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AGENDA COVER MEMORANDUM

Agenda Date: October 13, 2004

TO: Board of Commissioners

FROM: Lane County Legislative Committee
Commissioner Bill Dwyer, chair
Commissioner Anna Morrison, member

PRESENTED BY: Annette K. Newingham, Chief Deputy County Clerk
Department of Management Services

SUBJECT: PROPOSED AMENDMENTS FOR ADMINISTRATIVE RULEMAKING
HEARING

I. DISCUSSION: *IN THE MATTER OF PROPOSED AMENDMENTS TO PROPOSED ADMINISTRATIVE RULE*

II. ISSUE/PROBLEM:

The Secretary of State's office has notified County Election Officials of the attached Proposed Rulemaking Hearing, set for October 20, 2004, 9:00 a.m. at the Capitol that would implement a Rule for conducting Administrative Recounts. The State Elections Division has notified the Oregon County Clerks that it is their expectation that the rule will be amended based on discussion with election officials about what works and what doesn't.

III. DISCUSSION:

Background/Analysis:

The purpose of the rule is to establish a procedure for the conduct of administrative recounts of selected ballots following an election conducted in this state. This rule is intended to facilitate and assist in achieving a maximum degree of correctness, impartiality and efficiency in administration of the election laws.

The proposed rulemaking on administrative recounts falls short of helping Oregon counties to enhance accountability because of two flaws:

1. It potentially misdirects county elections resources away from the primary vote-counting mission during the critical timeframe immediately following Election Day.
2. It makes additional claims on the constrained county general fund to support tasks initiated by the state.

As currently written, this administrative rule would require a partial recount of a select number of ballots, at County expense. The recount would take place in the middle of the certification process before the results have been finalized. It would have the effect of redirecting limited county staff resources from the duty of completing the detailed election verification process.

With input from Oregon County Clerks, the attached amendments are proposed with the following key changes:

1. County to pay when the recount is initiated by the county.
2. State to pay when the recount is initiated by the state.
3. Change the range of dates to direct the recount to the 20th through the 23rd day after the election providing several days to schedule boards, arrange for locations, notify affected candidates pursuant to ORS 258.190 (3), prepare for the recount, complete the recount, and certify results no later than the 30th day after the election.)

Alternatives/Options:

1. BCC submit letter in support of the suggested language changes, with testimony from staff.
2. BCC suggest alternative language.
3. BCC take a neutral position on proposed administrative rule.

Recommendation:

Staff recommendation is Option 1. Draft letter attached.

Timing:

Upon direction of the Board.

III. IMPLEMENTATION/FOLLOW-UP:

Upon direction of the Board.

IV. ATTACHMENT:

Proposed Administrative Rule
Proposed Amendments to Rule
Proposed Letter of support of amendments from Board Chair

PROPOSED AMENDMENTS

165-0070-270

Administrative Recounts

- (1) The purpose of this rule is to establish a procedure for the conduct of administrative recounts of selected ballots following an election conducted in this state. The Secretary of State, as the chief elections officer for the State of Oregon, has the responsibility to adopt rules that the Secretary considers necessary to facilitate and assist in achieving a maximum degree of correctness, impartiality and efficiency in administration of the election laws. This rule is intended to carry out that responsibility by providing a mechanism for selective recounts to confirm the accuracy of the automated vote tally systems used to count ballots.
- (2) The procedures described in this rule may be implemented only if a county is not required to conduct either an automatic recount under ORS 258.280 and 258.290 or a partial or full demand recount under ORS 258.161. In the event that a recount under either of these procedures is commenced, any administrative recount is terminated.
- (3) Not later than the (-10th day and 20th day) **(+20th day)** after the date of the election, the county elections official shall provide the Secretary of State, Elections Division (Division) with copies of the official ballots showing all offices and measures on the ballot, or a copy of the abstract of votes for the election. Notwithstanding ORS 258.161, 258.280 and 258.290, the cost of conducting a recount under this rule shall be borne by the **(+county in which the recount is conducted)**.
- (4) Not **(-later)(+sooner)** than the (-10th day and 20th day) **(+20th day and not later than the 23rd day)** after the date of the election, the Division may direct the county elections official to conduct a recount of an office or measure, or portions of the votes cast for an office or measure, as selected by the Division. Any such recount shall be conducted in accordance with applicable procedures in ORS Chapter 258 and as stated by the Division in the order directing the recount. All recounts conducted under this rule shall be conducted by hand. Notwithstanding ORS 258.161, 258.280 and 258.290, the cost of conducting a recount under this rule shall be borne by the **(-county in which the recount is conducted.) (+state.)**
- (5) Upon completion of the recount, and not later than **(-20) (+30)** days after the election, the county elections official shall report on the results of the recount to the Division, together with any other information requested by the Division.
- (6) A county elections official may choose to conduct an administrative recount of a selected office or measure and notify the Division of that decision in writing not later than the **(-10th) (+20th)** day after the election. In this event, the Division will not direct the county to conduct an administrative recount under the procedures of this rule. If the county elections official chooses to conduct an administrative recount under this section, the results of the recount must be reported to the Division not later than the **(-20th) (+30th)** day after the election.
- (7) Recounts conducted under this rule shall not be used to alter the results obtained by the official tally of ballots, unless the procedures in ORS 258.161 are followed to make a demand for recount, either by a qualified person or the county elections official.
- (8) For purposes of this rule, an "administrative recount" is a hand recount of selected offices or measures by hand to verify the accuracy of the vote tally equipment. It is not intended to provide a basis for changing the outcome of the results determined by the vote tally equipment, or to substitute for the procedures in state law for the conduct of automatic or demand recounts. Persons interested in challenging the vote tallies in particular races or measures must utilize the procedures in ORS 258.161 and 258.171 in order to have the results of the recount become the official returns.

