

ELECTION RECOUNT PROCEDURES

November 2006



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Introduction

Elections are often decided by a few votes. In many cases they are decided by one or two votes out of the several hundred or even several thousand votes that are cast. An election may even end in a tie vote. These circumstances encourage a candidate, typically the one who loses the election, to have all the ballots counted again to assure all legal votes are counted properly, any illegal votes are not counted and the proper procedures for conducting the election were followed by the election officials.

This process of counting the ballots again is known as a recount. The procedures for requesting and conducting a recount are spelled out in the election laws. A recount is the exclusive remedy to test in court the right of a candidate to hold office based on the number of votes cast at an election.

This manual describes the procedures for requesting a recount and for conducting the recount of election results. This information is prepared by the State Elections Board pursuant to the requirements of s.9.01(10) Stats. If you have any questions about the recount process, please contact the Elections Board staff at the phone numbers set out below:

General: 608-266-8005

Toll Free: 866-VOTE-WIS

Elections Specialist 608-266-3276

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Legal Counsel: 608-266-0136

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Procedures for Requesting a Recount

When is a Recount Held?

The results of an election may only be recounted if a sworn petition requesting a recount is filed with the appropriate filing officer by a person entitled to ask for a recount along with any required fee.

Who May Request a Recount?

Only a candidate may request a recount of an election for an office. Any person who voted at a referendum election may request a recount of the referendum election results.

How is a Recount Requested?

An election recount is requested by filing a sworn recount petition with the filing officer along with any applicable fee. This must be done by the applicable deadline.

What is a Recount Petition?

A recount petition is a sworn statement requesting that the votes at an election be counted again and setting out the reasons why the ballots should be recounted. A verified recount petition (see the sample at the back of the manual, Form EB-186) must be filed with the filing officer with the applicable fee, if any is required.

The sworn petition must state the following information:

1. The petitioner was a candidate for the office in question. If the results of a referendum election are at issue, the petition must state that the petitioner voted on the referendum question.
2. The petitioner must specifically request a recount.
3. The basis for requesting the recount. This can consist of a general statement that the petitioner believes that a mistake or fraud was committed in a specified ward or municipality in the counting and return of the votes cast for the office. Or, more specific grounds such as a particular defect, irregularity, or illegality in the conduct of the election may be listed in the petition. If specific defects, irregularities or illegalities are listed, the petitioner shall state if this information is based on personal knowledge of the petitioner or if the petitioner believes the information to be true based on information provided from other sources.
4. The ward or wards to be recounted. If a municipality consists of only one ward, the petition need only list the municipality in which the recount is desired. If all wards in a municipality, county or district are to be recounted, the petition may list the municipality, county or district without specifying each ward to be counted. The petitioner may also state “all wards” if the petitioner wants the entire election recounted. If no ward specifications are indicated, the filing officer will assume that all wards are to be recounted.
5. A verification statement signed under oath before a person authorized to administer oaths. The verification statement must state that the petitioner knows that the information in the petition is true based on the petitioner's personal knowledge or that the petitioner believes the information is true based on information provided to the petitioner.

After filing the recount petition, the petitioner may amend the petition. This may be done to include information discovered as a result of the facts gathered and determined by the board of canvassers during the recount. If the petitioner wants to amend his or her petition, the petitioner must file a motion with the board of canvassers to amend as soon as possible after the petitioner discovers or should have reasonably discovered the new information, and show that the petitioner was unable to include the information in the original petition.

If a candidate petitions for a recount in part, but not all, of the wards or municipalities within a jurisdiction or district, the opposing candidate may file a petition for a recount in any or all of the remaining wards or municipalities. The latter petition must be filed not later than 5:00 p.m.—2 days after the board of canvassers completes the first recount. The board of canvassers convenes at 9:00 a.m. on the next business day to count the remaining wards or municipalities. This right also applies to a referendum election. Any elector who voted at the election may petition to recount the remaining wards or municipalities in a referendum election.

If a recount petition is not filed in the proper form by the filing deadline, or is not filed on time, or is not accompanied with the required filing fee, the petitioner loses his or her right to a recount of the election.

A copy of the recount petition, Form EB-186, is set out at the end of this section.

When is a Filing Fee Required?

In some cases, a fee may be required for the recount. If 1,000 or fewer votes are cast, no fee is required if the difference in the total votes cast between the leading candidate and those cast for the petitioner or between the affirmative and negative votes cast at a referendum is less than 10. If the difference is at least 10 votes, a fee of \$5 per ward is required. If more than 1,000 votes are cast, no fee is required if the difference is no more than one half of one percent (.5%). If the difference is more than .5% but not more than 2%, the fee is \$5 per ward. If the difference is more than 2%, the petitioner must pay the actual cost of conducting the recount. See the chart for calculating recount fees following this section.

To determine if the difference exceeds one-half of one percent or exceeds two percent, multiply the total votes cast by .005 or .02. If the difference between the leading candidate and the candidate requesting the recount is greater than the number determined by multiplying the total votes cast in the election by .005, \$5 per ward is due. If the difference between the leading candidate and the candidate requesting the recount is greater than the number determined by multiplying the total votes cast in the election by .02, the actual cost of the recount is due.

The fee of \$5 per ward is calculated based on the number of wards recounted. In a polling place that combines wards, the fee is based on each separate ward included in the combination. The fee must be paid in cash or in another form of payment acceptable to the filing officer.

The “leading candidate” is the candidate winning the election. In an election where more than one candidate is elected to the same office or in a primary election when two or more candidates are nominated, the “leading candidate” is the person receiving the lowest number of votes, but who is still elected or nominated. It is not the candidate with the most votes.

Where Does the Petitioner File the Recount Petition?

The petitioner files the recount petition with the filing officer with whom nomination papers or a declaration of candidacy are filed for that office. The recount petition is filed as follows:

A petition for the recount of the election of **all federal and state offices and all state referenda** contests is filed with the State Elections Board, 17 West Main Street, Suite 310, Madison, Wisconsin 53703.

A petition for the recount of **all county offices and all county referenda** elections is filed with the county clerk in the county in which the election took place. In Milwaukee County, the recount petition is filed with the Milwaukee County Board of Elections Commissioners.

A petition for **all municipal offices**, including the election of all city, village, and town offices, and for **all municipal referenda** is filed with the municipal clerk where the election occurred. In the City of Milwaukee, the recount petition is filed with the City Board of Election Commissioners.

A recount petition for **all school board** offices and **all school referenda** elections is filed with the school district clerk.

The recount petition for **all other special purpose offices and referenda** elections, is filed with the clerk of the jurisdiction calling the election.

When Must the Petition be Filed?

The petition must be filed so it is in the physical possession of the filing officer at a specified time. The deadlines for filing are as follows:

If a municipal or county board of canvassers determines the election result, the time is not earlier than the completion of the canvass for the election and not later than 5:00 p.m. on the third *business* day after the last meeting day of the board of canvassers which determines the election or referendum results.

If the State Elections Board Chairperson or designee determines the election or referendum, the petition must be filed no earlier than the last meeting day of the last county board of canvassers to make a statement in the election or referendum and no later than 5:00 p.m. on the third business day after the Elections Board receives the last statement from the county board of canvassers.

What Happens When the Petition is Filed Properly?

Before the petition is actually filed, the filing officer typically knows, based on the results of the election or referendum, that a recount is likely. In addition, the filing officer may begin to suspect, based on questions that he or she may receive, that a recount is a possibility. Under these circumstances the filing officer alerts the members of the board of canvassers to be prepared for a recount. The board of canvassers should arrange their schedules to allow them to be available for the recount when they are notified that a recount petition was filed and that a recount will be conducted. When the petition is filed, the filing officer informs the board of-canvassers where and when to convene to begin the recount.

Upon receipt of a valid recount petition, the filing officer shall make a copy of the petition for delivery

to all candidates whose names were listed on the ballot for the same office. In a partisan primary, candidates from all parties for the same office must be notified by the filing officer. The petition copies shall be given promptly to the sheriff. The sheriff shall promptly serve copies on the candidates without fee.

A candidate or agent designated by the candidate may accept delivery of the copy of the petition instead of having the sheriff serve a copy on the candidate.

The filing officer should inform each candidate to whom notice of the recount was given of the place and time of the recount when petition copies are served on the candidates. The filing officer should also inform each candidate of his (or her) right to be present during the recount and to be represented by counsel to observe and challenge the votes cast and the canvassers' decisions at the election. The petitioner and candidates are encouraged to obtain legal counsel to represent them in any recount proceedings. The board of canvassers should also make arrangements to obtain legal advice as needed during the recount proceedings.

Calculating Recount Fees

Upon receiving a petition, the filing officer shall calculate any fee due or reasonably estimate any fee due. The filing officer shall provide the petitioner promptly with the total due or estimate.

If 1,000 or less votes are cast	
Vote Difference	Amount Due
Less than 10 votes	No fee due
At least 10 votes	\$5 per ward
If more than 1,000 Votes are Cast	
Vote Difference	Amount Due
No more than .5%	No fee due
More than .5% but not more than 2%	\$5 per ward
More than 2%	Actual Cost

See 9.01(1), Stats.

