

CHAPTER 154

ELECTIONS

HOUSE BILL 99-1160

BY REPRESENTATIVES Fairbank, Dean, Lee, and McKay;
also SENATOR Dyer.

AN ACT

CONCERNING THE CANVASS OF ELECTIONS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 1-1-104 (1), Colorado Revised Statutes, is amended, and the said 1-1-104 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

1-1-104. Definitions. As used in this code, unless the context otherwise requires:

(1) ~~"Assembly" means a meeting of delegates of a political party, organized in accordance with the rules and regulations of the political party, held for the purpose of designating candidates for nominations at a primary election.~~ "ABSTRACT OF VOTES CAST" MEANS A CERTIFIED RECORD OF THE RESULTS IN EACH ELECTION FOR CANDIDATES FOR ANY OFFICE, BALLOT ISSUE, OR BALLOT QUESTION THAT THE COUNTY CLERK AND RECORDER CERTIFIED FOR THE BALLOT.

(1.3) "ASSEMBLY" MEANS A MEETING OF DELEGATES OF A POLITICAL PARTY, ORGANIZED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE POLITICAL PARTY, HELD FOR THE PURPOSE OF DESIGNATING CANDIDATES FOR NOMINATIONS AT A PRIMARY ELECTION.

(1.7) "BALLOT" MEANS THE LIST OF ALL CANDIDATES, BALLOT ISSUES, AND BALLOT QUESTIONS UPON WHICH AN ELIGIBLE ELECTOR IS ENTITLED TO VOTE AT AN ELECTION.

(46.5) "STATEWIDE ABSTRACT OF VOTES CAST" MEANS THE RECORD OF THE RESULTS IN EACH ELECTION FOR CANDIDATES, BALLOT ISSUES, AND BALLOT QUESTIONS THAT THE SECRETARY OF STATE CERTIFIED FOR THE BALLOT.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

SECTION 2. 1-10-101, Colorado Revised Statutes, is amended to read:

1-10-101. Canvass board for partisan elections - appointment, fees, oaths.

(1) (a) At least fifteen days before any primary, general, or congressional vacancy election, the county chairpersons of each of the two major political parties in each county shall certify to the county clerk and recorder, IN THE MANNER PRESCRIBED BY SUCH CLERK AND RECORDER, the appointment of ~~an eligible elector who is a resident of the county to act as a member of the county board of canvassers~~ ONE OR MORE REGISTERED ELECTORS TO SERVE AS A MEMBER OF THE COUNTY CANVASS BOARD. The ~~two~~ appointees, together with the county clerk and recorder, constitute the county CANVASS board. ~~of canvassers.~~

(b) If for any reason an appointee to the county CANVASS board ~~of canvassers~~ refuses, fails, or is unable to serve, the appointee shall notify the county clerk and recorder. The county clerk and recorder, by the speediest and most convenient method, shall notify the county chairperson of the political party to which the appointee belongs. The county chairperson shall forthwith appoint another person to the county CANVASS board. ~~of canvassers.~~ If the political party has no county chairperson or vice-chairperson or if a vacancy in the appointment occurs on the date of the meeting of the county CANVASS board ~~of canvassers~~ so that there can be no specific compliance with the provisions of this section, the county clerk and recorder shall make the appointment or shall fill the vacancy as nearly in compliance with the intention of this section as possible.

(2) Each ~~member of the county board of canvassers except the county clerk and recorder~~ CANVASS BOARD APPOINTEE shall receive a minimum fee of fifteen dollars for each day on which the member is actually engaged in opening election returns and ~~making abstracts of the votes cast~~ OF SERVICE. The fee shall be set by the county clerk and recorder and shall be paid by the county for which the service is performed.

(3) ~~Before beginning their duties as members of the county board of canvassers~~ PRIOR TO ASSUMING THEIR DUTIES, the members of the CANVASS board shall ~~take an oath in the following form~~ SWEAR OR AFFIRM THE FOLLOWING: "I,, do solemnly swear (or affirm) that I am ~~an eligible~~ A REGISTERED elector in precinct, in the county of; that I am a registered member of the party as shown on the registration books of the county clerk and recorder; and that I will faithfully perform the duties required of a member of the county CANVASS board." ~~of canvassers."~~

SECTION 3. Part 1 of article 10 of title 1, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

1-10-101.5. Duties of the canvass board. THE CANVASS BOARD SHALL RECONCILE THE BALLOTS CAST IN AN ELECTION TO CONFIRM THAT THE NUMBER OF BALLOTS COUNTED IN THAT ELECTION DOES NOT EXCEED THE NUMBER OF BALLOTS CAST IN THAT ELECTION. THE CANVASS BOARD ALSO SHALL CERTIFY THE ABSTRACT OF VOTES CAST IN ANY ELECTION.

