

TITLE 34
ELECTIONS

CHAPTER 23
RECOUNT OF BALLOTS

34-2301. APPLICATION FOR RECOUNT OF BALLOTS. (1) Any candidate for federal, state, county or municipal office desiring a recount of the ballots cast in any nominating or general election or person supporting or opposing a state, county or city measure, may apply to the attorney general therefor, within twenty (20) days of the canvass of such election, by the state board of canvassers if for federal and state office, or within twenty (20) days of the canvass of such election by the county commissioners if for a county or municipal office.

(2) Candidates for all other offices and supporters and opponents to all other ballot measures desiring a recount may apply to the county clerk within twenty (20) days of the canvass of said election by the board of county commissioners.

[34-2301, added 1957, ch. 198, sec. 1, p. 410; am. 1985, ch. 41, sec. 1, p. 84; am. 2009, ch. 341, sec. 64, p. 1035; am. 2011, ch. 285, sec. 15, p. 784.]

34-2302. PRECINCTS SPECIFIED FOR RECOUNT -- REMITTANCE. In his application he shall state the precinct or precincts in which he desires recount to be made and shall remit to the attorney general or county clerk, pursuant to section 34-2301, Idaho Code, together with his application the sum of one hundred dollars (\$100) for each such precinct in which he desires a recount made.

[34-2302, added 1957, ch. 198, sec. 2, p. 410; am. 2011, ch. 285, sec. 16, p. 784.]

34-2303. BALLOTS ORDERED IMPOUNDED BY ATTORNEY GENERAL. Upon receiving the application for recount together with the remittance required by section 34-2302, Idaho Code, the attorney general or county clerk, pursuant to section 34-2301, Idaho Code, shall cause all ballot boxes used in such election in the precinct or precincts in which recount is to be made to be immediately impounded and taken into custody by the sheriff of the county or counties in which precinct or precincts are located. In the event that the recount is of the results of a primary election the ballot boxes used to hold the blank half of the ballot shall also be impounded.

[34-2303, added 1957, ch. 198, sec. 3, p. 410; am. 2011, ch. 285, sec. 17, p. 784.]

34-2304. ORDER FOR RECOUNT -- PROCEDURE -- NOTICE. The attorney general or county clerk shall then issue an order for recount. The order shall name the prior election judges and clerks of the precinct to act in the same capacity and receive the same compensation as they did on election day. The order shall provide for the place where the recount is to be made; that all candidates named on the ballot for the office contested, or a representative of either or all of them, may be present to watch the counting; and that every other person interested may be present. The order shall state the date on which the recount is to be made which shall not be more than ten (10) days from

the date of the order. Copies of the order shall be mailed to each candidate named on the ballot for the office to be recounted.

[34-2304, added 1957, ch. 198, sec. 4, p. 410; am. 1985, ch. 41, sec. 2, p. 85; am. 2011, ch. 285, sec. 18, p. 785.]

34-2305. MANNER OF RECOUNTING. At the time and place fixed for recounting the ballots cast in any precinct all ballots shall be recounted in plain view of the candidates or their representatives. The recount shall commence at the time and place so ordered, and shall continue until the recount is finished and the results tabulated. The attorney general shall be the final authority concerning any question which arises during the recount for federal, state, county or municipal elections. The county prosecuting attorney shall be the final authority concerning any question that arises during the recount of other elections.

[34-2305, added 1957, ch. 198, sec. 5, p. 410; am. 1985, ch. 41, sec. 3, p. 85; am. 2011, ch. 285, sec. 19, p. 785; am. 2012, ch. 211, sec. 10, p. 578.]

34-2306. DIFFERENCE REVEALED BY RECOUNT -- CANDIDATE RELIEVED OF COSTS. If the results of the recount indicate a difference, which if projected across all the precincts of the office in question would change the result of the election in favor of the candidate requesting the recount or change in the measure being recounted, then the cost of such recount shall be borne by the county or state and the sums of money theretofore paid for the recount shall be returned to the candidate or person who requested the recount of a ballot measure.

In order to be relieved of the costs of the recount, the candidate or person must request that at least twenty (20) precincts containing not less than five thousand (5,000) votes cast be recounted if for a federal or state office or measure, or five (5) precincts containing not less than one thousand two hundred fifty (1,250) votes cast be recounted for a state legislative district office, or at least two (2) precincts having not less than five hundred (500) votes cast be recounted for a county office or measure, or two (2) precincts having not less than two hundred (200) votes cast to be recounted in city or district elections.

[34-2306, added 1957, ch. 198, sec. 6, p. 410; am. 1985, ch. 41, sec. 4, p. 85; am. 2011, ch. 285, sec. 20, p. 785.]

34-2307. WHEN GENERAL RECOUNT ORDERED. If the candidate or person who requested the recount is relieved of the costs of the recount as described in section 34-2306, Idaho Code, the attorney general, or the county prosecuting attorney for district offices, shall require a recount to be made in all the remaining precincts of the office in question. The state shall pay for a general recount of a federal, state, or legislative district office, while the county shall pay for a general recount of a county, city or district office.

