TITLE 23

ELECTIONS

Chapter 246. Administration of Election Laws; Vote Recording Systems
247. Qualification and Registration of Electors
248. Political Parties; Presidential Electors
249. Candidates; Recall
250. Initiative and Referendum
251. Voters' Pamphlet
253. Absent Electors
254. Conduct of Elections
255. Special District Elections
258. Election Contests; Recounts
260. Campaign Finance Regulation; Election Offenses

Chapter 246

1983 REPLACEMENT PART

Administration of Election Laws; Vote Recording Systems

GENERAL PROVISIONS

246.012 Definitions
246.021 Time within which election documents must be received by election officer
246.046 Secretary of State and county clerks to seek out evidence of violations

SECRETARY OF STATE

246.110 Secretary of State as chief election officer
246.120 Directives, instructions and assistance to county clerks
246.140 Conferences for county clerks; compliance with instructions
246.150 Rules
246.160 Compilations and digests of election laws; distribution of supplies and materials to county clerks and others
246.170 Election Supply Service Revolving Account
246.179 Reimbursement of county clerk for special election for Representative in Congress

COUNTY CLERK

246.200 County clerk to conduct elections
246.210 County clerk to supervise local election officials
246.220 Directives of county clerk
246.230 Duties in connection with administration of election laws
246.245 Notification to county clerk when city boundary changed
246.250 Personnel; equipment, materials and facilities; payment of expenses; administering oaths
246.270 Office hours of county clerk on election days

PRECINCT ELECTION BOARDS

246.310 Precinct election boards
246.320 Notifying appointees and posting their names; considering objections; filling vacancies
246.330 Compensation of election board clerks
246.335 Meetings with county clerk

PRECINCTS; POLLING PLACES

246.410 Establishment and division of precincts
246.420 Designation of polling places; preferred use of public buildings; symbol designating access to handicapped

VOTE RECORDING SYSTEMS

246.520 Applicable laws; conflicting laws and ordinances inapplicable
246.530 Adoption, purchase or procurement of equipment; use thereafter
246.540 Joint purchase, maintenance and use
246.550 Examination and approval of equipment by Secretary of State
246.560 Requirements for approval of equipment
246.570 Rental agreements authorized
246.580 Content of rental agreement
246.590 Voting Machine Acquisition Account; loans for purchase of equipment; repayment
246.600 Voting Machine Sinking Fund Account; deposit of rentals
246.610 Appropriation from General Fund if sinking fund inadequate

COMPELLING ELECTION OFFICERS TO PERFORM DUTIES

246.810 Duties of district attorney upon notification county clerk has failed to comply with rule, directive or instruction
246.820 Mandamus to compel county clerk to comply with rule, directive or instruction
246.830 Procedure where local election official fails to comply with law, directive or instruction

APPEALS FROM ELECTION OFFICERS

246.910 Appeal from Secretary of State or county clerk to courts

CROSS REFERENCES

Administrative procedures governing state agencies, 183.310 to 183.550
Constitutional provisions relating to suffrage and elections, Const. Art. II
Dates of legislatively prescribed election dates, 171.185
Election offenses, Ch. 260
Election to determine whether city shall issue bonds for construction of interstate bridge, 381.611
Election to determine whether county shall issue bonds for construction of interstate bridge, 381.440
Procedure for submitting question whether city or county public offficial required to file statement of economic interest, 244.201

246.150

Nominating schedule for filling vacancies on special district boards, 255.245
Rules to enforce regular biennial special district elections, 255.325

246.320

Selection of substitute for absent clerk, 254.295

246.330

Compensation for substitute clerk, 254.295

246.410

Ward boundary lines within cities, Const. Art. II, §14a, 221.906

246.810 to 246.830

Punishment of election officer for failure to perform duties, 260.685, 260.993

GENERAL PROVISIONS

246.010 [Repealed by 1957 c.608 §231]

246.011 [1957 c.608 §1; 1975 c.675 §1; repealed by 1979 c.190 §431]

246.012 Definitions. As used in this chapter:

(1) "Ballot" means any material on which votes may be cast for candidates or measures.

