

## **Chapter 6**

# **Recounts**

This chapter of the handbook contains information about recounts for offices, recounts for public measures, and administrative recounts. It also provides instructions on how to administer recounts.



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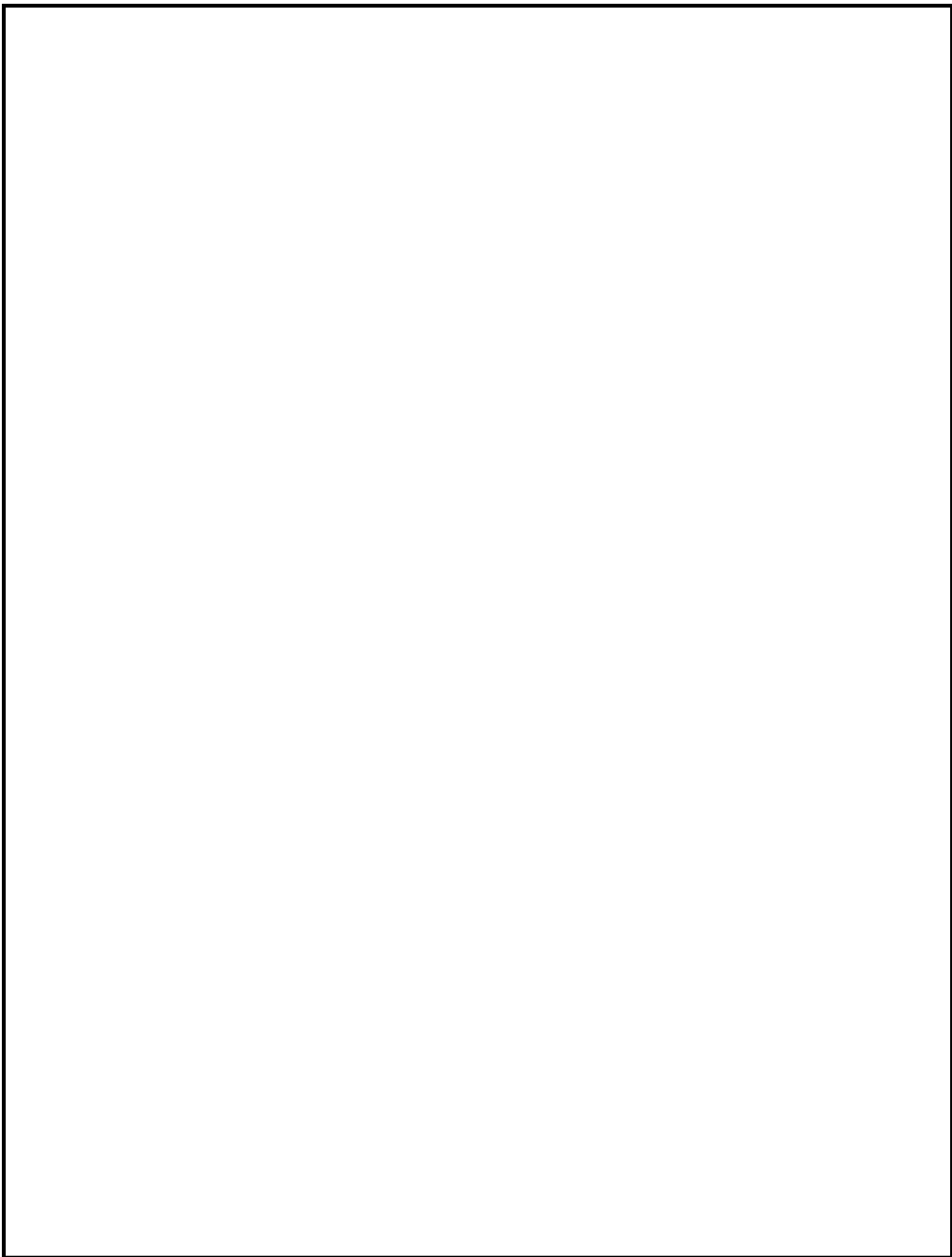
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## Overview

### **Board of Supervisors Orders Recounts**

The board orders all recounts; the auditor cannot act alone. It is the duty of the board to order a recount when the auditor receives a request or petition that meets the necessary legal requirements. The board must submit a written order to the auditor. This can be a motion or resolution the board has passed.

[§50.48(1), 331.302(1)]

### **What Happens with the Bond**

When it is necessary to collect a bond prior to a recount, the bond should be kept in a safe place under the control of the auditor until the official canvass of votes is corrected or completed.

