

## CHAPTER 204C

## ELECTION DAY ACTIVITIES

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**204C.01 DEFINITIONS.**

The definitions in chapter 200 apply to this chapter.

**History:** 1981 c 29 art 5 s 1

**204C.02 APPLICATION.**

This chapter applies to all elections held in this state except as otherwise provided by law.

**History:** 1981 c 29 art 5 s 2; 1987 c 266 art 1 s 34

**204C.03 PUBLIC MEETINGS PROHIBITED ON ELECTION DAY.**

**Subdivision 1. School districts; counties; municipalities; special taxing districts.** No special taxing district governing body, school board, county board of commissioners, city council, or town board of supervisors shall conduct a meeting between 6:00 p.m. and 8:00 p.m. on the day that an election is held within the boundaries of the special taxing district, school district, county, city, or town. As used in this subdivision, "special taxing district" has the meaning given in section 275.066.

**Subd. 2. State colleges and universities.** Except for regularly scheduled classes, no Minnesota state college or university shall schedule an event between 6:00 p.m. and 8:00 p.m. on the day that an election is held in any political subdivision in which the university or college is located.

**Subd. 3. Public elementary and secondary schools.** Except for regularly scheduled classes, a public elementary or secondary school may not schedule a school sponsored event between 6:00 p.m. and 8:00 p.m. on the day that a regularly scheduled election is held in any political subdivision in which the school is located.

**Subd. 4. State government.** No state agency, board, commission, department, or committee shall conduct a public meeting on the day of the state primary or general election.

**History:** 1981 c 29 art 5 s 3; 1983 c 303 s 12; 1991 c 221 s 2; 1996 c 395 s 10; 1Sp2001 c 10 art 18 s 27

**204C.04 EMPLOYEES; TIME OFF TO VOTE.**

Subdivision 1. **Right to be absent.** Every employee who is eligible to vote in an election has the right to be absent from work for the purpose of voting during the morning of the day of that election, without penalty or deduction from salary or wages because of the absence. An employer or other person may not directly or indirectly refuse, abridge, or interfere with this right or any other election right of an employee.

Subd. 2. **Elections covered.** For purposes of this section, "election" means a regularly scheduled state primary or general election, an election to fill a vacancy in the office of United States senator or United States representative, or an election to fill a vacancy in the office of state senator or state representative.

Subd. 3. **Penalty.** A person who violates this section is guilty of a misdemeanor, and the county attorney shall prosecute the violation.

**History:** 1981 c 29 art 5 s 4; 1988 c 578 art 1 s 3; 1991 c 245 s 1; 1995 c 20 s 1; 2000 c 260 s 27

**204C.05 STATE ELECTIONS; HOURS FOR VOTING.**

Subdivision 1. **Opening and closing times.** Except as otherwise provided in this section, at the state primary and the state general election the hours for voting in every precinct in the state shall begin at 7:00 a.m. and shall extend continuously until 8:00 p.m.

Subd. 1a. **Elections; organized town.** The governing body of a town with less than 500 inhabitants according to the most recent federal decennial census, which is located outside the metropolitan area as defined in section 473.121, subdivision 2, may fix a later time for voting to begin at state primary, special, or general elections, if approved by a vote of the town electors at the annual town meeting. The question of shorter voting hours must be included in the notice of the annual town meeting before the question may be submitted to the electors at the meeting. The later time may not be later than 10:00 a.m. for special, primary, or general elections. The town clerk shall either post or publish notice of the changed hours and notify the county auditor of the change 30 days before the election.

Subd. 1b. **Elections; unorganized territory.** An unorganized territory or unorganized territories which constitute a voting district may have shorter voting hours if at least 20 percent of the registered voters residing in the voting district sign a petition for shorter hours and present it to the county auditor. The later time may not be later than 10:00 a.m. for special, primary, or general elections. The county auditor shall either post or publish notice of the changed hours, within the voting district, 30 days before the election.

Subd. 2. **Voters in line at closing.** At or before the hour when voting is scheduled to begin, the election judges shall agree upon the standard of time they will use to determine when voting will begin and end. Voting shall not be allowed after the time when it is scheduled to end, unless individuals are waiting in the polling place or waiting in line at the door to register or to vote. The voting shall continue until those individuals have been allowed to vote. No individual who comes to the polling place or to a line outside the polling place after the time when voting is scheduled to end shall be allowed to vote.