(2) "County clerk" means the county clerk or the county official in charge of elections.

(3) "County governing body" means the county court sitting for the transaction of county business or the board of county commissioners.

(4) "Election" means any election held within this state.

(5) "Elector" means an individual qualified to vote under section 2, Article II, Oregon Constitution.

(6) "Governing body" means the governing body of any subdivision of the state.

(7) "Local election official" means any person who is:

(a) An official of any election precinct or special district or public corporation organized for public purposes; and

(b) Authorized or required by law to perform functions in connection with elections held in the election precinct or special district or public corporation organized for public purposes.

(8) "Measure" includes any of the following submitted to the people for their approval or rejection at an election:

(a) A proposed law.

(b) An Act or part of an Act of the Legislative Assembly.

(c) A revision of or amendment to the Oregon Constitution.

(d) Local, special or municipal legislation.

(e) A proposition or question.

(9) "Precinct" means any election precinct.

(10) "Voting machine" means:

(a) Any device which will record every vote cast on candidates and measures and which will either internally or externally total all votes cast on that device.

(b) Any device into which a ballot may be inserted and which is so designed and constructed that the vote for any candidate or measure may be indicated by punching or marking the ballot.

(11) "Vote tally system" means one or more pieces of equipment necessary to examine and tally automatically the marked or punched ballots. [1979 c.190 §1; 1983 c.392 §2]

246.020 [Repealed by 1957 c.608 §231]

246.021 Time within which election documents must be received by election officer. (1) An election document and an accompanying payment of fees required to be filed with the Secretary of State, county clerk or other filing officer, not later than a specified number of days before or after an election, must be delivered to and actually received at the office of the designated officer not later than 5 p.m. of the day the document or fee is due or, if the day due is a Saturday, Sunday or holiday, on the next business day.

(2) The exception to subsection (1) of this section is, when at 5 p.m. an individual is physically present in the office of the designated officer and in line waiting to deliver a document, the individual shall be considered as having begun the act of delivering the document and shall be permitted to file it.

(3) As used in this section, "election document" includes, but is not limited to, a declaration of candidacy for nomination for public or political party office, completed nominating petitions, statements and portraits for voters' pamphlets, reports of election campaign contributions and expenditures, and initiative, referendum or recall petitions. [Formerly 246.510; 1967 c.228 §1; 1979 c.190 §2]

246.030 [Repealed by 1957 c.608 §231]

246.035 [1965 c.527 §4; repealed by 1971 c.267 §16]

246.040 [Repealed by 1957 c.608 §231]

246.045 [1967 c.338 §§2, 3; 1975 c.675 §2; 1979 c.190 §391; renumbered 260.705]

246.046 Secretary of State and county clerks to seek out evidence of violations. The Secretary of State and each county clerk shall diligently seek out any evidence of violation of any election law. [Formerly 260.325]

246.050 [Repealed by 1957 c.608 §231]

246.055 [1973 c.154 §1; repealed by 1979 c.190 §431]

246.060 [Repealed by 1957 c.608 §231]

246.070 [Repealed by 1957 c.608 §231]

246.080 [Repealed by 1957 c.608 §231]

246.090 [Repealed by 1957 c.608 §231]

246.100 [Repealed by 1957 c.608 §231]

SECRETARY OF STATE

246.110 Secretary of State as chief election officer. The Secretary of State is the chief election officer of this state, and it is the secretary's responsibility to obtain and maintain uniformity in the application, operation and interpretation of the election laws. [1957 c.608 §2; 1979 c.190 §5]

246.120 Directives, instructions and assistance to county clerks. In carrying out the responsibility under ORS 246.110, the Secretary of State shall prepare and distribute to each county clerk detailed and comprehensive written directives, and shall assist, advise and instruct each county clerk, on registration of electors and election procedures which are under the direction and control of the county clerk. The directives and instructions shall include relevant sample forms of ballots, documents, records and other materials and supplies required by the election laws. A county clerk affected thereby shall comply with the directives or instructions. [1957 c 608 §3; 1965 c.464 §1; 1979 c.190 §6]

246.130 [1957 c.608 §4; repealed by 1979 c.190 §431]

246.140 Conferences for county clerks; compliance with instructions. (1) In carrying out the responsibility under ORS 246.110, the Secretary of State, not later than the 200th day after the date of adjournment of the regular session of the Legislative Assembly, shall organize and conduct at convenient places and times in this state at least three conferences on the administration of the election laws.

