

Procedures to Request and Conduct a Recount

This outline summarizes Texas election law with respect to recounts as currently codified. We have made every effort to insure the accuracy of this summary outline, but this material cannot substitute for the statutory source material and relevant interpretive case law and administrative regulations. All statutory references are to the Texas Election Code (the "Code") unless otherwise noted.

Recount request deadlines occur soon after the canvass, and as noted below, a recount must be requested not later than two days following the canvass. Therefore, you are encouraged to make copies of this outline available to any interested parties, including candidates, election officials, voters, and the general public.

I. Introduction:

A. Basics

1. Recount procedures are used **only** to recount the votes in a particular race (office) or measure.
2. A recount does not have the scope of an election contest in court, i.e., the recount committee will not look at the manner in which voters were qualified to vote in person or by mail.
3. The governing body of an entity cannot conduct a recount on its own motion, e.g., at the canvass.
4. Any entry into the ballot box other than in response to a proper recount request or in accordance with other Code procedures (e.g., election contest, criminal investigation) is an **unauthorized entry carrying criminal penalties**.

B. Common Misconceptions - the recounting of a particular race:

1. DOES NOT authorize a recount in another race;
2. DOES NOT delay canvassing, but the canvassing authority must make a note on the canvass that a recount has been requested. Submission of a recount petition delays the issuance of a certificate of election and qualification for the office involved in the recount pending completion of recount;
3. DOES NOT authorize the requalifying of voters; or
4. DOES NOT authorize more than one recount of a race (a race can only be recounted once).

II. Recount Supervisor [Sec. 213.001]

A. Definition: The recount supervisor is the authority designated by Section 213.001 (see II. B. below) to manage and supervise a recount in election precincts in the jurisdiction of the local canvassing authority [Sec. 211.002(7)]. The Recount Supervisor is the presiding officer of the local canvassing authority or the designee of same. [Secs. 213.001, [211.004](#)].

B. Presiding officer of local canvassing authority (governing body).

1. Commissioners court – county judge
2. Primary election-county chair
3. City election - mayor
4. School election - president of school board
5. Water district election - president of board of directors
6. Hospital district election - president of board of directors
7. Other political subdivision elections - president of the board of directors

III. Recount Coordinator [Sec. 211.002(6)]

A. Definition: The authority to whom a petition for an initial or expedited recount is submitted under Section 212.026 or 212.082. The Recount Coordinator is effectively the presiding officer of the final canvassing authority. The final canvassing authority is often the same as the local canvassing authority.

B. Presiding officer of **final** canvassing authority (county judge for county and precinct races) (see II. B. above for listing). [Secs. 212.026, 212.082].

1. Primary election-county chair (county and precinct races); state chair (state and district races)
 2. November election for state and county officers-county judge (county and precinct races); secretary of state (state and district races) [Sec. 67.010(b)]
- C. If the presiding officer of the local canvassing authority is a candidate in a race for which a recount is to be made, he or she is ineligible to serve [Sec. 211.004(a)]. The following authority shall serve as substitute coordinator or supervisor if the presiding officer is ineligible or unable to serve:
1. County clerk, if a commissioners court is the canvassing authority.
 2. For a city, the city secretary;
 3. For a political subdivision other than a county or city, the secretary of the governing body or the person performing the duties of secretary under the Election Code. [Sec. 211.004(a)].
 4. For a primary, the secretary of the county executive committee, if a political party's county executive is the canvassing authority and the committee has a secretary who is a member of the committee, or the county clerk if the committee does not have a member-secretary.

IV. **Who May Petition For Recount**

- A. **Candidate** for a nomination or election to an office **only** if the candidate is shown by the election return **not** to be nominated or elected. [Secs. 212.022]. A winning candidate in certain circumstances affecting officers with a state level canvass may request a recount.
- B. **For a measure election:**
 1. The campaign treasurer of a specific-purpose political committee that was involved in the election;
 2. Or any 25 or more persons, acting jointly, who were eligible to vote in the election. [Sec. 212.024(b)]

V. **Petition (Application) Contents** [Sec. 212.001]

(Sample Form following this outline.)

