

# Chapter 251

## 1969 REPLACEMENT PART

### Election Contests; Recounts

#### ELECTION CONTESTS

- 251.015 Definitions for ORS 251.015 to 251.090
- 251.025 Grounds for contest; persons authorized to contest
- 251.035 When election results may be set aside on account of illegal votes or mistake or fraud
- 251.045 Petition of contest
- 251.060 Contestant's bond; costs, disbursements and fees
- 251.070 Notice and hearing on contest
- 251.080 Judgment of circuit court
- 251.090 Appeal to Supreme Court

#### RECOUNTS

- 251.510 Definitions for ORS 251.520 to 251.610
- 251.520 Filing demand for recount with Secretary of State; deposit
- 251.540 One recount only; two or more recount demands
- 251.550 Secretary of State ordering recount; effect of original returns; notice

- 251.560 Counting boards; appointment; compensation
- 251.570 Opening ballot boxes
- 251.580 Making recount and return of results
- 251.590 Completion of recount; certifying votes; notification of person demanding recount
- 251.600 Recount is official return of election if all precincts recounted
- 251.610 Payment of cost of recount
- 251.615 Payment of costs where more than one recount conducted simultaneously
- 251.620 Duties of counting board members
- 251.625 Authority of Secretary of State over recounts
- 251.630 Costs to be included and excluded from recount costs
- 251.635 Costs to be collected for multi-county or state-wide election recounts

#### PENALTIES

- 251.990 Penalties

### CROSS REFERENCES

Administration of election laws, Ch. 246  
City council to judge qualifications and election returns of its members, in cities organized under 1893 Act, 221.910  
Criminal penalty for violations of election laws, 260.510  
Election documents, time within which must be received, 246.021  
Election offenses, Ch. 260  
Jurisdiction of each house of the Legislative Assembly in judging of the election and returns of its own members, Const. Art. IV, § 11  
Manner in which contested elections for Governor shall be determined, Const. Art. V, § 6

Procedure in case of tie for legislative office, 250.845  
Registrar of elections in Multnomah County to perform election duties of county clerk, 246.300

#### ELECTION CONTESTS

Member of organization advocating overthrow of the United States Government by force or violence is not eligible to have name on ballot, 236.030  
Procedure and punishment in contesting nomination or election, 260.430 to 260.470  
Punishment of candidate found guilty, in an election contest proceeding, of corrupt or illegal practices, 260.440

## ELECTION CONTESTS

**251.010** [Repealed by 1957 c.217 §9]

**251.015 Definitions for ORS 251.015 to 251.090.** As used in ORS 251.015 to 251.090, unless the context requires otherwise:

(1) "Contestant" means any person who files a petition of contest under ORS 251.045.

(2) "Contestee," in the case of a contest of the nomination or election of any person for or to any office, means such person, and, in the case of a contest of the approval or rejection of any measure, means any person involved in the cause of the contest.

(3) "Measure" means any proposed law, Act or part of an Act of the Legislative Assembly, amendment to the Oregon Constitution or local, special or municipal legislation voted upon by the people at any primary, general or special election.

[1957 c.217 §1]

**251.020** [Repealed by 1957 c.217 §9]

**251.025 Grounds for contest; persons authorized to contest.** The nomination or election of any person for or to any office or the approval or rejection of any measure at any primary, general or special election may be contested as provided in ORS 251.015 to 251.090 by any elector entitled to vote for such person or measure at such election, or by any person who was a candidate at such election for the same nomination or office, for any of the following causes and no other:

(1) Deliberate and material violation of any provision of the election laws in connection with such nomination, election, approval or rejection.

(2) Ineligibility of the person elected to the office to hold the office at the time of the election.

(3) Illegal votes.

(4) Mistake or fraud in the canvass of votes.

(5) Fraud in the count of votes.

[1957 c.217 §2]

**251.030** [Repealed by 1957 c.217 §9]

**251.035 When election results may be set aside on account of illegal votes or mistake or fraud.** (1) In no case shall the nomination or election of any person for or to any office be set aside under ORS 251.080 on account of illegal votes or mistake or fraud in the count or canvass of votes unless it appears that:

(a) The person nominated or elected had knowledge of or connived in an illegal vote or a mistaken or fraudulent count or canvass; or

(b) The number of votes taken from the person nominated or elected by reason of such illegal votes or mistake or fraud in the count or canvass of votes would reduce his legal votes below the number of legal votes given to some other person for the same nomination or office.

