

1 **Mandatory Vote Count Audit**

2 Originally written in February 2006
3 revised- September 2006 and December 2007 to January 2008
4 GENERAL SESSION

5 STATE OF UTAH

6 Chief Sponsor: Neil Hansen

7 House Sponsor: Neil Hansen

8 [Note: Changes suggested by Utah’s County Clerks, or made to reduce redundancy and increase flexibility are
9 formatted with strikeouts for deleted text and orange colored text for added text. A bill version without the knockout
10 text is posted: [http://electionarchive.org/ucvAnalysis/US/paper-audits/UT/VoteCountAudit-
11 UT.pdf](http://electionarchive.org/ucvAnalysis/US/paper-audits/UT/VoteCountAudit-UT.pdf)]

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13 **LONG TITLE**

14 **General Description:**

15 Utah voters, candidates, citizens and election officials want high confidence in the integrity of
16 Utah's election process by subjecting electronic vote counts to independent manual audits; and
17 by making reports available with which to evaluate rates of voter turnout, voting equipment
18 allocation, under-votes, over-votes, spoiled ballots, voting equipment failure, absentee ballots,
19 uncounted ballots, and provisional ballots. This bill modifies the Election Code to require
20 routine independent audits of vote count accuracy and to require the release to vote count
21 auditors of records and information necessary to verify the integrity of the vote count audits
22 and to evaluate voter service levels.

23
24 **Amends 20A-1-102 (28)** (possibly)

25
26 **Amends 20A-4-106, 20A-4-201, 20A-4-202.**

27 [See Also <http://utahcountvotes.org/legislature/PublicAccess2ElectionRecords4Utah.pdf>]
28

29 **Amends 20A-4-301 to extend the canvass period** [Note: This statute must be amended to increase the
30 canvass time to up to 28 days and make the canvass time periods consistent for counties and municipalities in
31 order to allow ample time for conducting the vote count audits – 28 days is a common canvass period in some
32 other states]

33 20A-4-301. Board of canvassers.

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

35 (i) the county; and

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

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

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

44 ...

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

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

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

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

53

54 **Enacts**

55 **20A-4-203. Definitions.**

56 **20A-4-204 Vote Count Audits -- General Provisions.**

57 **20A-5-607. Election Audit & Recount Committee.**

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59 **Section 1. 20A-4-203. Definitions.**

60 (a) "Auditable Election" means a regular primary election, regular general election, or the
61 Western States Presidential Primary.

62 (b) "Auditable **Election Contest**" means any election contest for a state or federal office or
63 state-wide ballot issue and any contest for the position of an election official such as the county
64 clerk's office.

65 (c) "Auditable Vote Count Report" means a report of all ballots printed, used, unused, and
66 spoiled for each precinct and all unofficial vote counts for each auditable race recorded on each
67 voting machine for each precinct or batch of ballots counted for each type of vote (including
68 absentee, early, early-provisional, Election Day, Election Day-provisional) for all auditable
69 races broken out by type of vote counting system (i.e. central count optical scan paper ballots,
70 DRE memory cards, precinct-based optical scan); along with the vote counting device and
71 serial number for each device used to tabulate each unofficial machine vote count and the
72 precinct and state and federal congressional district identifiers for each vote count; plus the
73 approximate number of uncounted ballots and the reasons why any ballots are not yet counted.

74 (d) "Confidence-level" means 100% minus the maximum chance that an incorrect outcome
75 is certified, assuming that the fewest number of vote counts are miscounted which could alter
76 the outcome (winners) of an election contest. For example, certifying an election outcome at
77 95% confidence-level means that either the outcome is correct, or something with chance at
78 most 5% occurred.

