

**DEPARTMENT OF THE SECRETARY OF STATE
BUREAU OF CORPORATIONS, ELECTIONS AND COMMISSIONS
DIVISION OF ELECTIONS**

**Chapter 502: RULES GOVERNING THE CONDUCT AND PROCEDURES FOR ELECTION
RECOUNTS**

SUMMARY: This rule sets forth the procedures for the conduct of recounts of state elections by the Secretary of State, including the collection, security and handling of ballots, scheduling the recounts, personnel, instructions, supervision, disputed ballots and final signoff at the conclusion of the recount.

SECTION 1. PREPARATION FOR THE RECOUNTS

1. Designating State Recount Personnel

- A. Recount Supervisor.** The recount will be conducted under the supervision of the Secretary of State, or his or her designee, who is called the Recount Supervisor. The Recount Supervisor will direct and oversee the conduct of the recount according to the laws, rules and procedures governing the conduct of the recount or elections.
- B. Recount Assistants.** The Secretary of State will provide the necessary number of Department staff to act as Recount Assistants. The Recount Supervisor will assign one Recount Assistant to each counting team and will assign Recount Assistants to other tasks as necessary.
- (1) **Notice of Public Proceeding.** The recount is a public proceeding and members of the press and the general public may attend, although space may be limited. The Secretary of State will provide notice to the public regarding each recount, including information about scheduling.
 - (2) **Collection and Storage of Ballots and Election Materials.** Upon receiving a request for a recount, the State Police will collect the ballots, incoming voting lists and other election materials as requested by the Secretary of State pursuant to 21-A M.R.S.A. §737-A. The State Police will deliver these materials to a secure storage area under the control of the State Police. The State Police will provide access to the secure storage area containing recount materials to the Recount Supervisor and Secretary of State staff to organize and log the materials prior to the start of the recounts. While the recounts are being conducted, the Recount Supervisor and Recount Assistants will maintain control over the ballots and other recount materials. At the conclusion of the recounts, the Recount Supervisor will return the recount materials to the custody of the State Police, who will secure them until the materials are returned to the applicable municipalities.

- (3) **Materials Available at the Recount.** The following materials will be retrieved by the State Police and made available for inspection at the recount, if applicable: the used ballots, including voted and counted ballots; spoiled, defective and void ballots which were segregated and not counted; envelopes containing challenge certificates; used absentee envelopes, used absentee applications, test ballots, unused ballots and the incoming voting lists.
- (4) **Scheduling Recounts and Counters**
 - (a) **Recount schedule.** The Recount Supervisor will set the schedule for the recounts. Each recount will begin promptly at the assigned time and will resume promptly after the time allotted for lunch and breaks has concluded. While recounts will normally be conducted during regular business hours, a recount may be continued after 5 p.m., with the agreement of the participating candidates or their counsel.
 - (b) **Counters.** Each candidate will provide the number of counters required by the Recount Supervisor. At a minimum, six counters will be required for each candidate participating in the recount. If more are needed, the Recount Supervisor will notify the candidates or their representatives of the number of counters to be supplied. Candidates and certain other persons, as designated in 21-A M.R.S.A. §737-A, sub-§5, are prohibited from participating in the recounts in any capacity. It is not recommended that the counsel for a candidate act as a counter, although it is not prohibited.

SECTION 2. CONDUCTING THE RECOUNTS

1. **Security of the Recount Area.** There will be a guardrail enclosure set up to separate the recount area from the public viewing area. In addition to the State recount personnel, only the Counsel for the candidates, assistants to the Counsel, and the counters may be within the guardrail enclosure. All persons participating in the recount, including the Recount Supervisor and Recount Assistants, will sign in before the start of the recount, on a form provided by the Secretary of State. Candidates and members of the public must remain outside the guardrail area. Only limited conversation will be permitted in the recount room. Cell phones must be silenced during the recount and may be used within the guardrail area only by the Recount Supervisor or Recount Assistants as needed to conduct the recount. Any person who causes a disruption of the recount process may be removed from the room, at the discretion of the Recount Supervisor.
2. **Inspection of Materials**
 - A. **Prior to Counting.** Prior to the beginning of the recount, the candidates' counsels or their representatives will be allowed within the guardrail enclosure

to inspect the tamper-proof containers, locks and seals and sign off on their condition.

- B. **During the Recount.** Used (voted) ballots will be inspected and counted during the recount process as provided in subsection 4 below. Once the final count for a municipality has been determined, the voted ballots for that municipality will be resealed in tamper-proof containers, and will not be available for inspection again. The containers of unused ballots and absentee ballot envelopes for each municipality may be inspected immediately after that municipality's ballots have been counted, or they may be held for inspection until after all the ballots have been counted. The voting lists and other election materials are available for inspection after all the ballots have been counted and the final recount tabulation has been completed.

3. **Instructions.** At the start of the recount, the Recount Supervisor or designee will provide instruction to the participants on the laws and rules governing the recount process, ballot markings and the determination of voter intent.