SECTION 4. 1-10-102, Colorado Revised Statutes, is amended to read:

1-10-102. Official abstract of votes cast - certification. (1) No later than the tenth day after the primary election or the general or congressional vacancy election, the county board of canvassers shall make an official abstract of the votes cast for national and state offices and district offices of state concern. ~~The county clerk and recorder, immediately after the official abstract of votes has been prepared, shall make a copy of the official abstract and shall deliver or transmit it to the office of the secretary of state, who shall file and record a copy of the abstract in a book to be kept for that purpose. The county clerk and recorder shall certify the official abstract and copies and affix to them the county seal~~ SEVENTH DAY AFTER ANY ELECTION COORDINATED BY THE COUNTY CLERK AND RECORDER, THE CANVASS BOARD SHALL COMPLETE ITS DUTIES.

(2) ~~The county clerk and recorder shall certify a list of names of those elected to the county offices and forward that list to the secretary of state.~~

(3) If a recount of a national or state office or district office of state concern is held and ~~changes in~~ the vote result CHANGES, THE COUNTY CANVASS BOARD SHALL PREPARE AND CERTIFY an amended copy of the official abstract of votes ~~shall be filed with the secretary of state showing the recount results as the official abstract of votes for that county~~ CAST. IF THE VOTE RESULT DOES NOT CHANGE AFTER THE RECOUNT, THE COUNTY CANVASS BOARD SHALL INCLUDE A STATEMENT TO THAT EFFECT IN THE OFFICIAL ABSTRACT OF VOTES CAST.

SECTION 5. 1-10-103, Colorado Revised Statutes, is amended to read:

1-10-103. Transmitting returns to the secretary of state - total of results.

(1) ~~On the sixteenth day after any primary election, the secretary of state shall survey the returns of votes cast for candidates for United States senator, for representatives in congress, and for all state offices and district offices of state concern~~ IMMEDIATELY AFTER THE OFFICIAL ABSTRACT OF VOTES CAST HAS BEEN CERTIFIED AND NO LATER THAN THE EIGHTH DAY AFTER AN ELECTION, THE COUNTY CLERK AND RECORDER SHALL TRANSMIT TO THE SECRETARY OF STATE THE PORTION OF THE ABSTRACT OF VOTES CAST THAT CONTAINS THE STATEWIDE ABSTRACT OF VOTES CAST.

(2) ~~On the sixteenth day after any general or congressional vacancy~~ NO LATER THAN THE FOURTEENTH DAY AFTER AN election, the secretary of state shall ~~survey the returns of votes cast for the following: Presidential electors, United States senators, representatives in congress, governor and lieutenant governor, secretary of state, state treasurer, attorney general, regents of the university of Colorado, members of the state board of education, state senators, state representatives, and district attorneys~~ COMPILER AND TOTAL THE RETURNS RECEIVED FROM ALL COUNTIES FOR ALL CANDIDATES, BALLOT ISSUES, AND BALLOT QUESTIONS CERTIFIED BY THE SECRETARY OF STATE, DETERMINE IF A RECOUNT OF ANY OFFICE, BALLOT ISSUE, OR BALLOT QUESTION IS NECESSARY, AND ORDER THE APPROPRIATE RECOUNTS, IF ANY.

(3) EACH COUNTY CLERK AND RECORDER SHALL TRANSMIT A LIST OF THE NAMES OF THOSE CANDIDATES ELECTED TO COUNTY OFFICES TO THE SECRETARY OF STATE NO LATER THAN THE EIGHTH DAY AFTER THE ELECTION.

SECTION 6. 1-10-104, Colorado Revised Statutes, is amended to read:

1-10-104. Imperfect returns - corrections. (1) ~~If, a county board of canvassers~~ IN THE COURSE OF THEIR DUTIES, THE CANVASS BOARD or the secretary of state finds that the method of making or certifying returns from any precinct, county, or district does not ~~strictly~~ conform to the requirements of law, the returns shall nevertheless be ~~surveyed~~ CANVASSED if they are sufficiently explicit in showing how many votes were cast for each candidate, BALLOT QUESTION, or ballot issue.

(2) ~~If the county CANVASS board of canvassers or the secretary of state finds that during the survey of returns any statement furnished to them has omitted certain matters which should have been included or that clerical mistakes have been made, they shall send the returns to the appropriate county clerk and recorder for correction~~ A CLERICAL ERROR OR OMISSION IN THE RETURNS, the county clerk and recorder, after consultation with the election judges, shall make any correction required by the facts of the case. ~~but shall not change or alter any decision made by them prior to the corrections.~~ The election judges shall SIGN AND submit to the ~~canvassers~~ CANVASS BOARD any documentation required for ANY EXPLANATION OR verification of the ADDITIONS OR corrections. ~~and, at some convenient time, shall come to the office of the county clerk and recorder to initial any change previously authorized orally. A county board of canvassers~~ THE CANVASS BOARD may adjourn from day to day for the purpose of obtaining ~~and receiving~~ THE ADDITIONS OR corrections. ~~but shall not delay the surveying past the day provided by law for its completion.~~

SECTION 7. 1-10-105, Colorado Revised Statutes, is amended to read:

1-10-105. Official abstract of votes cast - certification by secretary of state.