- 80 (e) "Election Audit & Recount Committee" means the independent entity established in
81 Section 20A-5- 607 to help develop, approve, and implement a plan to audit & recount vote
82 counts of every auditable election and to supervise and direct the vote count audit.
- 83 (f) "Election Outcome" means the specific set of winners and set of losers of an auditable race.
- 84 (g) "Hand-count" means a counting of the votes, wherein the handling of the voter verifiable
85 paper ballot records is done by human hand and the identification of each vote is determined
86 by a visual inspection of said records by human beings.
- 87 (h) "Machine vote counts" mean vote counts obtained through electronic means whether from
88 paper or electronic ballots.
- 89 (i) "Mandatory independent routine manual audit" means an independent audit of all auditable
90 elections and auditable contest conducted by vote count auditors, under the supervision and
91 direction of the Election Audit & Recount Committee, for the purpose of verifying the
92 accuracy of election outcomes by randomly selecting unofficial vote counts and comparing
93 hand-to-eye counts of voter-verifiable paper ballot records with the unofficial vote counts
94 recorded after each auditable election, by each of the following voting systems: touch-screen or
95 electronic voting machines, optical scanning equipment, provisional ballots, absentee ballots
96 and other ballots mailed to county and state elections officers, whether from a domestic or
97 overseas location, and ballots created through the use of a ballot marking device.
- 98 (j) "Manual count" means a hand-to-eye count.
- 99 (k) "Random selection or random drawing" means that items are selected by using probability
100 sampling methods including simple random samples or stratified random samples.
- 101 (l) "Vote count" means a tally of votes for a particular candidate or ballot proposition obtained
102 from counting a group of one or more ballots that are counted at one place and time. Vote
103 counts can be precinct or polling location vote counts, where each count is associated with all
104 the paper ballots or voter-verifiable paper records cast within a precinct or polling location, or
105 voting machine vote counts, where each vote count is associated with the voter-verifiable paper
106 ballot records cast on one voting machine, or batches of ballots (counted by hand or by central
107 count optical scan voting systems), where each vote count is associated with a batch of ballots
108 maintained as a group. A vote count may be an individual ballot only if the voting system
109 produces an auditable report of vote counts for individual ballots and preserves ballot privacy.
- 110 (m) "Vote count audit" means a "mandatory independent routine manual audit".
- 111 (n) "Vote count auditor" means a person selected to conduct a vote count audit who meets the
112 criteria set out in the section below titled "Selection of Vote Count Auditors".
- 113 (o) "Vote Count Audit Plan" means the published plan containing the rules, standards, policies,
114 procedures, and methods developed by the Election Audit & Recount Committee for
115 conducting vote count audits.
- 116 (p) "Voter-verifiable paper record" means the following auditable records of votes cast:
- 117 a. A paper ballot prepared by the voter for the purpose of being hand counted or read by
118 automatic tabulating equipment;
- 119 b. A paper ballot prepared by the voter to be mailed to an election officer, whether from
120 a domestic or overseas location;

121 c. A paper ballot created through the use of a ballot marking device if, in each case, the
122 record permits the voter to verify the record in accordance with Subsection **20A-5-**
123 **302(2)(xiii)**; or

124 d. A human-readable paper printout of the voter's vote produced by a touch screen or
125 other electronic voting machine, or a voting device if, in each case, the record permits
126 the voter to verify the record in accordance with Subsection **20A-5-302(2)(xiii)**.

127 (q) "Voting system" means a collection of one or more voting devices, voting machines,
128 automatic tabulating equipment and voting procedures which allow a voter to view ballots,
129 select candidates and cast votes, and that aggregates and tabulates all of the votes cast in each
130 election.

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132 **20A-4-204 Vote Count Audits -- General Provisions.**

133 **Section 2. Vote Count Audits -- General Provisions.**

134 (1) For every auditable election, each county shall, in accordance with this statute and using a
135 Vote Count Audit Plan approved by the Election Audit & Recount Committee, and under the
136 direction and supervision of the Election Audit & Recount Committee or their designees,
137 conduct a "vote count audit" of all auditable races after initial unofficial election results are
138 tabulated and publicly released.

139 **Procedures** for vote count audit shall include:

140 a) No later than noon on Election Day, each County Clerk's office shall submit to the
141 Utah Election Audit & Recount Committee and to the Lt. Governor's Election Office a
142 list of voting machine serial numbers and the Utah House of Representative and Senate
143 districts and U.S. House districts in which each voting machine is deployed to record
144 votes, and a list of any voting machine not deployed in the election.

145 b) **Auditable Vote Count Reports of Unofficial Results:** As soon as possible after polls
146 close and prior to the random selection of vote counts to be audited, each county
147 election officer shall submit to the Lieutenant Governor's office, and publicly post, an
148 auditable vote count report, and shall publicly post the location of a facility for the
149 manual audit, along with a list of at least five dates prior to the official canvass date
150 when the facility will be available for conducting the vote count audit.

151 c) The Lt. Governor's office shall compile a state-wide auditable vote count report in all
152 multi-county or state-wide races from the individual county auditable vote count
153 reports and publicly post its statewide and county auditable vote count reports on its
154 web site and submit a copy to the Election Audit and Recount Committee.

155 d) After receiving auditable vote count reports from all county election officers, Utah
156 Vote Count Auditors shall as soon as possible, in a publicly transparent process,
157 determine and publish the audit amounts sufficient to verify each auditable race as
158 specified in Section (2) and provide 24 hours public notice of the time and place of the
159 public random selections of vote counts and the times and locations of each county's
160 manual audits.

161 e) **Random Selection of Vote Counts:** The Utah Vote Count Auditors shall in a publicly
162 observable and transparent process, randomly select machine vote counts to manually
163 audit. The method used to make the random selections shall be publicly transparent

164 and verifiable. If a spreadsheet or program is used, the public shall be able to observe
165 the screen at close range during the process and a copy of the spreadsheet or program
166 used shall be made publicly available. Ten-sided translucent fair dice or other
167 transparent method of random selection may be used.

168 f) Immediately after randomly selecting vote counts for audit, the Vote Count Auditors
169 shall provide to all Utah Vote Count Auditors, to all county election officials, and shall
170 publicly post a list of all the machine vote counts identified for manual auditing and the
171 vote count audits shall begin immediately or within at most 24 hours afterwards.