(2) The Secretary of State shall give written notice of the place and time of each conference to each county clerk.

(3) Each county clerk or designated deputy shall attend at least one of the conferences and shall comply with the instructions given under the authority of the Secretary of State at each conference the county clerk or deputy attends. [1957 c.608 §5; 1959 c.263 §1; 1979 c.190 §7; 1983 c.567 §3]

246.150 Rules. The Secretary of State may adopt rules the secretary considers necessary to facilitate and assist in achieving and maintaining a maximum degree of correctness, impartiality and efficiency in administration of the election laws, other than ORS 246.810 to 246.830. [1957 c.608 §8; 1979 c.190 §8]

246.160 Compilations and digests of election laws; distribution of supplies and materials to county clerks and others. The Secretary of State shall:

(1) Prepare and print, in appropriate and convenient form, periodic compilations and digests of the state election statutes.

(2) Distribute in appropriate quantities to the county clerks for use by the county clerks and by election boards, copies of such compilations and digests and such supplies and materials necessary to the conduct of elections as the Secretary of State considers appropriate, including poll books, tally sheets, return sheets and abstract of votes sheets.

(3) Make the compilations and digests available for distribution, free or at cost, to interested persons. [1957 c.608 §125; 1963 c.455 §1; part renumbered 246.170; 1979 c 190 §9]

246.170 Election Supply Service Revolving Account. (1) There is established in the General Fund of the State Treasury an account to be known as the Election Supply Service Revolving Account. All moneys received by the Secretary of State under ORS 246.160 shall be deposited therein; and all moneys in the account are appropriated continuously to the Secretary of State for the payment of expenses incurred in performing the functions described in ORS 246.160.

(2) To facilitate financing the costs incurred under ORS 246.160, the Secretary of State may at any time during the biennium transfer to the Election Supply Service Revolving Account any amounts considered necessary, not to exceed $25,000, from biennial appropriations to the Secretary of State. Funds so transferred shall be retransferred from the Election Supply Service Revolving Account by the Secretary of State to the appropriation from which the original transfer was made. The retransfers shall be accomplished before the last day of each biennial period. [Formerly part of 246.160; 1973 c.162 §3; 1979 c.190 §10]

246.179 Reimbursement of county clerk for special election for Representative in Congress. Notwithstanding ORS 246.250, if a special primary election or a special election to fill a vacancy in the election or office of Representative in Congress is held on a date other than the date of the primary or general election, the Secretary of State shall reimburse each county clerk for necessary expenses of the election based on a claim filed by the county clerk and approved by the Secretary of State. The claim shall be made on a form designed by the Secretary of State. The Secretary of State shall make the reimbursement from funds made available to the Secretary of State by the Emergency Board. [1983 c.567 §2]

246.180 [1973 c.283 §9; 1979 c.190 §98; renumbered 249.009]

COUNTY CLERK

246.200 County clerk to conduct elections. Except as specifically provided otherwise in the statute laws of this state, the county clerk shall be the only election officer to conduct any election in this state. For the purpose of this section, the conduct of an election includes, but is not limited to, establishing precincts and polling places, preparing ballots and sample ballots, and receiving and processing votes. For the purpose of this section, the conduct of an election does not include accepting and verifying a filing for nomination or filing of a petition, preparation of a voters' pamphlet or ballot title, or preparation or publication of an election notice. [1979 c.317 §1; 1983 c.350 §63a]

246.210 County clerk to supervise local election officials. Subject to the directives and instructions prepared and distributed or given by the Secretary of State under ORS 246.120 or 246.140, a county clerk may exercise general supervision of administration of election laws by each local election official in the county for the purpose of achieving and maintaining a maximum degree of correctness, impartiality, efficiency and uniformity in the administration by local election officials. If under this section two or more county clerks exercise general supervision of the same local election official, the county clerks shall cooperate and coordinate to insure uniformity of general supervision. [1957 c.608 §9; 1979 c.190 §11]