If a bond was collected and the recount did not change the outcome of the election, the county keeps the bond and deposits it in the county's election fund. In the case of bonds held and then kept by the SOS, the bond is deposited in the state's general fund. When the outcome of the election does change, the bond is returned to the party who posted the bond.

[§50.48(2)]

### **Publishing Notice of Recount**

Notice of the recount does not have to be published. Recounts are a purely ministerial function rather than a policymaking one, so they are not subject to the notification requirements of the Iowa open meetings law.

[IAC 721—26.106]

### **Observers**

Recounts, like all canvasses of votes, are open to the public. Observers may watch and listen but they may not participate in or interfere with the recount. Observers are not permitted to touch ballots.

[IAC 721—26.106]

### **Auditor's Staff**

A staff member of the auditor's office may serve on a recount board if chosen to do so. There are no specific prohibitions in the *Iowa Code*. However, this is not generally advised.

### **Compensation of Recount Board**

The *Iowa Code* does not provide for any compensation for recount board members; they serve without pay.

## Frequently Asked Questions

### What is a recount?

A “recount” is a formal process for re-examining and recounting the ballots which were voted and counted for an office or public measure including any disputed ballots returned under section 50.5 that were “objected to” but counted.

### What is the difference between a recount and a contest?

A recount is a formal procedure in which ballots are counted again.

An election contest is the formal process for challenging the results of an election by alleging that improper activities resulted in an incorrect outcome. (See the Contest Guide for more information.)

### Who can request a recount for an office?

Any person who received votes for an office, including the person who received the most votes, may request a recount. A write-in candidate may file a request for a recount but only if the person is legally qualified to seek and hold the office for which the candidate received votes.  
[§50.48(1)(b), IAC 721—26.100]

### Who can request a recount for a public measure (question on a ballot)?

Eligible electors can ask for a recount of the ballots cast for a public measure by filing a petition.  
[§50.49]

### Where are requests for recounts filed?

All requests for recounts are filed with the auditor in the county where the election was held. When a city, school district, or other local office appeared on the ballot in more than one county the request must be filed with the control auditor who conducted the election for the jurisdiction.

When the request is for a recount of a statewide or federal office or for a congressional or legislative district with territory in more than one county, the request must be filed in each county in which the candidate wants to have the ballots counted again.  
[§50.48(1)]

### When does the recount have to be completed?

The recount board must complete the recount and file its report no later than the 18<sup>th</sup> day following the board of supervisors canvass.

**Exception:** Recounts for city primary elections or regular city elections in cities with runoff election provisions must be completed no later than the 11<sup>th</sup> day following the board of supervisors canvass.  
[§50.48(4)(c), IAC 721—26.107]

### **May staff members of the auditor's office help the recount board members?**

Yes, but only to help operate equipment and be organized. The auditor or auditor's designee cannot help count votes.

The auditor or auditor's designee is responsible for the security of the ballots and must supervise their handling.

If the recount board requests the use of the optical scan voting machine, the auditor or auditor's designee must operate the tabulation machine. [IAC 721—26.105]

### **How long should a recount take?**

The recount may take several hours or longer to complete. The time needed for the recount depends on the number of ballots to be recounted and the method used to recount them.

The recount board must complete the recount and file its report no later than the 18<sup>th</sup> day following the board of supervisors canvass.

**Exception:** Recounts for city primary elections or regular city elections in cities with runoff election provisions must be completed no later than the 11<sup>th</sup> day following the board of supervisors canvass.

[§50.48(4)(c), IAC 721—26.107]

### **Does the recount board count the ballots by hand or by machine?**

This is a decision a majority of the recount board must make. If automatic tabulating equipment was used to count the ballots at the precinct, the recount board may request the auditor to retabulate the ballots using the equipment or may count the ballots by hand, or do both. If using the equipment, the auditor or auditor's designee must operate the voting equipment. Use the same program used on Election Day unless the program is known or believed to be flawed.

If voting equipment was not used, the board must count the ballots by hand.

[§50.48(4), IAC 721—26.105]

## Elective Office Recounts – 5 Steps

### **Step 1: Review the Request**

Review the request and ensure it is legally sufficient to be filed (see below). If you are unsure about the legal sufficiency of a recount request, consult with the county attorney. The SOS has produced a recount request form candidates may use to provide the auditor's office with the necessary information to start the recount process. This form is helpful but not required. The request form for a recount of votes cast for office is available in the Election Forms Library.

