



2017 SENATE BILL 102

March 9, 2017 - Introduced by Senators LEMAHIEU, CRAIG, KAPENGA, MARKLEIN, STROEBEL and VUKMIR, cosponsored by Representatives TUSLER, THIESFELDT, ALLEN, BERNIER, BRANDTJEN, E. BROOKS, R. BROOKS, EDMING, GANNON, HORLACHER, KATSMA, KERKMAN, KREMER, KRUG, KULP, MACCO, MURPHY, MURSAU, OTT, PETERSEN, QUINN, ROHRKASTE, SANFELIPPO, SCHRAA, SKOWRONSKI, SPIROS, STEFFEN, TITTL and WEATHERSTON. Referred to Committee on Elections and Utilities.

1 **AN ACT to amend** 9.01 (1) (a) 1., 9.01 (1) (ag) 2., 9.01 (1) (ag) 3m., 9.01 (1) (ag)
2 4., 9.01 (1) (ar) 3. and 20.510 (1) (g); and **to create** 9.01 (1) (a) 2. c. and 9.01 (1)
3 (a) 5. of the statutes; **relating to:** aggrieved parties petitioning for a recount
4 and making an appropriation.

Analysis by the Legislative Reference Bureau

This bill provides that any candidate voted for at any election who is an aggrieved party or any elector who voted on any referendum question at any election may petition for a recount. The bill defines an “aggrieved party” as any of the following:

1. For an election at which 4,000 or fewer votes are cast for the office that the candidate seeks, a candidate who trails the leading candidate by no more than 40 votes after the official canvass.

2. For an election at which more than 4,000 votes are cast for the office that the candidate seeks, a candidate who trails the leading candidate by no more than 1 percent of the total votes cast for that office after the official canvass.

Current law allows any candidate to petition for a recount regardless of the difference between the votes cast for the petitioner and those cast for the leading candidate. Under current law, and under the bill, if the difference between the votes cast for the petitioner and those cast for the leading candidate is more than 0.25 percent of the total votes cast for the office that the candidates seek, the petitioner must pay a fee equal to the actual cost of performing the recount.

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The bill also provides that the actual cost of performing a recount includes the actual cost incurred by the Elections Commission to provide services for performing the recount and allows the commission to recover that cost. In addition, under the bill, a person must file a petition for a recount no later than 5 p.m. on the first business day following the last meeting of the board of canvassers and the county board of canvassers may convene to conduct the recount no later than 9 a.m. on the third day after receiving the order for a recount. Under current law, a person must file a petition for a recount no later than 5 p.m. on the third business day following the last meeting of the board of canvassers and the county board of canvassers may convene to conduct the recount no later than 9 a.m. on the second day after receiving the order for a recount.

Finally, the bill changes the deadline for a petitioner to pay any balance owing toward the fee for the recount from 30 days after the petition is filed to 45 days after the petition is filed. The bill also changes the deadline for the clerk to issue a refund of any overpayment from 30 days after the board of canvassers makes its determination to 45 days after the determination.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 9.01 (1) (a) 1. of the statutes is amended to read:
2 9.01 (1) (a) 1. Any candidate voted for at any election who is an aggrieved party,
3 as determined under subd. 5., or any elector who voted upon any referendum
4 question at any election may petition for a recount. The petitioner shall file a verified
5 petition or petitions with the proper clerk or body under par. (ar) not earlier than the
6 time of completion of the canvass following canvassing of any valid provisional
7 ballots under s. 6.97 (4) and, except as provided in this subdivision, not later than
8 5 p.m. on the ~~3rd~~ first business day following the last meeting day of the municipal
9 or county board of canvassers determining the election for that office or on that
10 referendum question following canvassing of all valid provisional ballots or, if more
11 than one board of canvassers makes the determination, not later than 5 p.m. on the
12 ~~3rd~~ first business day following the last meeting day of the last board of canvassers

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1 which makes a determination following canvassing of all valid provisional ballots.
2 If the commission chairperson or chairperson's designee makes the determination
3 for the office or the referendum question, the petitioner shall file the petition not
4 earlier than the last meeting day of the last county board of canvassers to make a
5 statement in the election or referendum following canvassing of all valid provisional
6 ballots and not later than 5 p.m. on the ~~3rd~~ first business day following the day on
7 which the commission receives the last statement from a county board of canvassers
8 for the election or referendum following canvassing of all valid provisional ballots.

9 **SECTION 2.** 9.01 (1) (a) 2. c. of the statutes is created to read:

10 9.01 (1) (a) 2. c. If the petitioner is a candidate voted for at the election for which
11 the petitioner seeks a recount, that the petitioner is an aggrieved party.