(2) In no case shall the approval or rejection of a measure be set aside under ORS 251.080 on account of illegal votes or mistake or fraud in the count or canvass of votes unless it appears that the number of votes taken from the approval or rejection by reason of such illegal votes or mistake or fraud in the count or canvass of votes would change approval to rejection or rejection to approval.

[1957 c.217 §3]

**251.040** [Repealed by 1957 c.217 §9]

**251.045 Petition of contest.** Not later than 10 days after the final canvass of votes or other final compilation of the result of any primary, general or special election or the completion of a recount of votes cast in connection with such nomination, office or measure under ORS 251.510 to 251.610, any person authorized by ORS 251.025 to contest the nomination or election of any person for or to any office or the approval or rejection of any measure at such election may file a petition of contest with the clerk of the circuit court for the county in which the certificate of nomination, certificate of election or proclamation, as the case may be, is or will be issued or in which any contestee resides. The petition shall specify with particularity the cause of the contest, shall name the contestees and shall be verified by the contestant in the manner required by law for the verification of complaints in civil cases.

[1957 c.217 §4]

**251.050** [Repealed by 1957 c.217 §9]

**251.060 Contestant's bond; costs, disbursements and fees.** (1) Before any proceeding on a petition of contest filed under ORS 251.045, the contestant shall furnish a bond, conditioned upon the payment of all costs, disbursements and attorney's fees that may be awarded against the contestant if he does not prevail and with not less than two sureties, who shall justify in the manner required of sureties on bail bonds. The

circuit court shall determine the amount of and approve the bond. The amount of the bond shall not exceed \$2,000. If judgment is rendered against the contestant, it shall also be rendered against the sureties on the bond.

(2) The prevailing party in the contest proceeding shall recover his costs, disbursements and reasonable attorney's fees against the losing party, except that if the cause of the contest is mistake in the canvass of votes and the contestant prevails, the cost of any recanvass of votes necessary in connection with such cause shall be paid by the county in the case of a contest of a state or county nomination, office or measure, by the city in the case of a contest of a city nomination, office or measure or by any other political subdivision or public corporation in the case of a contest of such a subdivision or corporation nomination, office or measure.

[1957 c.217 §5]

#### **251.070 Notice and hearing on contest.**

(1) Upon the filing with him of a petition of contest under ORS 251.045, the clerk of the circuit court shall cause a notice to be served in the same manner as a summons issued out of the circuit court on all contestees named in the petition, directing them to appear and answer not less than three nor more than seven days after the date of the filing of the petition.

(2) The circuit court shall fix a time, not more than 20 days after the return date fixed in the notice, for the hearing by the circuit court of the contest proceeding, and shall give written notice of such hearing at least five days prior thereto to each party to the proceeding. The contest proceeding shall take precedence over all other business on the circuit court docket, and shall be disposed of with all convenient dispatch.

(3) Each party to the contest proceeding is entitled to subpoenas and subpoenas duces tecum, as in civil cases. The circuit court shall hear and determine the proceeding without a jury, and the practice and procedure otherwise applicable to civil cases shall govern the proceeding.

[1957 c.217 §6]

#### **251.080 Judgment of circuit court.**

(1) Upon the conclusion of the contest proceeding hearing under ORS 251.070, the circuit court shall render a judgment affirming or setting aside the nomination or election of the person for or to the office or the approval or rejection of the measure.

(2) If the judgment sets aside the nomination or election of a person, it shall also declare that the nomination or office is vacant. Any vacancy so declared shall be filled as provided by law.

(3) If the judgment sets aside the approval or rejection of a measure, it shall also declare the measure rejected.

(4) If the judgment declares a measure rejected, the election authority submitting the measure rejected shall call a special election for the purpose of resubmitting the measure to the voters for their approval or rejection. The special election shall be held at the same time and places as the next statewide election following the date of the judgment.

(5) A measure shall not be declared either approved or rejected for any cause under subsection (1) of ORS 251.025 unless it appears that the violation was capable of affecting the result of the election.

[1957 c.217 §7; 1969 c.617 §1]

**251.090 Appeal to Supreme Court.** Any party to the contest proceeding may appeal from the judgment rendered by the circuit court under ORS 251.080 to the Supreme Court in the same manner as appeals in civil cases are taken. The appeal shall take precedence over all other business on the Supreme Court docket, and shall be disposed of with all convenient dispatch.