SAMPLE

RECOUNT PETITION

In Re: The Election for
(specify office)

Verified Petition
for Recount

Petitioner (name of petitioner) alleges and shows to (specify the clerk or body with whom nomination papers are filed for that office):

1. That Petitioner was a candidate for the office of (specify office) in an election held on (specify_date of election);
2. That Petitioner is informed and believes that a (mistake or fraud) has been committed in (specify each ward or municipality) in the counting and return of votes cast for the office of (specify office); and/or

3. That Petitioner (is informed and believes) or (knows of his/her own knowledge) that:

(Specify other defects, irregularities or illegalities in the conduct of the election).

Wherefore: Petitioner requests a recount of (specify each ward or municipality in which a recount is desired); each ward need not be specified if a recount is requested for all wards within a jurisdiction).

Dated this _____ day of _____, _____.

Petitioner

I, (name of petitioner), being first duly sworn, on oath, state that the matters contained in the above petition are known to me to be true except for those allegations stated on information and belief, which I believe to be true.

Petitioner

Subscribed and sworn to before me this _____ day of _____, _____.

Notary Public (or other person authorized to administer oaths)

My Commission Expires _____
(specify expiration date)

Procedures for Conducting the Recount

When Does the Recount Begin?

The recount begins at 9:00 a.m. on the morning following the last day for filing the recount petition. If the following morning is a Saturday (or holiday) the canvassers may begin the recount on the Saturday (or holiday) and they are encouraged to do so. The recount may begin earlier if all candidates have been served with a copy of the recount petition.

In a recount ordered by the State Elections Board, the board of canvassers shall convene no later than 9 am on the second following receipt of the order by the county clerk or in Milwaukee County, the County Board of Election Commissioners.

Who Conducts the Recount?

The board of canvassers that determines the original election result conducts the recount, except for state and federal elections. For state and federal elections, the county boards of canvassers for the counties in which the contested votes are cast conduct the recount.

The board of canvassers should be composed of the same people who initially canvassed the election results. However, there may be substitutions among the members of the board of canvassers caused by illness or absence from the community during the recount. A list of substitute canvass board members should be developed before the recount begins. The minutes of the recount should reflect any change in canvass board members and the reason for the substitution.

What Do the Canvassers Do Before Beginning the Recount?

The board of canvassers conducting the recount should be sure that it has all the supplies and materials needed for the recount. The supplies include sufficient paper and pens to record the minutes of the recount, new tally sheets (Form EB-105), and canvass report forms (Form EB-106). There is a checklist at the end of this manual of the supplies that are needed. The original election materials to be received from each ward include the following:

- ❑ All ballots to be recounted, contained in the original ballot bag or ballot container, (EB-101);
- ❑ All paper records from direct record electronic (DRE) voting devices;
- ❑ All logs of seals for electronic voting machines and tabulators;
- ❑ Both copies of the original poll lists, including any supplemental voter lists;
- ❑ The rejected absentee ballots, (contained in the brown carrier envelope, EB-102);
- ❑ The used absentee ballot certificate-affidavit envelopes, (contained in the white carrier envelope, EB-103);
- ❑ The original Inspectors' Statement, (EB-104);
- ❑ The original tally sheets, (EB-105), including the vote printouts generated by electronic voting

and tabulating devices;

- ❑ The original canvass report of the election results, (EB-106);
- ❑ A copy of any informational memoranda relating to the election and the recount prepared by the Elections Board and sent to county and municipal clerks; and
- ❑ The list of absentee ballot applications prepared by each municipal clerk pursuant to s.6.89, Stats. and all written absentee ballot application forms filed pursuant to s. 6.86(1)(a), Stats.

If the materials are not on hand when the recount is scheduled to begin, the canvassers must immediately obtain these materials before proceeding.

The board of canvassers should determine if proper notice of the recount was given to the appropriate candidates and that the clerk notified each candidate of the place and time of the recount. Finally, the board of canvassers should determine that the recount was noticed as a public meeting under s.19.85 et. seq., Stats. The canvass board should note in the minutes whether or not the candidates were notified and whether public notice of the recount was given. After doing this, the board of canvassers begins the recount.

What Does the Board of Canvassers Do?

The duty of the board of canvassers is to recount the votes cast for the office in question and to correct the errors, if any, that were made at the original determination of the election results. To do this the board of canvassers is required to conduct the recount as an open meeting under the Open Meetings Law.

The canvass board is also required to make a complete written record of the recount. Both sides must be given the opportunity to be heard and to present evidence on:

- all objections to the recount itself,
- the composition of the board of canvassers,
- the procedures followed,
- any ballot cast at the election, and
- any other issues presented to the canvass board during the recount.

This information and the canvass board's decisions must be recorded in the written minutes of the recount proceedings. A sample format for the minutes is set out at the end of this section.

In carrying out these responsibilities, the board of canvassers may hire tabulators who work at the canvass board's direction and who assist in counting the ballots. The canvass board members and the tabulators are the only persons who may handle and touch the ballots and other election materials. The board of canvassers must, however, allow the candidates, their representatives, and counsel to view and identify the election materials. With this in mind, the canvass board should exercise reasonable control over the conduct of the recount to assure that the canvassers and tabulators do not experience interference from any candidate, representative, counsel, media representative, or any member of the

public.

Who May Attend the Recount?

Any person may attend the recount. This includes the candidates, their representatives, their counsel, media representatives, and any other interested persons. These persons may observe the recount proceedings.

How Does the Board Conduct the Recount?

The board of canvassers conducts the recount by following the procedures established by law. These procedures apply to votes cast on paper ballots and on electronic voting equipment.

Paper Ballots

The procedures for recounting votes cast on paper ballots are set out below. Many of these steps also apply to recounting votes cast on electronic voting equipment. Keep in mind that all steps taken, objections made, evidence introduced, and decisions of the board of canvassers must be recorded in writing and preserved with the election materials. These procedures are conducted separately for each municipality and reporting unit within the municipality.

1. Review Voter Lists

The board reconciles the two poll lists to be sure the lists record the same voters, the same number of electors who voted in the ward or municipality along with identical supplemental information required by law. The canvassers determine from the voter lists the number of voters, the number of absentee voters and identify any irregularities appearing on these lists. The canvassers note in the minutes the number of persons who voted and any irregularities found on the registration lists.

2. Absentee Ballot Review

✓ *Determine Number of Absentee Voters*

The board of canvassers determines the number of absentee voters by reviewing the voter registration lists, the absentee ballot certificate envelopes and the list of absentee voters prepared by the municipal clerk pursuant to s.6.89, Stats.

✓ *Review of Written Applications*

The board of canvassers then reviews the written applications for absentee ballots and the list of absentee voters maintained by the municipal clerk. There should be a written application for each absentee ballot envelope. In the case of indefinitely confined and military absentee voters, a designation on a list prepared by the municipal clerk is sufficient if it indicates that an absentee ballot was delivered to and returned by an absentee voter.

Do not reject an absentee ballot if there is no written application. The board of canvassers records in the minutes the number of written absentee ballot applications on file. An explanation of any discrepancy should be included in the minutes.

✓ *Rejected Absentee Ballots*

The board of canvassers examines the rejected absentee ballot certificate envelopes. These should have been placed in the brown carrier envelope (Form EB-102). Defective absentee ballot

certificate envelopes should have been identified by the poll workers on election night and marked “rejected.” The defect should have been noted on the Inspectors’ Statement (Form EB-104).

Any improperly rejected ballots should be marked and placed into the pool of ballots to be counted. The number of voters is increased under this procedure and the change is recorded in the minutes. The minutes should reflect what action, if any, was taken on election night with respect to defective absentee ballot certificate envelopes.

✓ *Defective Absentee Ballot Envelopes*

The board of canvassers next examines the used absentee ballot certificate envelopes (Form EB-122) contained in the white carrier envelope (Form EB-103). Any defective absentee ballot certificate envelope not identified on election night is marked as defective, assigned a serial number, set aside, and properly preserved. A notation including a description of the defect, is made in the minutes.

The number of voters determined at the beginning of the recount is reduced by the total number of absentee ballots set aside under this procedure. This adjusted number is noted in the minutes and used whenever the number of voters is referred to during the recount.

An absentee ballot is defective if the envelope has not been signed by both the voter and a witness.

3. Ballot Container

The board of canvassers examines the ballot bag or ballot container to determine that it has not been tampered with, and/or opened and resealed. The board notes in the minutes any irregularities or possible tampering with the ballots.

4. Ballot Review

The board of canvassers opens the ballot bag or ballot container and removes the contents. The canvassers or tabulators count the number of ballots in the ballot bag, excluding any ballots that were set aside under the provisions of s.7.51(2), Stats., by the poll workers on election night. These set aside ballots should have been marked and bundled by the election inspectors on election night.

The board of canvassers reviews all ballots marked “Rejected,” “Defective” and “Objected To” to decide whether such ballots were correctly found to be “Rejected,” “Defective,” or “Objected To” when the ballots were first examined after the election.

