

ARTICLE 10.5

Recounts

Editor's note: This article was added with relocations in 1999. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

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1-10.5-101. Recounts required - expenses.

(1) (a) (Deleted by amendment, L. 2001, p. 1265, § 1, effective June 5, 2001.)

(b) A recount of any election contest shall be held if the difference between the highest number of votes cast in that election contest and the next highest number of votes cast in that election contest is less than or equal to one-half of one percent of the highest vote cast in that election contest. If there is more than one person to be elected in an election contest, a recount shall be held if the difference between the votes cast for the candidate who won the election with the least votes and the candidate who lost the election with the most votes is less than or equal to one-half of one percent of the votes cast for the candidate who won the election with the least votes. A recount shall occur only after the canvass board certifies the original vote count.

(2) Except as provided in section 1-10.5-106, any expenses incurred in conducting a recount in any political subdivision shall be paid by the entity that certified the candidate, ballot question, or ballot issue for the ballot. Members of the canvass board who assist in any recount shall receive the same fees authorized for counting judges in section 1-6-115.

Source: L. 99: Entire article added with relocations, p. 483, § 13, effective July 1. L. 2001: (1) amended, p. 1265, § 1, effective June 5. L. 2006: (1)(b) amended, p. 277, § 1, effective August 7.

1-10.5-102. Recounts for congressional, state, and district offices, state ballot questions, and state ballot issues. (1) If the secretary of state determines that a recount is required for the office of United States senator, representative in congress, any state office or district office of state concern, any state ballot question, or any state ballot issue certified for the ballot by the secretary of state, the secretary of state shall order a complete recount of all the votes cast for that office, state ballot question, or state ballot issue no later than the twenty-fifth day after the election.

(2) The secretary of state shall notify the county clerk and recorder of each county involved by registered mail and facsimile transmission of a public recount to be conducted in the county at a place prescribed by the secretary of state. The recount shall be completed no later than the thirtieth day after any election. The secretary of state shall promulgate and provide each county clerk and recorder with the necessary rules and regulations to conduct the recount in a fair, impartial, and uniform manner, including provisions for watchers during the recount. Any rule or regulation concerning the conduct of a recount

shall take into account the type of voting system and equipment used by the county in which the recount is to be conducted.

(3) (a) Prior to any recount, the canvass board shall choose at random and test voting devices used in the candidate race, ballot issue, or ballot question that is the subject of the recount. The board shall use the voting devices it has selected to conduct a comparison of the machine count of the ballots counted on each such voting device for the candidate race, ballot issue, or ballot question to the corresponding manual count of:

(I) In the case of an election taking place in a county prior to the date the county has satisfied the requirements of section 1-5-802, the ballots; or

(II) For an election taking place in a county on or after the date the county has satisfied the requirements of section 1-5-802, the voter-verified paper records.

(b) If the results of the comparison of the machine count and the manual count in accordance with the requirements of subparagraph (I) or (II) of paragraph (a) of this subsection (3) are identical, or if any discrepancy is able to be accounted for by voter error, then the recount may be conducted in the same manner as the original ballot count. If the results of the comparison of the machine count and the manual count in accordance with the requirements of subparagraph (I) or (II) of paragraph (a) of this subsection (3) are not identical, or if any discrepancy is not able to be accounted for by voter error, a presumption shall be created that the voter-verified paper records will be used for a final determination unless evidence exists that the integrity of the voter-verified paper records has been irrevocably compromised. The secretary of state shall decide which method of recount is used in each case, based on the secretary's determination of which method will ensure the most accurate count, subject to judicial review for abuse of discretion. Nothing in this subsection (3) shall be construed to limit any person from pursuing any applicable legal remedy otherwise provided by law.

(c) The secretary of state shall promulgate such rules, in accordance with article 4 of title 24, C.R.S., as may be necessary to administer and enforce any requirement of this section, including any rules necessary to provide guidance to the counties in conducting the test of voting devices for the recount required by paragraph (a) of this subsection (3). The rules shall account for:

(I) The number of ballots cast in the candidate race, ballot issue, or ballot question that is the subject of the recount;

(II) An audit of each type of voting device utilized by the county in the candidate race, ballot issue, or ballot question that is the subject of the recount; and

(III) The confidentiality of the ballots cast by the electors in the candidate race, ballot issue, or ballot question that is the subject of the recount.

Source: L. 99: Entire article added with relocations, p. 484, § 13, effective July 1. L. 2001: (2) amended, p. 300, § 1, effective August 8. L. 2002: (1) and (2) amended, p. 1638, § 28, effective June 7. L. 2005: (2) and (3) amended, p. 1423, § 51, effective June 6; (2) and (3) amended, p. 1458, § 51, effective June 6.