[34-2307, added 1985, ch. 41, sec. 6, p. 86; am. 2011, ch. 285, sec. 21, p. 786; am. 2012, ch. 211, sec. 11, p. 578.]

34-2308. CANDIDATE DISAGREEING WITH RECOUNT RESULTS -- APPEAL. (1) Any candidate or person may appeal the results of a recount or the determination that a recount is not necessary when:

- (a) Any candidate for the office or the person on either side of a measure for which a recount has been requested disagrees with the results

of the recount and alleges that the law has been misinterpreted or misapplied;

(b) It appears that a different application or interpretation of the law would have required a general recount where no general recount was ordered; or

(c) It appears that a different application or interpretation of the law would not have required a general recount where a general recount was ordered;

then the candidate claiming the misinterpretation or the misapplication of law may appeal to the district court in the county concerned if the office is a county, municipal or district office or to the district court in Ada county if the office is a federal or state office.

(2) The submittal on appeal shall be by brief and submitted within twenty-four (24) hours following the recount. The appeal submittal shall be served upon the attorney general of Idaho or the county prosecuting attorney within twenty-four (24) hours of filing it within the district court. The appeal submittal shall also be served upon the opposing candidate(s) or representatives of the pro and con sides of the ballot measure within twenty-four (24) hours of filing the appeal in the district court.

(3) The attorney general, in consultation with the secretary of state, may respond to the submittal by brief or the prosecuting attorney, in consultation with the county clerk, may respond for district elections.

(4) The opposing candidate(s) or parties, regarding a measure, may respond to the submittal by brief.

(5) At the discretion of the district court judge, a hearing may be ordered within five (5) days of the filing of the appeal. All parties required to be served with the appeal may participate fully in the hearing. The judge may determine that the appeal may be decided on the brief without a hearing.

(6) A decision thereon shall be given within five (5) days. Any appeal from the decision of the district court must be taken within twenty-four (24) hours after a decision is rendered. A decision on the appeal shall be given within five (5) days. No further appeal shall be allowed.

[34-2308, added 1957, ch. 198, sec. 8, p. 410; am. 1985, ch. 41, sec. 7, p. 86; am. 2004, ch. 48, sec. 1, p. 233; am. 2011, ch. 285, sec. 22, p. 786.]

34-2309. FREE RECOUNT. A losing candidate for nomination, or election or person supporting or opposing a ballot measure, may request a recount of the votes cast for the nomination or election to that office or passage or failure of a measure if the difference between the vote cast for that candidate and for the winning candidate for nomination or election, or the difference between the yes and no votes on a measure, is less than or equal to one-tenth of one percent (0.1%) of the total votes cast for that office or five (5) votes, whichever is greater. All requests shall be in writing, and filed with the appropriate officer during the time mentioned in section 34-2301, Idaho Code.

The state shall pay for the recount of a federal, state, or legislative district office, or state measure while the county shall pay for the recount of a county, city or district office or measure.

[34-2309, added 1985, ch. 41, sec. 9, p. 87; am. 1986, ch. 97, sec. 3, p. 276; am. 2011, ch. 285, sec. 23, p. 786; am. 2015, ch. 282, sec. 7, p. 1149; am. 2015, ch. 287, sec. 1, p. 1159.]

34-2310. "COSTS" DEFINED. As used in this chapter, costs of recount shall include the following:

(1) Travel costs of the office of the attorney general including meals and lodging.

(2) Normal hourly rate for election judges and clerks who are not employees of the county.

(3) Mileage for election judges who are not employees of the county.

(4) Any other costs directly attributable to the recount.

[34-2310, added 1985, ch. 41, sec. 10, p. 87.]

34-2313. RECOUNT PROCEDURES FOR AUTOMATED TABULATION SYSTEMS. (1) To ensure the accuracy of automated vote tabulation systems, the county clerk shall follow the recount procedures provided in this section.

(2) The votes from a random selection of ballots shall be tallied by hand and the votes from the same ballots shall be tabulated by an electronic ballot tabulating system. For statewide and federal office or a statewide measure, the number of ballots to be tallied and tabulated shall be equal to at least two (2) precincts of the ballots cast in each county. For all other offices or measures, the number of ballots to be tallied and tabulated shall be equal to the greater of one hundred (100) or five percent (5%) of the ballots cast for the office or measure, distributed by county where applicable.

(3) For a statewide or federal office or a statewide measure, if the results of the hand-tally and the automated vote tally system tabulation within the county differ by one-fourth of one percent (.25%) or less, the remaining ballots shall be recounted using automated vote tabulating systems. Otherwise, the remaining ballots shall be recounted by hand.

(4) For other offices and ballot measures, if the results of the hand-tally and electronic vote tabulating system tabulation differ by less than one percent (1%), or two (2) votes, whichever is greater, the remaining ballots shall be recounted using automated vote tabulating systems. Otherwise, the remaining ballots shall be recounted by hand.

[34-2313, added 2011, ch. 285, sec. 24, p. 787.]