

HOUSE BILL NO. HB0232

Elections-hand counting for recounts.

Sponsored by: Representative(s) Haroldson, Allemand, Banks, Bear, Brady, Erickson, Knapp, Locke, McCann, Schmid, Strock, Webb and Williams and Senator(s) Boner, Hutchings, Kolb, Pearson and Smith, D

A BILL

for

1 AN ACT relating to elections; providing a process for
2 certain recounts to be conducted by hand counting the
3 votes; authorizing the secretary of state and county clerks
4 to require recounts as specified; providing for hand counts
5 to be requested by candidates as specified; specifying the
6 costs of recounts; revising dates of the primary election
7 and the county and state canvass to allow time for hand
8 counting as specified; clarifying when a counting board is
9 required to be appointed; requiring rulemaking; creating an
10 account; making conforming amendments; providing an
11 appropriation; and providing for an effective date.

12

13 *Be It Enacted by the Legislature of the State of Wyoming:*

14

1 **Section 1.** W.S. 22-1-102(a)(xlii), 22-2-104(b) and
2 (d), 22-8-102, 22-8-108(a), (c), (d) and by creating a new
3 subsection (e), 22-14-114(a), 22-16-103(c)(i), 22-16-109(a)
4 through (c) and by creating new subsections (d) through
5 (g), 22-16-110(a)(intro), 22-16-111(a)(intro), (i), (ii)
6 and (b), 22-16-113(a)(i), (ii), (b) and (c), 22-16-118 and
7 22-21-103 are amended to read:

8

9 **22-1-102. Definitions.**

10

11 (a) The definitions contained in this chapter apply
12 to words and phrases used in this Election Code and govern
13 the construction of those words and phrases unless they are
14 specifically modified by the context in which they appear.
15 As used in this Election Code:

16

17 (xlii) "Recount" is the counting of ballots by
18 hand or the processing of ballots through the tabulation
19 system for an additional time or times, ~~conducted~~ for the
20 specific purpose of counting votes again in any specific
21 race, based upon the criteria of W.S. 22-16-109 ~~or~~
22 22-16-111 through 22-16-113;

23

1 **22-2-104. Election dates.**

2

3 (b) A primary election shall be held at the regular
4 polling places for each precinct on the first Tuesday after
5 the ~~third~~first Monday in August in general election years
6 for the nomination of candidates for partisan and
7 nonpartisan offices to be filled at the succeeding general
8 election and for the election of major party precinct
9 committeemen and committeewomen.

10

11 (d) Every bond election shall be held on the same day
12 as a primary election or a general election, or on the
13 first Tuesday after the first Monday in May or November, or
14 on the first Tuesday after the ~~third~~first Monday in
15 August.

16

17 **22-8-102. Qualifications.**

18

19 Except as otherwise provided by this section, judges of
20 election and members of counting boards shall be registered
21 electors and shall be physically, morally and mentally
22 competent to perform their duties. The county clerk may
23 appoint persons who are at least sixteen (16) years of age

1 to serve as judges of election or members of counting
2 boards if such persons meet all other requirements for
3 qualification of an elector. A judge of election shall not
4 be a member of a counting board at the same election except
5 as provided by W.S. 22-8-108(d) and (e).

6

7 **22-8-108. Appointment, composition and authority of**
8 **counting boards; when judges to count.**

9

10 (a) Unless ballots are tabulated by electronic voting
11 systems, the county clerk shall appoint a counting board
12 for each ~~paper ballot~~ polling place casting more than three
13 hundred (300) votes at the last general election, and may
14 appoint a counting board in such a polling place in which
15 one hundred fifty (150) or more such votes were cast at
16 such election. A counting board shall have three (3)
17 members or more to facilitate the counting of votes. No
18 more than one (1) person under the age of eighteen (18) may
19 be appointed as to each counting board.