(1) ~~The secretary of state shall make a certified statement of results for each of the offices listed in section 1-10-103. The statement shall show the names of the candidates and, for each candidate,~~ AFTER RECEIVING THE FINAL ABSTRACTS OF VOTES CAST FOR ALL ELECTIONS FROM THE COUNTIES, INCLUDING ANY RECOUNTS, THE SECRETARY OF STATE SHALL PREPARE AND CERTIFY AN OFFICIAL STATEWIDE ABSTRACT OF VOTES CAST FOR ALL CANDIDATES, BALLOT ISSUES, AND BALLOT QUESTIONS THAT THE SECRETARY OF STATE CERTIFIED FOR THE BALLOT. FOR EACH CONTEST, THE STATEWIDE ABSTRACT OF VOTES CAST SHALL SHOW the total number of votes received, with subtotals for each ~~district of state concern or~~ county in which the candidate was on the ballot, AND THE BALLOT WORDING FOR EACH BALLOT ISSUE AND BALLOT QUESTION.

(2) In the event of tie votes, ~~for the offices of governor and lieutenant governor, secretary of state, state treasurer, or attorney general, the certified statement of results shall include the ties which will then be resolved pursuant to section 1-11-101~~ THE SECRETARY OF STATE SHALL INCLUDE THE METHOD OF RESOLVING VOTES AND THE FINAL RESULT IN THE STATEWIDE ABSTRACT OF VOTES CAST.

(3) ~~All other tie votes shall be resolved pursuant to section 1-11-102 before the certified statement of results is prepared.~~

(4) IN THE EVENT THAT AN ACCURATE AND VERIFIABLE DETERMINATION OF THE COUNT CANNOT BE MADE AND THEREFORE THE SECRETARY OF STATE IS UNABLE TO CERTIFY THE ELECTION OF ANY CANDIDATE, THE SECRETARY SHALL ISSUE A REPORT INDICATING THE NATURE OF THE IRREGULARITY RATHER THAN ISSUE A CERTIFICATION.

(5) THE SECRETARY OF STATE SHALL PUBLISH ON A BIENNIAL BASIS AN OFFICIAL ABSTRACT OF VOTES CAST FOR ALL STATEWIDE ELECTIONS HELD IN THE YEAR OF THE GENERAL ELECTION AND INCLUDE THE ODD-NUMBER YEAR IMMEDIATELY PRECEDING THAT GENERAL ELECTION. THE ABSTRACT SHALL CONTAIN THE FOLLOWING INFORMATION:

(a) ALL INFORMATION INCLUDED IN THE STATEWIDE ABSTRACT OF VOTES CAST, AS PROVIDED IN SUBSECTION (1) OF THIS SECTION;

(b) THE NAMES OF CANDIDATES ELECTED TO COUNTY OFFICES AND THE OFFICES FOR WHICH THEY WERE ELECTED, AS FURNISHED BY THE COUNTY CLERK AND RECORDERS;

(c) THE RECONCILED TOTAL NUMBER OF ACTIVE, REGISTERED VOTERS IN EACH COUNTY ON ELECTION DAY, AS DETERMINED BY THE COUNTY CLERK AND RECORDERS NO LATER THAN FORTY-FIVE DAYS AFTER THE ELECTION;

(d) BASED ON THE TOTAL NUMBER OF ACTIVE, REGISTERED VOTERS, THE PERCENT OF VOTER TURNOUT IN EACH COUNTY; AND

(e) ANY OTHER INFORMATION THAT THE SECRETARY OF STATE DETERMINES WOULD BE INTERESTING OR USEFUL TO THE ELECTORATE OR OTHER ELECTED OFFICIALS.

(6) NO LATER THAN JUNE OF THE ODD-NUMBERED YEAR IMMEDIATELY FOLLOWING THE GENERAL ELECTION, THE SECRETARY OF STATE SHALL FURNISH EACH COUNTY CLERK AND RECORDER A COPY OF THE COMPLETE OFFICIAL BIENNIAL STATEWIDE ABSTRACT OF VOTES CAST AT NO CHARGE.

SECTION 8. 1-10-201, Colorado Revised Statutes, is amended to read:

1-10-201. Canvass of nonpartisan elections. (1) ~~Except as provided in section 1-10-202,~~ At least fifteen days before any nonpartisan election THAT IS NOT COORDINATED BY THE COUNTY CLERK AND RECORDER, the governing body ~~which~~ OR BODIES THAT called the election shall appoint ~~at least one member of the governing body and at least one eligible elector of the political subdivision who is not a member of the governing body to assist the designated election official in the survey of returns~~ TWO REGISTERED ELECTORS OF THE POLITICAL SUBDIVISION TO SERVE AS MEMBERS OF THE CANVASS BOARD. ONE OF THE TWO PERSONS APPOINTED MAY BE A MEMBER OF THE GOVERNING BODY. The persons so appointed and the designated election official constitute the CANVASS board ~~of canvassers~~ for the election. IF THE ELECTION IS COORDINATED BETWEEN TWO OR MORE GOVERNING BODIES, THE CANVASS BOARD SHALL BE APPOINTED IN ACCORDANCE WITH THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE GOVERNING BODIES.

