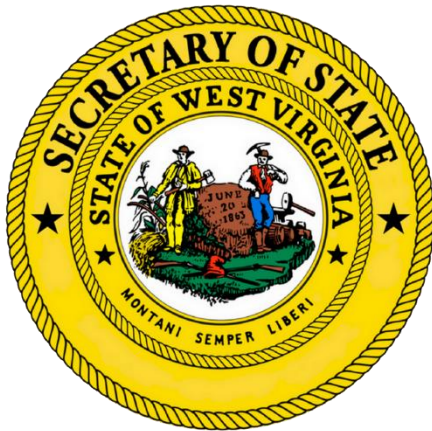




RECOUNT BEST PRACTICES & PROCEDURES GUIDE

WEST VIRGINIA SECRETARY

OF STATE'S OFFICE

ELECTIONS DIVISION

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Timeline for Recounts

The declaration of results, announcement of the 48-hour recount period, and bond requirement for demanding a recount all occur upon completion of canvass. For canvassing procedures and forms, please refer to the *Canvass Best Practices & Procedures Guide*.

The board of canvassers sets the amount of bond for a recount “in a reasonable amount with good sufficient surety,” not to exceed \$300.00. The recount bond amount shall be determined during the canvass procedures before any recount request is received. (W. Va. Code § 3-6-9(h))

In a multi-county election, the declaration of results starts a 48-hour countdown after the last county has declared its results. During the 48-hour period, and until the last county certifies its results in the multi-county election, a candidate or other eligible person may request a recount. Each county must notify the Secretary of State once its results have been declared. Saturdays, Sundays, and legal holidays are excluded when computing the 48-hour period.

At the end of the 48-hour period:

- All election races and ballot questions for which a recount has not been requested must be certified at the end of the 48-hour recount request period; or
- If a recount is requested, the recount notice shall be served in the 48- hour period beginning at the end of the recount request period.

NOTE: The 48-hour period after the declaration of results may end on different dates and times for different races, depending on when results are declared and whether the races are statewide, multi-county, or local.

Within 24 hours after the notice of recount is served, the person served with the notice has the opportunity to notify the board **in writing** that they intend to preserve their right to demand a recount of precincts not requested in the original recount request, or to continue the recount if it is stopped by a requestor, who shall also furnish the same bond.

The date of a recount shall be set by the board of canvassers and can be no sooner than three days after the notice of recount is served to the parties involved.

Requesting a Recount

A recount request must be submitted in writing to the County Clerk (or Municipal Recorder for municipal elections) within **48 hours after the declaration of results for single-county races**, or **after the last county has certified** its results for **multi-county races**. Remember, in multi-county races, counties may not certify their results until 48 hours after the **last** county has declared their results for that race.

Who can request a recount?

- To request a recount for an **elected office**, the person making the request must be a **candidate** for that same elected office.
- To request a recount for a **special issue election**, the person must be a **voter** of the jurisdiction of the election or the governing board.

What must be in the written request for a recount?

The written request for a recount must include:

1. The name of the candidate requesting a recount;
2. The office or issue to be recounted;
3. If it is an issue, the voter's name and address;
4. All the precincts to be recounted;
5. Any specific precincts that are not to be hand-counted; and
6. The bond as required.

Other candidates involved in the recounted race have the opportunity to reserve the right to continue the recount. The candidate who wants to reserve this right must respond to the recount notice within 24 hours and post the same bond amount, and the same holds true for issue recounts.

What must be in the written request to preserve the right to continue a recount?

The request to preserve the right to recount must be filed in writing to the County Clerk/Municipal Recorder and must state the following:

1. The name of the candidate(s), eligible person, or governing board filing the request to preserve the right to recount;
2. The intention to preserve the right to request the recount of precincts not originally requested; and
3. The intention to preserve the right to continue the recount should the initiating person stop the recount.

The candidate(s), eligible person, or the governing board filing the request to preserve the right to recount must pay a bond in the same amount as the bond required of the original candidate or eligible person requesting the recount.