5. Separate Absentee Ballots

The canvassers then separate all the probable absentee ballots from the other ballots. In separating the probable absentee ballots from the other ballots, the board of canvassers assumes that a ballot bearing the only the initials of the municipal clerk or deputy clerk is an absentee ballot. The number of probable absentee ballots should agree with the number of properly completed certificate envelopes, the number of absentee ballots recorded on the registration list on election night, and the number of written applications. Any discrepancies should be recorded in the minutes.

If the board of canvassers previously determined that any absentee ballot certificate envelopes were defective, the board of canvassers draws at random from the pool of probable absentee ballots, without inspection, the number of ballots equal to the number of defective envelopes that have been previously determined. If the board of canvassers finds more defective absentee ballot envelopes than probable absentee ballots, the board of canvassers sets aside all probable absentee ballots. These ballots are marked and properly preserved. The board notes in the minutes the steps taken under this procedure and the results determined.

The board of canvassers should only remove additional ballots if the number of remaining ballots exceeds the number of voters determined during the first step of the recount proceeding. See the procedure in the following section.

6. Treatment of Excess Ballots

If the number of ballots exceeds the number of voters, the board of canvassers or the tabulators place all the ballots face up to check for blank ballots. Any blank ballots (ballots which have not been marked for any office) are marked, set aside, and carefully preserved. The canvass board should record this action in the minutes.

If the number of ballots still exceeds the number of voters after removing all blank ballots, the board of canvassers places all ballots face down to check for initials. Any ballots not properly initialed by two inspectors or any probable absentee ballots not properly initialed by the municipal clerk (or deputy clerk) are set aside. The board of canvassers must, without inspection, randomly draw from these ballots as many ballots as are necessary to reduce the number of ballots to equal the number of voters determined to have voted on election day less any defective absentee ballot certificate envelopes. Any ballots removed for lack of proper initials are properly marked, set aside, and carefully preserved. The board records its actions in the minutes.

If the number of ballots still exceeds the number of voters, the board of canvassers places the remaining ballots in the ballot bag. The board randomly draws out, without inspection, the number of ballots equal to the number of excess ballots. These ballots are separated, marked by the board of canvassers, indicating that they were drawn out due to an excess number of ballots, set aside, and preserved. The actions taken under this procedure are also recorded in the minutes.

When the number of ballots and the number of voters agree or the number of voters exceeds the number of ballots, the board of canvassers returns the ballots to the ballot bag and thoroughly mixes the ballots.

7. Reviewing Provisional and Late Arriving Military Ballots

The board of canvassers shall examine the Inspectors' Certificate for Provisional Ballots (EB-108), provisional ballot reporting form and Provisional Ballot Certificate envelopes (EB-123) to determine if provisional ballots were correctly processed. The canvass board should determine if all ballots for voters providing the required information pursuant to S. 6.97, Stats., ElBd 3.04, Wis Admin. Code have been included in the count. The board shall record any discrepancies in the recount minutes.

In the event of recount for an election contest following a September partisan primary or

November general election, the board of canvassers shall review the status of late arriving military ballots to determine if late arriving military ballots were correctly processed. The canvass board should determine if all valid late arriving military ballots have been included in the count pursuant to S. 6.221 Wis. Stats. The board shall record any discrepancies in the recount minutes.

8. Counting the Ballots

The board of canvassers or tabulators then carefully count the ballots in accordance with the provisions of s.7.51, Stats. The results are recorded on duplicate tally sheets, (Form EB-105). These tally sheets are clearly labeled that they are for the election recount. The recount vote totals are recorded in the minutes.

If any person objects to any ballot, a majority of the board of canvassers decides whether the ballot is valid. The board of canvassers may consult with its legal counsel or the Elections Board staff regarding any objection.

9. Prepare Canvass Statement

After completing the recount, the board of canvassers prepares a statement of the revised election results on the canvass report, (Form EB-106).

Electronic Voting Equipment

The procedures for recounting votes cast on electronic voting equipment are set out below. Keep in mind that all steps taken, objections made, evidence introduced, and decisions of the board of canvassers must be recorded in writing and preserved with the election materials.

These procedures are conducted separately for each ward or reporting unit.

Optical Scan Voting Equipment

10. Programming

Optical Scan tabulating equipment may be reprogrammed to count only votes cast for or against the office or referenda. After review by the board of canvassers and the candidates or their representatives, the ballots are re-tabulated by the optical scan equipment. The ballots may not be hand counted without a court order.

If the tabulator is not reprogrammed, the re-tabulation will also count other offices. These totals should be separated, set aside and preserved. Recounted results for other offices should not be included in the canvass board report of recount results.

11. Testing the Equipment

The board of canvassers tests the automatic tabulating equipment to be used before the recount begins. A record of the test results is noted in the minutes.

12. Review Poll Lists and Reconcile the Number of Voters and Election Day Records

The board of canvassers follows steps 1 through 8 described in the section on paper ballots which apply to the poll lists, the ballot containers, and paper or absentee ballots.

13. The board of canvassers examines all the ballots for the presence or absence of initials and other distinguishing marks. A record is made in the minutes of any irregularities.
14. The board of canvassers reviews all ballots marked “Rejected,” “Defective” and “Objected To” to decide whether such ballots were correctly found to be “Rejected,” “Defective,” or “Objected To” when the ballots were first examined after the election.
15. The canvass board compares the “Duplicate Damaged Ballots,” which have been remade to their originals to determine the correctness of the duplicates.
16. The board of canvassers shall permit any petitioner, candidate or representative to view the ballots before the ballots are recounted by the automatic tabulating equipment.
17. If a party asserts that the automatic tabulating equipment may not correctly record vote intent, the ballot shall be reviewed by the board of canvassers to determine vote intent and counted separately.
18. The board of canvassers recounts the ballots on the automatic tabulating equipment and adds in any votes counted separately to the results.
19. After completing the recount, the board of canvassers prepares a statement of the revised election results on the canvass report, (Form EB-106).

Direct Record Electronic (DRE) Voting Machines

In most recounts DRE voting machines are used in conjunction with paper ballots or optical scan ballots to enable individuals with disabilities to vote privately and independently. As result the the paper ballots and optical scan ballots should be counted first following steps 1 through 7 described in the section on paper ballots which apply to the poll lists, the ballot containers, and paper absentee ballots.

20. Examine the Voting Machine

The board of canvassers examines the electronic voting device to determine that all seals are intact and match the log maintained by the poll workers and the municipal clerk. The canvass board notes in the minutes any irregularities or possible tampering with the device.

21. Review the vote totals

The board of canvassers examines the printed vote totals generated by the DRE at the polling place after the polls closed. The canvass board compares the totals with the results from the count of the paper or optical scan ballots. The canvass board notes in the minutes any inconsistencies with the election night totals.

22. Counting the votes

The board of canvassers proceeds to remove the paper record from the machine. The board of canvassers or tabulators then carefully count the ballots for the election contest that is the subject of the recount. The petitioner, candidates and representatives may observe the paper record as it is counted.

The board of canvassers may separate the individual voter records by cutting the paper record to facilitate the count.

The results are recorded on duplicate tally sheets, (Form EB-105). These tally sheets are clearly labeled that they are for the election recount. The recount vote totals are recorded in the minutes.

If any person objects to any ballot, a majority of the board of canvassers decides whether the ballot is valid. The board of canvassers may consult with its legal counsel or the Elections Board staff regarding any objection.

Determining Voter Intent

When counting paper ballots and write-ins votes, questions often arise concerning the intent of the elector. Poll workers have a duty to attempt to determine voter intent and give effect to that intent if it can be determined. Poll workers are expected to use common sense to determine the will of an elector based on the marks made by the elector on the ballot. The decisions of the poll workers may be reviewed by the recount board of canvassers.

Even if an elector has not fully complied with the provisions of the election law, votes should be counted as intended by the elector to the extent that the elector's intent can be determined. Statutory guidelines for determining voter intent are set out in s.7.50(2), Stats. Some of the general rules in that subsection of the statutes are set out below. The State Elections Board also has a manual, "Counting Votes," which can assist the board of canvassers in determining voter intent. A copy of the manual is set out at the end of this manual.

No ballot may be regarded as defective due to misspelling a candidate's name, or due to abbreviation, omission or use of a wrong initial.

When an elector indicates a straight party vote in the general election, but strikes a name, no vote should be counted for the name stricken. When an elector indicates a straight party vote, but votes for a candidate or candidates in another party, it is a vote for the candidate in the other party and no vote should be counted for the candidate for the same office in the party that was given a straight party vote.

If a sticker is attached, it is a vote for the candidate designated on the sticker even if a straight party vote has been marked on the ballot. A name appearing on a sticker counts as a vote for the candidate whose name appears on the sticker for the office in which the sticker is placed, even if the sticker indicates a different office.

Votes should only be counted for candidates where marks have been made or a name has been written in. Any indication, by a mark, of intent to vote for a candidate should be counted.

In the case of an overvote, write-in votes are given preference over marks in the box following

candidates whose names appear on the ballot, unless there are more write-in votes than permitted for a particular office. This is also true for optical scan write-in votes. If there are more write-in votes than permitted for a particular office, no votes are counted for that office.