(2) TO THE FULLEST EXTENT POSSIBLE, no member of the CANVASS board ~~of canvassers who is a member of the governing body or~~ NOR the member's spouse shall have a direct interest in the election. ~~unless all of the members of the governing body have a direct interest in the election, except the designated election official. No member of the board of canvassers who is not a member of the governing body or a member's spouse shall have a direct interest in the election unless all of the eligible electors have a direct interest in the election.~~

(3) If for any reason any person appointed as a member of the CANVASS board ~~of canvassers~~ refuses, fails, or is unable to serve, that appointed person shall notify the designated election official, who shall appoint another person with the same qualifications, if available, to the CANVASS board. ~~of canvassers.~~

(4) Each CANVASS BOARD member ~~of the board of canvassers, except members of the governing body,~~ WHO IS NOT A MEMBER OF THE GOVERNING BODY shall receive a minimum fee of fifteen dollars for each day ~~on which the member is actually engaged in opening election returns and making abstracts of the votes cast~~ OF SERVICE. The fee shall be set by the designated election official and shall be paid by the political subdivision for which the service is performed.

(5) ~~Before beginning their duties as members of the board of canvassers~~ PRIOR TO ASSUMING THEIR DUTIES, the members of the ~~board of canvassers shall take an oath in the following form~~ CANVASS BOARD SHALL SWEAR OR AFFIRM THE FOLLOWING: "I, _____, do solemnly swear (or affirm) that I am ~~registered to vote in a REGISTERED ELECTOR IN THE COUNTY OF _____ AND OF the state of Colorado and that I will faithfully perform the duties required of a member of the CANVASS board.~~ of canvassers." ~~In the event that the county board of canvassers serves as the board of canvassers for a political subdivision, no oath other than the oath taken pursuant to section 1-10-101 shall be required.~~

SECTION 9. 1-10-202, Colorado Revised Statutes, is amended to read:

1-10-202. Canvass of votes in coordinated elections. ~~The returns of coordinated elections may be surveyed by the county board of canvassers or by a separate board of canvassers, at the option of the political subdivisions holding the coordinated election:~~ FOR ANY ELECTION COORDINATED BY THE COUNTY CLERK AND RECORDER, THE CANVASS BOARD SHALL BE APPOINTED IN ACCORDANCE WITH THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE GOVERNING BODIES HOLDING THE ELECTION.

SECTION 10. 1-10-203, Colorado Revised Statutes, is amended to read:

1-10-203. Official abstract of votes cast - nonpartisan elections. (1) ~~The returns of all nonpartisan, ballot issue, and ballot question elections shall be made to the designated election official. Unless the election has been cancelled pursuant to section 1-5-208, no later than seven days after the election, the canvassers shall meet, survey the returns, issue a certified statement of results, and make out abstracts of votes for each office~~ NO LATER THAN SEVEN DAYS AFTER AN ELECTION, THE CANVASS BOARD SHALL CERTIFY TO THE DESIGNATED ELECTION OFFICIAL THE OFFICIAL ABSTRACT OF VOTES CAST FOR ALL CANDIDATES, BALLOT ISSUES, AND BALLOT QUESTIONS IN THAT ELECTION.

(2) If the election is canceled pursuant to section 1-5-208, the designated election official shall note the cancellation AND THE DECLARED WINNER on the certified statement of results and ~~shall indicate which candidates were elected by acclamation~~ THE ABSTRACT OF VOTES CAST, IF ONE IS PREPARED.

(3) IF A RECOUNT IS HELD AND THE RESULT OF THE ELECTION CHANGES AFTER THE RECOUNT, THE CANVASS BOARD SHALL PREPARE AND CERTIFY AN AMENDED OFFICIAL

ABSTRACT OF VOTES CAST. IF THE RESULT OF AN ELECTION SUBJECT TO A RECOUNT DOES NOT CHANGE AFTER SUCH RECOUNT, THE CANVASS BOARD SHALL INCLUDE A STATEMENT OF THAT FACT IN THE ABSTRACT OF VOTES CAST.

SECTION 11. 1-10-204, Colorado Revised Statutes, is amended to read:

1-10-204. Imperfect returns. If the ~~canvassers find~~ CANVASS BOARD FINDS that the method of making or certifying returns from any precinct does not ~~strictly~~ conform to the requirements of law, the returns of the votes cast in that precinct shall nevertheless be ~~surveyed~~ CANVASSED if the returns are sufficiently explicit to enable the ~~canvassers~~ CANVASS BOARD to determine how many votes were cast for each candidate, ballot question, or ballot issue.