20

21 (c) The counting board ~~in a paper ballot polling~~
22 place appointed under subsection (a) of this section has no
23 authority to act until polls are declared closed as

1 provided in W.S. 22-13-117, except as provided in W.S.
2 22-9-125(d). A counting board in an electronic voting
3 system counting center may commence preparing absentee
4 ballots for counting at any time on election day, or before
5 election day as provided in W.S. 22-9-125(d).

6

7 (d) For a polling place where a counting board need
8 not be appointed under subsection (a) of this section, the
9 judges of election shall count the votes. This subsection
10 shall not apply if ballots are tabulated by electronic
11 voting system.

12

13 (e) The county clerk shall appoint a counting board
14 for the purposes of completing recounts as provided in W.S.
15 22-16-109. The counting board under this subsection shall
16 consist of not less than three (3) members. Additional
17 counting board members may be appointed if deemed necessary
18 by the county clerk.

19

20 **22-14-114. Counting of ballots.**

21

22 (a) The following shall apply to the counting of
23 ballots:

1

2 (i) For ballots designed to be counted by
3 machine, each individual vote shall be determined by the
4 voting equipment and shall not be determined subjectively
5 by human tabulation except as provided below:

6

7 (A) When the intent of the voter is
8 unmistakable but the ballot was received in such damaged,
9 soiled, or other condition that it is rejected by the
10 machine. The secretary of state may promulgate rules
11 establishing standards for counting such ballots; :-

12

13 (B) When being recounted by hand in
14 accordance with W.S. 22-16-109. The secretary of state may
15 promulgate rules establishing standards for counting such
16 ballots;

17

18 (C) When counting write-in votes by
19 candidate under W.S. 22-16-103(iii).

20

21 (ii) For ballots not designed to be counted by
22 machine, only votes clearly marked, as provided by W.S.

1 22-14-104 and rules promulgated pursuant to this code,
2 shall be tallied;~~i-~~

3

4 (iii) For write-in votes, names which are
5 misspelled or abbreviated or the use of nicknames of
6 candidates shall be counted for the candidate if the vote
7 is obvious to the board.

8

9 **22-16-103. County canvass procedures.**

10

11 (c) The county canvassing board shall:

12

13 (i) Meet as soon as all returns have been
14 received and abstracted, but if any provisional ballots
15 have been cast in the county, not before the time has
16 passed for provisional voters to document their eligibility
17 to register or to vote. The board shall meet at a time and
18 place designated by the county clerk, but no later than the
19 ~~first~~second Friday following the election;

20

21 **22-16-109. Recounts.**

22

1 (a) The county canvassing board shall make a recount
2 of precinct votes if it appears to the board that a recount
3 is required due to irregularities in that precinct. The
4 recount under this subsection may be conducted by a hand
5 count or by using electronic voting equipment as determined
6 by the county canvassing board.

7

8 (b) Prior to the county canvass, there shall be a
9 recount made of all the votes:

10

11 (i) Cast for any federal, statewide or
12 legislative office in which the difference in number of
13 votes cast for the winning candidate receiving the least
14 number of votes and the number of votes cast for the losing
15 candidate receiving the greatest number of votes is less
16 than ~~one percent (1%)~~ two percent (2%) of the number of
17 votes cast for the winning candidate receiving the least
18 number of votes cast for that office in that county. This
19 recount shall be made in the entire district in which the
20 candidates are standing for election in that county. This
21 recount shall be conducted by a hand count. A recount under
22 this subsection shall not be required if a recount is

1 required under paragraph (ii) of this subsection for the
2 same office;

3
4 (ii) Cast for any federal, statewide or
5 legislative office in which the difference in the number of
6 votes cast for the winning candidate receiving the least
7 number of votes and the number of votes cast for the losing
8 candidate receiving the greatest number of votes is less
9 than one percent (1%) of the number of votes cast for the
10 winning candidate receiving the least number of votes cast
11 for that office in the entire state or district. This
12 recount shall be made in each county in which the
13 candidates are standing for election. This recount shall be
14 conducted by a hand count;

15
16 (iii) Cast for any other office not specified in
17 paragraph (i) or (ii) of this subsection in which the
18 difference in number of votes cast for the winning
19 candidate receiving the least number of votes and the
20 number of votes cast for the losing candidate receiving the
21 greatest number of votes is less than two percent (2%) of
22 the number of votes cast for the winning candidate
23 receiving the least number of votes cast for that office.