[1957 c.217 §8]

**251.110** [Repealed by 1957 c.217 §9]

**251.120** [Repealed by 1957 c.217 §9]

**251.130** [Repealed by 1957 c.217 §9]

**251.140** [Repealed by 1957 c.217 §9]

**251.150** [Repealed by 1957 c.217 §9]

**251.160** [Repealed by 1957 c.217 §9]

**251.310** [Repealed by 1957 c.217 §9]

**251.320** [Repealed by 1957 c.217 §9]

**251.330** [Repealed by 1957 c.217 §9]

**251.340** [Repealed by 1957 c.217 §9]

**251.350** [Repealed by 1957 c.217 §9]

**251.360** [Repealed by 1957 c.217 §9]

**251.370** [Repealed by 1957 c.217 §9]

**251.380** [Repealed by 1957 c.217 §9]

**251.390** [Repealed by 1957 c.217 §9]

**251.400** [Repealed by 1957 c.217 §9]

**251.410** [Repealed by 1957 c.217 §9]

**251.420** [Repealed by 1957 c.217 §9]

**RECOUNTS**

**251.510 Definitions for ORS 251.520 to 251.610.** As used in ORS 251.520 to 251.610:

(1) "Candidate" means a candidate for nomination or election to any elective office.

(2) "Measure" means any proposed law, Act or part of an Act of the Legislative Assembly, amendment to the Oregon Constitution or local, special or municipal legislation voted upon by the people.  
[1955 c.498 §1; 1957 c.218 §1]

**251.520 Filing demand for recount with Secretary of State; deposit.** (1) Any candidate or any officer of a political party on behalf of any candidate of his political party may file a demand requiring the Secretary of State to direct that a recount be made in every precinct listed in the demand or in the supplemental demand and in which votes were cast for the particular public office for which the candidate's name appeared on the ballot at any primary, general or special election.

(2) A registered elector may file a demand requiring the Secretary of State to direct that a recount be made in every precinct listed in the demand or in the supplemental demand and in which votes were cast on any measure which appeared on the ballot at any general or special election.

(3) The person making a demand for a recount as provided in subsections (1) and (2) of this section may, in the first demand, list the numbers of all or 5 or 10 percent of the precincts in which votes were cast for the office or on the measure to be recounted. If in the first demand he requested a recount of the vote in only five percent of such precincts, such person may file a supplemental demand and list the numbers of another five percent of such precincts or he may list the numbers of all the remainder of such precincts. The person making the demand may file a second supplemental demand only if he requests a recount of the vote in all other such precincts.

(4) Each demand shall be accompanied by a cash deposit of \$10 for each precinct listed to be recounted up to a maximum of \$8,000 for a recount of all the precincts in the state on any particular measure or for any public office for which a recount may be demanded as provided in this section.

(5) Each demand shall be in such form and shall set forth such information as is prescribed by the Secretary of State, includ-

ing the names and addresses of all persons and organizations providing any part of the cash deposit under this section and the amount provided by each. Each demand shall be sworn to or affirmed by the person filing it.

(6) The first demand shall be filed in the office of the Secretary of State not later than five days, a first supplemental demand, not later than 15 days, and a second supplemental demand not later than 20 days, after the date of the completion of the canvass of votes for the candidate or measure. As used in this subsection, "canvass of votes" means:

(a) In the case of a candidate for a state public office or a state measure, the canvass of votes by the Secretary of State under ORS 249.460, 250.840 or 254.120.

(b) In the case of a candidate for a county public office, the making of abstracts of votes by the county clerk under ORS 249.410 or 250.810, or in the case of a county measure, the canvass of votes by the county clerk under ORS 254.320 or 254.340.

(c) In the case of a candidate for a city public office or a city measure, the final canvass of votes or other final compilation of the result of the election by the official or officials who conduct such final canvass or compilation.

(d) In the case of a candidate for any other political subdivision or public corporation public office or any other political subdivision or public corporation measure, the final canvass of votes or other final compilation of the result of the election by the official or officials who conduct such final canvass or compilation.

[1955 c.498 §2; 1957 c.218 §2; 1963 c.351 §4; 1965 c.124 §1]

**251.530** [1955 c.498 §3; repealed by 1957 c.218 §11]

**251.540 One recount only; two or more recount demands.** (1) Only one recount shall be made for any measure or public office for which a recount may be demanded pursuant to ORS 251.520.

(2) If two or more demands for the recount of the same measure are filed with the Secretary of State the demand first received by the Secretary of State is the demand for a recount for the purposes of ORS 251.510 to 251.620.