IMPORTANT: If the person requesting a recount requests only specific precincts to be recounted, that candidate cannot afterwards add other precincts to the list to be recounted. The request for a recount shall include all precincts covered by that election unless the person filing the request specifies otherwise. The person requesting a recount or preserving the right to demand a continuation of the recount may specify precincts that are not to be hand-counted.

Notification of Recount

If a recount is demanded within the proper time, then the board of canvassers has 48 hours to send notice to all candidates who filed for the office in which a recount has been demanded.

The recount notice must state:

1. Date of the recount (shall not be earlier than 3 days after notice is served on all parties);
2. Time of the recount;
3. Place of the recount; and
4. Information in the original recount request.

The recount notice must be delivered by the sheriff of the county or the sheriff's designee. In a municipality, it must be delivered by the appropriate municipal police officer. The recount notice must be delivered to the requestor in person (or to the members of the governing board that officially requested a special issue election in person). The sheriff or the sheriff's designee or municipal police officer who delivers the notice must record how, to whom, and the time each notice is delivered.

If a candidate or board member cannot be found, the notice may be given to the spouse of the candidate or board member or to some other family member over the age of 16. If the notice is given to a person other than the candidate or board member, the sheriff or the sheriff's designee must inform the person receiving the notice of its purpose and meaning. If no one can be found to receive the notice, it must be posted on the front door of the usual place of residence of the candidate or board member.

If the candidate or board member does not have a usual place of residence in the county where the recount notice is being served, the recount notice must be delivered to the sheriff of the county in which the candidate or board member does have a usual place of residence. The sheriff of that county serves the recount notice in the same manner as discussed above.

If a sheriff or municipal police officer fails to make the recount notice delivery, he is penalized twenty dollars (\$20.00).

Recount Preparation

The recount shall take place in the county courthouse for a county election or the town hall for a municipal election that is not held in conjunction with the county election.

In addition to serving the recount notices to each of the parties in the race for which the recount has been requested (or to the governing board that officially requested the special issue election in which the recount has been requested), the board of canvassers must also post the notice on the door of the place where the recount is to be held.

The County Commission oversees the recount in the case of a county or statewide election, and the municipal governing body for a municipal election. All procedures must be conducted under the supervision of a quorum of the board.

A member of the board can still serve on the board even if the recount is for her/his office, but only in a supervisory role.

Example:

There is a recount in a county commission race, and the sitting commissioner was running for reelection. That commissioner may still serve in a *supervisory* role during the recount but may not assist with the recount. However, if the election goes to a contest, that individual **must** recuse himself/herself.

*Others who **may** assist in a recount:*

- County Clerk (Municipal Recorder/Clerk);
- County Clerk (Municipal Recorder/Clerk) staff; and/or
- Others hired to assist with recount.

*Those who **may not** assist in a recount:*

- Candidate of office involved in recount;
- Immediate family of candidate of office involved in recount;
- Member of governing board which requested a special issue election;
- Any board member's immediate family which requested a recount; or
- Any voter that requested the recount of a special election or his or her immediate family.

The recount teams consist of four people – two to count, and two to tally. **Each team of two must be of opposite political parties.**

Everyone working in the recount proceedings must be deputized in writing and take an oath that they will faithfully perform their duties.

Recount Materials

Materials for Electronic Voting Systems (Optical Scan and ExpressVote)

1. Ballots
 - a. Voted
 - b. Provisional (Challenged)
 - c. Early and absentee
 - i. Absentee ballots not counted after polls closed
 - ii. Applications for mail-in/faxed absentee ballots
 - iii. Poll slips used for early voting
 - iv. Precinct list of absentee and early voters
 - v. Military and overseas absentee material
 - d. Spoiled
 - e. Unused
2. Ballot stubs and poll slips
3. Provisional ballot forms (Where applicable)
4. Poll books and other official registration records
5. Tally sheets for the hand-count
6. Certificates and oaths for those participating
7. Statements of ballots used
8. Voting Devices/Terminals (Where applicable)
9. Ballot boxes (Where applicable)
10. Tabulating equipment
11. Computer printout of unofficial returns
12. Any supplementary tabulations such as tally sheets of hand-counted ballot with write-in votes prepared on election night
13. Official list of write-in candidates (If applicable)
14. List of ballots sent to each precinct --- including a list of actual ballot numbers (optical scan)
15. Flashcards
16. Unity software

