



JENNIFER BRUNNER
OHIO SECRETARY OF STATE

180 East Broad Street, 15th floor
Columbus, Ohio 43215-3726 USA
Tel.: 1-614-466-2655
Fax: 1-614-644-0649
www.sos.state.oh.us

DIRECTIVE 2007-30
November 16, 2007

To: ALL COUNTY BOARDS OF ELECTIONS

Re: Recount Procedures

This directive sets forth circumstances and procedures for recounts following the official certification of the results of an election.

I. OVERVIEW OF WHEN A RECOUNT MUST BE CONDUCTED:

A. Automatic Recount (R.C. 3515.011)

1. Automatic recounts in district, countywide and local elections:
A recount is required in any district (federal, state or local), county, municipal or township election if the margin of votes cast is equal to or less than one-half of one percent of the total vote cast on the race or issue. The board of elections orders the recount for county, municipal, township and school district elections. The Secretary of State orders the recount for all other elections. (See "Section II" below)
2. Automatic recounts in statewide elections:
A recount is required if the margin of difference between votes cast for two or more candidates for the same race or between votes on a state issue is equal to or less than one-fourth of one percent of the total vote cast on the race or issue. The Secretary of State orders the recount for any statewide election.

B. Requested Recount (R.C. 3515.01)

1. Requested recounts in district, countywide and local candidate elections:
Any candidate who was not declared nominated or elected may request no later than five days after the official results are certified by the county board of elections (or the most populous county in the case of a district located in more than one county), by a written application accompanied by the appropriate monetary deposit, a recount of the votes cast in any precinct in which he or she was a candidate. (See "Section III" below) A requested recount is appropriate only if a recount of the race is not mandated by R.C. 3515.011.
2. Requested recounts in issue elections in a district, political subdivision or county:
Any group of five or more qualified electors who declare that they voted "for" a question or issue that was defeated, or "against" a question or issue that passed, may request no later than five days after the official results are certified by the county board of elections (or the most populous county in the case of a district located in more than one county), by a written application accompanied by the appropriate monetary deposit, a recount of the votes cast in any precinct in which that question or issue was on the ballot. The group filing for the recount must designate, in its application, one of its members as the group's chairperson. A requested recount is appropriate only if a recount of that question or issue is not mandated by R.C. 3515.011.

C. Scheduling a Recount – Providing Written Notice (R.C. 3515.03)

Upon the filing of an application for a requested recount, or upon declaration by the board of elections or secretary of state that the results of any candidate or issue election mandates an automatic recount, the board shall promptly fix the time, method, and the place at which the recount will be made, which time shall be not later than 10 days after the day such application is filed or such declaration is made.

No later than five days after a recount application is filed or an automatic recount declaration is made, the board must give written notice of the time and place of the recount to all persons entitled to receive notice. Each person whom votes were cast for nomination or election which is subject of the recount shall receive notice. There must be at least five days notice of a recount unless such notice is waived by all persons entitled to receive notice. The recount cannot be held sooner than the fifth day after the board certifies the election results unless everyone entitled to receive notice waives, in writing, the five-day notice provision.

II. AUTOMATIC RECOUNT - DETERMINING ONE-HALF OF ONE PERCENT: R.C. 3505.011

A. When Candidate is One To Be Elected

Where there are two or more candidates for a single office, such as county auditor, the votes for all candidates in that race are added to obtain the total vote. For example:

Candidate A	2,845 votes	(declared elected)
Candidate B	2,815 votes	(defeated)
Candidate C	2,795 votes	(defeated)

The total vote for the office is 8,455. Of that total, $\frac{1}{2}$ of 1% is 42 votes. Candidate A defeated Candidate B by 30 votes, which is less than $\frac{1}{2}$ of 1%. Candidate A defeated Candidate C by 51 votes, which exceeds $\frac{1}{2}$ of 1% of the total vote cast for the office of county auditor. However, because one of the defeated candidates was within the $\frac{1}{2}$ percent margin, the entire race is automatically recounted.

B. When Several Candidates Are To be Elected

In the case of several candidates to be elected, the term in the statute, “declared winning candidate,” refers to the candidate whose election is disputed, rather than to all of the candidates for the particular office. Using the example below, if five candidates seek election as council members-at-large, with three to be elected, only the votes cast for Candidates 3, 4 and 5 are regarded as the “total votes” cast for the third council seat in computing the margin for an automatic recount. For example:

Candidate 1	4,200 votes	(elected)
Candidate 2	4,100 votes	(elected)
Candidate 3	2,300 votes	(declared elected)
Candidate 4	2,275 votes	(declared defeated)
Candidate 5	2,250 votes	(defeated)

Do not include the votes cast for Candidates 1 and 2 in computing the total vote for the third council seat.