Write-in votes cannot be counted if the candidate's name already appears on the ballot in the general election, unless written in for the same office. In a partisan primary, a write-in vote does not count if the candidate is listed on the ballot of another political party. In a nonpartisan (Spring) primary or election a write-in vote should be counted even if the candidate's name is listed on the ballot or the candidate received a vote for another office listed on the ballot. If a person writes an individual's name on the ballot in the space provided, the elector need not make any mark after the write-in vote for the vote to be valid.

What does the board of canvassers do after completing the recount?

The board of canvassers forwards the recount returns and minutes of the recount to the municipal clerk if the recount is for a municipal election. If the recount is for a school board election, the board of canvassers promptly forwards the results and minutes to the school board clerk. If the recount is for a county election, the county board of canvassers promptly forwards the results and minutes to the county clerk. If the recount is for a state or federal election, the results and minutes of the recount are forwarded immediately to the State Elections Board. The canvassers are urged to complete the recount proceedings as expeditiously as possible, but in no case later than 13 days after the recount is ordered.

A copy of the minutes of any recount should be sent to the State Elections Board.

After the Recount is Completed, What Right Does a Candidate or Petitioner Have to Challenge the Results of the Recount?

The candidate or petitioner has a right to appeal the recount election in court. The appeal must be filed with the circuit court within five (5) days of the completion of the recount. If the recount affects a state or federal office or referendum, notice of the appeal must be served on the Elections Board. The candidate may want to confer with his or her attorney about appealing a recount. No certificate of election may be issued by the filing officer until the deadline for filing all appeals has passed and the election results are final.

This information is prepared pursuant to s.9.01(10), Stats. Petitioners, candidates and filing officers should seek legal counsel when they are involved in a recount. If you have any questions, concerns, suggestions or recommendations about the recount process, please contact the:

State Elections Board
17 West Main Street, Suite 310
P.O. Box 2973
Madison, WI 53701-2973
Phone Number: 608-266-3061
Fax Number: 608-267-0500
Email: seb@seb.state.wi.us
Website: <http://elections.wi.gov>

Sample Format for Recount Minutes

Date of Recount:

County:

Office to be Recounted: *(Include District Number)*

Original Result: *(Candidates' Names and Votes for Each Candidate. If there was a tie, explain how it was broken.)*

Canvass Board Members: *(If substitute, give reason for substitution.)*

Other Personnel: *(Tabulators, Corporation Counsel, Clerical Support)*

Others Present:

Notification: *(Were candidates notified and was public notice given?)*

For Each Municipality:

Name of Municipality:

Reporting Unit:

Original Vote Totals for Reporting Unit:

Number of Voters from Registration List:

Number of Absentee Ballot Applications:

Number of Absentee Ballots:

Notes: *(Include a description of any discrepancies, irregularities, errors, problems, objections raised by observers. Record any decision of the board of canvassers. Identify any exhibits by description and number.)*

Recount Vote Totals for Reporting Unit:

Recount Results:

A copy of the minutes from any recount must be sent to the:

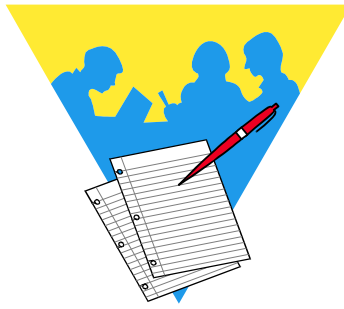
State Elections Board
17 West Main Street, Suite 310
P.O. Box 2973
Madison, WI 53701-2973

Checklist of Supplies and Materials Needed for the Recount

- ❑ Paper and Pens (To record the minutes of the recount!)
- ❑ Tape Recorder (Optional)
- ❑ New *Tally Sheets* (EB-105)
- ❑ New *Canvass Reports* (EB-106)
- ❑ Copies of any informational memoranda relating to the election and the recount prepared by the State Elections Board staff and sent to county and municipal clerks.
- ❑ Recount checklists and the *Elections Recount Procedures Manual*—available from the State Elections Board

Election Materials from Each Reporting Unit:

- ❑ All ballots to be recounted, contained in the original ballot bag or ballot
- ❑ All paper ballot records from direct record electronic (DRE) voting devices
- ❑ All logs of seals for electronic voting machines and tabulators
- ❑ Container with the *Ballot Container Certificate* (EB-101)
- ❑ Both copies of the original *Poll List* (EB-107), including any supplemental voter lists
- ❑ The rejected absentee ballots, contained in the brown carrier envelope—*Certificate of Rejected Absentee Ballots* (EB-102)
- ❑ The used absentee ballot certificate envelopes, contained in the white carrier envelope—*Used Certificate Affidavit Envelopes of Absentee Electors* (EB-103)
- ❑ The *Inspectors' Certificate for Provisional Ballots* (EB-108), provisional ballot reporting form and *Provisional Ballot Certificate* envelopes (EB-123)
- ❑ The original *Inspectors' Statement* (EB-104)
- ❑ The original *Tally Sheets* (EB-105), including the vote printouts generated by electronic voting and tabulating devices
- ❑ The original election results—*Canvass Report* (EB-106)
- ❑ The list of absentee ballot applications prepared by each municipal clerk pursuant to s. 6.89, Stats. and all written *Absentee Ballot Applications* (EB121) filed pursuant to s. 6.86(1)(a), Stats.
- ❑ Materials related to tracking late arriving military ballots



Counting Votes

A guide to counting votes for ballot candidates, write-in votes, and assistance in determining how to count irregular votes.



Part One:

Counting Votes at the Spring Primary, Spring Election and General Election (Rev.10/2002)

Part Two:

Counting Votes at the September Partisan Primary (Rev.8/2002)

COUNTING VOTES

AT THE SPRING PRIMARY, SPRING ELECTION & GENERAL ELECTION

Public Counting

The counting of votes is always done **publicly** after the polls close at 8:00 p.m. The counting is done by the election inspectors. The governing body of a municipality may also appoint tabulators to assist election inspectors in the counting of votes. Any person, including candidates at the election, may observe the counting of votes.

Voter Intent

When counting votes at any election, **voter intent is the controlling factor** in determining if and how a vote should be counted. When there is a question of how a vote should be counted because it is not clearly marked as the instructions on the ballot indicate, the decision is made by a majority of the election inspectors. Even though tabulators may be used to assist in the counting, the decision on how to treat a questionable ballot is made by the election inspectors. One common example of when a determination of voter intent and the validity of a ballot must be made is when an elector has overvoted for a particular office on the ballot. This ballot should be treated as an overvote for that office only. A recording is made on the Inspectors' Statement (EB-104) that a vote was not counted for that office because of an overvote. All other offices on that ballot must be counted as the voter intended.

Counting Paper Ballots

Accuracy is very essential when counting votes. Election inspectors should familiarize themselves with the proper procedures for counting votes on paper ballots as set out on pages 19-21 of the "election day manual for wisconsin election officials." to alleviate fatigue and assure accuracy, all election inspectors and tabulators should count votes. For each different type of ballot or for each office to be counted, the duties should be rotated among all inspectors and tabulators.

Whenever a ballot is found to be defective, is objected to, or is rejected, the ballot must be identified with a number and a notation must be made on the Inspectors' Statement (EB-104).

Counting Write-In Votes

Determining the proper way to count write-in votes raises several questions and, as in counting all votes, it is important to remember that if the voter's intent can be determined the write-in vote must be counted to reflect that intent. Another important point is that, in most cases, a write-in vote will take precedent over a vote for a person whose name is printed on the ballot for the same office.

Where marksense or optical scan voting systems are used, care must be taken to assure that write-in votes are counted when the elector fails to make a mark or connect the arrow next to the write-in line. Because the equipment will not pick up a write-in vote where there is no mark, the arrow is not connected, or the oval is not filled in, inspectors must **inspect each ballot** to determine if a write-in vote has been cast.

Following are several examples of when and when not to count write-in votes. Inspectors must also remember that all write-in votes cast for any person at the election must be listed on the tally sheet, regardless of whether or not the person is a registered write-in candidate.

The examples of when and when not to count write-in votes set out below include, but are not limited to, general situations for all elections. In addition to these situations, there are special considerations when counting votes at the general election.

GENERAL SITUATIONS

Count Write-in Votes When:

1. The name of the person is misspelled, but the intent of the voter can be reasonably determined.
2. The name of the person is abbreviated, but the intent of the voter can be reasonably determined.
3. The name of the person contains a wrong initial or an initial is omitted.
4. Only the last name of a person is written in. If the person is a registered write-in candidate, and/or the intent of the voter can be reasonably determined.
5. An X or other mark is omitted. An X or any other mark is not required in order to cast a write-in vote.
6. A sticker contains only the name of a person and is placed on a ballot. The vote is counted for the person named for the office listed in the space where the sticker is placed.
7. A sticker contains only the name of a person and is placed in the margin. Voter intent must be determined. If the person named on the sticker has filed a campaign registration statement indicating the office sought, the vote should be counted for the person named on the sticker for the office.
8. A sticker contains the name and the office the person is seeking and is placed on the face of the ballot other than in a particular office space. This vote is counted for the person for the office listed on the sticker.
9. The instructions to voters are "Vote for one", and the voter makes an X or other mark in the box to the right of a name that is printed on the ballot and also writes in another person's name for the same office, only the write-in vote is counted. This is not an overvote.
10. The instructions to voters say "Vote for not more than two", and the voter makes an X or other mark in the box to the right of two names that are printed on the ballot and also writes in another person's name, only the write-in vote is counted. This is not an overvoted ballot.
11. In a nonpartisan election, a candidate's name is printed on the ballot for an office and the voter writes in that candidate for another office. The vote is counted for the office where the write-in occurs.
12. The name of a person, who has filed a campaign registration statement indicating the office sought, is written in under an office other than the one indicated on the campaign registration statement. The vote counts for the person for the office where the name is written.
13. A sticker containing the name of a candidate and the office sought is placed under a different office than the one indicated on the sticker. The vote counts for the person named on the sticker for the office under which the sticker is placed.