246.220 Directives of county clerk. A county clerk may prepare and issue such directives as are necessary to facilitate and assist in carrying out general supervision under ORS 246.210. The directives shall be directed to and complied with by each local election official affected thereby. The county clerk shall distribute to each local election official affected a copy of each directive prepared and issued under this section. A county clerk may make the directives available for distribution, free or at cost, to other interested persons. [1957 c.608 §10; 1979 c.190 §12]

246.230 Duties in connection with administration of election laws. (1) In the exercise of general supervision under ORS 246.210, a county clerk shall:

(a) Subject to ORS 246.120 and 246.150, prescribe and design for use in the county the ballots, documents, records and other materials and supplies required or permitted by the election laws or otherwise necessary in administration of the election laws by the local election officials. Each local election official shall use the materials and supplies so prescribed.

(b) Require each local election official in the county to submit reports pertaining to the administration of the election laws by the local election official. Each local election official shall comply with that requirement.

(c) Inspect and observe administration of the election laws by any local election official in the county at any time considered necessary.

(d) Carry on a program of inservice training for local election officials in the county by periodically distributing to them such bulletins, manuals and other informational and instructional materials and by establishing and conducting such classes of instruction pertaining to the administration of the election laws by local election officials as the county clerk considers desirable.

(2) The county clerk shall prepare the poll book of electors. The poll book shall clearly indicate each district in which the elector is eligible to vote. [1957 c.608 §11; 1965 c.527 §1; 1971 c.660 §1; 1975 c.675 §3; 1979 c.190 §13]

246.235 [1965 c.527 §3; repealed by 1979 c.190 §431]

246.240 [1957 c.608 §12; repealed by 1965 c.527 §5]

264.245 Notification to county clerk when city boundary changed. If the boundary of a city is changed, the city governing body immediately shall send a certified copy of the order, resolution or other action changing the boundary to the county clerk of each county in which the city is located. [1979 c.190 §14]

246.250 Personnel; equipment, materials and facilities; payment of expenses; administering oaths. (1) The county clerk may employ personnel and procure equipment, supplies, materials, books, papers, records and facilities of every kind as the clerk considers necessary to facilitate and assist in administering the election laws.

(2) The necessary expenses incurred by the county clerk in administering the election laws, including reasonable rental for polling places, shall be allowed by the county governing body and paid out of the county treasury.

(3) The county clerk and deputies may administer oaths and affirmations in connection with the performance of their functions in administering the election laws. [1957 c.608 §14; 1979 c.190 §15]

246.260 [1957 c.608 §15; repealed by 1979 c.190 §431]

246.265 [1977 c.829 §12; repealed by 1979 c.190 §431]

246.270 Office hours of county clerk on election days. On the day of any general, special or primary election held throughout the county, the county clerk's office shall remain open for business pertaining to the election while the polls are open. [1957 c.608 §18; 1979 c.190 §16]

246.300 [1957 c.608 §17; repealed by 1975 c.675 §36]

PRECINCT ELECTION BOARDS

246.310 Precinct election boards. (1) Not later than the 30th day before the primary election:

(a) The county clerk shall appoint persons to serve on election boards. There shall be at least one election board for each polling place. If the poll book of a precinct is divided into two or more separate parts as provided in ORS 254.226, the county clerk may appoint an election board for each separate part.

(b) The county clerk may appoint more than one election board for any precinct in which 100 or more ballots were cast at the last general election or in which there are more than 200 electors.

(2) The election board shall consist of a day board to issue ballots and may include a counting board to count ballots. A day board shall consist of three or more clerks. A counting board shall consist of four or more clerks. No election board clerk shall serve on the day board and the counting board at the same time. The county clerk shall designate one clerk of each day board and one clerk of each counting board as chairman.

(3) The county clerk shall appoint the election board clerks for a term of two years. The county clerk may withdraw the appointment of a clerk at any time. Clerks may be reappointed for more than one term.