The votes cast for Candidates 3, 4 and 5 total 6,825. Of that total, $\frac{1}{2}$ of 1% is 34 votes. Thus:

- Candidate 3 defeated Candidate 4 by 25 votes, which is less than $\frac{1}{2}$ of 1%.
- Candidate 4 defeated Candidate 5 by 50 votes, which exceeds $\frac{1}{2}$ of 1% of the total vote cast for the third council seat.

An automatic recount must be ordered on the basis of the margin of votes cast for Candidates 3 and 4. Only the votes for Candidates 3, 4 and 5 are recounted, not all five candidates.

III. REQUESTED RECOUNT - APPLICATION FOR A RECOUNT:

A. Written Application for a Requested Recount (R.C. 3515.01, 3515.02, 3515.03)

R.C. 3515.01 provides that a recount of the election results certified by a board of elections may be requested as follows:

1. **Candidate election:** A candidate who was not declared nominated or elected (i.e., was defeated) in a race may make written application to the appropriate election officials for a recount of votes cast in that race in some or all of the precincts where that race was submitted to the voters.
2. **Issue election:** A group of five voters who voted opposite to the certified result (i.e., if the question or issue passed, they voted against it, or vice versa) may file a written application with the appropriate election officials for a recount of votes cast on that issue in all or some of the precincts where that issue was submitted to the voters.

Pursuant to R.C. 3515.02, the defeated candidate or group of voters must file a written application requesting the recount with the appropriate election officials within five (5) days after the board of elections certifies the official canvass of the election results, as follows:

- For elections within the county: the county board of elections.
- For multi-county district elections: the board of elections of the most populous county.
- For a statewide election: the Secretary of State.

R.C. 3515.03 requires a recount application to list each precinct to be recounted.

B. Deposit (R.C. 3515.03)

1. The applicant(s) must file with the application a deposit of \$50 in (currency, bank money order, bank cashier's check, or certified check) for each precinct to be recounted.
2. The board shall deposit all moneys received from an applicant in a special depository fund with the county treasurer. The expenses of the recount and refunds shall be paid from that fund upon order of the board of elections. Any balance remaining in that fund that has not been spent for the recount or refunded to the recount applicant shall be paid into the general fund of the county.
3. The deposit serves as security to cover the cost of the recount. If all requested precincts are not counted, any unused balance is refundable to the applicant(s).

C. Assessing recount charges (R.C. 3515.07)

1. **Calculating the charges**

The board of elections calculates the charges for making the recount, including all expenses incurred by the board because of the application, but *excluding* the regular operating expenses that the board would have incurred if the application had not been filed.

The quotient of the total amount of charges so calculated and fixed, divided by the number of precincts for which votes were counted and which were listed in the application, shall be the charge per precinct for the recount of the votes of the precincts actually recounted and which were listed in the application. The charges per precinct shall not be more than \$50 nor less than \$5 for each precinct in which the votes were recounted.

The board shall deduct the charge per precinct from the money deposited by the applicant, and the board shall refund to the applicant the balance of the money so deposited.

2. When charges shall not be assessed

No such charge per precinct shall be deducted from the recount deposit in the following circumstances:

- a. Upon the completion of the recount of a candidate nomination or election in any precinct, if either of the following occurs:
 1. The total number of votes cast in such precinct for the applicant, as recorded by the recount, is more than four (4) percent larger than the number of votes for the applicant in that precinct recorded in the original certified abstract, or
 2. The applicant is declared nominated or elected.
- b. Upon the completion of the recount of an issue election in any precinct if either of the following occurs,
 1. The total number of votes in that precinct on the same side of that issue as the side represented by the applicant, as recorded by the recount, is more than four (4) percent larger than the number of votes in that precinct on the same side of that issue recorded in the original certified abstract, or
 2. The result of that issue election is declared to be opposite to the original declaration of the result of that issue election.

IV. BEFORE THE RECOUNT:

A. Establish Time of the Recount (R.C. 3515.03)

No recount shall be held prior to the official canvass and certification of the election. The board members must fix the time, method and place of the recount. Accounting for the five-day notice requirement (*see B, immediately below*), a recount must be held within 6 to 10 days after the declaration of official results or after an application is filed.

B. Notice To Candidates/Issue Committees (R.C. 3515.03)

The director of a board of elections conducting a recount shall notify by certified mail all candidates in the race or chairperson of a committee or group of persons named in a recount application for an issue election for which a recount has been established of the time and place not later than five (5) days before the recount is held.