**History:** 1981 c 29 art 5 s 5; 1983 c 303 s 13; 1985 c 169 s 6

**204C.06 CONDUCT IN AND NEAR POLLING PLACES.**

Subdivision 1. **Lingering near polling place.** An individual shall be allowed to go to and from the polling place for the purpose of voting without unlawful interference. No one except an election official or an individual who is waiting to register or to vote shall stand within 100 feet of the entrance to a polling place. The entrance to a polling place is the doorway or point of entry leading into the room or area where voting is occurring.

Subd. 2. **Individuals allowed in polling place.** (a) Representatives of the secretary of state's office, the county auditor's office, and the municipal or school district clerk's office may be present at the polling place to observe election procedures. Except for these representatives, election judges, sergeants-at-arms, and challengers, an individual may remain inside the polling place during voting hours only while voting or registering to vote, providing proof of residence for an individual who is registering to vote, or assisting a handicapped voter or a voter who is unable to read English. During voting hours no one except individuals receiving, marking, or depositing ballots shall approach within six feet of a voting booth, unless lawfully authorized to do so by an election judge.

(b) Teachers and elementary or secondary school students participating in an educational activity authorized by section 204B.27, subdivision 7, may be present at the polling place during voting hours.

Subd. 3. **Damaging or removing election materials; gross misdemeanor.** No individual shall intentionally:

(a) Tear down, mutilate, deface or otherwise damage during the hours of voting any voter instruction poster placed inside or outside of a polling place by an election judge or other election official; or

(b) Remove from the polling place before the time for voting ends any ballots prepared for use at the election or any supplies or conveniences placed in voting booths for use by the voters, except as authorized by law.

A violation of this subdivision is a gross misdemeanor.

Subd. 4. **Damaging or removing election materials; felony.** No individual shall intentionally:

(a) Remove from a polling place any election file or election register, except as authorized by law;

(b) Damage, deface, or mutilate any ballot, election file or election register or any item of information contained on it, except as authorized by law; or

(c) Add anything to a ballot, election file or election register, except as authorized by law.

A violation of this subdivision is a felony.

Subd. 5. **Sergeant-at-arms.** The election judges may appoint a sergeant-at-arms when necessary to keep the peace or otherwise to assist them. An election judge may request a sergeant-at-arms or a peace officer to arrest or remove from the polling place any individual who, despite a warning to desist, engages in disorderly conduct. A sergeant-at-arms or a peace officer shall not otherwise interfere in any manner with voters.

Subd. 6. **Peace officers.** Except when summoned by an election judge to restore the peace or when voting or registering to vote, no peace officer shall enter or remain in a polling place or stand within 50 feet of the entrance of a polling place.

Subd. 7. **Use of intoxicating liquor; prohibition; penalty.** During the time an election is being held it is a misdemeanor to bring intoxicating liquor or 3.2 percent malt liquor into a polling place, to drink intoxicating liquor or 3.2 percent malt liquor in a polling place, or to be intoxicated in a polling place. The election judges shall not permit an obviously intoxicated individual to vote or remain in the polling place for any purpose.

**History:** 1981 c 29 art 5 s 6; 1984 c 471 s 10; 1984 c 515 s 1; 1986 c 444; 1987 c 266 art 1 s 35; 1989 c 291 art 1 s 12; 1991 c 237 s 5; 1991 c 249 s 31; 1993 c 223 s 12

## 204C.07 CHALLENGERS.

Subdivision 1. **Partisan elections.** At an election to fill partisan offices, the chair of an authorized committee of each major political party may appoint by written certificate voters from that political party to act as challengers of voters at the polling place for each precinct. Only one challenger from each major political party for each precinct shall be allowed to remain in the polling place at one time.

Subd. 2. **Nonpartisan elections.** At an election to fill nonpartisan offices, each nonpartisan candidate may appoint by written certificate voters to act as challengers of voters at the polling place for each precinct. Only one challenger for each candidate shall be allowed to remain in the polling place for each precinct at one time.

Subd. 3. **Elections on a question.** At an election where a question is to be voted upon, the mayor of a city, or the school board of a school district, or the board of supervisors of a town, upon receiving a written petition signed by at least 25 eligible voters, shall appoint by written certificate one voter for each precinct in the municipality, or school district if applicable, to act as a challenger of voters in the polling place for that precinct.