- A. Must be written.
- B. Contents:
 1. Identify the office or measure (and side of measure requestor represents) for which a recount is requested;
 2. State ground for recount; no ground required for recount of electronic voting system results. [Sec. 212.0241];
 3. Identify election precincts for which recount is requested (see VIII Scope of Recount for details), and method of voting;
 4. If requesting a recount of electronic voting system ballots, specify manual or electronic recount.

NOTE: If more than one petition for recount is filed and more than one method of counting is requested, a manual recount takes precedence over an electronic recount. An electronic recount using a **corrected** program takes precedence over electronic recount using the same program as the **original** count;

5. Give petitioning candidate's name, mailing address, and at least one telephone number at which he or she can receive notice. Petitioner may designate an agent to receive notice if petitioner is not a resident of this state or if there is more than one person requesting the recount;
6. Give name of each opposing candidate, a mailing address and at least one telephone number at which each can receive notice;
7. Petitioning candidate or his or her agent must sign; and
8. Must be accompanied by the required deposit. [Sec. 212.001]

VI. **Grounds** [Sec. 212.022 – 212.0241]

- A. Difference between number of votes received by petitioner and number of votes received by the person who was elected or is entitled to a place on the runoff election ballot is **less than 10%** of the number of votes received by the person elected or entitled to a place on the runoff ballot (same formula for votes for and against a measure).

Example: Jane 2000
 Doe
 John
 Doe 1850
 difference 150
10% of 2000 is 200,
therefore, John may
request a recount;

- B. The number of votes received by ALL candidates in the race (not just the top vote-getters) is less than 1000; or,
- C. An election judge swears that he or she counted paper ballots incorrectly (this must be certified by the Secretary of State, and it does not happen very often).
- D. No ground required for recount of electronic system results. [Sec. 212.0241].

VII. **Petition Recipient** [Sec. 212.026]

- A. Request should be submitted to the presiding officer of the final canvassing authority or to the substitute recount coordinator, see Sections II and III of this outline for listing. See also Sec. 1.007, authorizing employees to accept filings at authority's place of business.
- B. If the presiding officer of the final canvassing authority is not the recount coordinator, the presiding officer shall promptly deliver any petition submitted to him/her to the substitute coordinator. A petition otherwise timely submitted shall not be deemed invalid because of this.

VIII. **Scope of Recount**

- A. **Offices or measures without state level canvass** (i.e., city, school, other political subdivisions; county and precinct offices in a primary or November general election): request must include **every election day precinct** in the territory from which the officer is elected (unless the ground is counting errors under Section 212.034). [Sec. 212.131].
- B. **Offices or measures with state level canvass** (i.e., statewide and district offices* in a primary or November general election):

*Note: all district offices are canvassed at the state level, regardless of whether they consist of one or more counties. [Secs. 172.119, 67.010].

- 5. In an election for which there is a final canvass at the state level, an initial recount of votes cast in a particular voting system may include any one or more counties covered by the election, but must include all the election precincts in which a particular voting system is used in each county recounted. [Sec. 212.131].
- 6. In an election for which there is a final canvass at the state level, an initial recount of votes cast on paper ballots (i.e., hand-counted on election day) must include each election precinct in which paper ballots were used in the election, except as provided by Section 212.131(d) (counting errors under Section 212.034). [Sec. 212.131].