Do Not Count Write-in Votes When:

1. A name is misspelled or abbreviated and the intent of the voter can not be reasonably determined.

2. A write-in sticker is placed on the endorsement (back) side of the ballot.
3. A write-in sticker is found in the ballot box and is not attached to any ballot.
4. The instructions on the ballot are "Vote for one" and the name of more than one person has been written in for a single office. This is an overvote and no votes are counted for that office.
5. The instructions on the ballot are "Vote for One" and the name of more than one person has been written in and a vote has also been cast for a candidate whose name is printed on the ballot for the same office. This is an overvote and no votes are counted for that office.
6. Where lever type voting machines are used, and a voter can cast a vote for more than one candidate (such as school board office), do not count a write-in name for any candidate whose name also appears on the ballot.
7. In the general election, when a candidate's name is printed on the ballot for an office and the voter writes in that candidate's name for a different office.

GENERAL ELECTION

When counting votes at a General Election it is important to remember that all votes are counted for the person for the office in which the elector has cast the vote. If a name is written in by the elector the party affiliation does not matter when it comes to determining the number of votes cast for that person. All votes cast for an individual, for the same office, are added together even though they may have been written in under different party columns on the ballot.

Straight Party Voting

At a General Election electors have the option of casting a straight party vote for all the candidates of a designated political party, or casting individual votes for candidates of their choice. A straight party vote cannot be cast for candidates listed in the Independent column. An elector must cast votes individually for Independent candidates. Straight party votes are cast in one of the following ways:

1. Where paper ballots are used, by making an **(X)** in the circle at the top of the selected party column. There is no circle in the Independent column, because a straight party vote is not allowed here.
2. Where lever voting machines are used, by pulling the lever or pushing the button at the right of the selected party designation.
- 3.. Where marksense or optical scan voting systems are used, by connecting the arrow or filling in the oval next to the selected party designation.

When a straight party vote has been cast, an elector may still vote individually for candidates of his or her choice under another party column. When an elector casts an individual vote for a candidate of a party different than the straight party vote, the individual vote must be counted for that office. A vote is also counted for all other offices under the straight party column selected by the voter.

When a straight party vote has been cast and the elector also marks individual votes for certain candidates within that same party, the straight party vote should be determined as the voter's intent and a vote must be counted for all candidates under that party column.

When voting for Governor and/or Lieutenant Governor:

If an elector writes in the name of a candidate for governor, but does not write in a name of a candidate for lieutenant governor, a vote is counted for the candidate for governor.

If an elector writes in the name of a candidate for lieutenant governor, but does not write in a name of a candidate for governor, a vote is counted for the candidate for lieutenant governor.

However a write-in vote for governor shall not be added to the votes of the same candidate if there are different combinations of governor/lieutenant governor. For example:

- a write-in vote for Mary Jones for governor and Samuel Smith for lieutenant governor may not be added to a write-in vote for Mary Jones for governor with a different candidate for lieutenant governor or no candidate for lieutenant governor.
- a write-in vote for Mary Jones for governor and Samuel Smith for lieutenant governor may not be added to a write-in vote for Samuel Smith for lieutenant governor with a different candidate for governor or no candidate for governor.
- a write-in vote for Mary Jones for governor may not be added to a write-in vote for Mary Jones for governor with a different candidate for lieutenant governor.
- a write-in vote for Samuel Smith for lieutenant governor may not be added to a write-in vote for Samuel Smith for lieutenant governor with a different candidate for governor.

In these situations, the write-in votes are listed separately on the tally sheet for each combination of candidates.

When voting for President and Vice President of the United States:

An elector casting a write-in vote for President and Vice President must designate the presidential candidate of his or her choice. A vote for a candidate for President only will be counted. If the elector casts a write-in vote for only a candidate for Vice President, the vote will not be counted.

This information was prepared by the staff of the State Elections Board, and represents the staff's view of the application of the law set out in s.7.50(2), Stats., to the general situations described. Election inspectors and candidates should review the law or consult an attorney about any specific application of the law. Any questions should be directed to an elections specialist, 608-266-8005.

COUNTING VOTES AT THE SEPTEMBER PARTISAN PRIMARY

Public Counting

Counting votes is always done publicly after the polls close at 8:00 p.m. Counting is done by the election inspectors. The governing body of a municipality may also appoint tabulators to assist election inspectors with counting votes. Any person, including candidates at the election, may observe the counting of votes.

Voter Intent

When counting votes, voter intent is the controlling factor in determining if and how a vote should be counted. When there is a question of how a vote should be counted because the vote is not clearly marked as the instructions on the ballot indicate, the decision is made by a majority of the election inspectors. Even though tabulators may be used to assist in counting, the decision on how to treat a questionable ballot is made by the election inspectors. One common example of when a determination of voter intent must be made is when an elector has overvoted a particular office on the ballot. This ballot should be treated as an overvote for that office only. A record is made on the Inspectors' Statement (EB-104) that a vote was not counted for that office because of an overvote. All other offices on that ballot must be counted as the voter intended.

Counting Paper Ballots

Accuracy is very essential when counting votes. Election inspectors should familiarize themselves with the proper procedures for counting votes on paper ballots. See pages 19-21 of the "Election Day Manual for Wisconsin Election Officials." To alleviate fatigue and assure accuracy, all election inspectors and tabulators should count votes. The duties should be rotated among all inspectors and tabulators for each different type of ballot or for each office to be counted.

Whenever a ballot is found to be defective, is objected to, or is rejected, a notation must be made on the Inspectors' Statement (EB-104).

Counting Write-In Votes

Determining the proper way to count write-in votes raises several questions. It is important to remember that if the voter's intent can be determined, the write-in vote must be counted to reflect that intent. Another important point is that, in most cases, a write-in vote will take precedence over a vote for a person whose name is printed on the ballot for the same office.

Where marksense voting systems are used, care must be taken to assure that write-in votes are counted when the elector fails to make a mark or connect the arrow next to the write-in line. Because the marksense equipment will not pick up a write-in vote where there is no mark or the arrow is not connected, inspectors must inspect each ballot to determine if a write-in vote has been cast.

Following are several examples of when and when not to count write-in votes. Inspectors must also remember that all write-in votes cast for any person at the election must be listed on the tally sheet, regardless of whether or not the person is a registered write-in candidate.

The examples of when and when not to count write-in votes set out below include, but are not limited to, general situations for all elections. In addition to the general situations there are special considerations where punch card electronic voting systems are used, and when counting votes at partisan primaries and general elections.

GENERAL SITUATIONS

Count Write-in Votes When:

1. The name of the person is misspelled, but the intent of the voter can be reasonably determined.
2. The name of the person is abbreviated, but the intent of the voter can be reasonably determined.
3. The name of the person contains a wrong initial or an initial is omitted.
4. Only the last name of a person is written in. If the person is a registered write-in candidate, and/or the intent of the voter can be reasonably determined.
5. An X or other mark is omitted. An X or any other mark is not required in order to cast a write-in vote.
6. A sticker contains only the name of a person and is placed on a ballot. The vote is counted for the person named for the office listed in the space where the sticker is placed.
7. A sticker contains only the name of a person and is placed in the margin. Voter intent must be determined. If the person named on the sticker has filed a campaign registration statement indicating the office sought, the vote should be counted for the person named on the sticker for the office.
8. A sticker contains the name, the political party and the office the person is seeking and is placed on the face of the ballot other than in a particular office space. This vote is counted for the person for the political party and office listed on the sticker.
9. The instructions to voters are "Vote for one", and the voter makes an X or other mark in the box to the right of a name that is printed on the ballot and also writes in another person's name for the same office, only the write-in vote is counted. This is not an overvote.
10. The name of a person, who has filed a campaign registration statement indicating the office sought, is written in under an office other than the one indicated on the campaign registration statement. The vote counts for the person for the office where the name is written.
11. A sticker containing the name of a candidate and the office sought is placed under a different office than the one indicated on the sticker. The vote counts for the person named on the sticker for the office under which the sticker is placed.

Do Not Count Write-in Votes When:

1. A name is misspelled or abbreviated and the intent of the voter can not be reasonably determined.
2. A write-in sticker is placed on the endorsement (back) side of the ballot.
3. A write-in sticker is found in the ballot box and is not attached to any ballot.
4. The instructions on the ballot are "Vote for one" and the name of more than one person has been written in for a single office. This is an overvote and no votes are counted for that office.
5. The instructions on the ballot are "Vote for One" and the name of more than one person has been written in and a vote has also been cast for a candidate whose name is printed on the ballot for the same office. This is an overvote and no votes are counted for that office.