(3) If two or more demands for the recount of the same public office are filed with the Secretary of State the demand received from or on behalf of the losing candidate receiving the highest number of votes is the

demand for a recount for the purposes of ORS 251.510 to 251.620.  
[1955 c.498 §5; 1963 c.351 §5]

**251.550 Secretary of State ordering recount; effect of original return; notice.** (1) Upon the filing of a demand for a recount under ORS 251.520, whether it is a first demand or a supplemental demand, the Secretary of State shall direct the county clerk of any county in which are located the precincts in which ballots were cast on the particular state or county measure or for the public office specified in the demand for a recount, or shall direct the official or officials who conducted the final canvass of votes or other final compilation of the result of the election in which ballots were cast on the particular city or other political subdivision or public corporation measure or for the public office specified in the demand for a recount, to conduct a recount of such ballots in the precincts listed.

(2) If the demand for a recount is filed pursuant to subsection (1) of ORS 251.520, the Secretary of State shall, not later than three days after the filing of the first demand, notify the affected candidates by certified or registered mail that a recount is to be made in all or some of the precincts, as the case may be, in which ballots were cast for the particular public office specified in the demand for a recount.

(3) The person making a demand for a recount shall be bound by the original official returns unless he demands a recount of all the precincts in which votes were cast on the particular measure or for the particular office.

(4) The official or officials who are to conduct the recount shall, within a reasonable time prior to the recount, notify the affected candidates or, in the case of a demand for recount of a measure, shall notify the individual filing the demand for recount as to the date, time and place of the recount.

[1955 c.498 §4; 1957 c.218 §3; 1963 c.351 §6; 1965 c.124 §2]

**251.560 Counting boards; appointment; compensation.** (1) Upon receipt of notice from the Secretary of State that a recount is to be made, the county clerk or other official or officials directed to conduct the recount shall appoint from the list of registered electors who voted in the election for which the recount is demanded, as many counting boards as may be necessary to complete the recount within the shortest prac-

ticable time after the date the last demand is filed whether it is a first demand or a supplemental demand. No member of the counting boards shall have been a candidate for any office voted upon at the election. The members of any counting board shall not all be members of the same political party.

(2) Each member of the counting board shall be compensated at a rate of not less than \$1 per hour and not less than \$6 per day. The specific compensation shall be fixed by the county court or board of county commissioners and paid by the county in the case of a state or county public office or measure, by the city in case of a city public office or measure, by any other political subdivision or public corporation in the case of such a subdivision or corporation public office or measure or from the deposit made pursuant to ORS 251.520 in accordance with ORS 251.610.

[1955 c.498 §6; 1957 c.218 §4; 1963 c.351 §7]

**251.570 Opening ballot boxes.** The county clerk or other official or officials directed to make the recount under ORS 251.550 shall open the ballot boxes containing the ballots to be recounted, and only in the presence of the counting board appointed pursuant to ORS 251.560 and the persons referred to in subsection (2) of ORS 251.580.  
[1955 c.498 §7; 1957 c.218 §5]

**251.580 Making recount and return of results.** (1) The counting board shall conduct the recount and return the result thereof in the manner provided by law.

(2) The counting board shall, if requested, permit, in the case of a public office, any affected candidate or one person authorized in writing by such candidate and one person authorized in writing by each political party, or, in the case of a measure, one person advocating and one person opposing the measure, to be present to watch the recount. Such persons shall be registered electors of this state.

[1955 c.498 §8; 1957 c.218 §6; 1965 c.124 §3; 1969 c.462 §1]

**251.590 Completion of recount; certifying votes; notification of person demanding recount.** (1) The recount of the precincts designated shall be completed as soon as practicable after the date the last demand is filed.

(2) If all the precincts in which votes were cast on the particular measure or for the particular office are recounted, the

county clerk or other official or officials directed to conduct the recount shall as soon as practicable after the date of completion of the recount:

(a) Certify the abstract of votes recounted to the Secretary of State.

(b) Certify the abstract of votes recounted to the official issuing certificates of nomination or election in the case of a public office or to the official responsible for issuing a proclamation in the case of a measure. The official shall then issue certificates of nomination or election to the persons entitled thereto by such recount or shall issue a proclamation, as the case may be.

(c) By mail notify the person who filed the demand for the recount of the result of the recount and the cost of the recount.

(3) If all the precincts in which votes were cast on a particular measure or for a particular office are not recounted, the abstract of the votes recounted shall not be certified and the abstract of votes resulting from the original count shall be the official return of the primary, general or special election.

(4) The county clerk or other official or officials directed to conduct the recount shall not later than four days after the date of completion of the recount certify the cost of the recount to the Secretary of State.

[1955 c.498 §9; 1957 c.218 §7; 1963 c.351 §8]

**251.600 Recount is official return of election if all precincts recounted.** If all the precincts in which votes were cast on a particular measure or for a particular office are recounted, the abstract of the vote resulting from the recount shall be the official return of the primary, general or special election, as the case may be.

