

RECOUNTS

Summary

A recount is the exclusive remedy to test the right of a candidate to hold office based on the number of votes cast at an election. Any candidate voted for may request a recount of the office to which he or she was seeking election. Likewise, any elector who voted on a referendum may request a recount of the referendum. The State Elections Board has prepared a detailed set of procedures for conducting recounts. Municipal clerks may obtain a copy of the *Election Recount Procedures* manual from the agency website. A copy of the manual should be made available to all affected candidates and members of the board of canvassers.

Procedures

Recount Petition

Immediately after the election results are known, clerks should determine whether there is a possibility of a recount. While clerks are not required to inform candidates of their right to a recount, they should make every effort to have the information available to interested candidates. It is important to provide all candidates with the same information. The best approach is to provide an interested candidate with as much information as possible.

The Elections Board has developed a sample Recount Petition (EB-186) that is available on the agency website.

1. The recount petition must be filed within three (3) business days following certification by the board of canvassers.
2. The petition must be sworn under oath.

The petition may simply allege that the petitioner believes that a mistake was made in the conduct of the election. If the petitioner wants *specific* allegations of fraud or election irregularities investigated, he or she must set forth those allegations in the petition.

Determining Recount Fees

1. The candidate is not required to pay a fee for a recount if the difference between the votes cast for the leading candidate and the votes cast for the petitioning candidate is less than 10 when 1,000 or fewer votes were cast for the office. When more than 1,000 votes were cast, the candidate is not required to pay a fee if the difference is less than one-half of 1% (.005) of the total votes cast for the office.

Note: In elections where voters are asked to vote for more than one candidate for a position, the “leading candidate” is the candidate who received enough votes to fill the last available position. For example, at a school board election where a voter is asked to select three (3) candidates, the “leading candidate” would be the candidate who won the last seat (with the third-most votes), not the candidate who received the most votes.

2. If the difference in votes is at least 10 when 1,000 or less votes are cast or is more than .5% (.005) but less than 2% (.02) when more than 1,000 votes are cast, the petitioner shall pay a fee of \$5 for each ward for which the petitioner requested a recount.
3. If the difference in the votes cast for the leading candidate is more than 2% (.02) when more than 1,000 votes are cast, the petitioner shall pay a fee equal to the actual cost of performing the recount.

Conducting the Recount

The proper board of canvassers shall reconvene no earlier than 9:00 a.m. on the day following delivery of notices to all candidates and no later than 9:00 a.m. on the day after the deadline for filing the petition for recount.

1. The municipal clerk may choose a substitute member to serve on the recount board of canvassers when an original member is unable to serve.
2. The board of canvassers must allow the candidates or their representatives to observe the proceedings and to raise any objections to the procedure of the recount or to the ballots on their merits.
3. The board of canvassers is responsible for insuring that the recount is conducted in an orderly manner and not interfered with by the candidates, their representatives, or the media.
4. Detailed minutes of the recount proceedings are required by law.

- a. The minutes must include a record of objections, all offers of evidence, all exhibits, and all specific findings of fact regarding any irregularity discovered during the recount.
- b. A copy of the minutes of any recount must be provided to the filing officer and to the State Elections Board.
- c. A sample format for keeping recount minutes is set out in the *Election Recount Procedures* manual.

Recount on Automatic Tabulating Equipment

Wisconsin law requires that a recount of votes cast on optical scan voting equipment be conducted on the automatic tabulating equipment. §5.91, Wis. Stats.

1. The board of canvassers shall test the automatic tabulating equipment to be used before the recount.
2. Any candidate may by the next day after the deadline for requesting a recount, petition the circuit court for an order requiring ballots to be counted by hand or by another method approved by the court.
3. If municipalities employ direct recording electronic (DRE) voting equipment, the board of canvassers shall perform the recount using the voter verified paper audit trail (VVPAT) cast by each elector, as generated by the machines.

Appeals

1. An appeal of the recount determination may be filed in circuit court within 5 days after the completion of the recount.
2. The filing officer may not issue a certificate of election until the deadline for filing all appeals has passed and the election results are final.

Frequently Asked Questions

1. *If a recount fee is required, must it be collected before starting the recount?*

If the petitioner is required to pay a fee, the fee must be collected by the deadline for filing the petition. The clerk must provide the petitioner with an estimate that the petitioner must pay at the time that he or she files the petition.

If the petitioner is required to pay a fee equal to the cost of performing the recount, the petitioner shall pay any balance owed within 30 days after the clerk provides the petitioner with a written statement of the amount due.

2. *Are recount proceedings open to the public?*

Recounts are open to the public and require proper notice under the open meetings law. Participants and observers must be allowed to view and to identify all materials and ballots. However, only members of the board of canvassers may touch any of the materials or ballots. The board of canvassers is responsible for insuring the recount is conducted in an orderly manner and not interfered with by the candidates, their representatives, or the media.

3. *Are candidates whose office is involved in recount required to be notified?*

The municipal clerk is responsible for informing all candidates of the time and location of the recount. The recount should not begin until the board of canvassers has determined that these notices have been given.

List of Related Forms and Publications

All forms and publications are available on the agency website or can be ordered from the State Elections Board.

Forms

EB-186: Petition for Recount

Manuals

Election Recount Procedures Manual