SECTION 12. 1-10-205, Colorado Revised Statutes, is amended to read:

1-10-205. Corrections. If the ~~canvassers find during the survey of returns that any statement furnished to them has omitted certain matters which should have been included or that clerical mistakes have been made, the canvassers~~ CANVASS BOARD FINDS A CLERICAL ERROR OR OMISSION IN THE RETURNS, THE BOARD shall consult with the election judges from whom the returns were received to resolve the discrepancies. The election judges shall submit to the ~~canvassers~~ CANVASS BOARD any documentation for verification of the ~~corrections which the facts of the case require but shall not change or alter any decision made by them prior to the corrections~~ ADDITIONS AND CORRECTIONS, AND THE CANVASS BOARD SHALL MAKE ANY ADDITIONS AND CORRECTIONS REQUIRED BY THE FACTS OF THE CASE. The ~~canvassers~~ CANVASS BOARD may adjourn from day to day for the purpose of obtaining the corrections AND ADDITIONS.

SECTION 13. Title 1, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE CONTAINING RELOCATED PROVISIONS, WITH AMENDMENTS, to read:

ARTICLE 10.5 **Recounts**

1-10.5-101. Recounts required - expenses. (1) (a) IF SENATE BILL 99-028 IS NOT ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTY-SECOND GENERAL ASSEMBLY AND DOES NOT BECOME LAW, 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 PERCENT OF THE HIGHEST VOTE CAST IN THAT ELECTION CONTEST. A RECOUNT SHALL OCCUR ONLY AFTER THE CANVASS BOARD CERTIFIES THE ORIGINAL VOTE COUNT.

(b) IF SENATE BILL 99-028 IS ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTY-SECOND GENERAL ASSEMBLY AND BECOMES LAW, 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. 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.

1-10.5-102. [Formerly 1-10-301] Recounts for congressional, state, and district offices, state ballot questions, and state ballot issues. (1) ~~If, on or before the twentieth day after the general or congressional vacancy election or on or before the tenth day after the primary election, all the official abstracts of votes have been received in the office of the secretary of state, and it appears, as evidenced by the official abstracts of votes, that a candidate for~~ IF THE SECRETARY OF STATE DETERMINES THAT A RECOUNT IS REQUIRED FOR THE OFFICE OF United States senator, representative in congress, ~~or any state office or district office of state concern, has failed to be nominated in a primary election by two percent or less of the highest vote cast for a candidate of the same party for that office or failed to be elected in a general or congressional vacancy election by one percent or less of the highest vote cast for a candidate for the same office,~~ 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 FOURTEENTH DAY AFTER THE ELECTION.

(2) The secretary of state shall ~~make demand upon~~ NOTIFY the county clerk and recorder of each county involved by registered mail ~~for~~ 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 by no later than the ~~thirtieth day after the general or congressional vacancy election or the fifteenth day after the primary election~~ TWENTY-FIRST DAY AFTER ANY ELECTION. The secretary of state shall ~~also~~ 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 ~~allowing interested political parties and candidates to be represented by~~ 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) PRIOR TO ANY RECOUNT, THE CANVASS BOARD SHALL CHOOSE A PRECINCT AT RANDOM AND A TEST NUMBER OF BALLOTS ON WHICH TO CONDUCT A MACHINE COUNT AND HAND COUNT OF BALLOTS. THE PRECINCT CHOSEN SHALL HAVE AT LEAST FIFTY BALLOTS FOR THE COUNT. IF THE RESULTS OF THE MACHINE COUNT AND THE HAND COUNT ARE IDENTICAL, THEN THE RECOUNT SHALL BE CONDUCTED IN THE SAME MANNER AS THE ORIGINAL BALLOT COUNT.

1-10.5-103. [Formerly 1-10-302] Recount for other offices, ballot issues, and ballot questions in an election coordinated by the 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 ~~that any candidate for any county office failed to be nominated in a primary election by two percent or less of the highest vote~~

~~east for a candidate of the same party for that office or if any candidate for a county office failed to be elected in a general election by one percent or less of the highest vote cast for a candidate for the same office; 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, in question. The recount shall be held at the same time and place and in the same manner as a recount conducted pursuant to section 1-10-301. If no recount is ordered under section 1-10-301, any recount of the votes for county officers shall be held no later than the thirtieth day after a general election or no later than the fifteenth day after a primary election and shall be completed no later than the thirty-fifth day after the general election or the twentieth day after the primary election~~ BALLOT QUESTION, OR BALLOT ISSUE. ANY RECOUNT OF THE VOTES SHALL BE COMPLETED NO LATER THAT THE TWENTY-FIRST DAY AFTER THE ELECTION.

1-10.5-104. [Formerly 1-10-303] Recount for nonpartisan elections not coordinated by the county clerk and recorder. If it appears, as evidenced by the survey of returns, that any candidate failed to be elected or ballot issue or ballot question failed to pass by a margin of one percent or less of the highest number of votes cast for the next candidate for that office or for the ballot issue or ballot question, ~~the governing body shall conduct~~ 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, or the ballot issue, or ballot question NO LATER THAN THE FOURTEENTH DAY AFTER THE ELECTION. Any recount under this section shall be ~~held~~ COMPLETED no later than the ~~fifteenth day after a regular or special election or no later than the thirtieth day after a coordinated election and shall be completed by no later than the twentieth day after a regular or special election or the thirty-fifth day after a coordinated election.~~ Notice prior to the recount shall be given to all interested candidates or supporters of a ballot issue or ballot question. ~~The interested parties or their representatives shall be allowed to be present and observe the recount. Any recount under this section shall be paid for by the governing body~~ TWENTY-FIRST DAY AFTER THE ELECTION.