- C. In general, all votes cast in the election precincts requested are subject to recount. [Sec. 212.135; for more details see Secs. 212.136, 212.137, 212.034, 212.132].
- IX. **Deposit** [Secs. 212.111-212.113, Ch. 215]
- A. The amount is based in part on the number of precincts. Early voting ballots are considered to be a (one) separate precinct. Since one polling place per election day precinct is the rule in the Code, take the number of polling places on election day and add one for early voting to figure the deposit.
 - B. Calculation of deposit:
 - 0. \$60 for each precinct in which regular paper ballots were used; and
 - 1. \$100 for each precinct in which an electronic voting system was used.
 - C. The following is a complete list of what costs are assessable against a person requesting a recount. These costs may be paid from the deposit.
 - 0. Compensation of recount committee members;
 - 1. Charges for use of automatic tabulating equipment; and
 - 2. Service charge of \$15 for each recount supervisor as reimbursement to the fund from which telephone, postage and other office expenses of the recount supervisor(s) are paid.
 - 3. In an election for which the final canvass is at the state level (statewide office or measure, district office, or president or vice-president of the United States), a service charge of \$15 for each recount supervisor and an additional \$50, paid to the recount coordinator, for reimbursement to the fund from which telephone, postage and other office expenses of the recount supervisor(s) are paid.
 - 4. NEW LAW: The actual expense incurred in producing a printed ballot image from an electronic voting system record. Senate Bill 910 (2013).
 - D. Form of Payment.
The deposit must be in the form of cash, cashier's check, or money order made payable to the recount coordinator and must accompany the petition. [Sec. 212.111]
 - E. Refund and Assessment of Costs.
 - 0. Recount supervisor shall maintain records of the recount costs.
 - 1. If the outcome of the election is changed by the recount, the entire deposit is returned to the petitioner. If the **outcome** does not change, the costs listed above are paid from the deposit. If the deposit is insufficient to cover the costs, the petitioner is responsible for the additional costs. Any part of the deposit remaining after the costs are paid is returned to the petitioner. A change in "outcome" means that the winner of the election changed (officer), or the result as to whether a proposition passed or failed changed (measure).
 - 2. Where more than one request for a recount is filed and the petitioner's chosen counting method is not used, the petitioner is entitled to a refund less any necessary expenditures incurred before the other counting method was chosen.
- X. **Deadline For Filing**
- A. Regular: (plurality vote, or majority vote but only two candidates) If the entity elects by PLURALITY (a majority vote is not required), OR, if there were just TWO candidates in the race, the deadline is the **later** of 5:00 p.m. of the 5th day after election day or 5:00 p.m. of the 2nd day after the canvass. Candidates are elected by plurality vote unless the law (e.g., statute, home-rule charter, court order) expressly provides otherwise. [Secs. 2.001, 212.028].
 - B. Expedited: When a majority vote (NOT plurality) is required AND there were more than two candidates, the deadline is the **later** of 2:00 p.m. of

the third day after election day or 2:00 p.m. of the first day after the date of the local canvass. **If the deadline falls on a Saturday, Sunday, or legal state holiday, the deadline is extended to 10:00 a.m. of the next business day.** [Secs. 2.025, 2.023, 212.083, 212.088].

C. Regarding all recount deadlines: The request is considered submitted AT THE TIME OF ITS RECEIPT. [Sec. 212.003].

XI. **Review of Petition** [Secs. 212.029 - 212.030, 212.085]

- A. Recount coordinator has 48 hours to review petition and must promptly notify the petitioner of each defect. [Sec. 212.029].
- B. Any amendment to a petition in response to a notice of a defect must be submitted by the deadline for submitting the petition, or by 5:00 p.m. of the second day after notice of the defect is received, whichever is later. [Sec. 212.030].

XII. **Approval of Petition**

If petition is approved, the recount coordinator must note approval and the date of approval on petition. The coordinator must notify the recount supervisor, who, with written approval of coordinator, must order the recount. (County judge serves as coordinator **and** supervisor where commissions court is **final** canvassing authority.) The coordinator must notify the following:

- A. Petitioner and each opposing candidate of approval. [Secs. 212.031 & 212.032].
- B. In a recount on a measure, the campaign treasurer of a political action committee on the opposite side of the petitioner, or a person eligible to vote in the election who is representative of the interests of the other side if there is no political action committee. [Sec. 212.032].