172 g) **Audit Tally Sheet:** If more than one auditable race is being manually counted at the
173 same time, the tally sheet shall be organized in the same order as the ballot, with
174 sections for each auditable race and question and the name of each candidate listed in
175 the same order as they are listed on the ballot. There should be a space following each
176 name/question for one of the counters to put a hash mark for each vote for that
177 candidate/question. The tally sheet should have a space for the team to write in the
178 total votes for each candidate, and the total skipped, defective, cancelled, and write-in
179 ballots. A stack and count method may be used instead for counting individual paper
180 ballots one auditable race at a time.

181 h) **Manual Counts:** Voter verifiable paper records selected for audit shall be manually
182 counted in a publicly observable way prior to the final canvass. The public shall be
183 able to observe the manual audit at close range during the process. Auditors shall:

184 a. Rearrange the audit location for counting. All counting must occur where it is
185 visible to members of the public who wish to observe. A video camera may be
186 used to magnify the view of the ballot for public observers.

187 b. Identify all those who will be counting and swear them in.

188 c. Read the instructions for counting to all the auditors who will be counting.

189 d. Count the number of registered voters (including any who registered on
190 Election Day) who are recorded as having voted.

191 e. For each vote count selected for manual auditing the election official shall make
192 available the corresponding group of sealed paper ballot records or the journal
193 tape take-up canister for each DRE paper roll and the Vote Count Auditors
194 shall:

195 i. Examine the tamper evident seal

196 ii. Note any evidence of tampering on a log provided by the election officer
197 for that purpose.

198 iii. Ascertain the reasons for any evidence of tampering and record the
199 reasons on log provide by the election officer for that purpose.

200 iv. Remove the tamper evident tape seal

201 f. Each tally team shall have at least two members who look at the paper ballots to
202 determine the votes, and at least two members who look at the counts recorded
203 by the team to verify their correctness. Unless a sort and stack counting method
204 is used for counting individual paper ballots, each counting team shall include, a
205 reader who should read off the name of the candidate (the word yes or no for

206 questions) who received the vote on the ballot being counted, at least one
 207 marker who should make a hash mark beside that name on a tally sheet. If a
 208 voter has not voted for any candidate for a particular office the reader should
 209 state “skipped” and the marker should mark the “skipped” row for that office on
 210 the tally sheet. If the voter voted for two or more candidates for an office where
 211 the ballot instructs to vote for one the reader should read off “defective” and the
 212 marker should mark the “defective” row on the tally sheet. If the instructions are
 213 that a voter should vote for two and the voter voted for three or more, follow
 214 these same instructions. If a voter has cancelled the ballot, the reader should
 215 state “cancelled” and the marker should mark the “cancelled” row for that office
 216 on the tally sheet. If the voter wrote in a candidate, that name should be written
 217 in on the tally sheet.

218 g. If an observer wishes to protest how the tally team is counting a particular ballot
 219 he or she needs to do so at the moment in time when that ballot is being counted
 220 by the team.

221 h. As each team completes its totals, the tally sheets should be turned in.

222 i. If discrepancies are found, the Auditors should investigate and attempt to
 223 resolve each discrepancy with the County Election Official.

224 j. The same vote counts selected for auditing auditable races may be used to
 225 manually audit other election races that appear on the ballot at the discretion of
 226 counties.

227 k. Tally and record the total number of votes hand-counted for each ballot
 228 proposition and office, as well as the number skipped, defective, or cancelled on
 229 a log provided by the election officer for that purpose

230 i) **Audit Logs:** A log shall be kept by auditors on a log form provided by the election
 231 officer for that purpose which shall

232 i. Record the total number of votes, and skipped, defective, and cancelled
 233 ballots hand-counted for each auditable race.

234 ii. Note any differences between the hand-counted results and the auditable
 235 vote count report results.

236 iii. Ascertain the reasons for any differences between the hand-counted and
 237 the auditable vote count report results and record the reasons.

238 iv. If applicable, note that an audited machine was used both in early voting
 239 and on Election Day.

240 If a machine identified for audit failed on Election Day and was replaced by another
 241 machine, the election officer shall audit both the replacement machine and, to the
 242 extent possible, the failed machine.

243 j) Log all the other information required in this section.

244 k) Each election officer shall make all audit logs available for inspection by the board of
 245 canvassers and available as a public record; and transmit a summary of the audit logs to
 246 the lieutenant governor with the canvassers’ reports required by Utah Code section

247 20A-4-304 and to the Election Audit and Recount Office and preserve a copy with the
248 election returns as required by Utah Code section 20A-4-304.