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.

1-10.5-106. [Formerly 1-10-304 and 1-10-304.5] Request for recount by interested party. (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) ~~If it appears, as evidenced by the survey of returns, that any candidate failed to be nominated or elected by more than the number of required votes provided in section 1-10-301, 1-10-302, or 1-10-303, the losing candidate~~ WHENEVER A RECOUNT IS NOT REQUIRED, AN INTERESTED PARTY may submit a ~~certified~~ NOTARIZED written request for a recount at the expense of the ~~person making the request or the losing political party or organization~~ INTERESTED PARTY MAKING THE REQUEST. This request shall be filed ~~within thirty days after the general or congressional vacancy election or within fifteen days after the primary election or any other election~~ 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 FIFTEEN DAYS AFTER THE 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 ~~designated~~ election official shall ~~notify the other candidate or candidates and shall determine the cost and notify the requesting candidate. If the recount is for an office greater than a county office, the cost shall be determined by the secretary of state who shall notify the candidate. The candidate or the losing political party or organization shall pay on demand the cost of the recount to the county clerk and recorder for a recount of a county office, to the secretary of state for a recount of a congressional, state, or district office, or to the governing body for a nonpartisan election~~ WHO WILL CONDUCT THE RECOUNT SHALL DETERMINE THE COST OF THE RECOUNT WITHIN THREE DAYS 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 TWO DAYS 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 ~~candidate who requested the recount is declared the winner of the election, regardless of the margin of victory, or if the winning candidate failed to be nominated or elected by more than the number of required votes provided in section 1-10-301, 1-10-302, or 1-10-303~~ 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 ~~person or the losing political party or organization who paid them, and the expenses shall be paid as provided in section 1-10-309. The recount provided for in this section shall be in addition to any other recounts provided by law~~ 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 ~~held~~ COMPLETED no later than the ~~thirtieth day after a general election or no later than the fifteenth day after a primary election or other election and shall be completed no later than the thirty-fifth day after the general~~

~~election or the twentieth day after the primary election or other election~~ THIRTIETH DAY AFTER THE ELECTION.

1-10.5-107. [Formerly 1-10-305] 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 ~~of canvassers~~ who officiated in ~~making~~ CERTIFYING the official abstract of votes ~~or certified statement of results~~ CAST. If any member of the CANVASS board ~~of canvassers~~ 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 ~~of canvassers~~ 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 ~~of canvassers~~ may require the production of any documentary evidence regarding any vote cast or counted and may correct the ~~survey of returns~~ ABSTRACT OF VOTES CAST in accordance with its findings based on the evidence presented.

(4) At the conclusion of the recount, the CANVASS board ~~of canvassers~~ 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 ~~1-10-304 and 1-10-304.5~~ 1-10.5-105 AND 1-10.5-106. The ~~canvassers~~ CANVASS BOARD shall meet and issue ~~a revised certified statement of results, and make out revised abstracts of votes~~ AN AMENDED ABSTRACT OF VOTES CAST for the office, ballot issue, or ballot question that is the subject of the recount and deliver ~~them~~ IT to the designated election official.

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

1-10.5-108. [Formerly 1-10-306] Method of recount. ~~In precincts using paper or electronic ballots, The recount shall be of the ballots cast, and the votes shall be tallied~~ RECORDED on sheets other than those used at the election. ~~In precincts using voting machines, the recount shall be of the votes tabulated on the voting machines, and separate tally sheets shall be used for each machine.~~

1-10.5-109. [Formerly 1-10-307] Challenge of recount. (1) (a) ~~Any candidate for a county, state, or national or district office of state concern who is a party to a recount or the supporters of any statewide ballot issue or ballot question who requested a recount and who~~ 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 candidate for a local office who is a party to a recount or the supporters of any local ballot issue or ballot question who requested a recount and who~~ 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.

SECTION 14. 1-11-101, Colorado Revised Statutes, is amended to read:

1-11-101. Tie votes at partisan elections. (1) If at any general or congressional vacancy election, AFTER ALL RECOUNTS HAVE BEEN COMPLETED, any two or more pairs of joint candidates for the offices of governor and lieutenant governor or if two or more candidates for the offices of secretary of state, state treasurer, or attorney general tie for the highest number of votes for the same office, one of the pairs or one of the individual candidates shall be chosen by the two houses of the general assembly on a joint ballot.

(2) If at any general or congressional vacancy election, AFTER ALL RECOUNTS HAVE BEEN COMPLETED, any two or more persons tie for the highest number of votes for presidential electors, for United States senator, for representative in congress, for regent of the university of Colorado, for member of the state board of education, for state senator or state representative, or for district attorney, the secretary of state shall proceed to determine by lot which of the candidates shall be declared elected. Reasonable notice shall be given to the candidates of the time when the election will be determined.