XIII. **Time and Place**

Recount supervisor, with the written approval of the recount coordinator (if a different person), must order a recount to be held not later than the 7th day after the date the petition is approved, make arrangements for conducting recount, and set time and place for beginning recount. [Sec. 212.031].

XIV. **Notice**

Recount supervisor must give "personal notice" to petitioner and all opposing candidates at least 18 hours before the recount is set to begin. This time period can be waived and the recount may start earlier if ALL persons entitled to notice agree to start earlier. Notice **MUST** include time and place and number of counting teams designated. [Secs. 213.009 & 213.010].

XV. **Recount Committee**

- A. Committee is composed of at least four members, appointed by the recount supervisor. The recount supervisor also names the chair of the committee.
- B. The recount coordinator may appoint one member of each counting team.
- C. Members must meet the qualifications of election day clerks. Exception: A person who served as a judge on election day or of the early voting ballot board is ineligible to serve on the recount committee.
- D. Committee members are entitled to an hourly rate of pay set by the recount supervisor.
- E. In a recount other than one on automatic tabulating equipment, the committee functions as one or more counting teams composed of three members each. [Secs. 213.002-213.005].

XVI. **Who May be Present**

- A. Only persons specifically permitted to attend by law may be in the room where the recount is taking place or in a hallway within 30 feet of the entrance to the room. [Sec. 213.015]. Those persons are:

0. The recount chair and committee members. [Sec. 213.002].
 1. The candidates and their representatives.
(Sample Form following this outline.)
 - a. Each candidate may have two representatives if there is just one counting team or representatives in a number equal to the number of counting teams if there is more than one counting team. The representatives must present certificates of appointment, and they have the same rights, duties, and privileges of election day poll watchers; however, the Code did not specify the same eligibility requirements. [See, Sec. 213.013(f) for certificate requirements].
 - b. Photocopying by a Representative-On request of a person entitled to appoint representatives to serve at the recount, the recount committee chair must permit the person to photocopy, under the chair's supervision, any ballot challenged by the person or by the person's representative. The person must pay a reasonable charge for making the copies, and if no copying equipment is available, may supply the equipment at his or her own expense. [Sec. 213.013(i)].
 2. The custodian of the voted ballots. [Sec. 213.001(c)].
 3. The recount supervisor. [Sec. 213.002].
 4. Any state or federal inspectors.
- B. During any printing of ballots cast using a DRE, for use in a recount, the full recount committee is not required to be present and the chair may decide how many members should be present. Each candidate is entitled to be present at the printing and to have the same number of representatives at the printing as counting teams designated for the recount. [Sec. 213.016].

XVII. Retrieval of Erroneously-Placed Records

If the election records custodian determines that election records were placed in the locked ballot boxes in error (e.g., all four copies of the "combination form" or other records were mistakenly locked in the ballot box), it is the opinion of the Elections Division that during the time of the authorized entry into the boxes for purposes of the recount, the records custodian may retrieve the documents as necessary to comply with the Election Code and to avoid the necessity of a court order. [Sec. 66.059]. The retrieval should be in the presence of the recount chair and other authorized persons, and the records custodian should make a note of the retrieval in the election records. (See Section I above, ballot box may be unlocked only as authorized by law; unauthorized entry carries criminal penalties.)

XVIII. Access to Ballots, Equipment, and Other Material

On presentation of a written order signed by the recount coordinator, the custodian of the voted ballots, voting machines, tabulating equipment, etc. shall make these items available to the recount committee. [Sec. 213.007]. Pursuant to the federal Help America Vote Act, the audit log of the electronic voting system must be available upon request.