249 **(2) Amount of Election Audits:** Hand-counts of the voter-verifiable paper records
250 corresponding to each vote count shall be conducted such that:

251 (a) the number of vote counts audited shall give at least 95% probability that at least
252 one miscounted vote count will be in the audit sample if the amount of miscounted vote
253 counts were sufficient to reverse an election outcome, taking into account the margins
254 between the candidates and the total number and size of vote counts in the auditable
255 race using the number of ballots cast to calculate margins and to measure the size of
256 vote countsⁱ; and

257 (b) at least 1% (one per centum) of vote counts in which votes are cast shall be audited;
258 and

259 (c) in addition to the randomly selected precincts in a) and b) above, if at least one
260 precinct or batch vote count has not been selected from each county in which a race
261 district exists then one vote count shall be randomly selected for audit from within
262 each county; and

263 (d) in addition to the randomly selected precincts in a), b), and c) above, four
264 discretionary vote counts may be selected for audit by the leading runnerup for any
265 state-wide race and two discretionary vote counts may be selected for audit by the
266 leading runner-up for any U.S. House race and one discretionary vote count may be
267 selected for audit by the leading runnerup for any other auditable race; or alternatively,
268 vote counts which calculations show are “suspicious” shall also be manually audited.ⁱⁱ

269 [Note: *The intent is to make sure that at least one vote count for each auditable election contest is*
270 *audited in each county.*]

271 **(3) Auditor Access to Election Records:** Before the audit, each election officer shall take
272 whatever measures are necessary to make available to independent auditors:

- 273 a. All written procedures for between-election, pre-election, during election, and
274 post-election chain of custody and security procedures for the security of voting
275 equipment, and also for the security of paper ballots and paper voter registration
276 and election records. Specific passwords and security keys shall be redacted,
277 and
- 278 b. all written procedures provided to poll workers and election judges, and
- 279 c. ballot definition files used by voting machines to cast or tally votes, and
- 280 d. voter verifiable paper ballot records of vote counts selected for the audit, and
- 281 e. poll books and precinct reconciliation records, and
- 282 f. electronic and paper voter registration records, and
- 283 g. records of absentee ballots and provisional ballots requested by, provided to,
284 and mailed back by voters, including those counted and not counted ballots
- 285 h. computerized voting equipment log and audit files, and
- 286 i. unused and spoiled ballots and electronic ballot records, and
- 287 j. ballot definition files and documents, and
- 288 k. any summary records of votes or ballots, and
- 289 l. any addendum to the original auditable vote count report submitted originally to
290 the Lt. Governor’s office and the Utah State Audit office containing any

291 changes to the number of counted and uncounted ballots and votes, with the
292 reasons for the changes documented.

293 (3) **Exceptions to Election Audits for Certain Auditable Races:** A vote count audit shall not
294 be required of a particular auditable election race under this subtitle if

295 a. the winning candidate in the election had no opposition on the ballot; or

296 b. if a 100% manual recount as specified in Section **20A-4-401** has been, or will be, conducted
297 of the same auditable race.

298 (4) **Certification of Election Results:** Neither the State of Utah nor any county may canvass
299 or certify the results of any auditable election race which is subject to a vote count audit under
300 this subsection prior to the completion of the audits and the announcement and publication of
301 the results of the vote count audits in all counties where votes are cast in an auditable race.

302 -----

303 [Note: *The intent is to audit the state's election results **independently** of the state election office of the Lt.*
304 *Governor. The Utah Auditor is an appropriate choice for overseeing a committee that must develop and*
305 *implement auditing rules and regulations that are given the full weight of law and includes processes of chance*
306 *wherein vote count shall be chosen for an audit using probability sampling methods and qualified vote count*
307 *auditors may be chosen to manually examine vote counts using probability sampling methods]*

308 -----

309 **Section 3. Utah Election Audit & Recount Committee**

310 (1) The State Auditor's Office shall:

311 (a) within thirty (30) days of the date this statute is signed into law, notify appropriate
312 organizations to appoint members for and accept appointments for members of the
313 Election Audit & Recount Committee (E.A.R.C.). The E.A.R.C. shall consist of at least
314 seventeen (17) members who may serve a maximum of (2) two (4) four-year terms in
315 any (10) ten-year period, none of whom shall be or were:

316 (i) a member of Utah's Voting Equipment Selection Committee or State
317 Plan Committee on Election Reform; or

318 (ii) an owner, employee or sub-contractor of a voting system company, or
319 voting system service company, or voting system supply company; or

320 (iii) working for any political candidate's campaign or ballot proposition.