In the case of a recount of votes cast upon a question or issue, any group of five or more qualified electors, who voted upon such question or issue and whose votes were in opposition to the votes of the members of the group of electors who applied for the recount, or for whom the recount was required by section 3515.011 of the Revised Code, may file with the board a written statement to that effect, shall designate one of their number as chairperson of such group, may appoint an attorney at law as their legal counsel, and may request that the persons so designated be permitted to attend and observe the recount.

C. Observers (R.C. 3515.03)

1. Each candidate in the race or chairperson of a committee or group of persons named in a recount application for an issue election being recounted is entitled to one observer for each counting team or tabulating unit.
2. An observer may observe the recount, but shall not interfere with it, nor touch the ballots.
3. Appointments of observers must be in writing signed by the candidate or ballot issue chairperson.

V. STOPPING A RECOUNT: (R.C. 3515.03, 3515.04)**A. Before a Mandatory Recount Starts** (R.C. 3515.03)

At anytime after a recount is ordered pursuant to R.C. 3515.011, but before the recount is held, the declared losing candidate or issue chairperson for a losing side may file a written request to stop the recount. If more than one losing candidate is entitled to the recount, each of the candidates must file such written request to stop the recount. In such case and in the case of only one losing candidate, the board must grant the request.

B. After the Recount Starts (R.C. 3515.04)

At any time during a recount, the declared losing candidate or candidates or the issue chairperson for the losing side may file a written request to stop the recount. If the board finds that results of the recount at that point will not change the official results, the recount is stopped. If the board finds otherwise, the request to stop recounting must be denied and the recount continued until all ballots from the precincts involved have been counted.

VI. RECOUNT PROCEDURES: (R.C. 3515.04, 3506.18, 3501.05)**A. All Voting Systems**

1. The recount must be conducted by teams having equal numbers of members of the major political parties.
2. The total vote cast in a candidate or issue election being recounted must be compared to the number of voters listed in the pollbook, poll list, or signature pollbook records. In the presence of at least two election officials, each of whom is a member of different major political parties, these records must be available for visual inspection by observers. The observers shall not be permitted to handle the records. Observers may observe the inspection of the ballots.
3. Regular absentee ballot envelopes returned after the statutory deadline may be viewed by the observers. An observer may *not* see the actual ballots, only the ballot envelopes, which must still be sealed.
4. Disputed ballots may be settled by the board or by a majority of the employees designated as teams, if so delegated by the board, as such disputes arise. It is best practice for the board, itself, to resolve such disputes.
5. Ballots must be handled only by members of the board, director, deputy director or other designated employees of the board.
6. Votes cast for write-in candidates must be verified to determine (1) the candidate is a qualified write-in candidate, and (2) that the ballot has not been overvoted.
7. Ballots must be checked for proper candidate or issue position to verify each candidate or issue has been properly identified.
8. The board must randomly select whole precincts whose total equals at least 3% of the total vote and must hand count those precincts' ballots.
9. The board must compare the hand counted votes in the precincts comprising 3% of the total votes cast in the election being recounted and compare the total with a count made by the voting system's tabulator. If the tabulator count does not match the hand count, but the difference between the counts is 2 or less votes, after rechecking the hand counted results with the machine tabulated results, the board shall randomly select additional precincts the sum of whose total votes cast equals at least 3% of the total votes cast for the election being recounted. A hand count and machine count must be made and compared for this second batch. The results of all hand counts must be recorded by the board on the

attached form and preserved with the ballots recounted for the required retention schedule.

- If the hand count and machine tabulation of the second batch of ballots are not equal, or if the first batch comparison resulted in a difference of more than 2 votes, *all ballots for the election being recounted must be hand counted.*
 - If the hand count and machine tabulation of the first batch are equal, or if the hand count and tabulated count of the first batch result in a difference of 2 or less votes and the second batch comparison results in an exact match, *the remainder of the ballots may be processed through the tabulator.*
 - If, however, the official canvass of the election being recounted shows only a 2-vote difference between the winner or loser, the hand and machine counts of the first batch must be equal in order for the remainder of the ballots to be processed through the tabulator. Otherwise, all ballots for the election to be recounted shall be hand counted.
10. For the purposes of this directive, “randomly select” means the following:
- a. Whole precincts shall be selected for recount.
 - b. Enough precincts shall be selected for recount whose total votes cast, when taken together, equal at least 3% of the total votes cast in the election at issue.
 - c. The first precinct selected shall be selected by making a list of all the named political subdivisions within the election district (that is, township, city or village, county, district or state) and drawing by lot among such political subdivisions within the election district the political subdivision from which the first precinct will be selected. Such first precinct shall be the lowest numbered and/or lettered precinct in that political subdivision.
 - d. Subsequent precincts shall be selected from the next political subdivision, if any, in the election district, choosing the lowest numbered and/or lettered precinct in that political subdivision. If reaching the end of the alphabet results in a sum of total votes cast of less than 3% of the total votes cast in the election district, the next precinct chosen shall be from the lowest alphabetical political subdivision in the district and thereon from that point.
 - e. If one precinct has been chosen from each political subdivision in the election district, or if there is only one political subdivision in the election district (e.g. in a township, village or city recount situation), and the sum of total votes cast is less than 3% of the total votes cast in the election district, the next precinct chosen shall be from the first political subdivision and shall be the numbered or lettered precinct from the political subdivision that is chronologically subsequent to the first precinct chosen in that political subdivision. If reaching the end of the lettered or numbered precincts results in a sum total votes cast of less than 3% of the total votes cast in the election district, the next precinct chosen shall be from the lowest numbered precinct in a political subdivision.
 - f. Precinct selection shall continue in such fashion as set forth above for the completion of the second manual count, if necessary.

B. Optical Scan Machines

1. Test the Program
 - a. Prepare a test stack of ballots that are pre-marked and then manually count them.
 - b. Run the test stack through the tabulator to verify that the tabulator total matches the hand count.
2. The Recount
 - a. Ballots must be inspected for mutilations and other invalidities.
 - b. Ballots must be checked for proper candidate position and to verify that each candidate or issue has been properly identified.

- c. The board must randomly select one or more whole precincts, the sum of whose total votes cast equals at least 3% of the total votes cast for the election being recounted. (Refer to Section VI. A. 11. above to determine how to randomly select precincts))
- d. The board must then undertake the following steps in the order listed:
 - 1) Perform a hand count of the ballots in the randomly selected precincts. If the recount involves only one precinct, the entire precinct shall be hand counted.
 - 2) Run the hand counted precincts through the tabulator.
 - 3) If the tabulator count does not match the hand count with a difference of 2 or less votes, and after rechecking the hand counted results the two results (hand count and machine tabulated) are still *not* equal, another 3% of the total votes cast for the election being recounted, using additional precincts randomly selected, must be hand counted and compared to machine tabulation of the hand counted ballots. If the hand count and the machine tabulator count are still *not* equal, *all ballots for the election being recounted must be hand counted*. If a comparison of the results of the tabulator count and the hand counted ballots in the second batch are equal, and if the difference between the hand count and machine count in the first batch is no more than 2 votes, the remainder of the ballots may be processed through the tabulator. Otherwise, all ballots for the election to be recounted shall be hand counted. In the event that the official canvass shows only a 2-vote difference between the winner and loser in an election, the hand and machine counts of the first batch must be equal in order for the remainder of the ballots to be processed through the tabulator.
 - 4) At the conclusion of the recount, the program must be retested using the pre-audited test stack of ballots.

C. Direct Record Electronics (DRE) Voting Machines

In accordance with R.C. 3506.18, the voter verified paper audit trail (VVPAT) serves as the official ballot to be recounted.

1. Verify VVPAT

- a. The board must randomly select one or more precincts the sum of whose total votes cast equals at least 3% of the total votes cast for the election being recounted. (Refer to Section VI. A. 11. above to determine how to randomly select precincts)
- b. For each election or ballot position to be recounted, a hand count of the vote for each voting unit used in the randomly selected precincts for the recount must be made by physical examination of the VVPAT roll. The hand count must then be compared to the recorded summary that appears at the end of the VVPAT for that election or ballot position. A record of the comparison must be made for each voting unit. If there is no difference between a hand count and the VVPAT summary, the VVPAT summary shall be presumed to be the accurate count for the voting unit for the election or ballot position being recounted.
- c. If any comparison of a voting unit's hand count and VVPAT summary results in a difference between the hand count and recorded summary, it must be determined if a hand counting mistake has occurred. If it is determined that no counting mistake has occurred, the hand count of the VVPAT shall be taken to be the accurate count for the voting unit, and the board shall notify the secretary of state of any such discrepancy occurring between a hand count and VVPAT recorded summary for a voting unit on the form provided with this directive.

2. The Recount

- a. If the recount involves only one precinct, a hand recount must be conducted.
- b. If the recount involves more than one precinct:
 - 1) Check the public counters to verify that the numbers on those counters correspond to numbers on the VVPAT and the pollbook, poll list, or signature pollbook records.
 - 2) If comparing hand counts of the election or ballot position with corresponding VVPAT summaries for all voting units in the randomly selected precincts results in the determination of an accurate vote count for each VVPAT summary, the recount may be conducted through electronic tabulation.
 - 3) If the results of comparing a hand count of the election or ballot position with every VVPAT summary for all voting units in the randomly selected precincts results in the determination that any VVPAT hand count is the accurate vote count (as opposed to the VVPAT summary), all ballots for the recount shall be counted by hand.

VII. Post-Recount Actions:

A. Board of Elections' Duties (R.C. 3515.05)

Upon completion of the recount or upon stopping the recount prior to such time, the board of elections shall promptly prepare and certify an amended abstract showing the votes cast in each precinct in its county in which the candidacy or issue was submitted to electors, and the amended abstract shall embody the votes of the precincts, the ballots of which were recounted, as shown by such recount. The board shall mail copies of the certified amended abstracts to such other boards or election officials as it was required to in the case of the original abstract that is amended by the results of the recount.

The board shall make an amended declaration of the result of such election in the same manner required in the making of its original declaration of the result of such election.

B. Remedies by Candidates/Issue Groups Affected by Partial Recounts (R.C. 3515.06)

1. Candidates

If, pursuant to R.C. 3515.04, a person who was originally declared nominated or elected subsequently appears by the amended declaration of the results made following a recount to be not so nominated or elected, that person may, within five (5) days after the date of such amended declaration of the results of such election, file an application with the board of elections for a recount of the votes cast at such election for such nomination or election in any precinct, the ballots of which have not been recounted. Any such recount shall be conducted in the manner provided herein.

2. Issues

If, following a recount of votes cast in an election upon any issue, the amended declaration of the results of the election shows the result to be contrary to the originally declared result, any group of five or more qualified electors which has filed a statement with the board as provided in the third paragraph of R.C. 3515.03 may, within five (5) days after the date of the amended declaration, file an application with the board for a recount of the votes cast at such election upon such question or issue in any precinct of the county, the votes of which have not been recounted. Any such recount shall be conducted in the manner provided herein.

The procedures described in this Directive are the basic requirements for conducting a recount. If a majority of the members of a board of elections believes the results warrant further investigation at any period during the conduct of the recount, it may institute more rigorous recounting procedures. In such an event, the board shall document its procedures and retain such

documentation with the ballots recounted and other related forms and documents relating to the recount.

If you have any questions, please feel free to consult your assigned election attorney.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jennifer Brunner".

Jennifer Brunner

Report to Secretary of State on Variances Between Hand Count Total and VVPAT Summary for Recounts Using DREs

In accordance with Secretary of State's Directive 2007-30, VI. Recount Procedures, C. Direct Recording Electronics (DRE) Voting Machines, *discrepancies* occurring between the results of a hand count of the voter verified paper audit trail (VVPAT) and the VVPAT recorded summary for a voting unit during a recount must be reported to the Secretary of State.

_____ County Board of Elections

Election Date: _____

Voting System Used: (check one) Premier TSX ES &S iVotronic

Date of recount: _____

Office or Issue Subject of Recount _____

Number of Voting Unit(s) with discrepancies _____

Serial number(s) of unit(s):

Reason for discrepancy:

Signature of Director

Signature of Chairperson of Board

Date Signed: _____

RECOUNT – HAND COUNT

In accordance with Secretary of State's Directive 2007-30, page 5, VI. Recount Procedures, section A. 9. the results of hand counts of candidates or issue elections during a recount must be recorded on this form. This form must be preserved with the ballots recounted for the required retention schedule.

_____ County Board of Elections

Date of recount: _____ Date of Election _____

Office or Issue Subject of Recount _____

If an issue election, please complete the following information for each precinct hand counted:

Name of Precinct: _____

Results: For/Yes _____ Against/No _____

Name of Precinct: _____

Results: For/Yes _____ Against/No _____

Name of Precinct: _____

Results: For/Yes _____ Against/No _____

Name of Precinct: _____

Results: For/Yes _____ Against/No _____

Name of Precinct: _____

Results: For/Yes _____ Against/No _____

Name of Precinct: _____

Results: For/Yes _____ Against/No _____

Name of Precinct: _____

Results: For/Yes _____ Against/No _____

If additional lines are needed, please attach a separate sheet.

If a candidate nomination or election, please complete the following information for each precinct hand counted:

Name of office _____ Date of Election _____

Name of Precinct: _____

Candidate Names:

Results:

Name of Precinct: _____

Candidate Names:

Results:

Name of Precinct: _____

Candidate Names:

Results:

Name of Precinct: _____

Candidate Names:

Results:

If additional lines are needed, please attach a separate sheet.