(3) If at any primary election, AFTER ALL RECOUNTS HAVE BEEN COMPLETED, any two or more candidates FOR AN OFFICE OTHER THAN A COUNTY OFFICE of the same political party tie for the highest number of votes for the same office, the tie shall be resolved in a manner agreed upon by the tying candidates. In case the candidates fail to agree on the method of resolution within five days after the canvass is complete, the tie shall be resolved by lot to be cast as the secretary of state may determine.

(4) IF AT ANY PRIMARY ELECTION INVOLVING A COUNTY OFFICE, AFTER ALL RECOUNTS HAVE BEEN COMPLETED, TWO OR MORE CANDIDATES OF THE SAME POLITICAL PARTY TIE FOR THE HIGHEST NUMBER OF VOTES FOR THE SAME OFFICE, THE CANVASS BOARD SHALL DETERMINE BY LOT THE PERSON WHO SHALL BE ELECTED.

THE CANVASS BOARD SHALL PROVIDE THE CANDIDATES AFFECTED BY THE TIE VOTE REASONABLE NOTICE OF THE TIME WHEN THE ELECTION WILL BE DETERMINED.

SECTION 15. 1-11-103 (1) and (2), Colorado Revised Statutes, are amended to read:

1-11-103. Certificates of election for nonpartisan, ballot issue, or ballot question elections. (1) Except in the case of offices for which a recount is required, ~~as provided in section 1-10-303,~~ immediately after the FINAL abstract of votes CAST for each office has been prepared AND CERTIFIED, the designated election official shall notify the candidates of their election to office. After any required bond and oath is filed, the designated election official shall make a formal certificate of election for each ~~of the persons~~ PERSON who ~~were~~ WAS elected and shall deliver the formal ~~certificates to those persons~~ CERTIFICATE TO THAT PERSON.

(2) Except in the case of ballot issues or ballot questions for which a recount is required, ~~as provided in section 1-10-303,~~ immediately after the ~~survey of returns~~ ABSTRACT OF VOTES CAST for each ballot issue or ballot question has been prepared AND CERTIFIED, the designated election official shall notify the governing body of the political subdivision conducting the election and the petition representatives of a ballot issue or ballot question of the election result and shall make a certificate of the votes cast for and against each ballot issue and for and against each ballot question available for public inspection in the office of the designated election official for no less than ten days following the completion of the ~~survey of returns by the board of canvassers~~ ABSTRACT OF VOTES CAST BY THE CANVASS BOARD.

SECTION 16. 1-11-104, Colorado Revised Statutes, is amended to read:

1-11-104. Certificates of election for county and precinct officers. Except in the case of offices for which a recount is required, ~~as provided in section 1-10-302,~~ immediately after the FINAL abstract of votes CAST for county and precinct officers has been prepared AND CERTIFIED, the county clerk and recorder shall make a certificate of election, or a certificate of nomination in the case of a primary election, for each ~~of the persons having the highest number of votes for~~ PERSON DECLARED TO BE ELECTED OR NOMINATED TO each office and shall deliver the certificates to ~~the persons who were elected~~ THAT PERSON.

SECTION 17. 1-11-105, Colorado Revised Statutes, is amended to read:

1-11-105. Certificates of election for national, state, and district officers. IMMEDIATELY AFTER THE FINAL STATEWIDE ABSTRACT OF VOTES CAST HAS BEEN PREPARED, the secretary of state shall make and transmit a certificate of election, certified under the secretary of state's seal of office, to each of the persons declared to be elected to national, state, and district offices of state concern and shall record in a book to be kept for that purpose each such certification. IF THE SECRETARY OF STATE IS UNABLE TO CERTIFY THE CANDIDATE ELECTED TO A STATE OR DISTRICT OFFICE OF STATE CONCERN, NO SUCH CERTIFICATION OF ELECTION SHALL BE TRANSMITTED BY THE SECRETARY OF STATE UNTIL THE CANDIDATE ELECTED HAS BEEN DETERMINED.

SECTION 18. 1-11-106, Colorado Revised Statutes, is amended to read:

1-11-106. Delivery of certified list of results. Upon the organization of the house of representatives, the secretary of state shall deliver to the speaker of the house a certified list of candidates elected to each state office and of each member elected to the general assembly showing the member's district. IF THE SECRETARY OF STATE IS UNABLE TO CERTIFY THE CANDIDATE ELECTED TO STATE OFFICE OR THE MEMBER ELECTED TO THE GENERAL ASSEMBLY FROM A PARTICULAR DISTRICT, THE SECRETARY OF STATE SHALL ALSO DELIVER A LIST OF THE STATE OFFICES OR DISTRICTS FOR WHICH NO CERTIFICATION MAY BE MADE. The speaker, upon receipt of the CERTIFIED list AND, IF DELIVERED, THE LIST OF OFFICES AND DISTRICTS FOR WHICH NO CERTIFICATION MAY BE MADE and before proceeding to other business, shall open and announce the results in the presence of a majority of the members of both houses of the general assembly, who shall assemble for that purpose in the chamber of the house of representatives. The person having the highest number of votes for any of the offices shall be declared duly elected by the presiding officer of the joint assembly. The two houses on joint ballot shall then resolve any tie votes which are on the certified list of results.