321 (b) ensure that the E.A.R.C. committee includes 17 to 23 members (13 to 19 of whom
322 are voting members) including:

323 (i) three to four members who shall have at least a Master's Degree in
324 mathematics or statistics and be appointed by the chair persons of the four
325 largest Utah university and college **mathematics or statistics** departments, all
326 of whom shall be invited to appoint someone to serve on the committee; and

327 (ii) two to three members who shall have at least a Master's Degree in
328 **computer science or computer engineering or computer security**; appointed
329 by the chair persons of the three largest state university or college computer
330 science department chair persons, all of whom shall be invited to appoint
331 someone to serve on the committee; and

- 332 (iii) two to three members appointed by chair persons of the three largest Utah
333 university or college government **political science** departments' chair persons,
334 all of whom shall be invited to appoint someone to serve on the committee, and
- 335 (iv) members who are **financial auditors** ~~who are members of different~~
336 ~~political parties~~ appointed by Utah's Chief State auditor,
- 337 (v) two to three **political party** members appointed by the chair persons of the
338 three State political parties which garnered the most votes **in Utah** in the last
339 federal election, all of whom shall be invited to appoint someone to serve on the
340 committee,
- 341 (vi) two to four members who are appointed by the trustees of grassroots Utah
342 nonprofit **election rights or open government organizations** and who have
343 served in a prior election as an election judge or poll worker,
- 344 (vii) at least four non-voting members who are **county election officers**, at least
345 one from a county of each class appointed by the association of county election
346 officials;
- 347 (viii) one non-voting member appointed by the Utah Lt. Governor's Office; and
- 348 (ix) an **attorney with expertise in election law** appointed by the State Attorney
349 General's Office to serve as a non-voting member of the committee to give
350 advice on the legality of the operations of and any rules and regulations
351 proposed by the E.A.R.C.

352 (c) ensure that the organizations which are qualified to appoint State E.A.R.C. members
353 are notified and E.A.R.C. members are appointed at least forty-five (45) days prior to
354 the second Monday in January in each auditable election year, and arrange for space,
355 teleconference and other facilities for E.A.R.C. meetings and to meet E.A.R.C.
356 requirements; and publicly publish any reports submitted by the E.A.R.C.

357 [Notes: *Although input from Utah's county and state election offices is necessary for*
358 *coordination (and therefore two county elections officers are included as members) voting*
359 *system insiders should be kept to a minimum in order to reduce the possibility of a conflict of*
360 *interest. The size of university and college departments shall be determined by the number of*
361 *total students, staff, & faculty currently in the department.*]

362 (2) Compensation for the E.A.R.C.

363 (a) A member of the committee who is not a government employee may receive up to
364 \$1,200 compensation per each auditable election year for compensation and benefits for
365 the member's services, and may receive per diem and expenses incurred in the
366 performance of the member's official duties at the rates established by the Division of
367 Finance under Sections **63A-3-106** and **63A-3-107**.

368 (b) A member may decline to receive compensation or per diem and expenses for the
369 member's services.

370 (c) A state government officer or employee member who does not receive salary, per
371 diem, or expenses from the member's agency for the member's service may receive per
372 diem and expenses incurred in the performance of the member's official duties at the
373 rates established by the Division of Finance under Sections **63A-3-106** and **63A-3-107**.

374 (d) A state government officer or employee member may decline to receive per diem
375 for the member's service.

376 *[Note: There may be significant work required of some members, especially in the first auditable*
377 *election cycle.]*

378 (3) The Utah State Auditor shall fill any vacancies that occur on the committee between terms,
379 following the guidelines herein.

380 (4) The Utah State Auditor's offices shall provide staffing for the committee.

381 (5) Terms of Office: The members of the E.A.R.C. shall have four year terms with half of its
382 initial members having at most one four year term during the first five years.

383 -----

384 **Section 4. Election Audit & Recount Committee (E.A.R.C.) Responsibilities**

385 (1) The E.A.R.C. shall meet at least ten times during auditable election years.

386 (2) The E.A.R.C. shall develop, evaluate, and update a Vote Count Audit & Recount Plan
387 (VCAR Plan) that includes:

388 (a) a uniform format for reporting unofficial election data for the-auditable vote count
389 report of unofficial vote counts;

390 (b) a method or methods for determining vote count audit sample sizes;

391 (c) a method or methods to randomly select which vote counts to audit;

392 (d) a method for deciding whether to expand audit samples or to certify election results;

393 (e) rules, standards, policies, procedures and processes for conducting vote count audits
394 within Utah;

395 (f) a method or methods to appoint a chief independent auditor to oversee each county's
396 election audits

397 (g) a method or methods to select and assign vote count auditors; and

398 (h) a uniform format for auditing forms and audit reports.

399 (2) The E.A.R.C. shall publish the VCAR Plan and provide for a period of public review and
400 comment on it before approving, publishing and implementing the VCAR Plan for each
401 auditable election.

402 (3) The E.A.R.C. is authorized to coordinate with the State Elections Office, State Auditor's
403 Office and with county election officers in auditing the vote count.

404 (4) The E.A.R.C. shall publicly publish a report evaluating the efficacy and efficiency of
405 Utah's election audits and advise the Utah Lt. Governor's Office and Utah Legislature of any
406 problems or recommendations to reduce vote count errors or improve voting and election
407 systems in future elections.

408 (5) The E.A.R.C. shall advise the Utah Lt. Governor's Office and County Clerks' Association
409 by evaluating the auditability of new voting systems considered for purchase within the state of
410 Utah

411 (6) The E.A.R.C. shall be subject to Utah's GRAMA laws and the Open Meeting Act.