OPTICAL SCAN OR MARKSENSE VOTING SYSTEMS

At a September partisan primary, an elector may vote for candidates of only one political party or for candidates on the independent ballot. For this reason, electors casting votes on an optical scan or marksense electronic voting system may select a party preference. Selecting the party of choice will not prevent crossover voting, but it is a safeguard so that a voter will not lose all votes if he or she does crossover. Write-in votes are not permitted on the independent ballot.

Count Write-in Votes at a Partisan Primary When:

1. The voter writes in the name of a registered write-in candidate, but does not include the party and/or the office.
2. A sticker contains the name, political party and office the person is seeking and is placed anywhere on the face of a marksense ballot other than in a particular office space. This vote is counted for the person, party and office listed on the sticker.
3. The voter has written in the name of a person for an office, and has also voted for a person whose name is printed on the ballot for the same office. This is not treated as an overvoted ballot. In this case, the name written in must be counted and the vote for the person whose name is printed on the ballot is not counted.
4. The voter has selected a party preference, and writes in the name of a person but does not include the political party. The vote is counted for that person in the party selected.
5. A candidate's name is printed on the ballot for one office and the voter writes in that candidate's name for another office for the same party.
6. The voter has selected a party preference, has voted for candidates in more than one political party and writes in the name of a person in the write-in section. The votes cast for the candidates in the political party selected will be counted. The write-in vote is counted as a vote in the political party selected.
7. The voter has not selected a party preference, but has voted for candidates in one political party and then writes in the name of a person in the write-in section of the ballot. The write-in vote is counted as a vote in the party of the candidates voted for in the party section.

Do Not Count Write-in Votes at a Partisan Primary When:

1. The voter has selected a party preference choice, and then writes in the name of a person for an office of a different political party. This creates a crossover vote for that office only.
2. The voter has not selected a party preference, but has cast votes in one political party, and then writes in the name of a person and a different party creating a crossover vote. In this case, the entire ballot is not counted.
3. A candidate's name is printed on the ballot for an office and is written in for an office on the ballot of a different political party.
4. If the voter has not selected a party preference and writes in names of persons in the write-in section of the ballot, no votes will count. Without party designation, write-in votes cannot be attributed to a party.

CHAPTER 9

POST-ELECTION ACTIONS; DIRECT LEGISLATION

9.01 Recount.
9.10 Recall.

9.20 Direct Legislation.

NOTE: 2005 Wis. Act 451, which made major revisions to the election laws, including to Chapter 9, contains an extensive prefatory note explaining the changes.

Cross-reference: See definitions in s. 5.02.

9.01 Recount. (1) PETITION; FEES; GENERAL PROCEDURES. (a)

1. Any candidate voted for at any election or any elector who voted upon any referendum question at any election may petition for a recount. The petitioner shall file a verified petition or petitions with the proper clerk or body under par. (ar) not earlier than the time of completion of the canvass and not later than 5 p.m. on the 3rd business day following the last meeting day of the municipal or county board of canvassers determining the election for that office or on that referendum question prior to issuance of any amended return under s. 6.221 (6) (b) or, if more than one board of canvassers makes the determination, not later than 5 p.m. on the 3rd business day following the last meeting day of the last board of canvassers which makes a determination prior to issuance of any amended return under s. 6.221 (6) (b). If the chairperson of the board or chairperson's designee makes the determination for the office or the referendum question, the petitioner shall file the petition not earlier than the last meeting day of the last county board of canvassers to make a statement in the election or referendum and not later than 5 p.m. on the 3rd business day following the day on which the elections board receives the last statement from a county board of canvassers for the election or referendum.

NOTE: Par. (a) is shown as affected by 2 acts of the 2005 Wisconsin legislature and as merged by the revisor under s. 13.93 (2) (c).

2. Each verified petition under subd. 1. shall state all of the following:

a. That at the election the petitioner was a candidate for the office in question or that the petitioner voted on the referendum question in issue.

b. That the petitioner is informed and believes that a mistake or fraud has been committed in a specified ward or municipality in the counting and return of the votes cast for the office or upon the question or that another specified defect, irregularity, or illegality occurred in the conduct of the election.

3. The petition under subd. 1. shall specify each ward, or each municipality where no wards exist, in which a recount is desired. If a recount is requested for all wards within a jurisdiction, each ward need not be specified.

4. The petition under subd. 1. may be amended to include information discovered as a result of the investigation of the board of canvassers or the chairperson of the board, or chairperson's designee, after the filing of the petition if the petitioner moves to amend the petition as soon as possible after the petitioner discovers, or reasonably should have discovered, the information that is the subject of the amendment and if the petitioner was unable to include the information in the original petition.

(ad) Upon receiving a petition for a recount, the clerk or body receiving the petition shall calculate any fee due under

par. (ag) 1m. or reasonably estimate any fee due under par. (ag) 2. The clerk or body shall provide the petitioner promptly with the total due or estimate.

(ag) 1. If the difference between the votes cast for the leading candidate and those cast for the petitioner or the difference between the affirmative and negative votes cast upon any referendum question is less than 10 if 1,000 or less votes are cast or not more than 0.5% of the total votes cast for the office or on the question if more than 1,000 votes are cast prior to issuance of any amended return under s. 6.221 (6) (b), the petitioner is not required to pay a fee.

1m. If the difference between the votes cast for the leading candidate and those cast for the petitioner or the difference between the affirmative and negative votes cast upon any referendum question is at least 10 if 1,000 or less votes are cast or is more than 0.5% but not more than 2% if more than 1,000 votes are cast prior to issuance of any amended return under s. 6.221 (6) (b), the petitioner shall pay a fee of \$5 for each ward for which the petition requests a ballot recount, or \$5 for each municipality for which the petition requests a recount where no wards exist.

2. If the difference between the votes cast for the leading candidate and those cast for the petitioner or the difference between the affirmative and negative votes cast upon any referendum question is more than 2% if more than 1,000 votes are cast prior to issuance of any amended return under s. 6.221 (6) (b), the petitioner shall pay a fee equal to the actual cost of performing the recount in each ward for which the petition requests a recount, or in each municipality for which the petition request a recount where no wards exist.

3. All fees calculated or estimated under par. (ad) shall be prepaid in cash or another form of payment which is acceptable to the officer to whom they are paid. No petition for which a fee is required is valid unless the proper calculated or estimated fee is paid at the time of filing.

3m. The petitioner shall pay any balance owing toward the fee due under subd. 2. within 30 days after the clerk or body receiving the petition provides the petitioner with a written statement of the amount due. If the petitioner has overpaid the fee due under subd. 2. the clerk or body receiving the petition shall refund the amount overpaid within 30 days after the board of canvassers makes its determination in the recount.

4. The board shall deposit all moneys received by it into the account under s. 20.510 (1) (g), and shall pay the fees required for each recount to the county clerks of the counties in which the recount is to be held. The county clerk shall deposit fees received by him or her with the county treasurer. The municipal clerk shall deposit fees received by him or her with the municipal treasurer.

5. In this paragraph, the "leading candidate" includes every individual whose vote total at the time of the filing of the recount petition would entitle the individual to election or nomination to office. In an election in which more than one office of the same type is to be filled from the same territory, the number and percentage of votes cast under this paragraph shall be determined by first dividing the total number of

votes cast for the office by the number of offices being filled at the election from the same territory.

(am) A person who files a petition under par. (a) may withdraw the petition. If the petitioner withdraws a petition before any board of canvassers that canvassed the original election begins its recount, the clerk or body shall refund any fee paid under par. (ag).

(ar) 1. In the event of a recount for any office, the petition shall be filed with the clerk or body with whom nomination papers are filed for that office.

2. In the event of a recount for a referendum, the petition shall be filed with the clerk of the jurisdiction in which the referendum is called, and in the case of the state with the elections board.

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

(b) The proper board of canvassers shall reconvene no earlier than 9 a.m. on the day following delivery of notice to all candidates under sub. (2) and no later than 9 a.m. on the day following the last day for filing of a petition, or if the original canvass is subject to correction under s. 6.221 (6) (b), immediately after issuance of the amended statement and determination in the original canvass, whichever is later. The board of canvassers shall then proceed to recount the ballots in the wards or municipalities specified and to review the allegations of fact contained in the petition or petitions. The recount shall proceed for each ward or municipality as follows:

1. The board of canvassers shall first compare the poll lists and determine the number of voting electors.

2. The board of canvassers shall then examine the absentee ballot envelopes. Any defective absentee ballot envelopes shall be laid aside, properly marked and carefully preserved. The number of voters shall be reduced by the number of ballot envelopes set aside under this subdivision. An absentee ballot envelope is defective only if it is not witnessed or if it is not signed by the voter or if the certificate accompanying an absentee ballot that the voter received by facsimile transmission or electronic mail is missing.

3. The board of canvassers shall then examine the container or bag containing the ballots to be certain it has not been tampered with, opened, or opened and resealed. Any irregularities or possible tampering with the container or bag shall be noted.