SECTION 19. 1-11-201 (1) (c), (1) (d), (3) (b), and (3) (c), Colorado Revised Statutes, are amended to read:

1-11-201. Causes of contest. (1) The election of any candidate to any office may be contested on any of the following grounds:

(c) That an election judge or CANVASS board ~~of canvassers~~ has made an error in counting or declaring the result of an election that changed the result of the election;

(d) That an election judge, CANVASS board, ~~of canvassers~~, or member of a CANVASS board ~~of canvassers~~ has committed malconduct, fraud, or corruption that changed the result of the election;

(3) The result of any election to determine a ballot issue or ballot question may be contested on any of the following grounds:

(b) That an election judge or CANVASS board ~~of canvassers~~ has made an error in counting or declaring the result of an election that changed the result of the election; or

(c) That an election judge, CANVASS board, ~~of canvassers~~, or member of a CANVASS board ~~of canvassers~~ has committed misconduct, fraud, or corruption that changed the result of the election.

SECTION 20. 1-11-208 (2), Colorado Revised Statutes, is amended to read:

1-11-208. Contests for state senator or representative. (2) The contestor, within ten days after the completion of the official ~~survey of the returns~~ ABSTRACT OF VOTES CAST, shall file in the office of the secretary of state a verified statement of intention to contest the election, setting forth the name of the contestor, that the contestor is an eligible elector of the district, the name of the contestee, the office being contested, the time of the election, and the particular grounds for the contest, and shall serve a copy upon the contestee. The contestor shall file with the secretary of state a bond, with sureties, running to the contestee and conditioned to pay all costs

in case of failure to maintain the contest. The secretary of state shall determine the sufficiency of the bond, and, if it is sufficient, approve it.

SECTION 21. 1-11-215, Colorado Revised Statutes, is amended to read:

1-11-215. Recount in contests for county and nonpartisan elections. If, at trial of any election contest as provided in sections 1-11-214 and this section, the statement or counterstatement alleges an error in the ~~survey of returns~~ ABSTRACT OF VOTES CAST sufficient to change the result, the district judge has the power to order a recount of the ballots cast or the votes tabulated in the precincts in which the alleged error was made. The court may also require the production before it of witnesses, documents, records, and other evidence as may have or contain information regarding the legality of any vote cast or counted for either of the contesting candidates or a ballot issue or ballot question, or concerning the correct number of votes cast for a candidate or a ballot issue or ballot question. The court may order the returns corrected in accordance with the evidence presented and the court's findings.

SECTION 22. 1-12-119, Colorado Revised Statutes, is amended to read:

1-12-119. Canvass of votes. (1) For the recall of a partisan officer, the CANVASS board ~~of canvassers~~ shall be composed of one representative from each major political party and the county clerk and recorder. For the recall of a nonpartisan officer, the CANVASS board ~~of canvassers~~ shall be composed of the designated election official, one member of the governing body, and one eligible elector of the political subdivision.

(2) The CANVASS board ~~of canvassers~~ shall ~~commence a survey of the returns on~~ COMPLETE AN ABSTRACT OF VOTES CAST NO LATER THAN the day following the recall election. For state elections, the CANVASS board ~~of canvassers~~ shall contact the secretary of state on election night with the unofficial count. For county and all other elections, the CANVASS board ~~of canvassers~~ shall provide the governing body with the unofficial count at the opening of business hours on the day following the recall election.

(3) The certified ~~survey of returns~~ ABSTRACT OF VOTES CAST shall be sent by certified mail or hand delivered to the secretary of state for state elections and to the governing body for county and all other elections no later than the close of business on the fifth day after the recall election.

(4) If the majority of those voting on the recall question voted "yes", upon receipt of the certified ~~survey of returns~~ ABSTRACT OF VOTES CAST, the designated election official shall issue a certificate of election to the successor candidate who received the highest number of votes. A copy of the certificate shall be transmitted by the secretary of state to the appropriate house of the general assembly for recall elections concerning the general assembly and to the governor for the recall of all other elections of state officers. For all other recall elections, a copy of the certificate shall be transmitted to the governing body of the political subdivision.

SECTION 23. 1-13-722, Colorado Revised Statutes, is amended to read:

1-13-722. Defacing or removing abstract of votes. Any person who defaces, mutilates, alters, or removes the abstract of votes CAST posted upon the outside of the polling place in accordance with section 1-7-311 is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

SECTION 24. Repeal of provisions being relocated in this act. Part 3 of article 10 of title 1 and section 1-11-108, Colorado Revised Statutes, are repealed.

SECTION 25. Effective date. This act shall take effect July 1, 1999.

SECTION 26. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 30, 1999