412

413

414 **Section 5. Random Selection of Vote Counts to Audit**

415 The Election Audit and Recount Committee (E.A.R.C.) shall determine and publicly announce
416 the method of conducting the random drawings or random selections, before the election. The
417 random drawings or selections shall occur after the polls close and after each county has
418 publicly posted an auditable vote count report of its unofficial vote counts. Vote counts audited
419 under this subdivision shall be selected according to standards and procedures required by this
420 statute and developed by the E.A.R.C. that are announced in advance to the public and the
421 drawings shall be open to the public. The random selection of vote counts for the mandatory
422 vote count audit shall be made by a publicly transparent method by the E.A.R.C. or its
423 designees.

424

425 **Section 6. Selection of Vote Count Auditors**

426 The county clerk shall determine the procedure for selecting the vote count auditors, subject to
427 any requirements made by the E.A.R.C. Vote count auditors shall *not* include any:

428 (a) employee or official of any Utah county clerk's office or anyone who administered
429 the auditable election,

430 (b) employee or elected official from the Lt. Governor's office,

431 (c) employee or officer of any entity that designs, manufactures, or services a voting
432 system or supplier of any voting system used in the State,

433 (d) person who maintains or has special access to the voting system that a voter would
434 not normally have, prior to, or during the auditable election,

435 (e) person who acted as an election judge during the same auditable election, or

436 (f) person serving in any position on any political campaign committee of any
437 candidate for political office or working for groups supporting propositions.

438

439 **Section 7. Public Notice, Access & Disclosure**

440 1. An auditable vote count report shall be made publicly available for each county and by
441 the Lt. Governor's office for the entire state, as soon as possible after polls close and
442 before random selection of machine vote counts to audit.

443 2. The date, time and location of the random selections of vote counts to be audited and
444 the dates, times, and places of the manual vote count audits shall be noticed at least one
445 day (twenty-four hours) before the random selection is conducted.

446 3. The amount of the manual audits shall be noticed prior to the random selections. The
447 notice should include information on the number of recount teams that will be used so
448 that the candidates have the opportunity to bring an appropriate number of
449 representatives to watch each recount team.

450 4. As soon as practicable after the completion of a vote count audit and analysis
451 conducted under this subsection, the vote count auditors shall announce and publish the
452 vote count audit report.

453

454 **Section 8. The Vote Count Audit Report**

455 The vote count audit report shall consist of, for each audited vote count:

- 456 1. A reconciliation of all printed ballots for each precinct, including unused, used, cast,
457 spoiled, counted, and uncounted ballots.
- 458 2. A comparison of the vote count audit manual counts and the unofficial vote tabulations
459 reported in the auditable vote count report for each ballot type (provisional, early,
460 mail-in, Election Day,...) along with any explanations of the discrepancies, and a
461 description of the actions taken by the vote count auditors or election officials for
462 resolving the discrepancies, and
- 463 3. The number of voters registered to vote, the number of voters who are recorded in the
464 poll books and official registry as having signed in to vote, the number of ballots cast
465 on each ballot type the number of voters who requested mailed and provisional ballots,
466 with the number of ballots cast for each precinct for each ballot types, and
- 467 4. The number of any unused, spoiled, cast, counted, and uncounted ballots for each
468 ballot type, and
- 469 5. The number of machine or memory card failures, and
- 470 6. The amount of voting resources and machines allocated, and
- 471 7. The number of under-votes, over-votes for each ballot type, and
- 472 8. The number of missing or damaged voter-verifiable paper or electronic ballot records,
473 and number and type of any damaged or missing paper or electronic election records

474 The audit report shall be prepared by the vote count auditors, signed and forthwith filed
475 with the elections officer, the state Vote Count Audit Office, the State Auditor's Office,
476 and the Lt. Governor's Office and shall be made publicly available. The reconciliation
477 sheets shall be open to public inspection and may be used as prima facie evidence of a
478 discrepancy in any contest arising pursuant to the election statutes.

479

480 **Section 9. Audit All Vote Types**

481 The voter-verifiable paper records of votes cast at the precinct or equivalent location on or
482 before the date of the auditable election, other than provisional ballots, shall be hand counted
483 by vote count auditors and those record counts compared with the initial count of the votes as
484 announced by the precinct. The voter-verifiable paper records of votes cast other than at the
485 precinct on the date of the election and votes cast by provisional ballot on the date of the
486 election which are counted by the county on or after the date of the election, including votes
487 cast by absentee voters, absent uniformed services voters, and overseas voters, shall be hand
488 counted by the vote count auditors and those record counts compared with the county election
489 official tally of those votes.