Paper Ballots

1. Ballots
 - a. Voted
 - b. Provisional (Challenged)
 - c. Early and absentee
 - i. Absentee ballots not counted after polls closed
 - ii. Applications for mail-in/faxed absentee ballots
 - iii. Poll slips used for early voting
 - iv. Precinct list of absentee and early voters
 - v. Military and overseas absentee material
 - d. Spoiled
 - e. Unused
2. Ballot and poll ticket stubs
3. Poll books and other official registration records
4. Tally sheets for the hand-count
5. Certificates and oaths for those participating
6. Statements of ballots used
7. Ballot boxes
8. Precinct return certificates
9. Cumulative returns
10. Official list of write-in candidates (If applicable)
11. List of ballots sent to each precinct --- including a list of actual ballot numbers

Conducting the Recount

A quorum of the board of canvassers must always be present during the recount of the ballots, and the recount is conducted under their supervision. If a quorum of the board of canvassers is not present, the recount is recessed until a quorum is present or is adjourned until the next business day. The presiding officer of the governing body acts as the presiding officer of the board.

Before starting the recount, the board determines the order in which the precincts will be recounted, either by random drawing or using a sequential order beginning with the lowest number and continuing to the highest number. The determined order should meet with the agreement of the parties to the recount or their designated representatives.

At the appropriate time, the paper ballots, the electronically tabulated ballots, and the record of the tally of votes for all election precincts are brought before the board. **Only the board, the clerks, the employees of the clerk, and persons specifically employed to assist in the recount can handle election materials. No one else** is permitted to touch the election materials at any time. However, a reasonable number of the general public is allowed to attend and observe the recount. The board should hold the recount in a room of sufficient size and satisfactory arrangement to permit observation.

Everyone who has requested the recount or preserved the right to continue the recount (or an officially designated representative) may attend. The official representative of a candidate (or eligible person) must have a written and signed statement from the candidate, voter, or governing board member designating him or her as the official representative. The name of the representative must be included in the statement. Each candidate or eligible person may appoint only one official representative to act for him or her.

The candidates, voter, or governing board (or official representatives) have the right to observe the recount proceedings, including observing each ballot as it is read in a hand-count process. They may view and examine the tally sheets and ballots but may not handle the election materials. **If you have a way to project the ballot images onto a monitor, screen, or wall so that they can be easily seen by anyone observing the recount, it will help eliminate the need for observers to be watching over the shoulders of the recount teams.**

The candidate or eligible person (or his or her representative) has the right to question any ballot during the recount. If a ballot is questioned, the deputized team (all four members) must reexamine that ballot and vote on the voter's intent. If a majority of the team cannot agree on the intent of the voter's markings, it remains questioned and the votes for that ballot are **not** recorded.

Any ballot that is questioned is to be marked to provide for its identification at any future contest of the election. The ballots can be marked in numerical or alphabetical order, or they

can be tracked by the candidate questioning the ballot plus a number (e.g., Smith 1, Jones 1, Smith 2, etc.).

The evidence considered at a recount consists only of what can be viewed on the election materials as they exist or from relevant evidence from the election commissioners, poll clerks, or other persons present at the election. The board may not consider extraneous evidence.

Numerous court cases have determined that it is inappropriate for additional evidence to be presented during the recount. Only evidence presented during the canvass can be considered.

When ballots are being hand-counted, one of the deputized teams reads the ballots together. The votes are read aloud so that the deputized team that is recording the vote can hear. Each member of the recording team marks separate tally sheets. The recording team should compare their vote count on a scheduled basis (e.g., after every twenty ballots) to catch potential errors.

