



# Recount Procedure Summary

## DE Reference Guidelines 0010 (Updated 10/2014)

*These guidelines are for reference only. They are not to be construed as legal advice or representation. For any particular set of facts or circumstances, refer to the applicable state, federal law, and case law, and/or consult a private attorney before drawing any legal conclusions or relying upon this information.*

### APPLICABLE LAW

- Sections [102.141](#)(7) and [102.166](#), Florida Statutes (2013), and [Rule 1S-2.031](#), Fla. Admin. Code, govern recounts.
- This summary only represents a general overview. Please consult law and rule for specifics as they govern.

### ORDERING OF A RECOUNT

- **Who orders the recount?**
  - The Secretary of State orders any recount for federal, state, or multicounty races.
  - For all other races, the board certifying the results orders the recount.
- A recount may not begin until it has been ordered to occur by the proper authority.
- A candidate or political committee has no authority to request a recount.
- A recount at a minimum consists of a machine recount; it may also include a manual recount.

### PUBLIC NOTICE

- **Public notice** must be provided as soon as possible given the circumstances and the limited time schedule.
- Machine and manual recounts are **open to the public**.

### MACHINE RECOUNT (s. 102.141(7), F.S.)

- **A machine recount must be ordered if** the 1<sup>st</sup> set of unofficial returns indicates that a candidate was defeated or eliminated by  $\frac{1}{2}$  of 1% or less of the total votes cast for an office or if an issue was approved or rejected by  $\frac{1}{2}$  of 1% or less of the total votes cast on the issue. Persons running for party positions (committeemen and committeewomen) are not candidates.

#### STATUTORY DEADLINE TO REPORT 1<sup>ST</sup> SET OF UNOFFICIAL RETURNS (s. 102.141(5), F.S.)

- **After a Primary Election:** No later than noon on the 3<sup>rd</sup> day after the Primary Election.
- **After a General Election:** No later than noon on the 4<sup>th</sup> day after the General Election.
- **After a Special Primary or Special Election:** No later than noon on 4<sup>th</sup> day after the election. (Laws governing general elections are applicable to special primary and special elections – s. 100.191, F.S.)

- **Exception to a machine recount:**
  - **If a candidate or candidates who is defeated or eliminated from contention for the office by  $\frac{1}{2}$  of 1% or less request in writing that a machine recount not be conducted.**
- The canvassing board must follow the procedures in [Rule 1S-2.031](#).
- The machine recount constitutes a retabulation of all ballots.
- Before the machine recount occurs, a **new election definition** must be created for the race(s) to be recounted. Parameters must be set to reject all overvotes and undervotes.
- Before the start of the recount, a **public test of the tabulating equipment** must occur.
- **Optical scan ballots:** The canvassing board must run each ballot with the affected race(s) through tabulator. All overvotes and undervotes are outstacked to be used in the manual recount if one becomes necessary.
- **Touchscreen ballots:** The canvassing board must produce the printed vote totals form each of the touchscreen machines where the recounted race(s) appeared. The canvassing board tests the accuracy of the printed vote totals by comparing them against the totals from election night and shall resolve any discrepancy.
- **Results:** The results of the machine recount are included in the 2<sup>nd</sup> set of unofficial returns.

### STATUTORY DEADLINE TO REPORT 2<sup>ND</sup> SET OF UNOFFICIAL RETURNS (s. 102.141(7)(c), F.S.)

- **After a Primary Election:** No later than 3 p.m. on the 5<sup>th</sup> day after the Primary Election.
- **After a General Election:** No later than 3 p.m. on the 9<sup>th</sup> day after the General Election.
- **After a Special Primary or Special Election:** No later than 3 p. m. on the 9<sup>th</sup> day after the election. (Laws governing general elections are applicable to special primary and special elections – s. 100.191, F.S.)

### MANUAL RECOUNT (s. 102.166, F.S.)

- A manual recount must be ordered if the 2<sup>nd</sup> set of unofficial returns indicates that a candidate was eliminated or defeated by  $\frac{1}{4}$  of 1% or less of the votes cast for the office or an issue was approved or rejected by  $\frac{1}{4}$  of 1% or less.
- **Exceptions to a manual recount:**
  - If the candidate or candidates defeated or eliminated from contention for the office by  $\frac{1}{4}$  of 1% or less request in writing that it not be conducted; or
  - If the number of overvotes and undervotes is fewer than the number of votes needed to change the outcome of the election.
- The manual recount is only a **recount of overvotes and undervotes** as outstacked from the machine recount.
- The canvassing board must use the procedures in [Rule 1S-2.031](#).
- A vote for a candidate or issue must be counted if there is a clear indication on the ballot that a voter made a definite choice. See [Rule 1S-2.027](#).
- **Optical scan ballots:**
  - The canvassing board assigns **counting teams** to review the overvotes and undervotes. Authorized representatives are permitted to be present and object to any decision of the counting team, but the representatives may not otherwise disturb or interfere with the recount.
  - Each counting team sorts the ballots into 3 stacks for the recounted race: 1) ballots determined to contain a valid vote; 2) ballots determined to contain no clear indication of choice; and 3) ballots set aside for canvassing board determination.
- **Touchscreen ballots:**
  - Touchscreen machines do not permit overvotes; thus, only undervotes are reviewed.
  - The canvassing board orders the printing of an official copy of the ballot image report from each touchscreen voting machine that has recorded an undervote for the recounted race.
  - The ballot image report is reviewed to determine if there is a clear indication on the ballot that a voter made a definite choice.
- **Results:** The results from the manual recount are contained in the certification of the official returns.