490

491 **Section 10. Additional Audits If Cause Shown**

492 If the auditors are unable to reconcile the manual count with the electronic vote tabulation, then
493 the E.A.R.C. with the assistance of County Clerks and the Lt. Governor shall initiate or

494 conduct such further investigation of the discrepancies as may be necessary for the purpose of
495 reviewing whether or not to certify the election results, or expand the vote count audit, and
496 may order a re-canvass in accordance with the provisions of the election code. If any voter-
497 verifiable, paper record is found to have been damaged or missing, then the damaged or
498 missing records shall be assumed to be discrepant with the machine counts reported in the
499 unofficial auditable vote count report, and a tabulation of such damaged and missing paper
500 records will be duly recorded, and an explanation sought. In the event of any inconsistencies or
501 irregularities between any electronic records and the voter-verifiable paper records, the paper
502 records shall be the true and correct record of the votes cast, except in the case where evidence
503 exists that indicates that the paper record has been tampered with or damaged, in which case, if
504 an outcome is in question, a court will decide. Additional audits desired due to evidence
505 uncovered during an audit of machine malfunction or errors which are judged to exist in
506 insufficient amounts to produce incorrect election outcomes may be performed after the
507 certification of the election results. If vote count auditors find sufficient discrepancies, due to
508 any cause, between the unofficial tallies and the manual audit tallies, then the E.A.R.C. shall
509 randomly select and administer manual counts of additional vote counts as considered
510 appropriate to resolve any concerns resulting from the audit until the election outcomes can be
511 certified with at least a 95% confidence-level.

512 -----

513 **Section 11. Time Table for Audit Process**

- 514 1. By noon on Election Day, all election officers shall provide a list of all machines and their
515 corresponding serial numbers, corresponding precinct identifiers, and corresponding
516 congressional districts.
- 517 3. As soon as possible after polls close on Election Day, all election officers shall submit an
518 auditable vote count report of detailed vote counts for each machine and precinct in each race
519 for each vote type to the Lt. Governor’s office, to the state Vote Count Auditor, and publicly
520 post it.
- 521 4. Within 36 hours of receiving auditable vote count reports of vote counts from each county,
522 the Lt. Governor shall publicly release an auditable vote count report for multi-county
523 election contests and races submitted to voters in the state and provide a copy to the Utah
524 Election Audit and Recount members and post a copy publicly.
- 525 5. Within 36 hours of receiving the auditable vote count reports of vote counts, the E.A.R.C.
526 shall determine and then announce how many vote counts in the State must be audited for
527 each auditable race and publicly post this information and inform county clerks and vote
528 count auditors, and the E.A.R.C. and the Lt. Governor shall at the same time publish a public
529 notice, including in a prominent place on the State Elections Office website, giving at least
530 24 hours (1 day) advance notice of the date, time and place, including street address, building
531 and room number, of the public random drawings of vote counts, and the dates, times and
532 places, including street address, building and room number of the public manual vote counts
533 audits.
- 534 6. The E.A.R.C. or its designees shall conduct public random drawings to determine which
535 vote counts in each county will be independently manually audited.
- 536 7. Immediately following the random drawing, election officers and auditors shall begin the
537 publicly observable vote count audit of all voter-verifiable paper ballot records associated
538 with the vote counts selected for auditing. Election officers and auditors shall conduct the

539 initial manual audit with sufficient auditors to complete the hand counts and other
540 verifications within 96 hours (4 days) of when audits are initiated.

541 10. As soon as practicable after the completion of a vote count audit conducted under this
542 statute, the county shall announce and publish the audit report.

543 11. Deadline for completion of audits: The counties shall complete the vote count audits and
544 announce and submit the results to the E.A.R.C. and the Lt. Governor's Office for
545 publication of the information required under this section in time for the Lt. Governor's
546 Office to certify the results of the election and provide for the final determination of any
547 controversy prior to the deadline described in section 6 of the title 3, United States Code.

548

549 **Section 12: County Election Official (Clerk) – Responsibilities for Vote Count Audits**

550 County Clerks or their official representatives shall:

- 551 (1) Remove the opaque plastic covers or any obstructions which obscure voters' view of
552 sealed voter-verifiable machine-printed paper ballot records, and
- 553 (2) Include, in all instructions created for voters on how to vote, instructions telling voters
554 to review and verify the accuracy of any machine-printed voter-verifiable paper ballots,
555 and
- 556 (3) Plan and implement voting system procedures which, in all cases, allow a voter to
557 review and approve a human-readable paper record of the voter's ballot whenever an
558 electronic ballot record is cast, and
- 559 (4) By at least noon on Election Day in any election covered by this audit legislation,
560 provide a list of the number of precincts, along with the districts within each precincts,
561 and a list of vote tabulation machines to be used in the election, the serial numbers for
562 each vote-counting machine, along with the precinct(s) and the congressional district(s)
563 that each machine will handle, and
- 564 (5) Not print any paper roll ballot records after Election Day which voters have not had an
565 opportunity to verify in order to replace any damaged or missing voter-verifiable paper
566 roll ballot records, and
- 567 (6) Produce and publicly post auditable unofficial vote count reports, and
- 568 (7) Provide facilities and materials for conducting the manual vote count audits. Whenever
569 suitable facilities are available, the audits shall be administered at the location where
570 the ballots cast in the election are stored and counted after the date of the election, and
571 in the presence of those personnel who under statute are responsible for the custody of
572 the ballots, and
- 573 (8) Publicly post notices required by this statute regarding vote count audits, and
- 574 (9) Have staff present during vote count audits and oversee ballot transport and security to
575 and in the facility provided for the vote count audits, and
- 576 (10) Provide a method for members of the public to observe the vote count audits and verify
577 the integrity and accuracy of the audit, and
- 578 (11) Provide election records and voter verifiable paper ballot records to auditors, and
- 579 (12) Work with vote count auditors to resolve and explain any discrepancies discovered
580 during a vote count audit, and
- 581 (13) Complete the verification and counting of the absentee and provisional ballots and
582 produce a final, updated auditable vote count report which includes the absentee and
583 provisional ballots within 21 days after Election Day.