(4) An election board clerk shall be an elector of the county, shall be able to read, write and speak English and may not be a candidate for any office, except precinct committeeperson, to be voted for at the election next succeeding the appointment. The clerks of a day board or a counting board shall not all be members of the same political party. A person who is the spouse, child, son or daughter-in-law, parent, mother or father-in-law, sibling, brother or sister-in-law, aunt, uncle, niece, nephew, stepparent or stepchild of a candidate on the ballot at an election shall not serve as board clerk, unless the candidate is a candidate for precinct committeeperson and is the only such relative who is a candidate on the ballot in the same election. The county clerk shall appoint board clerks who have the necessary capacity and ability to carry out their functions with sufficient skill and dispatch.

(5) In the event of a vacancy in the office of board clerk, the county clerk shall appoint a qualified person to fill the vacancy. [1957 c.608 §22; 1959 c.317 §1; 1963 c.37 §1; 1963 c.159 §1; 1975 c.675 §4a; 1979 c.190 §17; 1983 c.514 §2]

246.320 Notifying appointees and posting their names; considering objections; filling vacancies. (1) Immediately after the appointment of election board clerks as provided in ORS 246.310 (1), the county clerk shall:

(a) Make and certify a list of the persons appointed for each precinct, make the list available for public inspection in the office for five days and provide a copy of the list to the chairman of the county central committee of each major political party as qualified under ORS 248.006.

(b) Notify by mail each person appointed of the appointment, and keep a record of all notifications.

(2) Not later than the fifth day after the list of appointees is available to the public, any elector may file with the county clerk, without charge, any objection or suggestion respecting the appointments. The county clerk shall consider all objections and suggestions so filed.

(3) If the county clerk revises the list because of objections or suggestions filed under subsection (2) of this section, notification of these additions or deletions shall be delivered to the county central committee chairman of each major political party. [1957 c.608 §23; 1979 c.190 §18]

246.330 Compensation of election board clerks. Each election board clerk shall be compensated at a rate not less than the federal or state minimum wage whichever is higher. The specific compensation shall be fixed and allowed by the county governing body and paid out of the county treasury. [1957 c.608 §24; 1973 c.588 §1; 1975 c.675 §5; 1975 c.678 §3; 1979 c.190 §19; 1979 c.519 §1a]

246.335 Meetings with county clerk. (1) Each county clerk shall meet at a convenient place at least once each calendar year with the election board clerks. At the meeting, the county clerk shall advise and instruct the board clerks concerning the proper election and voting procedures to be followed by them. The Secretary of

State by directive shall provide when the meeting is to occur. The county clerk's advice and instruction shall conform to applicable rules, directives and instructions of the Secretary of State.

(2) The Secretary of State may require a county clerk to conduct a meeting in addition to the annual meeting required by subsection (1) of this section. [1979 c.749 §2 (enacted in lieu of 246.340)]

246.340 [1957 c.608 §25; 1959 c.89 §1; 1979 c.190 §20; repealed by 1979 c.749 §1 (246.335 enacted in lieu of 246.340)]

246.350 [1975 c.678 §1; repealed by 1979 c.190 §431]

PRECINCTS; POLLING PLACES

246.410 Establishment and division of precincts. (1) Not later than January 31 before the primary election the county clerk shall divide all precincts having more than 750 electors. A precinct located in a single multiple dwelling may have more than 750 electors. The county clerk shall fix the boundaries of the precincts and designate the precincts by numbers or names. No precinct in any city with a population of 2,000 or more, according to the latest federal decennial or state census, shall include territory outside the corporate limits of the city.

(2) Except as provided in subsection (4) of this section, no precinct shall be created, united or combined which includes territory from more than one state representative district.

(3) The county clerk, not later than the 30th day before an election, may create, combine or divide one or more precincts in which voting machines or vote tally systems are used. The number of electors to be included in a precinct shall not exceed 1,500.

(4) At any election other than a primary or general election the county clerk, not later than the 30th day before the election, may combine two or more precincts for the election. In combining precincts, the county clerk shall consider the convenience of the elector. No combination of precincts shall number more than 2,000 electors.