1 This recount shall be made in the entire district in which
2 the candidates are standing for election. This recount
3 shall be conducted by electronic voting equipment.

4

5 (c) There shall be a recount made of all the votes
6 cast for any office if a losing candidate requests one
7 under provision of W.S. 22-16-110. This recount shall be
8 made in the entire district in which the candidate is
9 standing for election. This recount may be conducted by
10 hand count or by using electronic voting equipment as
11 determined by the candidate.

12

13 (d) Not later than the day following an election, the
14 secretary of state may require a recount of not more than
15 one (1) federal, statewide or legislative question or race.
16 The secretary of state shall specify which precincts are to
17 be recounted. This recount may be conducted by hand or by
18 using electronic voting equipment as specified by the
19 secretary of state.

20

21 (e) The county clerk shall have the discretion to
22 recount any ballot proposition or race either by precinct,
23 election district or precinct. This recount may be

1 conducted by hand or by using electronic voting equipment
2 as specified by the county clerk.

3
4 (f) If there is any discrepancy between the recount
5 results and the preliminary election results, the county
6 canvassing board shall determine the official result of the
7 election.

8
9 (g) There is created the election recount account.
10 Funds in the account shall not revert and are continuously
11 appropriated to the secretary of state for costs related to
12 administering hand recounts. The state treasurer shall
13 invest funds within the account in accordance with law. All
14 investment earnings from the account shall be deposited in
15 the general fund.

16
17 **22-16-110. How candidate may obtain recount; where**
18 **affidavit filed.**

19
20 (a) A candidate may obtain a recount of votes for the
21 office he is seeking by making and filing an affidavit
22 alleging that fraud or error occurred in counting,
23 returning or canvassing the votes cast in any part of the

1 district in which he is standing for election. The
2 affidavit shall specify whether the recount should be
3 conducted using electronic voting equipment or by hand
4 count using tally sheets. The affidavit shall be filed in
5 the same office the candidate filed his application for
6 nomination:

7

8 **22-16-111. Recount of ballot proposition.**

9

10 (a) A recount of votes of a ballot proposition may be
11 obtained ~~in one (1) of the following manners~~ as follows:

12

13 (i) A recount will be made:

14

15 (A) If the proposition is a statewide
16 proposition and receives a number of votes, greater or
17 lesser, within one percent (1%) of the number of votes
18 required for passage. The one percent (1%) variance shall
19 be calculated based upon the total number of votes cast on
20 the proposition, except for constitutional amendments in
21 which case the variance shall be calculated based upon the
22 total number of votes cast in the election. This recount
23 shall be conducted by a hand count;

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(B) If the ballot proposition is not a statewide ballot proposition and the proposition receives a number of votes, greater or lesser, within two percent (2%) of the number of votes required for passage. This recount shall be conducted by a hand count.

(ii) A recount will be made if requested in an affidavit signed by twenty-five (25) electors registered in a district voting on the question. The affidavit shall be filed with the county clerk not later than two (2) days after the county canvass has been completed for propositions voted on in one (1) county, and with the secretary of state not later than two (2) days after the state canvass has been completed for propositions voted on in more than one (1) county. The affidavit shall be accompanied by a deposit ~~of one hundred dollars (\$100.00)~~ as specified in W.S. 22-16-113(a). The affidavit shall specify whether the recount should be conducted by hand count or by electronic voting equipment.

(b) The county in which the recount is taken shall pay the costs of the recount if the recount is required by

1 ~~subsection~~ paragraph (a)(i) of this section; and the
2 signers of the affidavit referred to in ~~subsection~~
3 paragraph (a)(ii) of this section shall be jointly and
4 severally liable for the costs of the recount requested by
5 them ~~up to five hundred dollars (\$500.00)~~ per county
6 recounted if the results of the election are not changed by
7 the recount.