If the request is sufficient, record the date and time the request was filed (stamp the request). This could become critical if more than one request for a recount is filed.

Reject the recount request if any of the following six requirements are not met:

1. Filed on Time?

For most elections, the last day to request a recount is 5 p.m. on the third day after the county board of supervisors' canvass of votes for the election. If the supervisors canvassed on the Tuesday after the election, then candidates must file recount requests by 5 p.m. on the following Friday. Refer to the election-specific calendars for more information about recount request timelines.

**Exception:** The recount request deadline for city primary elections and the regular city election in cities where the council has adopted a runoff provision is 5:00 p.m. the day after the county canvass of votes.

2. Who requested the recount?

Only persons who received votes for an office (including the person who received the most votes) may request a recount. A write-in candidate may file a request for a recount but only if the person is legally qualified to seek and hold the office for which the candidate received votes. For offices that are elected as a team (president and vice president; governor and lieutenant governor), either of the two candidates may sign a request for a recount or designate a member of the recount board.

3. Is the name and date of the election on the request?

4. Is the race for which the recount is being requested on the request?

5. Are the precincts to be recounted named on the request?

6. Has the requestor named a designee to serve on the recount board?

[§50.48(1) (7), IAC 721—26.100]

## **Step 2: Determine Bond**

<b>Office</b>	<b>File Bond With</b>	<b>Amount</b>
Statewide Offices (including president, U.S. senator)	Secretary of State	\$1000
U.S. Representative	Secretary of State	\$500
State Senator	Secretary of State	\$300
State Representative	Secretary of State	\$150
Any office voted upon countywide by the voters of a county with more than 50,000 population	county auditor	\$200
All other elective offices	control county auditor	\$100

In very close elections, bonds are often not required. If an election was won (or lost) by less than one percent of the votes cast or 50 votes, whichever number is larger, the candidate requesting the recount does not have to post a bond.

[§43.56, 50.48(2)]

### **Example:**

Candidate A received 1,034 votes. Candidate B received 785 votes. Total votes cast (TVC) were 1,819.

One percent of TVC =  $1,819 \times 0.01 = 18.19$

Difference =  $1,034 - 785 = 249$

The difference of 249 is greater than 50 votes, so bond is required.

### **Bonds for Multicounty Offices**

Use the vote totals from all counties where the office was on the ballot. If more than one candidate for a multicounty office requests a recount, the bond requirement must be calculated for each candidate. If a candidate must post a bond, the candidate must post only one bond, even if the candidate requests recounts in more than one county.

[§43.56, 50.48(2), IAC 721—21.26(102)]

### **The Primary Election**

If no candidate received the required 35% of the votes cast for the office, the bond requirement is calculated from the number of votes needed to receive the nomination. No bond is required if the difference between the number of the votes needed to be nominated and the number of votes received by the candidate requesting the recount is less than 50 votes or one percent of the total votes cast, whichever is larger. If a bond is required, the bond shall be in the amount specified in the §50.48(2) (See bond chart above).

[§43.56(2)]

### **Step 3: Make Required Notifications**

After a recount request has been successfully filed, the auditor must notify the apparent winner by sending a copy of the recount request to the apparent winner by certified mail. The auditor must also attempt to contact the person by telephone.

#### **Apparent Winner**

The apparent winner is the person who received the most votes for the office and who will apparently be declared the winner at the final canvass of votes for the office. The apparent winner for a statewide race is determined by the vote totals for the whole state, not in individual counties.

- If the apparent winner of an election requested the recount, the person who received the next highest number of votes for that office must receive the official notice of the recount and shall designate the second member of the recount board.
- For partisan office, if the apparent winner cannot be reached within 4 days, notify the chairperson of the political party or organization which nominated the candidate to serve on behalf of the candidate. Notify the county chairperson for county offices and notify the state party for state and federal offices.

**Important Note:** The auditor must notify the SOS of the receipt of a recount request if the recount is for a state or federal office.

[§50.48, IAC 721—26.100]

### **Step 4: Board of Supervisors Orders Recount**

Obtain an order for the recount from the county board of supervisors.

[§50.48(1)]

## **Step 5: Convene Recount Board**

Convene the recount board and conduct the recount. See Administration of a Recount on page 14 of this chapter.

