

House Bill 2040

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Rules for Oregon Association of County Clerks)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Removes requirement to conduct second recount for batches of ballots already subject to recount.

Removes requirement to conduct either hand recount or risk-limiting audit for election where recount is separately required by law.

A BILL FOR AN ACT

1
2 Relating to elections; amending ORS 254.529.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 254.529 is amended to read:

5 254.529. (1) At each primary election, general election and special election, the county clerk
6 shall make a determination on whether to conduct:

7 (a) A hand count of ballots as described in this section and compare the tally of votes for those
8 ballots produced by a vote tally system with the tally of votes for those ballots produced by the hand
9 count; or

10 (b) A risk-limiting audit in the manner described in ORS 254.532.

11 (2) If the county clerk determines that a hand count will be conducted:

12 (a) In the event that the unofficial tally of ballots produced by a vote tally system reveals that
13 the margin of victory between the two candidates receiving the largest number of votes in the
14 county is less than one percent of the total votes cast in that election in the county, the county
15 clerk shall conduct a hand count of ballots in at least 10 percent of all precincts or of ballots in
16 at least 10 percent of all batches of ballots collected by the county clerk.

17 (b) In the event that the unofficial tally of ballots reveals that the margin of victory between
18 the two candidates receiving the largest number of votes in the county is greater than or equal to
19 one percent but less than two percent of the total votes cast in the county, the county clerk shall
20 conduct a hand count of ballots in at least five percent of all precincts or of ballots in at least five
21 percent of all batches of ballots collected by the county clerk.

22 (c) In the event that the unofficial tally of ballots reveals that the margin of victory between
23 the two candidates receiving the largest number of votes in the county is greater than or equal to
24 two percent of the total votes cast in the county, the county clerk shall conduct a hand count of
25 ballots in at least three percent of all precincts or of ballots in at least three percent of all batches
26 of ballots collected by the county clerk.

27 (3) If the county clerk determines that a hand count will be conducted, the county clerk shall
28 conduct a hand count of ballots cast in the election contest between the two candidates receiving
29 the largest number of votes in the county, an election contest for an office to be voted on in the
30 state at large and, if possible, an election contest for a state measure. The Secretary of State shall

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 select the precincts or batches at random. At the election:

2 (a) If selecting precincts, no fewer than 150 ballots must have been cast in at least one of the
3 precincts selected.

4 (b) If selecting batches, the number of ballots contained in the batches selected must in the ag-
5 gregate be equal to or greater than:

6 (A) Ten percent of the total number of ballots cast in the election for a hand count required
7 under subsection (2)(a) of this section.

8 (B) Five percent of the total number of ballots cast in the election for a hand count required
9 under subsection (2)(b) of this section.

10 (C) Three percent of the total number of ballots cast in the election for a hand count required
11 under subsection (2)(c) of this section.

12 (4) Not later than 5 p.m. of the 15th business day after the date of the election, the Secretary
13 of State shall in writing advise the county clerks who made a determination that a hand count will
14 be conducted of:

15 (a) The election contests for which ballots are to be hand counted; and

16 (b) The precincts or batches in which ballots are to be hand counted.

17 (5) A county clerk shall begin the hand counts under this section not later than the 27th day
18 after the election and complete the hand counts not later than the 35th day after the election. The
19 results of the hand counts shall be provided to the Secretary of State, who shall make the results
20 publicly available on the Secretary of State's website.

21 (6) A comparison of the tally of votes produced by a vote tally system with the tally of votes
22 produced by the hand count under this section must show that the tally of votes produced by the
23 vote tally system differs by no more than one-half of one percent from the tally of votes produced
24 by the hand count.

25 (7)(a) If a hand count conducted under this section results in a tally of votes for a candidate or
26 measure that is different from the tally of votes produced by the vote tally system for that candidate
27 or measure, and the difference for each race is equal to or less than one-half of one percent, the
28 tally of votes produced by the vote tally system is the official tally of votes for that vote tally sys-
29 tem.

30 (b) If a hand count conducted under this section results in a tally of votes for a candidate or
31 measure that is different from the tally of votes produced by the vote tally system for that candidate
32 or measure, and the difference in any race is greater than one-half of one percent, the county clerk
33 shall conduct a second hand count of the same ballots.

34 (c) If the second hand count conducted under this subsection results in a tally of votes for a
35 candidate or measure that is different from the tally of votes produced by the vote tally system for
36 that candidate or measure, and the difference for each race is equal to or less than one-half of one
37 percent, the tally of votes produced by the vote tally system is the official tally of votes for that
38 vote tally system.

39 (d) If the second hand count conducted under this subsection results in a tally of votes for a
40 candidate or measure that is different from the tally of votes produced by the vote tally system for
41 that candidate or measure, and the difference in any race is greater than one-half of one percent,
42 the county clerk shall conduct a hand count of all ballots counted by that vote tally system. The
43 hand count is the official tally of votes for that vote tally system. If the hand count is the official
44 tally of votes, not later than the 37th day after the election, the county clerk shall certify amended
45 abstracts of votes to appropriate elections officials.

1 (8) For purposes of conducting the hand counts under this section, the county clerk shall:

2 (a) Retain custody of the ballots; and

3 (b) Provide for security for the ballots and the information required to be collected under this
4 subsection.

5 (9) This section does not apply:

6 (a) To precincts **and batches** that are subject to a recount under ORS 258.161, 258.280 or
7 258.290.

8 (b) If federal law requires a post-election hand count of ballots at the primary election, general
9 election or special election to verify election results and the Secretary of State determines that the
10 requirements of federal law are at least as stringent as the requirements of subsections (1) to (8)
11 of this section.

12 **(10) This section does not require a hand count of ballots or a risk-limiting audit for any**
13 **election in which a recount is required under ORS 258.280 or 258.290.**

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