Editor's note: This section is similar to former § 1-10-301 as it existed prior to 1999.

1-10.5-103. Recount for other offices, ballot issues, and ballot questions in an election coordinated by county clerk and recorder. In any election coordinated by the county clerk and recorder, if it appears, as evidenced by the official abstract of votes cast, that a recount is required for any office, ballot question, or ballot issue not included in section 1-10.5-102, the county clerk and recorder shall order a recount of the votes cast for the office, ballot question, or ballot issue. Any recount of the votes shall be completed no later than the thirtieth day after the election. A political subdivision that referred a ballot issue or ballot question to the electors may waive the automatic recount provisions of this section if the ballot issue or ballot question fails by giving written notice to the county clerk and recorder within fourteen days after the primary election or eighteen days after any other election.

Source: L. 99: Entire article added with relocations, p. 485, § 13, effective July 1. **L. 2001:** Entire section amended, p. 300, § 2, effective August 8. **L. 2002:** Entire section amended, p. 1639, § 29, effective June 7. **L. 2005:** Entire section amended, p. 1424, § 52, effective June 6; entire section amended, p. 1459, § 52, effective June 6.

Editor's note: This section is similar to former § 1-10-302 as it existed prior to 1999.

ANNOTATION

Annotator's note. The following annotations include a case decided under former provisions similar to this section.

Determination by lot does not prevent election contest. The determination by lot by the canvassing board of which candidate shall have the certificate of election where two candidates having the highest number of votes

have an equal number is not such settlement of the matter as will prevent the defeated party from contesting the election on the ground that legal votes for him were not counted or that illegal votes were counted for his opponent. *Nicholls v. Barrick*, 27 Colo. 432, 62 P. 202 (1900).

1-10.5-104. Recount for nonpartisan elections not coordinated by county clerk and recorder. If it appears, as evidenced by the abstract of votes cast that a recount is required for any office, ballot question, or ballot issue, the designated election official shall order a recount of the votes cast for the office, the ballot issue, or ballot question no later than the twenty-fifth day after the election. Any recount under this section shall be completed no later than the fortieth day after the election.

Source: L. 99: Entire article added with relocations, p. 485, § 13, effective July 1. **L. 2001:** Entire section amended, p. 301, § 3, effective August 8. **L. 2002:** Entire section amended, p. 1639, § 30, effective June 7.

Editor's note: This section is similar to former § 1-10-303 as it existed prior to 1999.

1-10.5-105. Notice of recount. Notice prior to the recount shall be given to all candidates and, in the case of a ballot issue or ballot question, any petition representative identified pursuant to section 1-40-113, any governing body, or any agent of an issue committee, if such committee is required to report contributions to the secretary of state pursuant to the "Fair Campaign Practices Act", article 45 of this title, that are affected by the result of the election. Notice shall be given by certified mail and by telephone, facsimile transmission, or personal service.

Source: L. 99: Entire article added with relocations, p. 485, § 13, effective July 1.

1-10.5-106. Request for recount by interested party - definitions. (1) As used in this section, "interested party" means the candidate who lost the election, the political party or political organization of such candidate, any petition representative identified pursuant to section 1-40-113 for a ballot issue or ballot question that did not pass at the election, the governing body that referred a ballot question or ballot issue to the electorate if such ballot question or ballot issue did not pass at the election, or the agent of an issue committee that is required to report contributions pursuant to the "Fair Campaign Practices Act", article 45 of this title, that either supported a ballot question or ballot issue that did not pass at the election or opposed a ballot question or ballot issue that passed at the election.

(2) Whenever a recount is not required, an interested party may submit a notarized written request for a recount at the expense of the interested party making the request. This request shall be filed with the secretary of state, the county clerk and recorder, the designated election official, or other governing body that originally certified the candidate, ballot question, or ballot issue for the ballot within twenty-one days after a primary election and within thirty-one days after any other election. Such election official shall notify the political subdivision within which the election was held no later than the day following receipt of the request. Before conducting the recount, the election official who will conduct the recount shall determine the cost of the recount within one day of receiving the request to recount,

notify the interested party that requested the recount of the cost, and collect the costs of conducting the recount. If the request is filed with the secretary of state, the secretary of state shall determine the cost of the recount by adding the individual amounts determined by the political subdivisions conducting the recount. The interested party that requested the recount shall pay the cost of the recount by certified funds to the election official with whom the request for a recount was filed within one day of receiving the election official's cost determination. The funds shall be placed in escrow for payment of all expenses incurred in the recount. If after the recount the result of the election is reversed in favor of the interested party that requested the recount or if the amended election count is such that a recount otherwise would have been required, the payment for expenses shall be refunded to the interested party that requested the recount. Any escrow amounts not refunded to the interested party that requested the recount shall be paid to the election officials who conducted the recount. Any recount of votes pursuant to this section shall be completed no later than the thirtieth day after the primary election and no later than the thirty-seventh day after any other election.