(5) Subject to the limitations of subsection (1) of this section, at any time after the primary election and before the next general election:

(a) The county clerk shall make such changes in the boundaries of precincts as are necessary to reflect changes occurring during such period in the corporate limits of any city with a population of 2,000 or more.

(b) The county clerk shall make such other changes in the boundaries of precincts as are necessary or convenient for voting purposes. [1957 c.608 §20; 1959 c.317 §2; 1965 c.109 §1; 1973 c.662 §1; 1977 c.301 §5; 1979 c.190 §21; 1979 c.427 §2]

246.420 Designation of polling places; preferred use of public buildings; symbol designating access to handicapped. (1) Not later than the 10th day before any election the county clerk shall designate one polling place for each precinct. The county clerk shall take into account the desirability that a polling place have adequate parking and lighting facilities and be accessible to the physically handicapped in accordance with state policy as stated in ORS 447.220. The county clerk may designate as a polling place any public building, including any schoolhouse, owned or leased by the state or any political subdivision thereof, and the public building may be used as a polling place without expense to the county. No official in charge of the public building may refuse its use as a polling place. If the public building has an entrance free of architectural barriers as defined by ORS 447.210, that entrance shall be kept unlocked during the hours the polls are open and its location clearly indicated at the main entrance of the building. More than one polling place may be designated in the same building.

(2) Any published list of polling places for use by electors shall indicate by a uniform, nationally recognized physically handicapped symbol those polling places which are accessible to handicapped electors. [1957 c.608 §21; 1961 c.49 §1; 1961 c.174 §1; 1975 c.675 §6; 1977 c.179 §1; 1979 c.190 §22]

246.510 [1955 c.246 §1; renumbered 246.021]

VOTE RECORDING SYSTEMS

246.520 Applicable laws; conflicting laws and ordinances inapplicable. All the provisions of the election laws and of any county or city charter or ordinance not inconsistent with ORS 246.520 to 246.610 apply to elections where voting machines or vote tally systems are used. Any provision of law or of any county or city charter or ordinance which conflicts with the use of voting machines or vote tally systems as provided in ORS 246.520 to 246.610 does not apply to elections in which voting machines or vote tally systems are used. [Formerly 258.025]

246.530 Adoption, purchase or procurement of equipment; use thereafter. A governing body may adopt, purchase or otherwise procure, and provide for the use of, any

voting machine or vote tally system approved by the Secretary of State in all or a portion of the precincts. Thereafter the voting machine or vote tally system may be used for voting at all elections for public and party offices and on all measures, and for receiving, registering and counting the votes in the precincts as the governing body directs. [Formerly 258.045]

246.540 Joint purchase, maintenance and use. (1) In purchasing voting machines or vote tally systems, a governing body of any county and the governing bodies of any incorporated cities, districts or other municipalities in the county, may provide for the joint purchase and subsequent ownership of voting machines or vote tally systems and for the care, maintenance and use of the machines or systems.

(2) The governing body of two or more counties may provide for the joint use of voting machines or vote tally systems. [Formerly 258.105]

246.550 Examination and approval of equipment by Secretary of State. (1) The Secretary of State shall publicly examine all makes of voting machines or vote tally systems submitted to the secretary and determine whether the machines or systems comply with the requirements of ORS 246.560, and can safely be used by electors.

(2) Any person owning or interested in a voting machine or vote tally system may submit it to the Secretary of State for examination. For the purpose of assistance in examining the machine or system the Secretary of State may employ not more than three individuals who are expert in one or more of the fields of data processing, mechanical engineering and public administration. The compensation of these assistants shall be paid by the person submitting the machine or system.

(3) Not later than the 30th day after completing the examination and approval of any voting machine or vote tally system the Secretary of State shall make a report on the machine or system, together with a written or printed description, drawings and photographs clearly identifying the machine or system and its operation. The Secretary of State upon request shall send a copy of the report to any governing body within the state.

(4) Any voting machine or vote tally system that receives the approval of the Secretary of State may be used for conducting elections. Any machine or system that does not receive such approval shall not be used at any election. After a machine or system has been approved by the Secretary of State, any change in the machine or system that does not impair its accuracy, efficiency or capacity shall not render necessary a reexamination or reapproval of the machine or system. [Formerly 258.155]

246.560 Requirements for approval of equipment. (1) No voting machine shall be approved by the Secretary of State unless it is constructed so that it:

(a) Secures to the voter secrecy of voting.

