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TO: ALL COUNTY BOARDS OF ELECTIONS
Members, Directors & Deputy Directors

ELECTION RECOUNT REQUIREMENTS & PROCEDURES

Attached to this Directive is *Recount Procedures 2006*, discussing the provisions of Revised Code sections 3515.01 through 3515.07. These provisions apply to all recounts of elections, whether mandatory (also referred to as "automatic") or requested, of statewide, county and district candidate races, and on questions and issues. *Recount Procedures 2006* incorporates amendments enacted by Am. Sub. H.B. 3 that became effective on May 2, 2006.

Please remember that a recount is based on official results. Therefore, no board shall conduct a recount prior to the certification of the official canvass results.

Before the board can certify the results of an election, each candidate race must have a declared winner. Any question and issue that fails to receive a majority of the votes cast is declared defeated.

- **Candidates:** If the official canvass of votes for a candidate race results in a tie (i.e., 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 **before the board certifies the results** of that race.

First, a majority of the board members agree upon the method to be used, such as tossing a coin, cutting cards, drawing straws, pulling a name out of a hat, and the like. Second, the board chairman, in the presence of a majority of the other board members, breaks the tie by lot and declares the winner. Third, that declaration must be put in writing, dated, and signed by at least a majority of the members of the board. Fourth, the board must post a copy of the executed declaration in a conspicuous place in its office.

Only then may the board certify the abstracts of the results of that race and proceed to schedule the recount mandated by R.C. 3515.011 for 6-10 days thereafter (weekends and holidays included). In accordance R.C. 3515.02, the board must give at least 5 days notice of the recount, unless all candidates in that race provide written waiver of the notice requirement.

The candidate whom the board declared the winner as a result of the tie breaker remains the winner of the race unless the recount results in a different candidate receiving a greater number of votes than the declared winner.

- **Question or Issue:** By contrast, a tie vote on a question or issue is **not** broken by lot, because the question or issue automatically is defeated if it fails to receive a majority of the votes cast. However, R.C. 3515.011 requires the board to conduct a recount of votes cast for the question/issue 6-10 days after the official certification (weekends and holidays included). In accordance with R.C. 3515.03, the board must give written notice of the recount to the appropriate political subdivision or the issue committee at least five days before the recount, unless all entities entitled to receive notice provide written waiver of the notice requirement.

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 must be retained for at least 22 months after election day, unless ordered held by the Secretary of State or a court of competent jurisdiction.

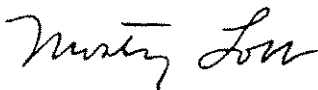
***Reminder:** Each board must take steps to ensure that no one person, acting alone, is able to gain access to ballots -- whether marked or soiled -- or the inventory of unused ballots.*

*Please remember to consult with your county prosecutor regarding public records requests for copies of your poll books and ballots.
See also Attorney General Opinion 2004-050.*

QUESTIONS

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

Sincerely,



Monty Lobb
Assistant Secretary of State

Encl.

RECOUNT PROCEDURES 2006

(Sections 3515.01 through 3515.07 of the Revised Code)

A. CLASSIFICATION OF RECOUNTS

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. 3515.011), while other recounts are conducted only if requested by eligible persons (R.C. 3515.01).

1. Automatic Recount (R.C. 3515.011)

- a. *District, county, municipal or township:* A recount is required if the margin of votes is equal to or less than one-half of one percent of the total vote cast on the candidacy or issue.

With respect to a mandatory recount of any election involving voters of only one county or a municipality, the board of elections of that county orders the recount.

With respect to a mandatory recount of an election involving voters of two or more counties, the most populous county of the district must notify the Secretary of State, who then will order the recount of that election.

- 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 (R.C. 3515.01)

- a. *Candidate Race:* Any candidate who was not declared nominated or elected may request, by written application accompanied by the appropriate security, a recount of the votes cast in any precinct in which he or she was a candidate. (See “C. Application,” below.) A requested recount is appropriate only if a recount of the race is not mandated by R.C. 3515.011.
- b. *Question/Issue:* 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, by written application accompanied by the appropriate security, a recount of the votes cast in any precinct that question or issue. (See “C. Application,” below.) 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.

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

Upon the filing of an application, or upon declaration by the board or secretary of state that the results of any election for a candidate race, question or issue mandates a 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.

At least five days before the recount, the board must give written notice of the time and place of the recount to 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.

See also the Section D, “Before the Recount,” below.

B. DETERMINING ONE-HALF OF ONE PERCENT FOR A MANDATORY RECOUNT

1. One To Be Elected

Where there are two or more candidates for a single office, such as county commissioner, 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 commissioner. However, because one of the defeated candidates was within the $\frac{1}{2}$ percent 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 F, G and H are regarded as the “total votes” cast for the third council seat in computing the margin for an automatic recount. For example:

Candidate D	4,200 votes	(elected)
Candidate E	4,100 votes	(elected)
Candidate F	2,300 votes	(declared elected)
Candidate G	2,275 votes	(declared defeated)
Candidate H	2,250 votes	(defeated)

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

The votes cast for Candidates F, G and H total 6,825. Of that total, $\frac{1}{2}$ of 1% is 34 votes. Thus,

- Candidate F defeated Candidate G by 25 votes, which is less than $\frac{1}{2}$ of 1%.
- Candidate F defeated Candidate H 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 F and G. Only the votes for Candidates F, G and H are recounted, not all five candidates.