### **Determining Members of a Recount Board (non-primary elections)**

A three-person board conducts recounts. No recount board may have more than three members. There are no qualifications specified in the *Iowa Code* limiting or defining who a candidate or group of petitioners may designate to serve on a recount board; however, a candidate may not serve as his or her own designee on the recount board.

#### **Requester is not Apparent Winner**

When a recount request is filed by a candidate who is not the apparent winner:

- The first member of the recount board is chosen by the candidate who filed the request for the recount.
  - If more than one person files a request for a recount of the same office in the same county, the board member shall be the designee of the first person who filed.
- The second member is chosen by the apparent winner.
  - If more than one person is to be elected to the office in question, the designation shall be made by the apparent winner who received the fewest votes.
- The third member of the board is mutually agreed upon by the first two members.
  - Convene the first two members of the board no later than 9 a.m. on the seventh day following the canvass to determine the third member. If they cannot agree on a third member by 8 a.m. on the ninth day following the canvass, the Chief Judge of the district court selects the third member no later than 5 p.m. on the 11<sup>th</sup> day following the canvass.

[§50.48(3), IAC 721—26.103]

### Requestor is Apparent Winner

When a recount request is filed by a person who is the apparent winner:

- The first member of the recount board is chosen by the candidate who filed the request for the recount.
  - If more than one person files a request for a recount of the same office in the same county, the board member shall be the designee of the first person who filed.
- The second member is chosen by the candidate who received the next highest number of votes for that office.
- The third member of the board is mutually agreed upon by the first two members.
  - Convene the first two members of the board no later than 9 a.m. on the seventh day following the canvass to determine the third member. If they cannot agree on a third member by 8 a.m. on the ninth day following the canvass, the Chief Judge of the district court selects the third member no later than 5 p.m. on the 11<sup>th</sup> day following the canvass.

[§50.48(3), IAC 721—26.103]

### **Determining Members of a Recount Board (Primary Election)**

Follow the rules above for recounts unless no candidate receives the required 35% of votes.

If no candidate for an office received the required 35% of the votes, the board shall consist of the following:

- The first member of the recount board is chosen by the candidate who filed the request for the recount.
- The second member is chosen by the candidate who received the highest number of votes. If that is the person who requested the recount, the person who received the second highest number of votes will designate the second person.
- The third member is mutually agreed upon by the first two members.

[§43.56(1)]

## Public Measure Recounts – 5 Steps

### **Step 1: Review Petition**

Review the petition and ensure it is legally sufficient to be filed (see below). If you are unsure about the legal sufficiency of a recount petition, contact the county attorney. The SOS has produced a recount petition form to provide the auditor's office with the necessary information to start the recount process. This form is helpful but not required. The petition form for a recount of votes cast for public measure is available in the Election Forms Library.

If the request is sufficient, record the date and time the request was filed (stamp the request). This could become critical if more than one request for a recount is filed.

Reject the recount request if any of the following requirements are not met:

1. Filed on Time?

The deadline to request a recount is 5 p.m. on the third day after the county board of supervisors' canvass of votes for the election. If the supervisors canvassed on the Tuesday after the election, then the request for a recount must be filed by 5 p.m. on the following Friday.

**Exception:** The recount request deadline for the regular city election in cities where the council has adopted a runoff provision is the day after the county canvass of votes.

2. Who requested the recount?

Eligible electors can ask for a recount of the ballots cast for a public measure by filing a petition with the auditor. Each signer must be a person who was entitled to vote on the public measure in question or would have been so entitled if registered to vote. Signers are not required to have voted in the election. Petitions must be signed by no less than one percent of the total votes cast for the public measure or 10 eligible electors, whichever is greater.

3. Is the name and date of the election on the request?

4. Is the letter, number, or description of the public measure for which the recount is being requested on the request?

5. Are the precincts to be recounted named on the request?

6. Have the petitioners named a designee to serve on the recount board?

[§50.49, IAC 721—26.100]

## **Step 2: Determine Bond**

For measures that do not require 60 percent approval, when the difference between the “yes” and “no” votes cast is less than one percent of the total votes cast on the measure or 50 votes, whichever is greater, no bond is required.

### **Example:**

“Yes” votes totaled 105 votes. “No” votes totaled 102 votes. Total votes cast (TVC) were 207.

One percent of TVC =  $207 \times 0.01 = 2.07$

Difference =  $105 - 102 = 3$

50 votes is greater than the difference of 3 votes, so bond is not required.

