

IC 3-12-12

Chapter 12. Recount Procedures for Public Questions

IC 3-12-12-1

Voters entitled to recount

Sec. 1. (a) Any voter who satisfies both of the following is entitled to have the votes cast on a public question on the ballot in that election district recounted under this chapter:

- (1) The voter is a voter in the election district where the public question was on the ballot at the election.
- (2) The voter voted at the election at which the public question was on the ballot.

(b) A recount may be conducted in one (1) or more of the precincts in which votes were cast for the public question.

As added by P.L.10-1988, SEC.181. Amended by P.L.4-1996, SEC.85.

IC 3-12-12-1.5

Chapter establishes standards to define vote in recount

Sec. 1.5. This chapter is enacted to comply with 42 U.S.C. 15481 by establishing uniform and nondiscriminatory standards to define what will be counted as a vote on a paper ballot, an optical scan voting system, or an electronic voting system in a recount conducted under this chapter.

As added by P.L.209-2003, SEC.191.

IC 3-12-12-2

Filing of petition

Sec. 2. A voter who desires a recount under this chapter must file a verified petition no later than noon fourteen (14) days after election day. The petition must be filed:

- (1) in the circuit court of each county in which is located a precinct in which the voter desires a recount; and
- (2) with the election division.

As added by P.L.10-1988, SEC.181. Amended by P.L.3-1997, SEC.378; P.L.164-2006, SEC.129.

IC 3-12-12-3

Petition contents

Sec. 3. Each petition filed under section 2 of this chapter must state the following:

- (1) The public question for which the petitioner desires a recount.
- (2) The precincts within the county in which the petitioner desires a recount.
- (3) That the petitioner voted on the public question in the election.
- (4) That the petitioner in good faith believes that the votes cast on the public question at the election in the precincts were not correctly counted and returned.

(5) That the petitioner desires a recount of all the votes cast on the public question in the precincts specified.

As added by P.L.10-1988, SEC.181.

IC 3-12-12-4

Signatures by voters; percentage

Sec. 4. The petition filed under section 2 of this chapter must also be signed by a number of voters within the election district that voted on the public question equal to at least ten percent (10%) of the voters who cast ballots on the public question in the election.

As added by P.L.10-1988, SEC.181.

IC 3-12-12-5

Cash deposit or bond to accompany petition

Sec. 5. (a) Each petition filed under section 2 of this chapter must be accompanied by a cash deposit or a bond with corporate surety to the approval of the court for the payment of all costs of the recount. The minimum amount of the cash deposit or bond is one hundred dollars (\$100). A cash deposit for a recount conducted by a county recount commission shall be deposited in the county general fund. A cash deposit in a recount conducted by the state recount commission shall be deposited in the state recount fund.

(b) This subsection applies to the recount of a public question to which either of the following applies:

(1) The public question is a local public question under IC 3-10-9 in which, on the face of the election returns, the difference between the number of affirmative and negative votes cast is not more than two hundred (200).

(2) The public question is covered under section 23 of this chapter and, on the face of the election returns, the difference between the number of affirmative and negative votes cast is not more than two thousand (2,000).

If the number of precincts to be recounted exceeds ten (10), then the amount of the deposit shall be increased by ten dollars (\$10) for each precinct in excess of ten (10).

(c) This subsection applies to the recount of a public question to which either of the following applies:

(1) The public question is a local public question under IC 3-10-9 and, on the face of the election returns, the difference between the number of affirmative and negative votes cast is more than two hundred (200).

(2) The public question is covered under section 23 of this chapter and, on the face of the election returns, the difference between the number of affirmative and negative votes cast is more than two thousand (2,000).

If the number of precincts to be recounted exceeds ten (10), the amount of the deposit shall be increased by one hundred dollars (\$100) for each precinct in excess of ten (10).

(d) If after a recount, it is determined that the result of the public question is other than what was shown on the face of the election

returns, the deposit furnished by the petitioner shall be returned to the petitioner in full.

(e) Any unexpended balance remaining in a deposit after payment of all costs of the recount remains in the county general fund.

(f) This subsection applies to a recount conducted by the state recount commission under this chapter. Any unexpended balance remaining in a deposit after payment of all costs of the recount remains in the state recount fund.

As added by P.L.10-1988, SEC.181. Amended by P.L.8-1995, SEC.63; P.L.176-1999, SEC.112.

IC 3-12-12-6

Payment of costs upon failure to provide cash deposit

Sec. 6. (a) This section does not apply to a petitioner if it is determined that the result of the public question is other than what was shown on the face of the election returns.

(b) If a cash deposit was not made as required by section 5 of this chapter, the petitioners shall pay to the circuit court clerk within ten (10) days after the recount is completed all costs of the recount.