C. APPLYING FOR A RECOUNT

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

As discussed under “A.2. Requested Recount,” above, R.C. 3515.01 provides that a recount of the election results certified by a board of elections may be requested as follows:

- a. **Candidate race:** 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.
- b. **Question or issue:** A group of five voters who voted opposite to the certified result (i.e., if the question or issue passed, they vote against it, or vice versa) may file a written application with the appropriate election officials for a recount of votes cast on that question/issue in all or some of the precincts where that question/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 race or issue: the Secretary of State.

R.C. 3515.03 requires that an application for recount must list each precinct to be recounted.

2. Deposit (R.C. 3515.03)

- a. 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.
- b. 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 shall be paid into the general fund of the county
- c. The deposit serves as security to cover the cost of the recount. If all precincts are not counted, any unused balance is refundable to the applicant(s).

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

a. 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 total amount of charges so fixed divided by the number of precincts listed in the application, the votes of which were recounted, shall be the charge per precinct for the recount of the votes of the precincts listed in the application, the votes of which were recounted. 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.

b. When charges shall not be assessed

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

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

D. BEFORE THE RECOUNT**1. 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* No. 2, *immediately below*), a recount must be held within 6 to 10 days after the declaration of official results or after an application is filed.

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

The director must notify all candidates in the race or chairperson of a question or issue being recounted of the time and place by certified mail not later than five (5) days before the recount is held.

3. Witnesses* (R.C. 3515.03)

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

*Am. Sub. H.B. 3 amends various sections of the Revised Code of Ohio to delete references to “witnesses” appointed pursuant to R.C. 3505.21. Effective June 1, 2006, the term “witness” is replaced by the term “observer” in those sections of law.

E. STOPPING A RECOUNT (R.C. 3515.03, 3515.04)**1. 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 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 (R.C. 3515.04)

At any time during a recount, the declared losing candidate or candidates or the 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 (R.C. 3515.04, 3506.18, 3501.05)**1. All Voting Systems**

- a. The recount must be conducted by teams having equal numbers of Democrats and Republicans.
- b. The total vote cast in a candidate race, or on a question/issue, 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 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 statutory deadline may be viewed by the witnesses. A witness 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, the director, the deputy director or other designated employees of the board.
- e. Votes cast for write-in candidates must be checked to determine (1) if the candidate is a qualified write-in candidate, and (2) if the ballot is overvoted.
- f. Witnesses may observe the inspection of the ballots.

2. Paper Ballots

Either:

- a. Count all eligible ballots as on election night, or
- b. 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. Optical Scan

a. Test the Program

- (1) Prepare a test stack of ballots that are pre-marked and then manually count them.
- (2) Run the test stack through the tabulator to verify that the tabulator total matches the hand count.

b. The Recount

- (1) Ballots must be inspected for mutilations and other invalidities.
- (2) Ballots must be checked for proper candidate position and to verify each candidate, question, or issue has been properly identified.
- (3) 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.
 - (a) Run the manually counted precincts through the tabulator.
 - (b) 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.
 - (c) At the conclusion of the recount, the program must be retested using the pre-audited test stack of ballots.

4. Direct Record Electronics (DRE)

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

The following process must be followed to protect and preserve the secrecy of an absentee or provisional ballot cast on the DRE in conducting the hand count of the VVPAT:

a. Secrecy of ballot

- (1) Prepare a list indicating valid and invalid provisional ballots with the electronic stub numbers included, but with no name linked to the numbers.
- (2) When a provisional ballot is listed on the VVPAT, the VVPAT team must immediately cover the portion of the ballot indicating the voter's choice(s) by a method determined by the board.
- (3) Two election officials comprising the VVPAT team shall ascertain from the list provided whether the ballot is valid or invalid.
- (4) Once a ballot's validity or invalidity has been ascertained, the VVPAT team shall mark out or label over that ballot's electronic stub number so the stub number is unreadable.
- (5) The ballot is then counted or not counted, depending upon its validity as indicated on the certification list. If the ballot is not counted, in addition to having the electronic "stub number" marked out, the ballot shall be marked "Not Valid."

b. Verify VVPAT

- (1) 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.
- (2) 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.
- (3) 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.

c. The Recount

- (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 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.
- (3) 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.
- (4) 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.
- (5) The board shall take measures to assure an accurate manual count is conducted of the VVPAT summary reports.
- (6) 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.

G. Post-Recount Actions

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

Upon completion of the recount or upon stopping the recount prior to such time, or in the case of a recount as provided in R.C. 3515.011, 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 nomination, election, or question 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 required in the case of the original abstract which such amended abstract amends.

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.

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

a. 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 that such person was not so nominated or elected, that person may, within five 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.

b. Questions/Issues

If, following a recount of votes cast in an election upon any question or issue, the amended declaration of the results of the election shows the result to be contrary to the originally declared result as to that question or issue, 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 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.

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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-