When measures require 60 percent approval no bond is required if the difference between 60 percent of the total votes cast and the number cast for the losing side is less than one percent of the total votes cast on the measure or 50 votes, whichever is greater.

[§50.49]

### **Example:**

“Yes” votes totaled 60,113. “No” votes totaled 48,210. Total votes cast (TVC) were 108,323.

One percent of TVC =  $108,323 \times 0.01 = 1083.23$ .

Difference =  $60,113 - 48,210 = 11,903$

The difference (11,903) is not less than one percent of TVC (1,084), so bond is required.

The bond for all public measure recounts, except statewide public measure recounts, is \$100 and is collected and held by the auditor. The bond for statewide public measure recounts is \$1000 and is collected and held by the SOS Office.

## **Bonds for Multicounty Measures**

If more than one county was involved in the public measure election, the abstracts prepared by the county boards in all of the affected counties shall be totaled for purposes of determining if a bond is required. Only one bond is posted when it is necessary to post a bond.

[§43.56, 50.48(2), IAC 721—21.26(102)]

### **Step 3: Make Required Notifications**

Make required notifications. Notify the SOS if the recount is for a statewide public measure.

[§50.49, IAC 721—26.100]

### **Step 4: Board of Supervisors Orders Recount**

Obtain an order for the recount from the county board of supervisors.

[§50.48(1)]

### **Step 5: Convene Recount Board**

Convene the recount board and conduct the recount. See Administration of a Recount on page 14 of this chapter.

### **Determining Members of a Recount Board**

A three-person board conducts recounts. No recount board may have more than three members. There are no qualifications specified in the *Iowa Code* limiting or defining who a candidate or group of petitioners may designate to serve on a recount board.

The recount board will consist of the following:

1. The person designated by the petitioners on the request for recount petition.
2. A designee of the auditor shall serve as the second member.
3. The third member of the board is mutually agreed upon by the first two members.

Convene the first two members of the board no later than 9 a.m. on the seventh day following the canvass to determine who will be the third member. If the first two members cannot agree on a third member by 8 a.m. on the ninth day following the canvass, the chief judge of the district court must select the third member no later than 5 p.m. on the eleventh day following the canvass.

[§50.49]

## **Administrative Recounts**

### **When to Request an Administrative Recount**

An administrative recount is a recount that may be requested by the auditor when:

- the auditor suspects that voting equipment used in the election malfunctioned
- equipment programming errors may have affected the outcome of the election
- the PEOs report counting errors to the auditor after the conclusion of the canvass of votes in the precinct

[§50.50, IAC 721-21.25]

### **Process and Timeline**

The process and timeline for administrative recounts is the same as for other recounts. The auditor may use different memory cards for the recount. If the auditor plans to use the same memory cards in the recount as used in the election, the information on the memory cards used in the election must be retained for six months for non-federal elections and 22 months for federal elections.

The auditor may also use different election definition files if the auditor believes the original files were flawed. Retain both the original and the new files for six months for non-federal elections and 22 months for federal elections.

See the election document retention record available in the Election Forms Library for additional information.

[IAC 721—21.25]

### **Administrative Recount – 3 Steps**

#### **Step 1: Make Request**

The auditor must make a request in writing to the board of supervisors. The request must explain the nature of the problem, in which precincts the problem occurred, and must list which offices and questions should be recounted.

[§50.50]

The request for an administrative recount can be made as soon as the day after the election and as late as three days after the canvass of votes. After that window has lapsed, an administrative recount is no longer an option.

[IAC 721—21.25]

### **Bond Requirement**

There is no bond for an administrative recount.

### **Step 2: Board of Supervisors Orders Recount**

The board must determine whether to order the administrative recount. The board needs to submit a written order for the recount to the auditor as soon as possible.

### **Step 3: Convene Recount Board**

Convene the recount board and conduct the recount. The ASVP board conducts the recount. See Administration of a Recount on page 14 of this chapter.

[§50.50]

## Administration of a Recount

### Location

The room where the recount is conducted should be arranged to enable observers to see and hear the process. However, the observers are not permitted to touch ballots.

### Delivery of Ballots and Supplies

Provide these tools to the board:

1. Recount Board Guide (available in EAH)
2. Counting Votes Guide (available in EAH)
3. Manual recount tally sheet and the report for recount of votes for office (or public measure) is available in the Election Forms Library

Deliver ballots to the board.