Subd. 4. **Restrictions on conduct.** The election judges shall permit challengers appointed pursuant to this section to be present in the polling place during the hours of voting and to remain there until the votes are counted and the results declared. No challenger shall handle or inspect registration cards, files, or lists. Challengers shall not prepare in any manner any list of individuals who have or have not voted. They shall not attempt to influence voting in any manner. They shall not converse with a voter except to determine, in the presence of an election judge, whether the voter is eligible to vote in the precinct.

**History:** 1981 c 29 art 5 s 7; 1986 c 444; 1987 c 266 art 1 s 36

#### 204C.08 OPENING OF POLLING PLACES.

Subdivision 1. **Display of flag.** Upon their arrival at the polling place on the day of election, the election judges shall cause the national flag to be displayed on a suitable staff at the entrance to the polling place. The flag shall be displayed continuously during the hours of voting and the election judges shall attest to that fact by signing the flag certification statement on the precinct summary statement. The election judges shall receive no compensation for any time during which they intentionally fail to display the flag as required by this subdivision.

Subd. 2. **Posting of voting instructions.** Before the hours for voting are scheduled to begin, the election judges shall post any official voter instruction posters furnished to them in a conspicuous location or locations in the polling place.

Subd. 2a. **Sample ballots.** A sample ballot must be posted in a conspicuous location in the polling place. The sample ballot must accurately reflect the offices, candidates, and rotation sequence on the ballots used in that polling place.

Subd. 3. **Locking of ballot boxes.** Immediately before the time when voting is scheduled to begin, one of the election judges shall open the ballot boxes in the presence of the individuals assembled at the polling place, turn the boxes upside down to empty them, lock them, and deliver the key to another election judge. The boxes shall not be reopened except to count the ballots after the hours for voting have ended and all voting has been concluded. The boxes shall be kept in public view at all times during voting hours. After locking the ballot boxes, the election judges shall proclaim that voting may begin, and shall post outside the polling place conspicuous written or printed notices of the time when voting is scheduled to end.

Subd. 4. **Ballot boxes, boxcar seals.** The governing body of a municipality or school district by resolution may direct the municipal or school district clerk to furnish a boxcar seal for each ballot box in place of a lock and key. Each seal shall consist of a numbered metal strap with a self-locking device securely attached to one end of the strap so that the other end may be inserted and securely locked in the seal. No two metal straps shall bear the same number.

**History:** 1981 c 29 art 5 s 8; 1983 c 253 s 11; 1987 c 266 art 1 s 37; 1997 c 147 s 37

#### 204C.09 BALLOT PREPARATION BY ELECTION JUDGES.

Subdivision 1. **Initialing.** Before the voting begins, or as soon as possible after it begins, at least two election judges shall each initial the backs of all the ballots. The election judges shall not otherwise mark the ballots.

Subd. 2. **Distribution procedure.** Official ballots shall be distributed only in the room containing the voting booths and only to individuals who are about to vote, except as otherwise provided in section 204C.15, subdivision 2. No official ballot shall be distributed to a voter unless it has been initialed by the election judges as provided in subdivision 1.

**History:** 1981 c 29 art 5 s 9

#### **204C.10 PERMANENT REGISTRATION; VERIFICATION OF REGISTRATION.**

An individual seeking to vote shall sign a polling place roster which states that the individual is at least 18 years of age, a citizen of the United States, has resided in Minnesota for 20 days immediately preceding the election, certifies residence at the address shown, is not under guardianship of the person, has not been found by a court of law to be legally incompetent to vote or convicted of a felony without having civil rights restored, is registered and has not already voted in the election. A judge may, before the applicant signs the roster, confirm the applicant's name, address, and date of birth. After the applicant signs the roster, the judge shall give the applicant a voter's receipt. The voter shall deliver the voter's receipt to the judge in charge of ballots as proof of the voter's right to vote, and thereupon the judge shall hand to the voter the ballot. The voters' receipts must be maintained during the time for notice of filing an election contest.

**History:** 1981 c 29 art 5 s 10; 1981 c 92 s 3; 1981 c 217 s 6; 1983 c 253 s 12; 1984 c 560 s 15; 1986 c 444; 1990 c 585 s 27; 1999 c 132 s 21

#### **204C.11 [Repealed, 1984 c 560 s 26]**

#### **204C.12 CHALLENGES TO VOTERS; PENALTY.**

Subdivision 1. **Manner of challenging.** An election judge shall, and an authorized challenger or other voter may, challenge an individual whom the person knows or reasonably believes is not an eligible voter.

