



J. KENNETH BLACKWELL
Ohio Secretary of State

180 E. Broad Street, 16th Floor, Columbus OH 43215
614.466.2655 / Toll Free: 877.767.6446 / Fax: 614.644.0649
e-mail: blackwell@sos.state.oh.us
www.sos.state.oh.us

DIRECTIVE NO. 2005-32
November 17, 2005

ALL COUNTY BOARDS OF ELECTIONS

TO: Members, Directors & Deputy Directors

ELECTION RECOUNT REQUIREMENTS & PROCEDURES

Attached to this Directive and incorporated by reference is the *2005 Outline of Recount Procedures* implementing Revised Code Sections 3515.01 to 3515.07. The *2005 Outline of Recount Procedures* sets forth the requirements for automatic or requested recounts, and applies to recounts of statewide, county, municipal, township, and school district races, and to recounts on questions and issues. The requirements set forth in the *2005 Outline of Recount Procedures* are based on the *Outline of Recount Procedures* that was sent with Directive 2004-58 on December 7, 2004, but have been revised to reflect the addition of the voter verified paper audit trail (VVPAT) to the counties' inventory of direct recording electronic (DRE) voting systems.

Please remember that a recount is based on official results, and that no recount may be held prior to the official canvass and certification of results. Also, it is not permissible for a board to count ballots for official results and immediately conduct an automatic recount without providing proper notification to candidates or issue chairpersons. Each candidate whose votes are to be recounted must be notified of the recount, and a declared losing candidate may request that a recount not be held. (R.C. 3515.03)

For those counties that have a VVPAT, R.C. 3506.18(A) provides that "For any recount of an election in which ballots are cast using a direct recording electronic voting machine with a voter verified paper audit trail, the voter verified paper audit trail shall serve as the official ballot to be recounted." Please see the revised *Outline of Recount Procedures*, which includes procedures for conducting a recount using the VVPAT.

Before the board can certify the results of that election, each candidate race must have a declared winner, and each question and issue contest must have a declared winning position.

- o If the official canvass of votes for an **office** results in a tie (that is, two or more candidates receive the same, equally high number of votes), **the tie must be resolved by lot at the board's certification meeting**. The board members determine the method to be used,

such as tossing a coin, cutting cards, drawing straws, pulling a name out of a hat, and the like. The board chairman, in the presence of a majority of the other board members, uses the selected method to break the tie and a winner is declared. Then, and only then, may the results of that candidate race be certified. The declared winner remains the winner in the race if the recount mandated by R.C. 3515.011 confirms the tie vote. (R.C. 3505.33)

- o By contrast, a tie vote on a **ballot question** or **issue** is **not** broken by lot, because the issue automatically loses if it has not been passed by a majority vote. However, a mandatory recount still must be conducted in accordance with R.C. 3515.011. The board must notify the appropriate political subdivision or issue committee of the recount.

BALLOT SECURITY

Ballot security is important at all times. As soon as any ballot tabulation is completed, all ballots, VVPATs, memory cards, cartridges, PCMCIA cards and other removable memory devices must be stored in a safe, dry place secured with two locks: one lock that can be opened by the director, and the other lock by the deputy director or other designated employee of the opposite political party of the director. All used ballots and VVPATs and any unused ballots must be retained for at least 60 days after election day except unless ordered held by the Secretary of State or a court of competent jurisdiction.

<i>Reminder:</i> Each board must take steps to ensure that no one person, acting alone, is able to gain access to ballots -- whether marked or soiled -- or the inventory of unused ballots.
Please remember to consult with your County Prosecutor regarding public records requests for copies of your poll books and ballots.

QUESTIONS

If you have any questions regarding these instructions, please contact the Elections Division at (614) 466-2585.

Sincerely,



J. Kenneth Blackwell

RECOUNT PROCEDURES 2005

(R.C. 3515.01-3515.07)

A word about DREs, VVPATs and Recounts

Am. Sub. H.B. 262, which took effect on May 7, 2004, significantly changed provisions of the Revised Code of Ohio governing voting and tabulating systems and recounts. (See Advisory 2004-04.) The Act requires that, beginning with the first federal election in 2006, every DRE must produce a voter verified paper audit trail (VVPAT), defined as “a physical paper printout on which the voter's ballot choices, as registered by a direct recording electronic voting machine, are recorded.” (R.C. 3506.01(H).)

With respect to the 2005 general election, some boards will be using DREs not yet equipped with VVPAT capability. Any recounts conducted in those counties for this election will be conducted using the procedures from previous years.