4. a. When the container or bag has been checked, it shall be opened and the contents removed. The board of canvassers shall, without examination other than what is

necessary to determine that each is a single ballot, count the number of ballots in the container or bag, excluding ballots removed under s. 7.51 (2) (e).

b. The board of canvassers shall then, for each opened absentee ballot envelope that was laid aside as defective under subd. 2., without inspection, randomly draw one absentee ballot from the container or bag. In differentiating absentee ballots from other ballots, the board of canvassers shall presume that a ballot initialed only by the municipal clerk, the executive director of the board of election commissioners, or a deputy clerk or secretary is an absentee ballot. If there are more defective absentee ballot envelopes than there are probable absentee ballots, all of the probable absentee ballots shall be removed from the container or bag. Additional ballots shall be removed only if the number of remaining ballots still exceeds the number of voting electors recorded under subd. 1., reduced by the number of defective envelopes set aside under subd. 2. All ballots removed shall not be counted, but shall be marked as to the reason for their removal, set aside and carefully preserved.

c. If, after completing the steps set forth in subd. 4. b., the number of ballots still exceeds the number of voters, the board of canvassers shall place all ballots face up to check for blank ballots. Any blank ballots shall be so marked, set aside and carefully preserved.

d. If, after completing the steps set forth in subd. 4. c., the number of ballots still exceeds the number of voters reduced by the number of defective envelopes set aside under subd. 2., the board of canvassers shall place all ballots face down to check the initials. Any ballot not properly initialed by 2 inspectors or any absentee ballot not properly initialed by the municipal clerk, the executive director of the board of election commissioners, or a deputy clerk or secretary shall be temporarily set aside and the board of canvassers shall, without inspection, randomly draw from these ballots as many as are necessary to reduce the number of ballots to equal the number of voters. Any ballots removed for lack of initials shall not be counted but shall be marked, set aside and carefully preserved.

e. If, after completing the steps set forth in subd. 4. d., the number of ballots still exceeds the number of voters reduced by the number of defective envelopes set aside under subd. 2., the remaining ballots shall be returned to the container or bag and the board of canvassers shall draw a number of ballots equal to the excess number of ballots by chance and without inspection from the container or bag. These ballots shall not be counted but shall be marked as having been removed by the canvassers on recount due to an excess number of ballots, set aside and carefully preserved.

5. When the number of ballots and voters agree, or after noting that the number of voters exceeds the number of ballots, the board of canvassers shall return all ballots to be counted to the ballot box and shall turn the ballot box in such manner as to thoroughly mix the ballots. The recount shall then begin.

5m. Except as otherwise provided in this section, the recount shall be conducted in accordance with s. 7.51.

6. In recounting the votes cast on a voting machine in which the record of the votes cast is contained in the machine, the board of canvassers shall make a record of the number of the seal, if any, the number of the protective counter or other device, if one is provided, and shall open the recording compartment of the machine, and without unlocking the machine against voting, shall recount the votes thereon. If the machine is an electronic voting machine

utilizing a detachable record of votes cast, the record shall be retabulated under s. 5.90.

7. When a machine is recounted, the board of canvassers shall proceed to inspect and examine the machine showing the votes cast for each office or referendum specified in the petition, and shall make a record of the votes for that office or referendum as shown on that voting machine, which they shall certify as correct, in the presence of at least one witness.

8. If upon the recount it is found that the original canvass of the returns has been correctly made from a voting machine and that a discrepancy still remains unaccounted for, the board of canvassers shall publicly unlock the voting and counting mechanism of the machine, and shall proceed to examine and test the machine to determine the cause of the discrepancy in returns from the machine. A similar test shall be performed for electronic voting machines to ascertain whether there is any malfunction in the machine. After the completion of the examination and test, the board of canvassers shall prepare a statement giving the results of the examination and test. The statement shall be witnessed by at least one witness.

8m. Where a voting machine or electronic voting system is used, and an error in the vote total as shown on the machine or record of votes cast is clearly apparent, the board of canvassers may change the vote total as shown by the machine or system and certify or use a different total to certify a different result than is indicated by the machine or system if there is evidence of a specific malfunction in the machine or system, if the malfunction could reasonably have caused the error, and if clear and convincing evidence exists which indicates the exact actual total number of votes cast. The burden of demonstrating that a vote total shown on a machine or record of votes cast is incorrect rests with the party seeking to change the recorded result on the basis of clear and convincing evidence.

8s. If an electronic voting system is used in which ballots are distributed to electors, and the board of canvassers makes a determination of elector intent under s. 7.50, the board of canvassers shall add to the result generated by the automatic tabulating equipment any votes counted by the board of canvassers in making its determination.

9. If upon the recount it appears that the original canvass of the returns by the election officials was incorrect, the statements and determinations of the board of canvassers shall be corrected accordingly.

10. Recounts at polling places utilizing an electronic voting system in which ballots are distributed to electors shall be performed in accordance with the procedure for recounting paper ballots insofar as applicable, except as provided in s. 5.90. Recounts at polling places utilizing electronic voting machines shall be performed in accordance with the procedure for recounting votes cast on mechanical voting machines, insofar as applicable, except as provided in s. 5.90.

11. All steps of the recount shall be performed publicly. Except as provided in subd. 12., all materials and ballots may be viewed and identified by the candidates, the person demanding the recount and their authorized representatives and counsel, but only members of the board of canvassers and tabulators assisting them may touch any of the materials or ballots. The candidates, the person demanding the recount and their authorized representatives and counsel may object to the counting of any ballot. Any errors shall be corrected.

12. Except as authorized in s. 6.47 (8), the board of canvassers shall not permit access to the name of any elector who has obtained a confidential listing under s. 6.47 (2) during the recanvass.

(2) NOTICE TO CANDIDATES. When the recount concerns an election for an office, the clerk or body with whom the petition is filed shall promptly prepare a copy of the petition for delivery to each opposing candidate for the same office whose name appears on the ballot. In a recount proceeding for a partisan primary, the clerk or body shall prepare a copy of the petition for delivery to each opposing candidate for the same party nomination for the same office, to each opposing candidate for the party nomination of each other party for the same office and to each independent candidate qualifying to have his or her name placed on the ballot for the succeeding election. A candidate or agent designated by a candidate may personally accept delivery of a copy of the petition. Upon such delivery, the clerk or body shall require the candidate or agent to sign a receipt therefor. If a candidate or agent does not personally accept delivery, the clerk or body shall then promptly deliver the copies of the petition to the sheriff, who shall promptly deliver the copies of the petition to each candidate at the address given on the candidate's nomination papers, without fee, in the manner provided for service of a summons in civil actions.

(3) REPRESENTATION AND OBSERVATION. The petitioner, all opposing candidates and interested persons shall be entitled to be present in person and by counsel to observe the proceedings.

(4) RIGHT TO COMPLETE RECOUNT. Whenever a recount petition for part of the wards within a jurisdiction or district, or for part of the municipalities within a district where there are no wards, is filed under this section, the opposing candidate, or any voter or other interested party including a municipality if on a referendum question, may similarly file a petition for recount in any or all of the remaining wards or municipalities in the jurisdiction or district. The petition shall be filed not later than 5 p.m. 2 days after the board of canvassers completes the first recount. The proper board of canvassers shall reconvene at 9 a.m. on the next business day following the filing of the petition and proceed to recount the ballots in all wards or municipalities specified and to otherwise review the allegations of fact contained in the petition. Any errors shall be corrected.

(5) OATHS; MINUTES; WITNESS FEES; TABULATORS; TIMING; PUBLICATION. (a) The board of canvassers or the chairperson of the board or the chairperson's designee shall keep complete minutes of all proceedings before the board of canvassers or the chairperson or designee. The minutes shall include a record of objections and offers of evidence. If the board of canvassers or the chairperson or chairperson's designee receives exhibits from any party, the board of canvassers or the chairperson or designee shall number and preserve the exhibits. The board of canvassers or the chairperson or chairperson's designee shall make specific findings of fact with respect to any irregularity raised in the petition or discovered during the recount. Any member of the board of canvassers or the chairperson or chairperson's designee may administer oaths, certify official acts and issue subpoenas for purposes of this section. Witness fees shall be paid by the county. In the case of proceedings before the chairperson of the board or chairperson's designee, witness fees shall be paid by the board.

(b) The board of canvassers conducting a recount may select and employ tabulators to assist it in its duties. Tabulators shall perform their duties under the direction of the board of canvassers. Only the members of the board of canvassers are competent to make any determination as to the validity of any vote tabulated. Compensation of tabulators shall be determined under s. 7.03.

(bm) Upon the completion of its proceedings, a board of canvassers shall deliver to the board one copy of the minutes of the proceedings kept under par. (a). In addition, in the case of a recount of an election for state or national office, for each candidate whose name appears on the ballot for that office under the name of a political party, the board of canvassers shall deliver one copy of the minutes to the chief officer, if any, who is named in any registration statement filed under s. 11.05 (1) by the state committee of that political party, and in the case of a recount of an election for county office, for each candidate whose name appears on the ballot for that office under the name of a political party, the board of canvassers shall deliver one copy of the minutes to the chief officer, if any, who is named in any registration statement filed under s. 11.05 (1) by the county committee of that political party.