Source: L. 99: Entire article added with relocations, p. 486, § 13, effective July 1. L. 2002: (2) amended, p. 1639, § 31, effective June 7. L. 2005: (2) amended, p. 1424, § 53, effective June 6; (2) amended, p. 1460, § 53, effective June 6. L. 2011: (2) amended, (SB 11-189), ch. 243, p. 1066, § 18, effective May 27.

Editor's note: This section is similar to former §§ 1-10-1304 and 1-10-304.5 as they existed prior to 1999.

1-10.5-107. Canvass board to conduct recount. (1) Any county clerk and recorder or governing body required to conduct a recount shall arrange to have the recount made by the canvass board who officiated in certifying the official abstract of votes cast. If any member of the canvass board cannot participate in the recount, another person shall be appointed in the manner provided by law for appointment of the members of the original board.

(2) Any canvass board making a recount under the provisions of this section may employ assistants and clerks as necessary for the conduct of the recount.

(3) The canvass board may require the production of any documentary evidence regarding any vote cast or counted and may correct the abstract of votes cast in accordance with its findings based on the evidence presented.

(4) At the conclusion of the recount, the canvass board shall make the returns of all partisan, nonpartisan, ballot issue, and ballot question elections to the designated election official and provide a copy to the persons or groups requesting the recount or notified of the recount pursuant to sections 1-10.5-105 and 1-10.5-106. The canvass board shall meet and issue an amended abstract of votes cast for the office, ballot issue, or ballot question that is the subject of the recount and deliver it to the designated election official.

(5) The designated election official shall notify the governing body of the results of the recount.

Source: L. 99: Entire article added with relocations, p. 487, § 13, effective July 1.

Editor's note: This section is similar to former § 1-10-305 as it existed prior to 1999.

1-10.5-108. Method of recount. (Repealed)

Source: L. 99: Entire article added with relocations, p. 487, § 13, effective July 1. L. 2001: Entire section amended, p. 301, § 4, effective August 8. L. 2005: Entire section repealed, p. 1425, § 56, effective June 6; entire section repealed, p. 1461, § 56, effective June 6.

Editor's note: This section was similar to former § 1-10-306 as it existed prior to 1999.

1-10.5-109. Challenge of recount. (1) (a) Any interested party that requested a recount of a county, state, national, or district office of state concern or any party to such recount that has reasonable grounds to believe that the recount is not being conducted in a fair, impartial, and uniform manner may apply to the district court of the city and county of Denver for an order requiring the county clerk and recorder to stop the recount and to give the secretary of state access to all pertinent election records used in conducting the recount, and requiring the secretary of state to conduct the recount. The county clerk and recorder shall be an official observer during any recount conducted by the secretary of state.

(b) Any interested party that requested a recount of any other local office, ballot question, or ballot issue or any party to such recount that has reasonable grounds to believe that the designated election official is not conducting the recount in a fair, impartial, and uniform manner may apply to the district court for the political subdivision for an order requiring the designated election official to stop the recount and to give the appropriate official who will take over conducting the recount access to all pertinent election records, and requiring the appropriate official to conduct the recount. If the county clerk and recorder is not the designated election official, then the county clerk and recorder is the appropriate official to conduct the recount. If the county clerk and recorder is the designated election official, then the secretary of state is the appropriate official to conduct the recount. The designated election official shall be an official observer during any recount conducted pursuant to this subsection (1).

(2) All expenses incurred by the secretary of state in conducting a recount pursuant to subsection (1) of this section shall be paid from the state general fund. Expenses incurred prior to a court order requiring the secretary of state to conduct the recount shall be paid by the county or political subdivision conducting the recount.

Source: L. 99: Entire article added with relocations, p. 488, § 13, effective July 1.

Editor's note: This section is similar to former § 1-10-307 as it existed prior to 1999.

1-10.5-110. Procedures for recount on direct recording electronic voting equipment. (Repealed)

Source: L. 2000: Entire section added, p. 1727, § 2, effective July 1. **L. 2004:** (1)(b), (3), and (4) amended, p. 1360, § 27, effective May 28. **L. 2005:** Entire section repealed, p. 1425, § 56, effective June 6; entire section repealed, p. 1461, § 56, effective June 6.