8

9 **22-16-113. Recount deposit; expense of recount.**

10

11 (a) An affidavit requesting a recount must be
12 accompanied by the following deposit:

13

14 (i) If the ~~difference in number of votes cast as~~
15 ~~calculated pursuant to W.S. 22-16-109(b) is one percent~~
16 ~~(1%) or greater but less than five percent (5%), five~~
17 ~~hundred dollars (\$500.00)~~ affidavit requests the recount be
18 conducted by electronic voting equipment, an amount
19 determined by the county clerk not to exceed one thousand
20 dollars (\$1,000.00);

21

22 (ii) If the ~~difference in number of votes cast~~
23 ~~as calculated pursuant to W.S. 22-16-109(b) is five percent~~

1 ~~(5%) or greater, three thousand dollars (\$3,000.00)~~
2 affidavit requests the recount be conducted by hand count,
3 an amount determined by the county clerk not to exceed five
4 thousand dollars (\$5,000.00).

5
6 (b) If the recount shows sufficient error to change
7 the result of the election, the county in which the recount
8 is taken shall pay expenses of the recount and the deposit
9 shall be returned. Otherwise the applicant or applicants
10 seeking the recount shall be liable for the actual cost of
11 conducting the recount up to a maximum of the amount
12 deposited under subsection (a) of this section, per county
13 recounted. Every county clerk shall issue a complete
14 accounting of all costs of the recount to the candidate
15 requesting the recount, and shall refund any surplus to the
16 candidate. If the actual cost of conducting the recount
17 exceeds five thousand dollars (\$5,000.00), the county clerk
18 may seek reimbursement of reasonable expenses from the
19 secretary of state. Reasonable expenses are limited to
20 facility rental fees, wages, per diem of twenty-five
21 dollars (\$25.00) per day and mileage for election judges
22 and county clerk staff. The secretary of state shall
23 reimburse those reasonable expenses from the election

1 recount account. If requesting reimbursement from the
2 secretary of state, the county clerk shall provide a
3 complete accounting of all costs of the recount and the
4 deposit paid by the candidate.

5
6 (c) If the recount is initiated by the county clerk
7 or county canvassing board ~~or required by W.S.~~
8 ~~22-16-109(b),~~ the cost of the recount shall be paid by the
9 county in which the recount is taken regardless of the
10 result of the recount. If the recount is initiated by the
11 secretary of state under W.S. 22-16-109(d) or required by
12 W.S. 22-16-109(b), the cost of the recount shall be paid by
13 the secretary of state regardless of the result of the
14 recount.

15
16 **22-16-118. Meeting of state canvassing board.**

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18 The state canvassing board shall meet no later than the
19 ~~second~~third Wednesday following the election. The
20 secretary of state shall send a messenger to obtain
21 official county abstracts not filed in a reasonable length
22 of time. The canvassing board shall meet at the time and
23 place set by the secretary of state. The board shall review

1 the state abstracts prepared by the secretary of state,
2 compare them with the tabulation and materials prepared by
3 the secretary of state, resolve any tie votes, and certify
4 the abstract as the official state canvass.

5

6 **22-21-103. How bond question to be submitted to**
7 **electors; contents.**

8

9 Each bond question shall be submitted to a vote of the
10 qualified electors of the political subdivision. Every bond
11 election shall be held on the same day as a primary
12 election or a general election, or on the Tuesday next
13 following the first Monday in May or November, or on the
14 Tuesday next following the ~~third~~first Monday in August.
15 Not less than one hundred ten (110) days before a bond
16 election, the political subdivision shall provide written
17 notification to the county clerk specifying the date of the
18 election and the bond question. The bond question shall
19 state the purpose of the bonds, the maximum principal
20 amount thereof, the maximum number of years allowed for the
21 indebtedness and the maximum rate of interest to be paid
22 thereon. The secretary of state may promulgate reasonable
23 rules for conducting bond elections where the election is

