

CHAPTER 8235

SECRETARY OF STATE

RECOUNTS

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8235.0200 AUTOMATIC AND ADMINISTRATIVE RECOUNTS.

This chapter establishes procedures for the conduct of all automatic and administrative recounts provided for in Minnesota Statutes, sections 204C.35 and 204C.36. The secretary of state or secretary of state's designee is the recount official for recounts conducted by the State Canvassing Board. The county auditor or auditor's designee is the recount official for recounts conducted by the county canvassing board. The county auditor or auditor's designee shall conduct recounts for county offices. The municipal clerk or clerk's designee is the recount official for recounts conducted by the municipal governing body. The school district clerk or clerk's designee is the recount official for recounts conducted by the school board, or by a school district canvassing board as provided in Minnesota Statutes, section 205A.10, subdivision 5. When the person who would otherwise serve as recount official is a candidate for the office to be recounted, the appropriate canvassing board shall select an election official from another jurisdiction to conduct the recount. "Legal adviser" means counsel to the recount official and the canvassing board for the office being recounted. The scope of an automatic or administrative recount is limited to the recount of the ballots cast and the declaration of the person nominated or elected.

Statutory Authority: *MS s 204C.361*

History: 8 SR 1348; 12 SR 2215; 17 SR 8

8235.0300 NOTICE.

Within 24 hours after determining that an automatic recount is required or within 48 hours of receipt of a written request for a recount and filing of a security deposit if one is required, the official in charge of the recount shall send notice to the candidates for the office to be recounted and the county auditor of each county wholly or partially within the election district. The notice must include the date, starting time, and location of the recount, the office to be recounted, and the name of the official performing the recount. The notice must state that the recount is open to the public, and in case of an automatic recount, that the losing candidate may waive the recount.

Statutory Authority: *MS s 204C.361*

History: 8 SR 1348; 19 SR 593

8235.0400 SECURING BALLOTS AND MATERIALS.

The official who has custody of the voted ballots is responsible for keeping secure and making available to the recount all election materials. Registration cards of voters who registered on election day may be processed as required by part 8200.2700. All other election materials must be kept secure by precinct as returned by the election judges until all recounts have been completed and until the time for contest of election has expired.

Statutory Authority: *MS s 204C.361*

History: 8 SR 1348

8235.0500 SECURING VOTING MACHINES.

Where lever voting machines or electronic voting systems are used, the machines and marking devices must remain sealed and locked under the supervision of the municipal clerk. No candidate, candidate's representative, or other person, except an election official carrying out election responsibilities, may be granted access to the voting machines or marking de-

vices. The election official having custody of the machines or marking devices is responsible for security of the machines and restricting access to them. All counting programs for electronic voting systems must be preserved in the manner required for voted ballots, and the official in charge of the jurisdiction shall certify that the true program used in the election has not been altered in any way and is available for the recount.

Statutory Authority: *MS s 204C.361*

History: 8 SR 1348

8235.0600 FACILITIES AND EQUIPMENT.

All recounts must be accessible to the public. In a multicounty recount the secretary of state may locate the recount in one or more of the election jurisdictions or at the site of the canvassing board. Each election jurisdiction where a recount is conducted shall make available without charge to the recount official or body conducting the recount adequate accessible space and all necessary equipment and facilities. Where an electronic voting system is used, the jurisdiction must make available without charge to the recount official or body conducting the recount the counting program used in the election, computers, services of technical personnel, and other equipment and facilities necessary to conduct the recount.

Statutory Authority: *MS s 204C.361*

History: 8 SR 1348

8235.0700 GENERAL PROCEDURES.

At the opening of a recount the recount official or legal adviser shall present the procedures contained in this rule for the recount. The custodian of the ballots shall make available to the recount official the precinct summary statements, the precinct boxes or containers containing the sealed envelopes of voted ballots, and any other election materials requested by the recount official. No ballots or election materials may be handled by candidates, their representatives, or members of the public. The recount official shall arrange the counting of the ballots so that the candidates and their representatives may observe the ballots as they are recounted. If other election materials are handled or examined by the recount officials, the candidates and their representatives may observe them. The recount official shall ensure that public observation does not interfere with the counting of the ballots. The recount official shall prepare a summary of the recount vote by precinct.