However, boards that use DREs that produce a VVPAT must use, in accordance with R.C. 3506.18, the VVPAT for recounts in connection with the 2005 general election.

A. ELIGIBILITY

It is well established in Ohio election law that the certified results of any election are subject to recount as provided in Revised Code Chapter 3515. Some recounts are mandatory (R.C. 3513.011), while other recounts are conducted only if requested by eligible persons (R.C. 3513.01).

1. Automatic Recount

- a. *District, county, municipal or township:* A recount must be conducted if the number of votes cast for the declared winning candidate (or winning side on an issue) does not exceed the number of votes cast for the defeated candidate (or issue) by a margin of one-half of one percent or less of the total vote.

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.

- b. *Statewide:* A recount is required if the margin of votes is equal to or less than one-fourth of one percent of the total vote cast on the candidacy or issue. The Secretary of State orders the recount for any statewide candidacy or issue.

2. Requested Recount

- a. Any candidate who was not declared elected may request, in writing, a recount of the votes cast in any precinct in which her or she was a candidate. Such request is necessary only in races in which the margin of votes was greater than one-half of one percent.
- b. Any group of five or more qualified electors who declare that they voted “for” an issue that was defeated, or “against” an issue that passed, may request, in writing, a recount of that issue. One member of the group must be designated as the group’s chairperson.

B. DETERMINING ONE-HALF OF ONE PERCENT

1. One To Be Elected

Where there are two or more candidates for a single office, such as mayor, 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 mayor. However, because one of the defeated candidates was within the margin, the entire race is automatically recounted.

2. Several To be Elected

The “declared winning candidate” refers to the candidate whose election is disputed, rather than to all of the candidates declared elected. Thus, 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 number of 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” cast 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. Candidate 3 defeated Candidate 4 by 25 votes, which is less than $\frac{1}{2}$ of 1%. Candidate 3 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.

C. APPLICATION

1. Written Application for a Requested Recount

A written application for a requested recount must be filed with the appropriate election officials within five (5) days after the certification of the official count:

- with the county board of elections for elections within the county,
- with the board of elections of the most populous county in multi-county district elections, or
- with the Secretary of State for recount of a statewide race or issue.

2. Deposit

- The applicant(s) must file a deposit of \$10 for each precinct to be recounted.
- The deposit is to cover the cost of the recount. If all precincts are not counted, any unused balance is refundable to the applicant.

D. BEFORE THE RECOUNT**1. Establish Time of the Recount**

No recount may be held prior to the official canvass and certification. The board must fix the time, method and place of the recount. A recount must be held within 10 days after the declaration of official results or 10 days after an application is filed.

2. Notice To Candidates

The director must notify all candidates or issue chairpersons in the race of the time and place by certified mail not later than five days before an automatic or requested recount is held.

3. Witnesses

- a. Each candidate or issue chairperson in the race is entitled to one witness for each counting team or tabulating unit.
- b. A witness may observe, but not interfere with the recount nor touch the ballots.
- c. Appointments of witnesses must be in writing signed by the candidate or issue chairperson.

E. STOPPING A RECOUNT**1. Before the Recount Starts**

At anytime after a recount is ordered but before the recount is held, the declared losing candidate or issue chairperson 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. The board must grant the request.

2. After the Recount Starts

At any time during a recount, the declared losing candidate or candidates or issue chairperson 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.

F. RECOUNT PROCEDURES**1. All Voting Systems**

- a. The recount must be conducted by teams having equal numbers of Democrats and Republicans.
- b. Total votes cast 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 of different political parties, the records must be available for visual inspection by witnesses. The witnesses shall not be permitted to handle the records.
- c. Absentee ballot envelopes returned after the polls closed may be viewed by the witnesses. The observer may *not* see the actual ballots, only the ballot envelopes, which must still be sealed. Disputed ballots may be settled as they arise by the board or by a majority of the employees designated as teams, if so delegated by the board.
- d. Ballots must be handled only by members of the board, director, deputy director or other designated employees of the board.

- e. Votes cast for write-in candidates must be checked to determine if the candidate is a qualified write-in candidate and for an overvoted ballot.
- f. Witnesses may observe the inspection of the ballots.

2. Paper Ballots

Either:

- Count all eligible ballots as on election night, or
- Sort the ballots using the “stack method,” then count each stack. The “stack method” means sorting by candidate, yes or no vote, for or against vote, and overvote or no vote.