XIX. Determining Counting Questions

The chair of the recount committee determines counting questions in accordance with the Code. [See Sec. 65.009; see also the current **Qualifying Voters on Election Day Handbook for Election Judges and Clerks** for detailed counting rules]. If the recount supervisor is present, he or she may exercise the authority of the chair. The chair must prepare a written statement of the reasons for rejecting a particular ballot, and place rejected ballots in a separate container. [Secs. 213.006 & 213.002].

XX. **Effect on Canvass**

A request for a recount does not delay the canvass, but the canvassing authority must make a note on the canvass that a recount has been requested. [Sec. 212.033]. Submission of a recount petition delays the issuance of a certificate of election and qualification for the office involved in the recount pending completion of recount. Therefore, no candidate, including a candidate for an unexpired term of office, may either receive a certificate of election or qualify for an office involved in a recount until the recount is finished. Nevertheless, this provision does not affect a candidate who has already received a certificate of election and qualified for an office before a recount petition involving that office is submitted. [Sec. 212.0331].

XXI. **Reports and Notice of Outcome of Recount**

- A. Committee Report - Committee chair makes a precinct-by-precinct report of the committee's count, and delivers one copy to the recount supervisor and one copy to the custodian of the election records. [Sec. 213.012]. The recount supervisor must promptly notify the recount coordinator of the result of the recount. [Sec. 213.054].
- B. Supervisor's Report – Upon receipt of the committee's report, the recount supervisor shall prepare and sign a precinct-by-precinct report, using the report submitted by the recount committee and the original election returns for any precinct not counted by the committee. This report serves as the official statement of the vote count in the local canvassing authority's jurisdiction. The supervisor shall deliver one copy of this report to the recount coordinator and one copy to the custodian of the election records. [Sec. 213.055].
- C. After receiving the supervisor's report, the recount coordinator shall determine the result of the recount and notify the petitioner, opposing candidates, and any other people entitled to notice under Section 212.032.

XXII. **Canvass Following Recount**

- A. If the recount changes the **number** of votes, regardless of change in outcome, the canvassing authority must conduct a canvass for the office or measure involved as soon as practicable after completion of the recount, using the committee report in the supervisor's possession. The new canvass is the official canvass for all purposes, including calculating election contest filing deadlines. [Sec. 213.033].
- B. If the canvassing board consists of **more** than 5 members, the presiding officer and four other members of the canvassing board may canvass the recount, if required to do so by the presiding officer. [Sec. 213.014].
- C. For the canvass following an expedited recount, the recount coordinator may determine the outcome of the recount via a telephone call or fax received from the recount supervisor, rather than waiting for the supervisor's written report, if waiting would delay the canvass and disrupt the orderly conduct of the runoff election [Sec. 213.058].

XXIII. **Automatic Recount [Ch. 216]**

- A. **In an election requiring a plurality vote**, if two or more candidates for the same office tie for the number of votes required to be elected, an automatic recount must be conducted before a second election can be held, **unless** the tying candidates cast lots to resolve the tie, or one of them decides to withdraw. [Ch. 216; Sec. 2.002(i)]. If the automatic recount resolves the tie, a second election need not be held.
- B. **In an election requiring a majority vote**, if more than two candidates tie for the highest number of votes, or if two or more candidates tie for the second highest number of votes, an automatic recount must be conducted to determine who will be the runoff candidates, before

resorting to casting lots in order to resolve the tie. [Sec. 2.023 (b) and (c)].

- C. If the candidates in a runoff election tie, an automatic recount must be held before the tying candidates can cast lots to determine the winner.
- D. In order to initiate an automatic recount, the presiding officer of the canvassing authority shall request the recount in the same manner as a recount petitioner as outlined in this petition except there is no deposit filed with the request. [Sec. 216.003].
- E. The method of counting votes in an automatic recount is the same method of counting used in the election that resulted in the tie vote. [Sec. 216.004].
- F. The costs of an automatic recount shall be paid by the political subdivision that is served by the presiding officer of the local canvassing authority. [Sec. 216.005].