(b) Provides facilities for voting for the candidates of as many political parties or organizations as may make nominations and for or against as many measures as may be submitted.

(c) Permits the elector to vote for any person and as many persons for an office and upon any measure for which the voter has the right to vote.

(d) Permits the elector, except at primary elections, to vote for all the candidates of one party or in part for the candidates of one party and in part for the candidates of one or more other parties.

(e) Correctly records on a separate ballot the votes cast by each elector for any person and for or against any measure.

(f) Provides that a vote for more than one candidate cannot be cast by one single operation of the voting machine or vote tally system except for President and Vice President and electors for those offices.

(g) Provides that straight party pointers shall be disconnected from all candidate pointers.

(2) A vote tally system shall be:

(a) Capable of correctly counting votes on ballots on which the proper number of votes have been marked or punched for any office or measure that has been voted.

(b) Capable of ignoring the votes marked or punched for any office or measure where more than the allowable number of votes have been marked or punched, but shall correctly count the properly voted portions of the ballot.

(c) Capable of accumulating a count of the specific number of ballots tallied for a precinct, accumulating total votes by candidate for each office, and accumulating total votes for and against each measure of the ballots tallied for a precinct.

(d) Capable of tallying votes from ballots of different political parties, from the same precinct, in a primary election.

(e) Capable of accommodating rotation of candidates' names on the ballot, provided that all

ballots from one precinct shall be of the same rotation sequence.

(f) Capable of automatically producing precinct totals in either printed, marked, or punched form, or combinations thereof. [Formerly 258.165]

246.570 Rental agreements authorized. (1) The Secretary of State may enter into an agreement, for a term of not more than one year, with any county within the state for the rental of approved voting machines or vote tally systems to the county.

(2) The Secretary of State on having entered into an agreement with a county may purchase the necessary voting machines or vote tally systems using money made available under the provisions of ORS 246.590. [Formerly 258.405]

246.580 Content of rental agreement. The rental agreement shall provide:

(1) Annual rental payments, not exceeding 20 percent of the cost of the voting machine or vote tally system plus five percent of that amount, payable on or before December 15.

(2) That maintenance, storage and transportation costs of the machines or system are to be paid by the county.

(3) That, if the rental agreement is renewed by the county from year to year, after the completion of the fifth year of rental the title to the voting machines or vote tally system shall be transferred by the Secretary of State to the county. [Formerly 258.415]

246.590 Voting Machine Acquisition Account; loans for purchase of equipment; repayment. (1) The State Treasurer, in the capacity of investment officer for the Oregon Investment Council, may loan moneys in the investment funds as provided in ORS 293.701 to 293.776, 293.810 and 293.820 for the acquisition of the voting machines or vote tally systems which counties have contracted to rent. The money so loaned shall be deposited in the Voting Machine Acquisition Account in the General Fund, which account is created. Money in the account is appropriated for the purchase of voting machines or vote tally systems.

(2) Money so loaned shall be repaid within five years together with interest at a rate agreed upon by the State Treasurer and the Secretary of State. The payments shall be made in amounts that are at least sufficient to reduce the outstanding principal to an amount equal to one-fifth the amount originally advanced multiplied by number of years remaining in the five-year repayment schedule. Separate repayment schedules shall be prepared for money advanced each year. [Formerly 258.425]

246.600 Voting Machine Sinking Fund Account; deposit of rentals. All rentals collected from the counties shall be deposited in the Voting Machine Sinking Fund Account, which account is established. All money on hand in the account at December 31 of each year shall be paid to the State Treasurer as the repayment of money advanced under ORS 246.590. [Formerly 258.435]

246.610 Appropriation from General Fund if sinking fund inadequate. In the event that there is not sufficient money in the Voting Machine Sinking Fund Account on December 31 of any year to meet the repayment schedule as provided in ORS 246.590, there is appropriated from the General Fund an amount sufficient which together with the money in the Voting Machine Sinking Fund Account will provide an amount sufficient to make the scheduled payment. [Formerly 258.445]