During a recount, all ballots are to be hand-counted, unless otherwise requested. The person filing the request or preserving his or her right to demand a continuation of the recount, may specify precincts that are not to be hand-counted. For electronic voting systems, any precinct recounted that was not to be hand-counted, will be recounted by the process required by W.Va. Code § 3-4A-27 for tabulating ballots electronically.

If a recount has been requested in more than one elected office or special issue, each deputized team may handle only one elected office or special issue recount proceeding at a time until that recount is completed. After a recount of a particular elected office or special issue is completed, the teams that worked with the completed recount can be assigned to work with a recount of another elected office or special issue.

In addition to only counting one office (or special issue) at a time, each team works with only one precinct at a time. The precinct materials **must not** be mixed. If more than one team is required to efficiently complete the recount, it is imperative that the teams are made up of the appropriate party affiliations. The canvassing board should determine the number of teams required in advance to allow for time to assemble the appropriate individuals. State law does not limit the number of teams that can be used; this is important when dealing with a countywide recount.

For challenged ballots, each precinct's ballots are handled the same way they were during the canvass. The same procedures shall be in place to maintain the secrecy of the ballots and to preserve them for any future contest.

Each precinct can only be recounted one time. However, if after recounting a precinct, the results do not match the canvass results, the ballots and tallies can be checked at that time to discover any error in reading the ballots or marking and computing the tally figures.

The person who requested the recount has the right to stop the recount at the conclusion of any precinct by withdrawing his or her request. When that happens, any person (or governing board) that has preserved the right to continue may exercise that right.

The costs of the recount are paid by the candidate or voter asking for the recount if it continues at his or her request. However, if the outcome of the election is reversed at the conclusion of the recount, costs shall not be assessed. This amount may be more than the bond that was set at canvass.

Example: Candidate Smith asks for a recount and the results change after two precincts, so he stops the recount. Because the result changed, Smith is not charged. Candidate Jones had reserved the right to continue the recount and exercises that right. After four more precincts are recounted, the results change again. Jones stops the recount and owes nothing because, again, the results changed. Smith is not permitted to restart the recount because he already stopped it.

The recount is not complete until the board puts the ballots in a sealed package and signs across the seal. The sealed packages are kept by the County Clerk (or Municipal Recorder). When the recount is complete, the board takes official action to certify the result of the election as it is determined by the recount.

If the recount changes the results, the County Clerk must export the updated results from the Election Management System and import them into the Election Night Reporting system, following the instructions provided by the Secretary of State.

Worksheets

RECOUNT RESULTS WORKSHEET

_____ County

Name of Person Requesting Recount: _____

Office (or Issue) Subject to Recount: _____

Recount Request Date: ____/____/____

Recount Notice Date: ____/____/____

Recount Start Date: ____/____/____

Recount End Date: ____/____/____

Precincts	Canvass Results	Recounted Results
No. _____	_____	_____
No. _____	_____	_____
No. _____	_____	_____
No. _____	_____	_____
No. _____	_____	_____
No. _____	_____	_____
No. _____	_____	_____
No. _____	_____	_____
No. _____	_____	_____
No. _____	_____	_____
No. _____	_____	_____
No. _____	_____	_____
No. _____	_____	_____
No. _____	_____	_____
No. _____	_____	_____
No. _____	_____	_____
No. _____	_____	_____

RECOUNT CERTIFICATION WORKSHEET

_____ County

We, the undersigned, hereby certify that to the best of our knowledge and belief, the results of the recount for the office/issue of _____ are true and correct as recorded this _____ day of _____, 20____.

_____ Name (printed)	_____ Title	_____ Signature
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_____ Name (printed)	_____ Title	_____ Signature
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_____ Name (printed)	_____ Title	_____ Signature
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_____ Name (printed)	_____ Title	_____ Signature
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_____ Name (printed)	_____ Title	_____ Signature
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_____ Name (printed)	_____ Title	_____ Signature
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