584 (14)Not certify any election result until the completion of the vote count audits and the
585 public posting of the audit reports.
586

587 **Section 13: Absentee and Provisional Ballot Auditing**

- 588 1. All absentee and provisional ballots shall be examined for legality and counted, and
589 the auditable vote count report shall be updated to include all absentee and
590 provisional ballots within 14 days of Election Day.
- 591 2. The mandatory vote count audit may be conducted in two stages. Stage one, the vote
592 counts are audited without taking into account the provisional and absentee ballot
593 vote counts. Stage two, after the absentee and provisional ballots are evaluated for
594 legality and counted, then the audit is adjusted to account for the new vote counts.
- 595 a. The initial auditable vote count report, prior to stage one of the audit shall
596 clearly note whether or not it excludes the absentee or provisional ballots and
597 shall include the number of total absentee and provisional ballots that were
598 cast in each county, and
- 599 b. The updated auditable vote count reports which include the absentee and
600 provisional ballots shall be publicly posted under the same requirements as
601 for the initial auditable vote count reports, prior to the random selections for
602 stage two of the audits.
- 603 c. In a two stage audit, the absentee and provisional ballots shall be counted,
604 sorted, stored, and reported in the auditable vote count report in identifiable
605 batches that are equal or smaller in size to an average-sized vote count (in
606 number of ballots cast) in the county, or, if not, then all absentee and
607 provisional ballots shall be manually audited.
- 608 d. The Election Audit and Recount Committee shall determine the audit
609 amounts and procedures for two-stage vote count audits subject to the
610 requirements of this statute.
- 611 3. If absentee and provisional ballots are included in the initial auditable vote count
612 report and audited in a one-stage audit with other ballots in the election, then they
613 may be counted, sorted, stored, and reported according to the same identifiable
614 precinct vote counts as the Election Day and Early voting ballots. If they are not,
615 then the absentee and provisional ballots shall be counted, sorted, stored, and
616 reported in the auditable vote count report in identifiable batches that are, as close as
617 possible, equal in size to an average-sized vote count (in number of ballots cast) in
618 the county.
- 619 4. The absentee and provisional ballots shall, if voting equipment or procedures permit,
620 also be reported by precinct in the auditable vote count report.
621
622

623 Funding for Mandatory Vote Count Audits

624 This bill authorizes \$260,000 (\$260 Thousand) per general election cycle (in even years) to
625 reimburse counties for the costs of conducting independent audits of vote count accuracy.
626 Funds shall be distributed after the audits are completed in an amount of up to \$30,000 to cover
627 expenses of the Utah Election Audit & Recount Committee for one auditable election, and
628 \$2,000 to be reimbursed to each county for administrative fees plus the remaining amount to be
629 distributed to each county to pay the vote count auditors and other expenses, in proportion to
630 the total number of ballots which are manually counted in the audits in each county. All these
631 amounts will be increased each year according to inflation.

632 *[Note: A more detailed analysis of costs can be done using election results data from prior auditable elections for*
633 *each county. This estimate is estimated based upon 130% of the costs to manually audit 2% of the State of New*
634 *Mexico's election results.]*

635

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18 ⁱ See <http://electionmathematics.org> Election Audit section for more information. Election audit efficiency can be improved
19 if voting systems are developed which are auditable at the individual machine or ballot levels. This is one reason why a
20 Election Audit & Recount Committee should be permitted to approve alternative election audit procedures in the future.
21 ⁱⁱ Calculation of "suspicious" precincts could assume that at most a 20% vote shift per precinct or batch vote count is not
22 suspicious and compare the partisanship of voters to the partisanship of election results in the current and prior audited elec-
23 tions as recorded in voter history files to determine vote counts having more than a 20% shift, or or another measure could
24 be used for the upper limit of the amount of vote miscount that could occur in any one auditable vote count. See Appendix
25 G in <http://electionarchive.org/ucvAnalysis/US/paper-audits/History-of-Election-Auditing-Development.pdf>