Subd. 2. **Statement of grounds; oath.** The challenger shall state the ground for the challenge, and an election judge shall administer to the challenged individual the following oath:

"Do you solemnly swear that you will fully and truly answer all questions put to you concerning your eligibility to vote at this election?"

The election judge shall then ask the challenged individual sufficient questions to test that individual's residence and right to vote.

Subd. 3. **Determination of residence.** In determining the legal residence of a challenged individual, the election judges shall be governed by the principles contained in section 200.031. If the challenged individual's answers to the questions show ineligibility to vote in that precinct, the individual shall not be allowed to vote. If the individual has marked ballots but not yet deposited them in the ballot boxes before the election judges determine ineligibility to vote in that precinct, the marked ballots shall be placed unopened with the spoiled ballots. If the answers to the questions fail to show that the individual is not eligible to vote in that precinct and the challenge is not withdrawn, the election judges shall verbally administer the oath on the voter certificate to the individual. After taking the oath and completing and signing the voter certificate, the challenged individual shall be allowed to vote.

Subd. 4. **Refusal to answer questions or sign a polling place roster.** A challenged individual who refuses to answer questions or sign a polling place roster as required by this section must not be allowed to vote. A challenged individual who leaves the polling place and returns later willing to answer questions or sign a polling place roster must not be allowed to vote.

Subd. 5. **Election judges; penalty.** An election judge who fails to carry out the duties prescribed by this section is guilty of a gross misdemeanor.

**History:** 1981 c 29 art 5 s 12; 1983 c 253 s 13,14; 1986 c 444; 1990 c 585 s 28

**204C.13 RECEIVING AND MARKING BALLOTS.**

Subdivision 1. **Handing ballot to voter.** When the election judges are satisfied that an individual is eligible to vote in that precinct, the election judge in charge of the ballots shall give the voter only one ballot of each kind that is to be voted upon at that precinct. Each ballot shall be removed separately as needed for each voter from the previously initialed pile of ballots.

Subd. 2. **Voting booths.** One of the election judges shall explain to the voter the proper method of marking and folding the ballots and, during a primary election, the effect of attempting to vote in more than one party's primary. Except as otherwise provided in section 204C.15, the voter shall retire alone to an unoccupied voting booth and mark the ballots without undue delay. The voter may take sample ballots into the booth to assist in voting. The election judges may adopt and enforce reasonable rules governing the amount of time a voter may spend in the voting booth marking ballots.

Subd. 3. **Marking ballots.** The voter shall mark each ballot in the following manner:

(a) A mark (X) shall be placed in the square opposite the printed name of each candidate for whom the individual desires to vote, and in the square before the "YES" or "NO" if the individual desires to vote for or against a question.

(b) The voter may write in other names on the lines provided under the printed names of the candidates, except that no names shall be written in on primary ballots.

(c) At a state primary an individual may vote for candidates of only one major political party on the partisan primary ballot. If a partisan primary ballot contains votes for the candidates of more than one major political party, the ballot is totally defective and no vote on the ballot shall be counted.

(d) An individual who spoils a ballot may return it to the election judges and receive another.

Subd. 4. **Folding ballots.** After marking the ballots, the voter shall fold each of them separately to conceal the face and all marks on it, and to expose only the initials of the election judges on the back of the ballot.

Subd. 5. **Deposit of ballots in ballot boxes.** The voter shall then withdraw from the voting booth with the ballots and hand them to the election judge in charge of the ballot boxes. That election judge shall immediately deposit each ballot in the proper box. Ballots that have not been initialed by the election judges as provided in section 204C.09, shall not be deposited in the ballot box.

Subd. 6. **Challenge of voter; time limits; disposition of ballots.** At any time before the ballots of any voter are deposited in the ballot boxes, the election judges or any individual who was not present at the time the voter procured the ballots, but not otherwise, may challenge the eligibility of that voter and the deposit of any received absentee ballots in the ballot boxes. The election judges shall determine the eligibility of any voter who is present in the polling place in the manner provided in section 204C.12, and if the voter is found to be not eligible to vote, shall place the ballots of that voter unopened among the spoiled ballots. The election judges shall determine whether to receive or reject the ballots of an absent voter and whether to deposit received absentee ballots in the ballot boxes in the manner provided in sections 203B.12, 203B.24 and 203B.25, and shall dispose of any absentee ballots not received or deposited in the manner provided in section 203B.12. A violation of this subdivision by an election judge is a gross misdemeanor.