As added by P.L.10-1988, SEC.181. Amended by P.L.8-1995, SEC.64.

IC 3-12-12-7

Multiple petitions in single county

Sec. 7. If more than one (1) petition is filed under section 2 of this chapter in one (1) county requesting a recount of votes cast on a public question in a precinct in that county, the circuit court of the county shall consolidate all petitions under the first petition filed.

As added by P.L.10-1988, SEC.181.

IC 3-12-12-8

Petitions in multiple counties; jurisdiction

Sec. 8. If petitions are filed under section 2 of this chapter in more than one (1) county, the circuit court of the county casting, on the face of the election returns, the highest number of votes on the public question shall assume jurisdiction over all petitions concerning the public question.

As added by P.L.10-1988, SEC.181.

IC 3-12-12-9

Order of recount

Sec. 9. Upon the filing of a petition and bond under this chapter, the court shall grant the petitions that have been filed and order the recount of votes in the precincts by appointing a recount commission.

As added by P.L.10-1988, SEC.181.

IC 3-12-12-10

Consolidated petitions and orders

Sec. 10. If there is a consolidation of petitions, the court shall by consolidated order grant the consolidated petitions and order a

consolidated recount of all votes on the public question in all precincts in the counties requested in the petitions.

As added by P.L.10-1988, SEC.181.

IC 3-12-12-11

Recount commission; membership

Sec. 11. (a) A recount commission consists of three (3) persons.

(b) Two (2) members of the commission must be voters who:

(1) are members of different major political parties of the state; and

(2) were qualified to vote at the election in a county in which the election district that voted on the public question is located.

(c) This subsection applies to a recount commission conducting a recount of an election in which only paper ballots were used. The third member of the commission must be a person who:

(1) is a member of a major political party of the state; and

(2) was qualified to vote at the election in a county in which the election district that voted on the public question is located.

(d) This subsection applies to a recount of an election in which a voting method other than only paper ballots was used. The third member of the commission must be a competent mechanic who is familiar with the ballot card voting systems or electronic voting systems used in that election. The mechanic is not required to be qualified to vote at the election in a county in which the election district that voted on the public question is located.

As added by P.L.10-1988, SEC.181. Amended by P.L.221-2005, SEC.131.

IC 3-12-12-12

Compensation of commission members

Sec. 12. Each member of a recount commission is entitled to a per diem not to exceed one hundred dollars (\$100) for each day actually engaged in making the recount. The judge of the court having jurisdiction over the recount shall fix the compensation paid under this section.

As added by P.L.10-1988, SEC.181. Amended by P.L.4-1991, SEC.120.

IC 3-12-12-13

Copy of recount order

Sec. 13. On the day when the order of a recount is made and entered by the court, the circuit court clerk shall send a certified copy of the order by certified mail to the first name on each petition filed under section 2 of this chapter at the address stated in the petition. The clerk shall charge the cost of mailing the order to each petitioner.

As added by P.L.10-1988, SEC.181.

IC 3-12-12-14

Impoundment and protection of voting equipment and materials

Sec. 14. (a) A court ordering a recount under this chapter shall by order impound and provide for the protection of the following:

(1) All ballots and electronic voting systems used at the election for casting votes in the precincts.

(2) All tally sheets relating to the votes cast on the public question.

(3) All poll lists of persons registered by the poll clerks as having voted on the public question.

(b) An order issued by the state recount commission under IC 3-12-10 supersedes an order issued by a court under this section to the extent that the orders conflict. The state recount commission shall assist a court acting under this section to the extent that the ability of the state recount commission to preserve the integrity of election records or equipment is not hindered.

(c) An impoundment order issued under subsection (a) may not prevent a circuit court clerk or board of registration from copying election material other than ballots if the clerk or board copies the material under the supervision of a person designated by the court. *As added by P.L.10-1988, SEC.181. Amended by P.L.221-2005, SEC.132.*

IC 3-12-12-15

Copies of impounded materials

Sec. 15. A circuit court clerk or board of registration may use a copy made under section 14 of this chapter instead of an original subject to an impoundment order under that section until the court orders the release of the original.

As added by P.L.10-1988, SEC.181.

IC 3-12-12-16

Access to impounded materials

Sec. 16. A court acting under section 14 of this chapter shall make the ballots, electronic voting systems, tally sheets, and poll lists available to the recount commission appointed under this chapter.

As added by P.L.10-1988, SEC.181. Amended by P.L.221-2005, SEC.133.

IC 3-12-12-17

Recount by commission; watchers

Sec. 17. (a) After a recount is ordered under section 9 of this chapter, the recount commission shall convene at a place fixed by order of the court and expeditiously complete the recount of all votes ordered recounted.