[1955 c.498 §10; 1957 c.218 §8; 1963 c.351 §9]

**251.610 Payment of cost of recount.**

(1) Notwithstanding ORS 162.630 and 293.265, or any other provision of law, the Secretary of State may retain any deposit made pursuant to ORS 251.520, for not more than 60 days after the election for which the recount was demanded, without depositing such deposit in the State Treasury.

(2) If the abstract of the vote resulting from the recount shows that a measure for which the recount was demanded received a majority of the votes or that a candidate for whose benefit the recount was demanded received a plurality of the votes for the particular public office for which his

name appeared on the ballot, the deposit required by ORS 251.520 shall be refunded by the Secretary of State to the person who filed the demand.

(3) If all the precincts in which votes were cast on a particular measure or for a particular office were not recounted or if the abstract of the vote resulting from the recount shows that a measure for which the recount was demanded did not receive a majority of the votes or that a candidate for whose benefit the recount was demanded did not receive a plurality of the votes for the office for which his name appeared on the ballot, the Secretary of State shall remit the deposit required by ORS 251.520 and any additional amount paid pursuant to subsection (5) of this section, to the State Treasurer who shall credit the amounts so received to a special account in the State Treasury. All such moneys deposited in such special account hereby are appropriated for the purpose of reimbursing the county, city or other political subdivision or public corporation, as the case may be, for the cost of the recount.

(4) Upon receipt from the county clerk or other official or officials directed to conduct the recount of a signed certificate itemizing the cost of the recount, the Secretary of State shall issue his warrants for the amount so certified. Any portion of the deposit required by ORS 251.520 remaining after the cost of the recount has been paid shall be refunded by the State Treasurer to the person who filed the demand upon receipt of a warrant from the Secretary of State showing the amount of the refund to which such person is entitled.

(5) If the cost of the recount exceeds the amount of the deposit required by ORS 251.520, and if the measure for which the recount was demanded or the candidate for whose benefit the recount was demanded did not prevail in the recount, the person who filed the demand shall pay to the Secretary of State the amount of the excess cost. [1955 c.498 §11; 1957 c.218 §9; 1963 c.351 §10]

**251.615 Payment of costs where more than one recount conducted simultaneously.** Whenever two or more recounts are conducted simultaneously, payment of the costs of the recount, in those counties where the same precinct or precincts are designated for recount by more than one person, shall be equitably apportioned among the requesters. With the advice of the county clerk or other

official or officials directed to conduct the recount, the Secretary of State shall determine such apportionment of costs.  
[1963 c.351 §3]

**251.620 Duties of counting board members.** No member of a counting board shall:

- (1) Wilfully neglect his duty.
- (2) Engage in any corrupt conduct in the discharge of his duty.
- (3) Alter or destroy any official ballot cast at any election and recounted pursuant to the provisions of ORS 251.510 to 251.610.  
[1955 c.498 §14; 1957 c.218 §10]

**251.625 Authority of Secretary of State over recounts.** In carrying out his responsibility to administer the election laws, the Secretary of State shall have the authority to issue directives and instructions and to assist and advise local election officials in methods and procedures to be used in conducting election recounts to assure an accurate recount in the shortest time at the least expense. Whenever demands are filed for a recount of a vote for both a measure and an office or for more than one measure or office, the Secretary of State may determine the most appropriate procedure to be used in conducting such recounts simultaneously.  
[1963 c.351 §2]

**251.630 Costs to be included and excluded from recount costs.** (1) The certification of costs of a recount as required in subsection (4) of ORS 251.610 may include:

(a) Payment to recount boards at a rate not to exceed the rate at which the election boards were paid during the election prior to the recount.

(b) Payment to additional employees required to conduct the recount and overtime payment to regular employees who are in fact eligible to receive such payments.

(c) Postage, telephone and telegraph charges directly related to the recount.

(2) The certification of costs of a recount as required in subsection (4) of ORS 251.610 shall not include:

(a) General administrative costs.

(b) The costs for security.

(c) Allowances for meals or lodging.  
[1969 c.272 §2]

**251.635 Costs to be collected for multicounty or state-wide election recounts.** If the demand for recount is made for a multicounty or state-wide election, the Secretary of State may also collect his costs limited to those allowed in subsection (1) of ORS 251.630.  
[1969 c.272 §3]

### PENALTIES

**251.990 Penalties.** Violation of ORS 251.620 is a misdemeanor.  
[1955 c.498 §15]

### CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Robert W. Lundy, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.  
Done at Salem, Oregon,  
on December 1, 1969.

Robert W. Lundy  
Legislative Counsel

