the

284   highest number of votes at the regular primary election are the nominees of the candidates'

285   party for those positions.

286   (c) (i) As used in this Subsection (5)(c), a candidate is "unopposed" if:

287   (A) no individual other than the candidate receives a certification under Subsection (3)

288   for the regular primary election ballot of the candidate's registered political party for a

289   particular elective office; or

290   (B) for an office where more than one individual is to be elected or nominated, the

291   number of candidates who receive certification under Subsection (3) for the regular primary

292   election of the candidate's registered political party does not exceed the total number of

293   candidates to be elected or nominated for that office.

294   (ii) A candidate who is unopposed for an elective office in the regular primary election

295   of a registered political party is nominated by the party for that office without appearing on the

296   primary election ballot.

297   (6) Except as otherwise provided in Section 20A-9-409.1:

298   (a) [When] when a tie vote occurs in any primary election for any national, state, or

299   other office that represents more than one county, the governor, lieutenant governor, and

300   attorney general shall, at a public meeting called by the governor and in the presence of the

301   candidates involved, select the nominee by lot cast in whatever manner the governor

302   determines[.]; and

303   (b) [When] when a tie vote occurs in any primary election for any county office, the

304   district court judges of the district in which the county is located shall, at a public meeting

305   called by the judges and in the presence of the candidates involved, select the nominee by lot

306   cast in whatever manner the judges determine.

307   (7) The expense of providing all ballots, blanks, or other supplies to be used at any

308   primary election provided for by this section, and all expenses necessarily incurred in the

309   preparation for or the conduct of that primary election shall be paid out of the treasury of the

310   county or state, in the same manner as for the regular general elections.

311   (8) An individual may not file a declaration of candidacy for a registered political party

312   of which the individual is not a member, except to the extent that the registered political party

313   permits otherwise under the registered political party's bylaws.

314   Section 5. Section **20A-9-409.1** is enacted to read:

315   **20A-9-409.1. Election by majority method for certain primary races -- Runoff --**

316   **Determination of winner.**

317   (1) As used in this section:

318   (a) "Majority method" means the method described in this section ensuring that an

319   individual nominated by a registered political party via a regular primary election race is

320   supported by a majority of the voters voting in that race.

321   (b) "Participating county" means a county that timely complies with Subsection (4).

322   (2) An election officer shall conduct a regular primary election partisan race, via the

323   majority method described in this section if:

324   (a) the race is to nominate a party's candidate for Congress, state legislative office,

325   governor, attorney general, state treasurer, or state auditor; and

326   (b) more than two candidates will be placed on the regular primary election ballot for

327   that race and party.

328   (3) An election officer for a participating county shall conduct a regular primary

329   election race, via the majority method described in this section, for all partisan county races

330   where more than two candidates will be placed on the regular primary election ballot for that

331   race and party.

332   (4) A county is a participating county if, before December 1 of an odd-numbered year:

333   (a) the county legislative body votes to become a participating county for the next

334   regular primary election;

335   (b) the county clerk agrees with the vote of the county legislative body; and

336   (c) the county legislative body and the county clerk provide written notice to the

337   lieutenant governor that the county legislative body and the county clerk have agreed to

338   become a participating county for the next regular primary election.

339   (5) To conduct a regular primary election partisan race via the majority method, the

340   election officer shall:

341   (a) on the ballot, provide for contingency voting for the race;

342   (b) initially, count only the first preference vote indicated on each ballot;

343   (c) (i) if the candidate who receives the highest number of votes under Subsection

344   (5)(b) receives more than 50% of all votes counted in the race, declare that candidate the

345   winner of the nomination; or

346   (ii) if the candidate who receives the highest number of votes under Subsection (5)(b)

347   receives 50% or fewer of all votes counted in the race, conduct a runoff for that race in

348   accordance with Subsections (6) and (7).

349   (6) (a) Subject to Subsection (8), if required under Subsection (5)(c)(ii), the election

350   officer shall conduct a runoff election for the race between the two candidates who received the

351   highest number of votes under Subsection (5).

352   (b) If a tie in the number of votes received makes it impossible to determine the two

353   candidates who receive the highest number of votes under Subsection (5), the tie shall be

354   broken, by lot, in the presence of the tied candidates or representatives of the tied candidates,

355   by:

356   (i) the election officer;

357   (ii) if the election officer is the lieutenant governor and the race is for governor, one of

358   the following, as designated by the lieutenant governor:

359   (A) the attorney general;

360   (B) the state treasurer; or

361   (C) the state auditor; or

362   (iii) if the election officer is a county clerk and the race is for county clerk, an

363   individual designated by the lieutenant governor.

364   (7) To conduct a runoff election described in Subsection (6)(a), the election officer

365   shall:

366   (a) award a vote in the runoff election to the candidate in the runoff race whom, via

367   contingency voting, the voter ranked higher for that race;

368   (b) declare nominated:

369   (i) the candidate who receives the highest number of votes under Subsection (7)(a); or

370   (ii) in the case of a tie, the candidate who wins by lot, cast in the presence of the tied

371   candidates or representatives of the tied candidates, by the individual described in Subsection

372   (6)(b).

373   (8) If the initial vote count described in Subsection (5) is eligible for a recount request

374   under Subsection 20A-4-401(1)(c), the election officer may not conduct the runoff election

375   until after:

376   (a) the deadline for requesting a recount has passed without a candidate filing a valid

377   request for a recount; or

378   (b) if a candidate timely files a valid recount request, the recount and the canvass of the

379   recount are complete.

380   (9) (a) To comply with Subsection (5)(b), the election officer shall count as the first

381   preference vote:

382   (i) the candidate whom the voter ranks as number one;

383   (ii) the candidate whom the voter ranks the highest, if the voter does not rank any

384   candidate as number one;

385   (iii) the candidate for whom the voter voted, if the voter only ranks or otherwise marks

386   one candidate and does not rank or mark any other candidate; or

387   (iv) the candidate whom the voter marks but does not rank, if the voter simply marks

388   but does not rank one candidate, and, for the remaining candidates, either:

389   (A) ranks the candidate with a ranking other than number one; or

390   (B) does not rank or otherwise mark the candidate.

391   (b) To comply with Subsection (7)(a), the election officer shall:

392   (i) if the voter ranks one of the two candidates higher than the other candidate, count a

393   vote for the higher ranked candidate;

394   (ii) if the voter only votes for one of the two candidates, by ranking or otherwise

395   marking the candidate, count a vote for that candidate; or

396   (iii) if the voter simply marks, but does not rank, one of the two candidates, and ranks

397   the other candidate with a ranking other than number one, count a vote for the candidate

398   marked but not ranked.

399   (c) An election officer may not reject a vote in a majority method race based solely on

400   the fact that the voter:

401   (i) did not rank all candidates;

402   (ii) voted for only one candidate, by simply marking but not ranking the candidate; or

403   (iii) voted for one candidate by simply marking, but not ranking, the candidate and, for

404   the other candidates, either:

405   (A) ranked the candidate with a ranking other than number one; or

406   (B) did not rank or otherwise mark the candidate.