(b) The petitioners may designate a watcher to be present at the recount and may also be present in person. Representatives of the media may also attend the recount.

As added by P.L.10-1988, SEC.181.

IC 3-12-12-18

Manual recount request; withdrawal

Sec. 18. (a) A petition filed under this chapter may request that ballot cards in specified precincts that used a ballot card voting system be counted manually. If a petition includes such a request, the recount commission may not use automatic tabulating machines to count ballot cards in the specified precincts. Ballot cards in those precincts shall be counted manually, and the tabulation of votes must comply with IC 3-11-7.

(b) A petitioner may withdraw a request for a manual recount of ballot cards at any time after the recount commission conducts a test of the automatic tabulating machines to ascertain that the machines will correctly count the votes cast on the public question that is the subject of the recount.

As added by P.L.10-1988, SEC.181.

IC 3-12-12-19

Certificate of recount totals

Sec. 19. When a recount is completed by a recount commission appointed under this chapter, the commission shall:

- (1) make and sign a certificate showing the total number of votes received in the precincts on the public question;
- (2) state in its certificate whether affirmative or negative votes received the highest number of votes in the precincts on the public question and by what plurality; and
- (3) file its certificate with the circuit court clerk. The clerk shall enter the certificate in the order book of the court.

As added by P.L.10-1988, SEC.181.

IC 3-12-12-20

Effect of recount certificate

Sec. 20. A recount certificate made under section 19 of this chapter supersedes all previous returns made in any form of the recounted votes. A certified copy of a recount certificate constitutes prima facie evidence of the votes cast on the public question in the precincts in any contest or other proceeding in which there is an issue as to the votes cast at the election on the public question.

As added by P.L.10-1988, SEC.181.

IC 3-12-12-21

Finality of commission determination; appeal

Sec. 21. The determination of a recount commission under section 19 of this chapter is final, although an appeal may be taken to the circuit court that appointed the commission.

As added by P.L.10-1988, SEC.181.

IC 3-12-12-22

Multiple county elections; differences in vote totals; certificate of corrected totals

Sec. 22. If a recount is made for a public question for which votes were cast in more than one (1) county, each circuit court clerk where the recount was made shall determine whether the votes in the

precincts shown by the recount certificate differ from the votes that were tabulated by the county election board. If a circuit court clerk finds that there is a difference between the votes shown by the recount certificate and the votes tabulated by the county election board, the clerk shall prepare a certificate showing the total vote in the county for and against the public question as corrected in accordance with the recount certificate.

As added by P.L.10-1988, SEC.181. Amended by P.L.3-1993, SEC.220.

IC 3-12-12-23

Statewide public questions; recounts; certificate of corrected vote totals; certificate of approval or rejection

Sec. 23. (a) This section applies to a recount of:

- (1) a public question concerning the ratification of a state constitutional amendment or the retention of a justice of the Indiana supreme court or judge of the Indiana court of appeals; or
- (2) another public question voted on by the electorate of the entire state.

(b) A circuit court clerk shall immediately transmit a certificate prepared under section 22 of this chapter to the election division.

(c) Upon tabulation of the returns under this section by the election division, the secretary of state shall issue a certificate declaring the public question approved or rejected.

(d) The election division shall provide to the office the results of the recount in each precinct in which a recount was conducted.

As added by P.L.10-1988, SEC.181. Amended by P.L.4-1991, SEC.121; P.L.3-1997, SEC.379; P.L.212-2001, SEC.32.

IC 3-12-12-24

Repealed

(Repealed by P.L.4-1991, SEC.147.)

IC 3-12-12-25

Single county elections; differences in vote totals; certificate of corrected totals

Sec. 25. If a recount is made for a public question on which votes were cast only in a single county, the circuit court clerk shall determine whether the votes shown by the recount certificate differ from the votes that were tabulated by the county election board. If the circuit court clerk finds that there is a difference between the votes shown by the recount certificate and the votes tabulated by the county election board, the clerk shall prepare a certificate showing the total vote for and against the public question as corrected in accordance with the recount certificate.

As added by P.L.10-1988, SEC.181. Amended by P.L.3-1993, SEC.221.

IC 3-12-12-26

Local public questions; recounts; transmittal of certificate of corrected totals; certificate of approval or rejection

Sec. 26. (a) This section applies to a recount of votes cast on a local public question.

(b) The circuit court clerk shall transmit the certificate prepared under section 22 or 25 of this chapter to the county election board of the county having the greatest percentage of population of the election district voting on the public question.

(c) Upon tabulation of the returns under this section, the county election board shall issue a certificate declaring the public question approved or rejected.

As added by P.L.10-1988, SEC.181. Amended by P.L.4-1991, SEC.122.