12 **SECTION 3.** 9.01 (1) (a) 5. of the statutes is created to read:

13 9.01 (1) (a) 5. In this paragraph, "aggrieved party" means any of the following:

14 a. For an election at which 4,000 or fewer votes are cast for the office that the
15 candidate seeks, a candidate who trails the leading candidate, as defined under par.
16 (ag) 5., by no more than 40 votes, as determined under par. (ag) 5.

17 b. For an election at which more than 4,000 votes are cast for the office that the
18 candidate seeks, a candidate who trails the leading candidate, as defined under par.
19 (ag) 5., by no more than 1 percent of the total votes cast for that office, as determined
20 under par. (ag) 5.

21 **SECTION 4.** 9.01 (1) (ag) 2. of the statutes is amended to read:

22 9.01 (1) (ag) 2. If subd. 1 does not apply to the difference between the votes cast
23 for the leading candidate and those cast for the petitioner or the difference between
24 the affirmative and negative votes cast upon any referendum question following
25 canvassing of all valid provisional and absentee ballots, the petitioner shall pay a fee

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1 equal to the actual cost of performing the recount in each ward for which the petition
2 requests a recount, or in each municipality for which the petition requests a recount
3 where no wards exist, plus the actual cost incurred by the commission to provide
4 services for performing the recount.

5 **SECTION 5.** 9.01 (1) (ag) 3m. of the statutes is amended to read:

6 9.01 (1) (ag) 3m. The petitioner shall pay any balance owing toward the fee due
7 under subd. 2. within ~~30~~ 45 days after the clerk or body receiving the petition
8 provides the petitioner with a written statement of the amount due. If the petitioner
9 has overpaid the fee due under subd. 2. the clerk or body receiving the petition shall
10 refund the amount overpaid within ~~30~~ 45 days after the board of canvassers makes
11 its determination in the recount. If, as a result of the recount, the petitioner is the
12 leading candidate, or the majority of votes cast on the referendum changes from
13 affirmative to negative or from negative to affirmative, the clerk or body receiving
14 the petition shall refund the amount paid within ~~30~~ 45 days after the board of
15 canvassers makes its determination in the recount. For purposes of this subdivision,
16 a petitioner has not overpaid the fees due under subd. 2., and is therefore not entitled
17 to a refund under this subdivision, if the recount results in a difference in the votes
18 cast that is below the threshold for paying the fee under subd. 2.

19 **SECTION 6.** 9.01 (1) (ag) 4. of the statutes is amended to read:

20 9.01 (1) (ag) 4. The commission shall deposit all moneys received by it into the
21 account under s. 20.510 (1) (g), and shall pay the fees required for each recount to the
22 county clerks of the counties in which the recount is to be held and shall retain the
23 amount necessary to pay for the actual cost incurred by the commission to provide
24 services for performing the recount. The county clerk shall deposit fees received by

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1 him or her with the county treasurer. The municipal clerk shall deposit fees received
2 by him or her with the municipal treasurer.

3 **SECTION 7.** 9.01 (1) (ar) 3. of the statutes is amended to read:

4 9.01 (1) (ar) 3. Whenever a clerk receives a valid petition and any payment
5 under par. (ag) 3., the clerk shall thereupon notify the proper board of canvassers.
6 Whenever the commission receives a valid petition and any payment under par. (ag)
7 3., the commission shall promptly by certified mail or other expeditious means order
8 the proper county boards of canvassers to commence the recount. County boards of
9 canvassers shall convene no later than 9 a.m. on the ~~second~~ 3rd day after receipt of
10 an order and may adjourn for not more than one day at a time until the recount is
11 completed in the county, except that the commission may permit extension of the
12 time for adjournment. Returns from a recount ordered by the commission shall be
13 transmitted to the office of the commission as soon as possible, but in no case later
14 than 13 days from the date of the order of the commission directing the recount. The
15 commission chairperson or the chairperson's designee may not make a
16 determination in any election if a recount is pending before any county board of
17 canvassers in that election. The commission chairperson or the chairperson's
18 designee need not recount actual ballots, but shall verify the returns of the county
19 boards of canvassers in making his or her determinations.

20 **SECTION 8.** 20.510 (1) (g) of the statutes is amended to read:

21 20.510 (1) (g) *Recount fees.* The amounts in the schedule to be apportioned to
22 the commission and the county clerks or county board of election commissioners as
23 prescribed in s. 9.01 (1) (ag). All moneys received on account of recount petitions filed
24 with the commission shall be credited to this appropriation account.

25 (END)