1. Deliver only ballots that were accepted and counted, including any disputed ballots returned from the precinct pursuant to §50.5.
2. Complete the recount ballot tracking chart before delivering ballots to the recount board. The recount ballot tracking chart is available in the Election Forms Library.
3. Confirm the number of ballots delivered to the board and returned to the auditor's office after counting is the same.

Recount boards do not consider:

- Rejected absentee or provisional ballots
- Spoiled ballots
- Defective ballots

[IAC 721—26.14 &26.104(1), §39A.4 (1), 49.92, 49.100, 50.3, 50.5]

## **General Rules for the Recount Board**

The Board must:

1. Conduct the recount “as expeditiously as possible” as stated in the *Iowa Code*.
2. Only tabulate the votes on the ballots that were voted and counted for the particular office or public measure named in the recount request or petition. It is the responsibility of the board to recount (i.e. to count again) the votes that were counted in the election. Boards have no legal authority to review ballots or information about ballots that were not counted.
3. Adhere to IAC 721—26 if counting by hand and when tabulating write-in votes.
4. Open only what is necessary. The board shall open only the sealed ballots from the precincts specified in the recount request.
5. Report results. The report of the recount board must be filed with the auditor no later than 18 days after the board of supervisors' canvass of the votes for the election in question (or 11 days after city primary elections or the regular city election in cities with runoffs).

[IAC 721—26.104(2)]

## **Best Practices for Getting Started**

- All three members of the board should be present when the ballot packages are opened. When opening ballots, the board should only work with one precinct at a time.
- Keep all ballots in view of the recount board members and any observers. Keep the ballots guarded to protect them from theft or loss. The auditor (or the auditor's designee) is responsible for the security of the ballots and shall supervise their handling.
- If one board member leaves the room, halt the process until that person returns.

## **Counting Votes**

The recount board:

- May request that the ballots be recounted by the machine (if automatic tabulating equipment was used to count the ballots at the precinct)

**OR**

- May count the ballots by hand

**OR**

- May conduct both types of counts

[50.48(4), IAC 721--26.105]

If using the equipment to conduct the recount, the auditor or auditor's designee must operate the voting equipment and use the same program used on election day unless the program is known or believed to be flawed. If voting equipment was not used, the board must count the ballots by hand.

## **Extending the Recount**

Recount boards may extend the recount to other precincts in the same county where the office or question appeared on the ballot when at least one member of the board deems it necessary to do so. The recount cannot be expanded to include other offices or questions.

[§50.48(4)]

## **Reviewing Additional Evidence**

No additional evidence, beyond the ballots that were counted, is reviewed during a recount. The recount process does not include examination of ballots which were rejected or reconsideration of whether ballots should have been accepted or rejected

## **Recount Board Restrictions**

Recount boards do not resolve procedural or legal questions about the conduct of the election or the qualifications of voters. The board does not decide if ballots were correctly accepted or rejected. The board merely counts ballots which were already counted. See the Election Contest Guide for information about available legal remedies when allegations of misconduct are raised after an election.

## **Auditors and Staff Restrictions**

1. Do not count votes if you are not on the recount board.
2. Do not instruct members of the board to count or not count a particular vote. Members of the recount board are the only one authorized to decide whether or not to count a vote. If a member of the auditor's staff is asked a question related to whether or not a vote should be counted, that member should not answer and the recount board should be instructed to review the Counting Votes Guide and IAC 721—26.

### **After Counting**

The recount board shall reseal the ballots after they have been retabulated and return them to the auditor. Complete the recount ballot tracking chart available in the Election Forms Library.

### **Recount Board's Report**

When the recount is complete, the board shall file a written report of its findings with the auditor. The report shall be filed no later than the 18th day following the county's canvass. The report must be signed by at least two members of the recount board and the tally sheets and any voting equipment results tapes produced in the recount process must be attached to it.

**Exception:** Recounts for city primary elections or regular city election in cities with runoff election provisions must be completed no later than the 11th day following the board of supervisors' canvass.

[§50.48(4) (c)]

### **Notify Board of Supervisors**

If the board reports different results from the original canvass, even if the winner doesn't change, notify the board of supervisors as soon as possible. The board of supervisors must reconvene within three days after being notified to correct the canvass.

[§50.48(5)]

### **Notify the Secretary of State**

If the recount was for a federal or state office, notify the SOS and send a new abstract ASAP so the state canvass of votes may be completed.

[§50.48(6)]

### **Return Bond (if necessary)**

When a bond is collected and the outcome (winner) of the election changes, the bond is returned to the party who posted the bond.

[§50.48(2)]