§737-A. Recount

Once a recount is requested for any federal, state or county office, the Secretary of State shall request that the State Police, sworn law enforcement officers employed by the Department of the Secretary of State or other sworn law enforcement officers take physical control of the ballots and other related materials needed for the recount as soon as possible and deliver them to the recount facility. When the recount involves an office that encompasses more than one county, the Secretary of State may organize retrieval of ballots from certain jurisdictions so that the recount may be conducted in stages until the requesting candidate or lead applicant for a referendum recount concedes or until all the ballots are recounted. [PL 2023, c. 304, Pt. A, §20 (RPR).]

The Secretary of State shall store and maintain exclusive control over the ballots and other materials pending and during the recount and until the sworn law enforcement officers or the State Police retrieve the materials for return to the municipalities. [PL 2023, c. 304, Pt. A, §21 (AMD).]

Any candidate other than the apparent winner who desires a recount must file with the Secretary of State a written request for a recount within 5 business days after the election, except that in an election determined by ranked-choice voting, only a candidate who received one of the top 3 rankings at the end of the penultimate round of ranked-choice counting may request a recount. The recount is held under the supervision of the Secretary of State, who shall allow the candidate's representatives or counsel to recount the ballots. The candidate may not act as a counter of ballots. [PL 2025, c. 114, §2 (AMD).]

If, after the official tabulation is submitted to the Governor, the apparent winner is determined the losing candidate, that candidate may request a recount within 3 business days after the date the Governor receives the tabulation. [PL 2015, c. 447, §28 (AMD).]

1. Deposit for legislative or single county office recount. This subsection applies to a recount for an election for the office of State Senator or State Representative or for a county office that does not encompass more than one county. All deposits required by this section must be made with the Secretary of State when a recount is requested by a losing candidate or an undeclared write-in candidate. Once the sworn law enforcement officers or the State Police have taken custody of the ballots and other election materials from the municipalities, the deposit made by the candidate requesting the recount is forfeited to the State if the resulting count fails to change the outcome of the election. If the recount reverses the election, the deposit must be returned to the candidate requesting the recount. The amount of the deposit is calculated as follows.

A. If the percentage difference shown by the official tabulation between the leading candidate and the requesting candidate is 1.5% or less of the total votes cast for that office, a deposit is not required. [PL 2015, c. 447, §29 (AMD).]

B. If the percentage difference shown by the official tabulation between the leading candidate and the requesting candidate is more than 1.5% and less than or equal to 4% of the total votes cast for that office, the deposit is $500. [PL 2015, c. 447, §29 (AMD).]

C. If the percentage difference shown by the official tabulation between the leading candidate and the requesting candidate is more than 4% and less than or equal to 6% of the total votes cast for that office, the deposit is $1,000. [PL 2003, c. 447, §25 (AMD).]

D. If the percentage difference shown by the official tabulation between the leading candidate and the requesting candidate is more than 6% and less than or equal to 8% of the total votes cast for that office, the deposit is $2,500. [PL 2003, c. 447, §25 (NEW).]

E. If the percentage difference shown by the official tabulation between the leading candidate and the requesting candidate is more than 8% and less than or equal to 10% of the total votes cast for that office, the deposit is $5,000. [PL 2003, c. 447, §25 (NEW).]

F. If the percentage difference shown by the official tabulation between the leading candidate and the requesting candidate is more than 10% of the total votes cast for that office, the deposit is $10,000. [PL 2003, c. 447, §25 (NEW).]

[PL 2023, c. 304, Pt. A, §22 (AMD).]

1-A. Deposit for statewide or multicounty office recount. This subsection applies to a recount for an office not described by subsection 1. A losing candidate who requests a recount must pay the deposit required by this subsection when the recount is requested. The amount of the deposit is calculated as follows.

A. If the difference shown by the official tabulation between the leading candidate and the requesting candidate is 1% or less of the total votes cast for that office or not more than 1,000 votes, whichever is less, a deposit is not required. A candidate who is not required to pay a deposit pursuant to this subsection may not be charged for the recount regardless of whether the procedure changes the result of the election. [PL 2017, c. 141, §5 (NEW).]

B. If the difference shown by the official tabulation between the leading candidate and the requesting candidate is more than 1% of the total votes cast for that office or more than 1,000 votes, whichever is less, the deposit is $5,000 or 10% of the reasonable estimate of the cost to the State of performing the first stage of the recount, whichever is greater. After completion of the recount, if the recount has not changed the result of the election, the Secretary of State shall calculate the actual cost of the procedure, which must be paid by the requesting candidate. If the deposit is greater than the actual cost, the overpayment must be refunded to the candidate. If the actual cost is greater than the deposit, the candidate shall pay the remainder of the actual cost to the State. Once the sworn law enforcement officers or the State Police have taken custody of the ballots and other election materials for the first stage of the recount, the deposit made by the candidate requesting the recount is forfeited to the State even if the candidate withdraws from the recount before the recount begins. If a recount reverses the election, the deposit must be returned to the candidate requesting the recount. [PL 2023, c. 304, Pt. A, §23 (AMD).]

[PL 2023, c. 304, Pt. A, §23 (AMD).]

2. Recount request. If a ballot contains the names of state and local candidates or questions, the Secretary of State shall determine which requests for recount must be honored first when more than one request is presented. If a recount is requested for more than one office or referendum question that is included on the same ballot for one or more jurisdictions, the Secretary of State may determine a process for counting the ballots for both offices or questions simultaneously.

[PL 2017, c. 141, §6 (AMD).]

2-A. Recount for write-in candidates. For the purposes of this section, a declared write-in candidate who has complied with the requirements of section 722-A is treated the same as any candidate whose name is printed on the ballot.

[PL 2017, c. 141, §7 (AMD).]

3. Notice of recount. The Secretary of State shall send written notice of a recount to the candidates for the office in question, stating the time and place of the recount.

[PL 1993, c. 473, §31 (NEW); PL 1993, c. 473, §46 (AFF).]

4. Time of recount and designated recount candidates. The recount must be held as soon as reasonably possible at a time and place that affords the designated recount candidates a reasonable opportunity to be present. For purposes of this section, "the designated recount candidates" means the leading candidate and each candidate who has requested a recount and paid the applicable fee in accordance with this section. The recount involves a new count of the results for the designated recount candidates only. Once a candidate has requested a recount, the other candidates for that elective office must be notified of the request as soon as possible. Candidates for that elective office whose vote totals fall between the totals of the leading candidate and the requesting candidate must be provided with an

opportunity to be included in the recount as a designated recount candidate by making a written request to join the recount and paying the applicable fee, either within 5 business days after the election or, if the recount request is made on the last day of that period, by the close of business on the next business day. Candidates for that elective office other than the designated recount candidates may be present to observe the recount but are not included in the recount, and their vote totals remain as indicated in the official results reported by the municipalities.
[PL 2003, c. 447, §26 (AMD).]

5. Persons prohibited from working at recount. Confidential state employees, employees of the Legislature, candidates and elected state officials may not participate in ballot recounts in any capacity. This subsection does not prohibit employees within the Department of the Secretary of State, election officials and staff of the Department of the Attorney General and the Judicial Department from performing their duties with respect to a recount.
[PL 1993, c. 473, §31 (NEW); PL 1993, c. 473, §46 (AFF).]

6. List of recount personnel. The Secretary of State shall maintain a list of recount personnel for 2 years after the recount.
[PL 1993, c. 473, §31 (NEW); PL 1993, c. 473, §46 (AFF).]

7. Disputed ballots segregated. At the recount, the Secretary of State shall segregate disputed ballots. Disputed ballots that are not resolved must be photocopied by a representative of the Secretary of State. The photocopy of the ballot is not a public record and must be kept separate from the original ballots.

When a recount is requested by a write-in candidate who did not receive the minimum number of votes required, if the write-in candidate is the only candidate at the recount and it appears from the recount that a sufficient number of votes for that candidate has been received at the election, then all ballots from that election are considered "disputed."
[PL 1993, c. 473, §31 (NEW); PL 1993, c. 473, §46 (AFF).]

8. Final recount tabulation. If the final recount tabulation as defined by rule is different than the results shown on the tabulation submitted to the Governor pursuant to section 722, the Secretary of State shall submit a certified copy of a corrected tabulation to the Governor.
[PL 2019, c. 371, §32 (AMD).]

9. Package resealed and marked. After a recount, if the election remains in dispute, the Secretary of State shall copy the incoming voting list, before proceeding to reseal the packages of ballots and incoming voting lists, noting the fact and date of the recount on the packages. The Secretary of State shall immediately send or deliver the copy of the incoming voting list to the clerk for the purpose of updating voter participation history in the central voter registration system. The clerk shall immediately send a receipt to the Secretary of State noting the date and time of delivery of the copy. All challenged and disputed ballots must be packaged separately. The challenged and disputed ballots must be kept until released to the court or to the Senate or the House of Representatives, if applicable, in case of an appeal.
[PL 2009, c. 253, §45 (AMD).]

10. Appeals. For all elections, except for the offices of United States Senator, United States Representative, State Senator and State Representative, if there are enough challenged or disputed ballots to affect the result of an election, the Secretary of State shall forward the ballots and all related records for that election to the clerk of the Supreme Judicial Court. The Supreme Judicial Court shall determine the result of the election pursuant to procedures adopted by court rule. The decision of the Supreme Judicial Court is final and must be certified to the Governor by the Chief Justice.

If there are enough challenged or disputed ballots to affect the result of an election to the office of United States Senator, United States Representative, State Senator or State Representative, the

Secretary of State shall notify the appropriate officials according to the rules and procedures adopted by each of those legislative bodies.
[PL 2019, c. 371, §33 (AMD).]

11. Withdrawal from recount. A candidate who requests and receives a recount may withdraw from the recount at any time while the recount shows that candidate to be the loser. If, during the recount, the candidate requesting the recount overtakes and passes the candidate who initially appeared to win the election, the candidate requesting the recount may not withdraw the request and the recount must be completed.
[PL 1993, c. 473, §31 (NEW); PL 1993, c. 473, §46 (AFF).]

12. Authority to adopt rules. The Secretary of State is authorized to adopt rules governing the conduct and procedures for a recount. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.
[PL 2009, c. 253, §46 (NEW).]

SECTION HISTORY

PL 1993, c. 473, §31 (NEW). PL 1993, c. 473, §46 (AFF). PL 1995, c. 459, §§67,68 (AMD). PL 1999, c. 426, §§27,28 (AMD). PL 2003, c. 447, §§25-27 (AMD). PL 2005, c. 453, §58 (AMD). PL 2007, c. 515, §§7-9 (AMD). PL 2009, c. 253, §§41-46 (AMD). PL 2015, c. 447, §§27-29 (AMD). PL 2017, c. 141, §§3-7 (AMD). PL 2019, c. 320, §16 (AMD). PL 2019, c. 371, §§28-33 (AMD). PL 2021, c. 536, §3 (AMD). PL 2023, c. 304, Pt. A, §§20-23 (AMD). PL 2025, c. 114, §2 (AMD).

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