3. Punchcards

Test the Program

- a. Prepare a new test deck of ballot cards that are punched and then manually count them. This deck must not be the same test deck used for the official count.
- b. Process the test deck through the computer to verify that the computer count matches the hand count.
- c. If the hand count and the computer count do *not* match, but the hand count is accurate, all ballots must be manually counted.

The Recount

- a. Ballot cards must be inspected for hanging chad attached by one or two corners, mutilations, and other invalidities. If a chad is attached by three or four corners, a vote shall not be counted for that particular candidate, question or issue. Overvotes and blank ballots may be separated from the stack at this time and placed at the top of the stack after the header cards.
- b. Ballot page assemblies and rotation header cards must be checked for each precinct for candidate positions to verify that each candidate, question, or issue has been properly identified.
- c. The board must select one or more whole precincts whose total equals at least 3% of the total vote. These precincts’ ballots must be manually counted. Selection method need not be mathematically random. If the recount involves only one precinct, only a manual count shall be conducted.
- d. Run the manually counted precincts through the computer.
- e. If the computer count does not match the hand count, and after rechecking the manual count the results are still *not* equal, *all ballots must be hand counted*. If the results of the computer count and the hand counted ballots are equal, the remainder of the ballots may be processed through the computer and results tabulated electronically.
- f. At the conclusion of the recount, the program must be retested using the pre-audited test deck.

4. Optical Scan

Test the Program

- a. Prepare a test stack of ballots that are pre-marked and then manually count them.
- b. Process the test stack through the tabulator to verify that the tabulator total matches the hand count.

The Recount

- a. If the hand count and the computer count do not match, but the hand count is accurate, all the ballots must be manually counted.
- b. Ballots must be inspected for mutilations and other invalidities.
- c. Ballots must be checked for proper candidate position and to verify each candidate, question, or issue has been properly identified.
- d. The board must select one or more whole precincts whose total equals at least 3% of the total vote and must manually count those precincts' ballots. Selection method need not be mathematically random. If the recount involves only one precinct, a manual count shall be conducted.
- e. Run the manually counted precincts through the tabulator.
- f. If the tabulator count does not match the hand count, and after rechecking the manual count the results are still *not* equal, *all ballots must be hand counted*. If the results of the tabulator count and the hand counted ballots are equal, the remainder of the ballots may be processed through the tabulator.
- g. At the conclusion of the recount, the program must be retested using the pre-audited test stack of ballots.

5 Direct Record Electronics (DRE)

a. No VVPAT

Test the Program

- a. Prepare a test cartridge.
- b. Process the cartridge through the computer.
- c. Verify that the cartridge results match the pre-determined votes cast for candidates and issues.
- d. If the totals do not match, check programming and rerun the test program until the totals match.

The Recount

- a. Check the public counters to verify that the numbers on those counters correspond to the numbers on the pollbook, poll list, or signature pollbook records.
- b. Process cartridges through the tabulator. If the totals are different than the totals of the official count, compare cartridge totals against paper audit trail report.
- c. At the conclusion of the recount, the program must be retested using the pre-audited cartridge.

b. With VVPAT

Verify VVPAT

- a. The board must select one or more precincts whose vote equals at least 3% of the total vote. Selection method need not be mathematically random.
- b. For each ballot position to be recounted, a manual record of the vote for each voting unit must be made by physical examination of the VVPAT roll. The manual record must then be compared to the recorded summary that appears at the end of the VVPAT for that ballot position. If there is no difference between the manual record and the VVPAT summary, the VVPAT summary for every voting device shall be presumed accurate.
- c. If the manual record and the VVPAT summary are different, it must be determined if a manual counting mistake has occurred. If so, a new manual record may be made for comparison.

The Recount

- a. 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.
- b. If the VVPAT summary report for each DRE is determined to be accurate, the votes recorded on each VVPAT summary report is the official record of ballots cast for that voting device. However, if the recount involves only one precinct, a manual recount must be conducted.
- c. The results of every VVPAT summary report of the ballot positions to be recounted shall be added together to determine the total number of votes cast for each candidate or issue to be recounted.
- d. If it is determined the VVPAT summary reports do not accurately reflect voter selections recorded on the VVPAT, a manual count must be conducted on every VVPAT roll.
- e. The board shall take measures to assure an accurate manual count is conducted of the VVPAT summary reports.
- f. A manual count of individual voter selections shall be made once, and only once for each VVPAT roll. Following the tabulation of all votes from each VVPAT roll to be recounted, the board shall certify the results of the recount.

The procedures described in this outline are the basic requirements for conducting a recount. If the board of elections feels the results warrant further investigation at any period during the conduct of the recount, it may institute more rigorous recounting procedures.

-end-