4. **Ballot Handling and Counting Process**

- A. At no time will a candidate or the candidate's counters or representatives be permitted access to the ballots, incoming voting lists or other election materials without supervision or observation by the Recount Supervisor or Recount Assistants.
- B. Only the purple pens or pencils provided by the Secretary of State will be used or allowed in the recount room.
- C. One counter for each candidate will be paired to form a counting team. Counters for each candidate will sit beside one another at a table, facing a Recount Assistant. Candidates' counters must remain at the tables during recount sessions, unless excused by the Recount Supervisor or Recount Assistant.
- D. Ballots will be unpacked and carried to the tables by the Recount Supervisor or Recount Assistants. At the completion of the counting session, the Recount Assistants will reseal the used (voted) ballots in the tamper-proof containers from that municipality or in any additional tamper-proof containers supplied by the Secretary of State.
- E. **Hand-counted ballots.** Ballots that were hand-counted on election night will be kept in their original lots and recounted by hand. The municipal lot total for the recounted race will be recorded on the recount tally sheet, as well as the recount tally.
- F. **Machine-tabulated ballots.** Ballots that were machine-tabulated on election night will be recounted by hand. Counters and Recount Assistants will first sort the ballots; separating, verifying and removing ballots that are not part of the recounted race. The ballots to be recounted will then be formed into lots of 50

ballots, although some odd lots may be formed with more or fewer than 50 ballots.

- G. **Absentee Ballot Envelopes Containing Ballots.** If, upon examination of absentee voting materials, absentee ballot envelopes appearing to contain ballots that were not removed from the envelope on election night are found, these ballots shall be dealt with in the manner described:
- (a) Clerk's notes indicate ballot is okay to cast and absentee ballot envelope has been slit open, but ballots have not been removed: The ballot shall be removed from the envelope and put into an odd lot to count.
 - (b) Clerk's notes indicate ballot is okay to cast and absentee ballot envelope has not been slit open: The ballot shall be segregated until the end of the recount. At the end of the recount, after checking the Incoming Voting List to make sure the voter did not vote at the polls, the ballot shall be opened, counted and added to the final count.
- H. **Lot tallies.** Upon completion of the recount of each lot of 50 ballots, the Recount Assistant for the counting team will be responsible for completing the Recount Tabulation form for that lot of ballots and obtaining the signatures of each team member. Each lot will be labeled with the alpha code assigned to the counting team and consecutively numbered. The tabulation form will indicate the municipal count (for paper ballots only), the recount counts for each candidate, the number of disputed ballots and the number of blank votes for that lot.
- I. **Municipality tallies.** After all the ballot lots have been counted for a municipality, the Recount Supervisor will provide the tabulation for that municipality to each participating party. The candidate and/or the candidate's counsel will be required to sign the Recount Tabulation document agreeing to the final count from that municipality, including the number of ballots in dispute. Once this is signed, the used ballots will be resealed and neither the candidate nor the counsel will have access to these ballots again.

5. **Disputed ballots**

- A. **Notification of dispute.** All disputes must be referred to the Recount Assistant assigned to that counting team, who will alert the Recount Supervisor or another Recount Assistant. The Recount Supervisor or Recount Assistant will complete a disputed ballot form which describes or depicts the nature of the dispute.
- B. **Identified and recorded.** Each disputed ballot will be labeled on the front with the alpha code assigned to the counting team, the lot number and an identifying sequential number. The municipality, voting district (if any), the candidate on whose behalf the ballot is being disputed, the reason for the ballot being disputed, and the identifying alpha/numeric code must be recorded by the Recount Supervisor or Recount Assistant on the Disputed Ballot form.

- C. **Segregated.** The Disputed Ballot form will be attached to the disputed ballot and placed in a tamper-proof container clearly labeled "disputed ballots".
- D. **Review of disputed ballots.** Prior to signing the final tabulation form, the candidates and/or their counsel may review the disputed ballots jointly and may resolve how individual ballots will be counted. Disputed ballots which are resolved before the final tabulation may be repacked and resealed with the other ballots.
- E. If there are enough disputed ballots to affect the result of the election, the interested candidate may appeal.

SECTION 3. RESOLUTION OF THE RECOUNT

1. **Final Recount Tabulation.** Upon the completion of the recount of ballots from all municipalities included in the recount, each candidate, or their counsel, will be required to sign the Final Recount Tabulation agreeing to the final count for the recount, including the number of ballots remaining in dispute. The sum of the final counts agreed to for each municipality becomes the final count for the election. If the number of challenged or disputed ballots included in the final count for the election is not enough to affect the result of the election, then the result of the election is determined by the final count. If the number of challenged or disputed ballots included in the final count for the election is enough to affect the result of the election, and the recount result is appealed pursuant to 21-A M.R.S.A. §737-A, subsection 10, then the result of the election will be determined by the appeal.
2. **Withdrawal from Recount.** If a candidate wishes to withdraw from the recount, the candidate may do so in writing, subject to the requirements of 21-A M.R.S.A. §737-A, sub-§11.

STATUTORY AUTHORITY: 21-A M.R.S.A. §737-A, sub-§12

EFFECTIVE DATE: