



OFFICE OF THE SECRETARY OF STATE

ELECTIONS DIVISION

DIRECTIVE OF THE SECRETARY OF STATE	SUBJECT: Recount State Measure 53	DIRECTIVE ISSUED AT THE REQUEST OF: Secretary of State	DATE: June 11, 2008	RULE NO.: 2008-3
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The Secretary of State as chief elections officer shall issue detailed directives necessary to maintain uniformity in the application, operation and interpretation of Oregon election laws. ORS 246.110 and 246.120
This document is an official directive of the Secretary of State.

Question:

What procedures should be followed in conducting a recount?

Answer:

Attached to and made a part of this directive are the instructions for preparing for and conducting the recount of ballots cast at the May 20, 2008 Primary Election for Ballot Measure 53.

The instructions provide information regarding:

- Automatic Recounts
- Preparing for the Recount
- Notice of Automatic Recounts
- County Elections Official's Notice of Recount
- County Elections Official's Notice of Breaking Seals
- Appointing Counting Boards
- Official Observers
- Preparation for Recount Procedures
- Ballot Counting Procedures
- Certification of Votes
- Certification of Costs

The directive also includes a checklist that may be used by the counting boards.

Bill Bradbury
Secretary of State

John Lindback
Elections Division Director

RECOUNT
Procedure for State Measure 53

Automatic Recounts (ORS 258.290)

The appropriate elections official shall determine if the difference in the number of votes cast for or against any measure is less than one-fifth of one percent (.002) of the total votes cast for and against the measure. If it is, the elections official shall order that a recount be held and the cost paid by the electoral district for which the measure was proposed.

Preparing for the Recount

Recounts shall be conducted pursuant to ORS Chapter 258 and the instructions and directives of the Secretary of State. **All recounts shall be conducted by hand.** The recount is not an adversarial proceeding and is to be conducted as openly and expeditiously as possible.

Notice of Automatic Recounts

If the official canvass of votes for a measure for which the Secretary of State is the filing officer reveals that an automatic recount is necessary, the Secretary of State shall direct the appropriate county elections officials to conduct a recount of the votes cast for that measure.

County Elections Official's Notice of Recount

The county elections official shall determine the date, time and place of the recount and notify the Secretary of State no later than 5 p.m. June 12, 2008. The Secretary of State will post this information on the Elections Divisions website.

At least one elector advocating for the measure and at least one elector opposing the measure are entitled to be present to watch the recount. ORS 258.211(2)(b). The Secretary of State will inform county elections officials if affected parties are interested in observing the recount.

County Elections Official's Notice of Breaking Seals

The county election official must not break any seals without notifying the Secretary of State of the date, time and place that the county elections official intends to break the seals. This notice must be provided at least one business day before the date scheduled for breaking the seals. This includes breaking the seals for purposes of organizing the ballots before the recount begins. (See "Preparation for Recount Procedures".)

Each time that a new recount is started, the Secretary of State must be notified that the seals will be broken again. Because counties may choose to seal and reseal ballots precinct by precinct, by groups of precincts contained in one box, or by the entire county, the breaking of seals may be a continuing activity throughout the recount. Each county should advise the Secretary of State of the process to be used in the county.

Appointing Counting Boards

As soon as the county elections official receives notice from the Secretary of State or determines it is necessary to conduct the recount, the official shall appoint as many four-member counting boards as needed from the list of electors of the county. It is recommended that one board be appointed for each 5,000 ballots to be recounted.

No member of the counting board shall have been a candidate for any office voted upon at the election. The members of a counting board shall not all be affiliated with the same political party. Compensation of counting boards shall be made at the rate which elections personnel were paid at the election before the recount, but at least the minimum wage required by state or federal law. ORS 258.200.

The county elections official or each counting board shall select a chair prior to beginning the recount.

Official Observers

In the case of a measure recount, one elector advocating and one elector opposing the measure may be present to observe the preliminary preparation of the recount. The Secretary of State, in the case of state measures shall select the advocacy and opposition organizations to act as the official affected parties in a measure recount. Each official measure organization selected by the appropriate elections official may designate an observer for each counting board. Each official measure organization must notify the Secretary of State of the one individual who will act as the official representative of that organization and who will sign the written authorizations provided to the observers.

All observers must have appropriate written authorization signed by the designated official of an affected organization in a measure. When appropriate, the Secretary of State shall provide to the county elections official the name of one person representing each affected organization who may sign written authorizations for observers from that organization, to ensure that the properly designated observers are the only observers allowed at counting boards.

Official observers shall not in any way interfere with the preparation or counting procedure. Any comments or questions about the proceedings in progress shall be directed to elections supervisory personnel, not to the counting boards. If at any time any observer creates a distraction or otherwise impedes the progress of the preparation or the count, the proceedings will be stopped and corrective action may be taken by the elections official.

Official observers have a statutory right to observe the recount for the purpose of assuring the integrity of the recount procedure. Official observers do not have any other role and do not have the right to address a counting board concerning the board's handling of individual ballots. Any observed procedural irregularity or perceived error may be reported to elections supervisory personnel who are to take corrective actions, if necessary. Observers may wish to keep written notes of comments on the handling of individual ballots.

Elections officials may approve one observer coordinator on site for each affected measure position to assist with the observers. This coordinator can not be a second observer at any table, and should be located away from the individual tables. Allowing observer coordinators, in addition to the observers, is discretionary on the part of elections officials.

One person from each of the affected parties involved in other recounts that have not yet been completed may also be present for other recounts. All affected parties have an interest in observing all recounts preceding their recount, including ones that they are not directly involved with. This one individual cannot be at any recount table as an observer. However, this one designated person may watch the entire recount to ensure that the ballots are properly handled and are properly resealed. Once the affected party's recount is complete, that affected party no longer needs to be notified of any subsequent recount activity and no longer has any observer status.

Preparation for Recount Procedures

Preparation for recount may include any preliminary preparation of the ballots that the elections official deems necessary.

If preliminary preparation of the ballots is deemed necessary by the elections official and it **requires seals to be broken** the elections official, or designated staff member, must first notify the Secretary of State. The notice shall include the date, time and place at which such preparation will occur. This notice must be provided at least one business day before any seals are broken. The elections official shall then assemble all ballot containers holding ballots to be recounted. Authorized observers, if present, may examine the seals on the containers to make certain they have not been broken or tampered with. The seals may then be broken in the presence of the authorized observers. The containers shall be resealed upon completion of the preparatory procedures.

Some election-related materials are not part of a recount but are available to be examined. At the request of an affected party, these materials shall be reviewed as soon as practicable following a request, at a time designated by the elections official. These items include all ballot return envelopes.

Challenge envelopes are NOT part of the recount and are not available for examination. Pursuant to ORS 254.426(3), challenge envelopes are confidential.

Ballot Counting Procedures

Before starting the recount, the elections official, or designated staff member, shall assemble all ballot containers and other materials pertinent to the recount. The chair of each counting board shall examine the seals of the containers to make certain they have not been broken. The seals on all containers holding ballots to be recounted shall be broken in the presence of the counting board and authorized observers.

The ballots shall be taken from the container. For measure 53, every cast ballot must be recounted. Each counting board shall recount only one precinct at a time. The ballots to be recounted shall be separated into the following stacks:

- 1) yes
- 2) no
- 3) overvotes,
- 4) undervotes,
- 5) duplicated ballots, and
- 6) rejected ballots, if any.

Any ballot that was duplicated by the original election board shall be checked against the original ballot to insure that the vote for the measure being recounted was properly duplicated. Duplicated ballots shall be sorted into appropriate stacks according to how the ballots were voted. The original ballot should then be resealed.

The four member counting boards shall divide into two-person teams after all of the ballots have been separated into the appropriate stacks and inspected. Each two-person team shall count each stack of ballots and record the count on scratch paper. The teams shall compare their counts. If they agree, the number shall be posted to the return sheet provided. If the counts do not agree, each stack must be recounted again until agreement is reached.

An overvote occurs when an elector marks more than the allowable choices for a particular office or measure. An undervote occurs when the elector does not mark any choice for a candidate or a measure. Each overvote and undervote ballot must be examined to confirm that the voter did, in fact, cast an overvote or an undervote.

During the original count there may have been some ballots rejected by elections personnel in the preinspection process. These ballots should be in a 'Rejected Ballots' envelope. Each of these ballots must be re-inspected and a decision made by at least three of the members of the counting board whether to count the ballot not previously counted. If the decision is to count the ballot, it is to be counted in the same manner as all other ballots. The rejected ballots are to be signed or initialed and dated by the recount board chair. If any ballots that were originally not counted are determined to be countable, this fact and the quantity counted shall be noted on the 'Rejected Ballots' envelope to explain the discrepancy between the original count and the recount.

The county elections official will compare the vote count reported by the counting board with the original vote count. Any difference in the vote count prepared by the counting board and the original count must be reviewed by the county elections official before the recount of a precinct is considered complete. All materials must be resealed. Resealing may be done precinct by precinct, in groups of precincts contained in one sealable container, or as a county as a whole, in the county elections official's discretion. All ballots must be resealed at the close of business each day if ballots are not maintained in a secured room.

The results for individual precincts are considered unofficial until they have been abstracted and certified by the county elections official.

Certification of Votes

If all precincts in which votes were cast on a measure are recounted, the results of the recount are the official results of the election. As soon as practicable after completion of the recount, the elections official shall certify the abstract of recounted votes to the Secretary of State. This certification should be delivered to the Secretary of State as soon as possible, by any delivery method that provides a written record. In the case of a measure election, the abstract must be certified to the elections official who issues the proclamation.

Certification of Costs

Not later than the **thirtieth** (30th) day after the recount is completed, the cost shall be certified to the Secretary of State pursuant to ORS 258.221(3). If the county is conducting multiple recounts, the certified costs are due thirty days after the completion of the last recount. ORS 258.270 requires the Secretary of State to equitable apportion the costs if multiple recounts are conducted.

Pursuant to ORS 258.231, the certification of costs may include:

- Payment to recount boards at a rate not to exceed the rate at which such elections personnel were paid during the election prior to the recount;
- Payment to additional employees required to conduct the recount and overtime payment to regular employees who are eligible to receive overtime payments;
- Postage and telephone charges directly related to the recount.
- The costs for security;

The certification of costs of a recount shall not include:

- General administrative costs;
- Allowances for meals or lodging.

Recommended Counting Board Checklist

- _____ 1. Check the seals on all pertinent containers to be sure they are intact. Provide each counting board with ballots for one precinct.
- _____ 2. Separate the ballots into the following stacks:
 - _____ One stack for "Yes" votes
 - _____ One stack for "No" votes
 - _____ Overvoted ballots
 - _____ Undervoted ballots
 - _____ Ballots that were duplicated
 - _____ Rejected ballots
- _____ 3. Check all duplicated ballots against the original to see that the recount race on the duplicate is an exact copy of the original and sort duplicate ballots into the above stacks by how voted.
- _____ 4. Inspect all rejected ballots. If the majority of the board decides that a ballot should have been counted, count the ballot and place into a stack by how voted.
- _____ 5. Divide each four member counting board into teams of two. Each two-member team count ballots in each stack for the precinct and records the count.
- _____ 6. Compare the counts and recount each stack until each team agrees on the final count.
- _____ 7. Record the final count on a return sheet.
- _____ 8. Return the completed precinct materials to the elections official. Issue the next precinct. Repeat the process step-by-step for each precinct that is recounted.