### STATUTORY DEADLINE TO REPORT OFFICIAL RETURNS (s. 102.112(2), F.S.)

- **After a Primary Election:** No later than 5 p. m. on the 7<sup>th</sup> day after the Primary Election.
- **After a General Election:** No later than Noon on the 12<sup>th</sup> day after the General Election.
- **After a Special Primary or Special Election:** No later than Noon on 12<sup>th</sup> day after the election. (Laws governing general elections are applicable to special primary and special elections – s. 100.191, F.S.)
- If the results are not received by the time specified, such returns are ignored and the results on file at the specified time shall be certified by the Department of State.

## EXAMPLES OF RECOUNT CALCULATIONS

### RACE WITH 2 CANDIDATES (PRIMARY OR GENERAL ELECTION BALLOT)

- **Candidate A:** 9,755 votes – 49.77%
- **Candidate B:** 9,845 votes – 50.23%
- **Total:** 19,600 votes – 100%
- **Calculation:**  $50.23\% - 49.77\% = .45\%$ ; therefore, Candidate A was defeated by .45% of votes cast.
  - If this scenario was based upon the 1<sup>st</sup> set of unofficial returns, a machine recount is required because  $.45\% \leq .5\%$ . (Note:  $\leq .5\%$  is the threshold for a machine recount.)
  - If this scenario was based upon the 2<sup>nd</sup> set of unofficial returns, a manual recount is not required because  $.45\% \geq .25\%$ . (Note:  $\leq .25\%$  is the threshold for a manual recount.)

### NONPARTISAN SCHOOL BOARD RACE WITH 3 CANDIDATES WHERE ONE CANDIDATE HAS RECEIVED A MAJORITY OF THE VOTES CAST (PRIMARY BALLOT, ONLY)

- **Candidate A:** 3,260 votes – 35.58%
- **Candidate B:** 4,583 votes – 50.02%
- **Candidate C:** 1,319 votes – 14.40%
- **Total:** 9,162 votes – 100%
- Per s. [105.051](#)(1)(b), Fla. Stat., **if two or more candidates, neither of whom is a write-in candidate, qualify for such office in the primary election, then the name of the candidate who receives the majority of the votes cast shall not appear on the general election ballot unless there is a write-in candidate.** If no candidate receives a majority of the votes cast, the names of the two candidates receiving the highest number of votes for the office will be placed on the general election ballot.
- **Calculation:** In the above race, Candidate A was eliminated as a candidate for the general election by .02% even though he finished 14.44 percentage points behind Candidate B. To avoid the recount in this scenario, the person receiving the majority vote must have won by more than 50.5% of the votes cast.
  - If this scenario was based upon the 1<sup>st</sup> set of unofficial returns, a machine recount is required because  $.02\% \leq .5\%$ . (Note:  $\leq .5\%$  is the threshold for a machine recount.)
  - If this scenario was based upon the 2<sup>nd</sup> set of unofficial returns, a manual recount is required because  $.02\% \leq .25\%$ . (Note:  $\leq .25\%$  is the threshold for a manual recount.)

### NONPARTISAN SCHOOL BOARD RACE WITH 3 CANDIDATES WITH NO CANDIDATE RECEIVING A MAJORITY OF THE VOTES CAST (PRIMARY ELECTION) OR ANY RACE INVOLVING “VOTE FOR NO MORE THAN 2” CANDIDATES (GENERAL ELECTION)

- **Candidate A:** 4,010 votes – 26.04%
- **Candidate B:** 7,315 votes – 47.50%
- **Candidate C:** 4,075 votes – 26.46%
- **Total:** 15,400 votes – 100%
- **Calculation:** In the above race, Candidate A was eliminated as a candidate behind Candidate C by .42% ( $26.46\% - 26.04\% = .42\%$ ).
  - If this scenario was based upon the 1<sup>st</sup> set of unofficial returns, a machine recount is required because  $.42\% \leq .5\%$ . (Note:  $\leq .5\%$  is the threshold for a machine recount.)
  - If this scenario was based upon the 2<sup>nd</sup> set of unofficial returns, a manual recount is not required because  $.42\% \geq .25\%$ . (Note:  $\leq .25\%$  is the threshold for a manual recount.)