COMPELLING ELECTION OFFICERS TO PERFORM DUTIES

246.810 Duties of district attorney upon notification county clerk has failed to comply with rule, directive or instruction. (1) A person having knowledge of any failure of a county clerk to comply with a rule, directive or instruction made by the Secretary of State under ORS 246.120, 246.140 or 246.150 may notify the district attorney of the county. Upon receipt of notification the district attorney shall immediately investigate the alleged failure of the county clerk to comply. Upon conclusion of the investigation the district attorney shall advise and direct the county clerk with regard to how the county clerk must proceed in connection with the matter. The county clerk shall immediately comply with the directive of the district attorney.

(2) If the district attorney, upon conclusion of an investigation under subsection (1) of this section, determines that the county clerk has failed to comply with the rule, directive or instruction and that such failure to comply involves a violation by the county clerk of any statute, the violation of which is punishable by a criminal penalty or forfeiture of office, the district attorney shall promptly prosecute.

(3) The remedy provided in this section is cumulative and does not exclude any other remedy against a county clerk who fails to comply

with the rule, directive or instruction. [1957 c.608 §6; 1979 c.190 §35]

246.820 Mandamus to compel county clerk to comply with rule, directive or instruction. (1) Whenever it appears to the Secretary of State that a county clerk has failed to comply with a rule, directive or instruction made by the Secretary of State under ORS 246.120, 246.140 or 246.150, the Secretary of State may apply to the appropriate circuit court for a writ of mandamus to compel the county clerk to comply. In any such mandamus proceeding it is a defense that the rule, directive or instruction is unlawful.

(2) The remedy provided in this section is cumulative and does not exclude any other remedy against a county clerk who fails to comply with the rule, directive or instruction. [1957 c.608 §7; 1979 c.190 §36]

246.830 Procedure where local election official fails to comply with law, directive or instruction. (1) Whenever it appears to a county clerk that any local election official in the county has failed to comply with any election law or any directive or instruction issued or given by the county clerk under ORS 246.220 or 246.230, the county clerk may issue an order to the official. The order shall specify in what particular the local election official has failed to comply, indicate the proper manner of compliance and direct the local election official to comply with the law, directive or instruction within a designated reasonable time.

(2) If the local election official fails to comply as directed by the order of the county clerk, the county clerk may apply to the circuit court for the county for an order, returnable not later than the fifth day after the date issued, to compel the local election official to comply with the order of the county clerk or to show cause why the official should not be so compelled. Upon receipt of the application of the county clerk the court shall issue the appropriate order, which shall be final. The court shall dispose of the matter as soon as possible and not later than the 10th day after the order is returned by the local election official.

(3) The remedy provided in this section is cumulative and does not exclude any other remedy against the noncomplying local election official. [1957 c.608 §13; 1979 c.190 §37]

APPEALS FROM ELECTION OFFICERS

246.910 Appeal from Secretary of State or county clerk to courts. (1) A person adversely affected by any act or failure to act by the Secretary of State or a county clerk under any election law, or by any order, rule, directive or instruction made by the Secretary of State or a county clerk under any election law, may appeal therefrom to the circuit court for the county in which the act or failure to act occurred or in which the order, rule, directive or instruction was made.

(2) Any party to the appeal proceedings in the circuit court under subsection (1) of this section may appeal from the decision of the circuit court to the Court of Appeals.

(3) The circuit courts and Court of Appeals, in their discretion, may give such precedence on their dockets to appeals under this section as the circumstances may require.

(4) The remedy provided in this section is cumulative and does not exclude any other remedy against any act or failure to act by the Secretary of State or a county clerk under any election law or against any order, rule, directive or instruction made by the Secretary of State or a county clerk under any election law. [1957 c.608 §19; 1975 c.227 §2; 1979 c.190 §38; 1983 c.514 §3]

246.990 [Repealed by 1957 c.608 §231]

246.991 [1967 c.338 §4; 1975 c.675 §7; repealed by 1979 c.190 §431]