(c) If the recount is made by a municipal or county board of canvassers and the result is required to be reported to a county board of canvassers or to the chairperson of the board or the chairperson's designee, the board of canvassers making the initial recount shall immediately certify the results to the county board of canvassers or to the chairperson of the board or designee. If a county board of canvassers receives such results, it shall then convene not later than 9 a.m. on the next business day following receipt to examine the returns and determine the results. If the chairperson of the board or the chairperson's designee receives such results, the chairperson or designee shall publicly examine the returns and determine the results not later than 9 a.m. on the 3rd business day following receipt, but if that day is earlier than the latest day permitted for that election under s. 7.70 (3) (a), the chairperson of the board or designee may examine the returns and determine the results not later than the day specified in s. 7.70 (3)(a).

(d) Whenever publication of an original determination is required, the county or municipal clerk shall publish the recount determination in the same manner.

(6) APPEAL TO CIRCUIT COURT. (a) Within 5 business days after completion of the recount determination by the board of canvassers in all counties concerned, or within 5 business days after completion of the recount determination by the chairperson of the board or the chairperson's designee whenever a determination is made by the chairperson or designee, any candidate, or any elector when for a referendum, aggrieved by the recount may appeal to circuit court. The appeal shall commence by serving a written notice of appeal on the other candidates and persons who filed a written notice of appearance before each board of canvassers whose decision is appealed, or in the case of a statewide recount, before the chairperson of the board or the chairperson's designee. The appellant shall also serve notice on the board if the chairperson of the board or the chairperson's designee is responsible for determining the election. The appellant shall serve the notice by certified mail or in person. The appellant shall file the notice with the clerk of circuit court together with an undertaking and surety in the amount approved by the court, conditioned upon the payment of all costs taxed against the appellant.

(b) If an appeal is filed from a recount determination in an election which is held in more than one judicial circuit, the chief judge of the judicial administrative district in which the election is held shall consolidate all appeals relating to that election and appoint a circuit judge, who shall be a reserve judge if available, to hear the appeal. If the election is held in

more than one judicial administrative district, the chief justice of the supreme court shall make the appointment.

(7) COURT PROCEDURES. (a) The court with whom an appeal is filed shall forthwith issue an order directing each affected county or municipal clerk or board to transmit immediately all ballots, papers and records affecting the appeal to the clerk of court or to impound and secure such ballots, papers and records, or both. The order shall be served upon each affected county or municipal clerk or board and all other candidates and persons who filed a written notice of appearance before any board of canvassers involved in the recount.

(b) The appeal shall be heard by a judge without a jury. Promptly following the filing of an appeal, the court shall hold a scheduling conference for the purpose of adopting procedures that will permit the court to determine the matter as expeditiously as possible. Within the time ordered by the court, the appellant shall file a complaint enumerating with specificity every alleged irregularity, defect, mistake or fraud committed during the recount. The appellant shall file a copy of the complaint with each person who is entitled to receive a copy of the order under par. (a). Within the time ordered by the court, the other parties to the appeal shall file an answer. Within the time ordered by the court, the parties to the appeal shall provide the court with any other information ordered by the court. At the time and place ordered by the court, the matter shall be summarily heard and determined and costs shall be taxed as in other civil actions. Those provisions of chs. 801 to 806 which are inconsistent with a prompt and expeditious hearing do not apply to appeals under this section.

(8) SCOPE OF REVIEW. (a) Unless the court finds a ground for setting aside or modifying the determination of the board of canvassers or the chairperson of the board or chairperson's designee, it shall affirm the determination.

(b) The court shall separately treat disputed issues of procedure, interpretations of law, and findings of fact.

(c) The court may not receive evidence not offered to the board of canvassers or the chairperson or chairperson's designee except for evidence that was unavailable to a party exercising due diligence at the time of the recount or newly discovered evidence that could not with due diligence have been obtained during the recount, and except that the court may receive evidence not offered at an earlier time because a party was not represented by counsel in all or part of a recount proceeding. A party who fails to object or fails to offer evidence of a defect or irregularity during the recount waives the right to object or offer evidence before the court except in the case of evidence that was unavailable to a party exercising due diligence at the time of the recount or newly discovered evidence that could not with due diligence have been obtained during the recount or evidence received by the court due to unavailability of counsel during the recount.

(d) The court shall set aside or modify the determination of the board of canvassers or the chairperson of the board or chairperson's designee if it finds that the board of canvassers or the chairperson or chairperson's designee has erroneously interpreted a provision of law and a correct interpretation compels a particular action. If the determination depends on any fact found by the board of canvassers or the chairperson or chairperson's designee, the court may not substitute its judgment for that of the board of canvassers or the chairperson or designee as to the weight of the evidence on any disputed finding of fact. The court shall set aside the determination if it finds that the determination depends on

any finding of fact that is not supported by substantial evidence.

(9) APPEAL TO COURT OF APPEALS. (a) Within 30 days after entry of the order of the circuit court, a party aggrieved by the order may appeal to the court of appeals.

(b) If an appeal is filed in respect to an election which is held in more than one court of appeals district, the chief justice of the supreme court shall consolidate all appeals relating to that election and designate one district to hear the appeal, except that if an appeal is filed in respect to an election for statewide office or a statewide referendum, the appeal shall be heard by the 4th district court of appeals.

(c) The court of appeals shall give precedence to the appeal over other matters not accorded similar precedence by law.

(10) STANDARD FORMS AND METHODS. The elections board shall prescribe standard forms and procedures for the making of recounts under this section. The procedures prescribed by the elections board shall require the boards of canvassers in recounts involving more than one board of canvassers to consult with the elections board staff prior to beginning any recount in order to ensure that uniform procedures are used, to the extent practicable, in such recounts.

(11) EXCLUSIVE REMEDY. This section constitutes the exclusive judicial remedy for testing the right to hold an elective office as the result of an alleged irregularity, defect or mistake committed during the voting or canvassing process.

History: 1971 c. 251; 1971 c. 304 s. 29 (2); 1971 c. 336; 1973 c. 313; 1973 c. 334 ss. 23 to 26, 57; 1975 c. 41, 422; 1977 c. 394 s. 53; 1977 c. 427; 1979 c. 200; 1979 c. 260 ss. 66 to 68, 93; 1979 c. 311, 355; 1983 a. 183; 1983 a. 484 s. 172 (3); 1983 a. 538; 1985 a. 304; 1987 a. 391; 1989 a. 192; 1993 a. 213; 1997 a. 27; 1999 a. 49, 182; 2001 a. 16; 2003 a. 265, 321; 2005 a. 149, 451; s. 13.93 (2) (c).

Cross Reference: See also s. ElBd 6.04, Wis. adm. code.

A challenge of compliance with procedures for absent voting is within the board of canvassers' jurisdiction. Absent connivance, fraud, or undue influence, substantial compliance with statutory voting procedures is sufficient. *Appeal From Recount in Election Contest*, 105 Wis. 2d 468, 313 N.W.2d 869 (Ct. App. 1981).

Sub. (8) does not require the party against whom the board rules to object to the board's determination to preserve the issue for judicial review. *Clifford v. Colby School District*, 143 Wis. 2d 581, 421 N.W.2d 852 (Ct. App. 1988).

Post-election eligibility challenges are properly brought under this section. *Logerquist v. Nasewaupsee Canvassers*, 150 Wis. 2d 907, 442 N.W.2d 551 (Ct. App. 1989).

The recount statute does not violate due process or equal protection and does not deny the electorate the right to have the winning candidate hold office. The relationship of recount and quo warranto actions is discussed. *Shroble v. Prusener*, 185 Wis. 2d 103, 517 N.W.2d 169 (1994).

When the board of canvassers' actions in a recount reflected proper application of the statutes, the reviewing court's finding that the board had another option available to it was immaterial. *DeBroux v. City of Appleton Board of Canvassers*, 206 Wis. 2d 321, 557 N.W.2d 423 (Ct. App. 1996), 96-1287.

This section is the exclusive remedy for any claimed election fraud or irregularity. Generally, to successfully challenge an election, the challenger must show the probability of an altered outcome in the absence of the challenged irregularity. *Carlson v. Oconto County Board of Canvassers*, 2001 WI App 20, 240 Wis. 2d 438, 623 N.W.2d 195, 00-1788.

A party's failure to timely file an appeal under sub. (6) does not preclude the party from later intervening in another's appeal. To appeal under sub. (6) requires a party to be aggrieved. A party advocating a position that prevailed is not aggrieved. *Roth v. LaFarge School District Board of Canvassers*, 2001 WI App 221, 247 Wis. 2d 708, 634 N.W.2d 882, 01-0160.

The sub. (6) (a) requirement that a vote-recount appeal to the circuit court be served on the other candidates is fundamental. That a candidate who was not served knew about the appeal and sought and was permitted to intervene in an appeal of a recount was immaterial to the validity of that appeal. The command that "other candidates" be served with the appeal is mandatory rather than directory. *Logic v. City of South Milwaukee Board of Canvassers*, 2004 WI App 219, 277 Wis. 2d 421, 689 N.W.2d 692, 04-1642.