Authorization: ORS 246.150

Stats Implemented: ORS.150

October 14, 2004

The Honorable Bill Bradbury
Oregon Secretary of State
Salem, OR

Dear Secretary Bradbury:

The integrity of our elections system and the public's confidence in its performance and accuracy remain high priorities for Lane County. Since the 2000 election and with the help of state and federal officials, we have adopted new vote counting technology and relocated our elections operations into new quarters, signaling our willingness and commitment to ensuring accuracy, impartiality and efficiency in counting and certifying the vote.

In that spirit, we applaud your effort, through proposed rulemaking (165-0070-270), to confirm the accuracy of automated vote tallies through selective administrative recounts. The structure and technology of our vote counting process in Lane County has changed significantly, and merits rigorous accountability during its maiden voyage to protect the interest of voters.

Nonetheless, the proposed rulemaking on administrative recounts falls short of helping us to enhance accountability because of two flaws:

- 1) It potentially misdirects county elections resources away from the primary vote-counting mission during the critical timeframe immediately following election day.
- 2) It makes additional claims on the constrained county general fund to support tasks initiated by the state.

To address those issues, we have asked our elections staff to recommend amendments to the proposed rule and discussed those remedies as a board. We forward those changes to you as an attachment and ask that you consider including them in the final version of the rule.

We understand that county elections divisions have a front-line role to play in reinforcing voter confidence in the state elections system. The adjustments we propose support your efforts to achieve a maximum degree of accuracy and impartiality, while preserving the county's capacity to staff and fund the local vote count effort.

Sincerely,

Bobby Green Sr. etc
Chair, BCC

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*
A statement of Need and Fiscal Impact accompanies this form.

<u>Secretary of State, Elections Division</u> Agency and Division	<u>Chapter 165</u> Administrative Rules Chapter Number
<u>Brenda Bayes</u> Rules Coordinator	<u>(503)986-1518</u> Telephone
<u>141 State Capitol, Salem, OR 97310-0722</u> Address	

<u>OCTOBER 20, 2004</u> Hearing Date	<u>9:00-9:30AM</u> Time	<u>900 CAPITOL ST SE ROOM 257 SALEM OR 97301</u> Location	<u>BRENDA BAYES</u> Hearings Officer
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Are auxiliary aids for persons with disabilities available upon advance request? Yes ☒ No ☐

RULEMAKING ACTION

ADOPT: 165-007-0270

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

AMEND:

REPEAL:

Renumber: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

Amend and Renumber: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

Stat. Auth.: ORS 246.150

Other Authority

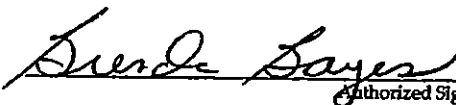
Stats. Implemented: ORS 258.150

RULE SUMMARY

This proposed rule establishes a procedure for the conduct of administrative recounts of selected ballots following an election conducted in this state.

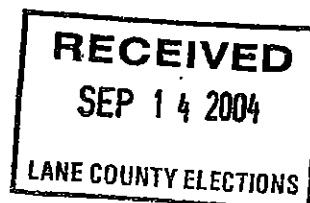
ORS 183.335(2)(G) requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

October 27, 2004
Last Day for Public Comment


Authorized Signer and Date

September 10, 2004

*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.



165-007-0270

Administrative Recounts

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(2) The procedures described in this rule may be implemented only if a county is not required to conduct either an automatic recount under ORS 258.280 and 258.290 or a partial or full demand recount under ORS 258.161. In the event that a recount under either of these procedures is commenced, any administrative recount is terminated.

(3) Not later than the 10th day after the date of the election, the county elections official shall provide the Secretary of State, Elections Division (Division) with copies of the official ballots showing all offices and measures on the ballot, or a copy of the abstract of votes for the election.

(4) Between the 10th and 20th day after the date of the election, the Division may direct the county elections official to conduct a recount of an office or measure, or portions of the votes cast for an office or measure, as selected by the Division. Any such recount shall be conducted in accordance with applicable procedures in ORS Chapter 258 and as stated by the Division in the order directing the recount. All recounts conducted under this rule shall be conducted by hand. Notwithstanding ORS 258.161, 258.280 and 258.290, the cost of conducting a recount under this rule shall be borne by the county in which the recount is conducted.

(5) Upon completion of the recount, and not later than 20 days after the election, the county elections official shall report on the results of the recount to the Division, together with any other information requested by the Division.

(6) A county elections official may choose to conduct an administrative recount of a selected office or measure and notify the Division of that decision in writing not later than the 10th day after the election. In this event, the Division will not direct the county to conduct an administrative recount under the procedures of this rule. If the county elections official chooses to conduct an administrative recount under this section, the results of the recount must be reported to the Division not later than the 20th day after the election.

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