Statutory Authority: *MS s 204C.361*

History: 8 SR 1348

8235.0800 COUNTING AND CHALLENGING BALLOTS.

Ballots must be recounted by precinct. The recount official shall open the sealed envelope of ballots and recount them in accordance with Minnesota Statutes, section 204C.22. If a candidate or candidate's representative disagrees with the recount official's determination of whether and for whom the ballot should be counted, the ballot may be challenged. At a recount of a ballot question, the manner in which a ballot is counted may be challenged by the person who requested the recount or that person's representative. Challenges may not be automatic or frivolous and the challenger must state the basis for the challenge. The precinct name, the reason for the challenge, and the name of the person challenging the ballot must be marked on the back of each challenged ballot before it is placed in an envelope marked "Challenged Ballots." After the count of votes for the precinct has been determined, all ballots except the challenged ballots must be resealed in the ballot envelopes and returned with the other election materials to the custodian of the ballots. After the count of votes for all precincts has been determined, the challenged ballot envelope must be sealed and kept secure for presentation to the canvassing board.

Statutory Authority: *MS s 204C.361*

History: 8 SR 1348; 17 SR 8

8235.0900 LEVER VOTING MACHINES.

In precincts where lever voting machines are used, the recount official shall compare the number of votes cast for each candidate as shown on the voting machine to the number of

votes for each candidate recorded by the election judges from the same voting machine. Machines must be read by precinct. Only the recount official and authorized election officials may open, read, or in any way touch or handle the voting machine. The recount official shall arrange the counting so that the candidates and their representatives may observe the recorded votes on the voting machines. Absentee paper ballots must be counted in accordance with part 8235.0800. After the count of votes has been determined for the precinct, the absentee ballots must be resealed in their envelope and returned with the other materials to the custodian of the ballots. A statement of recount results must be made for each precinct showing the machine number for each machine and the number of votes recorded for each candidate recorded on that machine.

Statutory Authority: *MS s 204C.361*

History: 8 SR 1348

8235.1000 ELECTRONIC VOTING SYSTEMS.

In precincts in an election jurisdiction where an electronic voting system is used, the recount official shall determine if the ballots are to be recounted on the automated equipment or manually. If the recount official is the secretary of state or the secretary's designee, the duplicate counting program certified to the secretary of state by the person preparing the program may be used to recount the ballots. If the ballots are recounted on the automated equipment, a test of the program and counting equipment as provided in part 8230.5100 must be made immediately prior to the recount, and a test sample of the ballots must also be counted manually. Unless the jurisdiction has only one precinct, the test sample shall be from two precincts, one selected by each candidate. In each of the precincts selected, the sample shall be at least three percent of the ballots cast or 50 ballots, whichever is greater. The test sample must also be counted on the automatic tabulating equipment. Access to the immediate area of the automatic counter or computer is limited to the recount official and legal adviser, officials of the election jurisdiction, the candidates and their representatives, and the technical persons necessary to the operation of the counting equipment. An observation area must be provided for the public. Ballots must be recounted by precinct. Paper absentee ballots must be counted in accordance with part 8235.0800. A report of recount results must be provided for each precinct. After the count of ballots for a precinct has been determined, all ballot cards and paper absentee ballots must be resealed in the ballot container and returned with the other materials to the custodian of the ballots.

Statutory Authority: *MS s 204C.361*

History: 8 SR 1348; 10 SR 1690

8235.1100 CANVASSING BOARD.

The recount official shall present the summary statement of the recount and any challenged ballots to the canvassing board. The candidate or candidate representative who made the challenge may present the basis for the challenge to the canvassing board. The canvassing board shall rule on the challenged ballots and incorporate the results into the summary statement. The canvassing board shall certify the results of the recount. Challenged ballots must be returned to the election official who has custody of the ballots.

Statutory Authority: *MS s 204C.361*

History: 8 SR 1348

8235.1200 SECURITY DEPOSIT.

When a bond, cash, or surety for recount expenses is required by Minnesota Statutes, section 204C.35 or 204C.36, the governing body or recount official shall set the amount of security deposit at an amount which will cover expected recount expenses. In multicounty districts, the secretary of state shall set the amount taking into consideration the expenses of the election jurisdictions in the district and the expenses of the secretary of state. The security deposit must be filed during the period for requesting an administrative recount. In determining the expenses of the recount, only the actual recount expenditures incurred by the recount

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official and the election jurisdiction in conducting the recount may be included. General office and operating costs may not be taken into account.

Statutory Authority: *MS s 204C.361*

History: 8 SR 1348