Subd. 7. **Leaving the polling place.** An individual who has voted or whose ballot has been rejected shall leave the polling place and shall not return except as provided by section 204C.06 or 204C.07.

**History:** 1981 c 29 art 5 s 13; 1987 c 222 s 1

**204C.14 UNLAWFUL VOTING; PENALTY.**

No individual shall intentionally:

(a) Misrepresent the individual's identity in applying for a ballot, depositing a ballot in a ballot box or attempting to vote by means of a voting machine or electronic voting system;

(b) Vote more than once at the same election;

(c) Put a ballot in a ballot box for any illegal purpose;

(d) Give more than one ballot of the same kind and color to an election judge to be placed in a ballot box;

(e) Aid, abet, counsel or procure another to go into any precinct for the purpose of voting in that precinct, knowing that the other individual is not eligible to vote in that precinct; or

(f) Aid, abet, counsel or procure another to do any act in violation of this section.

A violation of this section is a felony.

**History:** 1981 c 29 art 5 s 14; 1986 c 444

#### 204C.15 ASSISTANCE TO VOTERS.

**Subdivision 1. Interpreters; physical assistance in marking ballots.** A voter who claims a need for assistance because of inability to read English or physical inability to mark a ballot may obtain the aid of two election judges who are members of different major political parties. The election judges shall mark the ballots as directed by the voter and in as secret a manner as circumstances permit. If the voter is deaf or cannot speak English or understand it when it is spoken, the election judges may select two individuals who are members of different major political parties to act as interpreters. The interpreters shall assist the individual in marking the ballots. A voter in need of assistance may alternatively obtain the assistance of any individual the voter chooses. Only the following persons may not provide assistance to a voter: the voter's employer, an agent of the voter's employer, an officer or agent of the voter's union, or a candidate for election. The person who assists the voter shall, unaccompanied by an election judge, retire with that voter to a booth and mark the ballot as directed by the voter. No person who assists another voter as provided in the preceding sentence shall mark the ballots of more than three voters at one election. Before the ballots are deposited, the voter may show them privately to an election judge to ascertain that they are marked as the voter directed. An election judge or other individual assisting a voter shall not in any manner request, persuade, induce, or attempt to persuade or induce the voter to vote for any particular political party or candidate. The election judges or other individuals who assist the voter shall not reveal to anyone the name of any candidate for whom the voter has voted or anything that took place while assisting the voter.

**Subd. 2. Outside the polling place.** An individual who is unable to enter a polling place where paper ballots or an electronic voting system are used may register and vote without leaving a motor vehicle. Two election judges who are members of different major political parties shall assist the voter to register and to complete a voter's certificate and shall provide the necessary ballots. The voter may request additional assistance in marking ballots as provided in subdivision 1.

**Subd. 2a.** [Repealed, 1Sp2001 c 10 art 18 s 44]

**Subd. 3. Voting lines.** In all polling places two election judges shall assist a disabled voter to enter the polling place and go through the registration and voting lines. The voter may also request the assistance of election judges or any other individual in marking ballots, as provided in subdivision 1.

**History:** 1981 c 29 art 5 s 15; 1984 c 471 s 11,12; 1986 c 444; 1997 c 147 s 38

#### 204C.16 MISMARKING BALLOTS; DISCLOSURE OF MARKINGS BY OTHERS; PENALTY.

An election judge or other individual who marks the ballot of any voter, except as authorized by law and as directed by the voter, or who informs anyone other than the voter how the ballot was marked, is guilty of a gross misdemeanor.

**History:** 1981 c 29 art 5 s 16



**204C.17 VOTING; SECRECY.**

Except as authorized by section 204C.15, a voter shall not reveal to anyone in the polling place the name of any candidate for whom the voter intends to vote or has voted. A voter shall not ask for or receive assistance in the marking of a ballot from anyone within the polling place except as authorized by section 204C.15. If a voter, after marking a ballot, shows it to anyone except as authorized by law, the election judges shall refuse to deposit the ballot in any ballot box and shall place it among the spoiled ballots. Unless the showing of the ballot was clearly intentional, the voter shall receive another ballot as provided in section 204C.13, subdivision 3, clause (d).

**History:** 1981 c 29 art 5 s 17

**204C.18 BALLOTS; SECRECY.**

Subdivision 1. **Party preferences; protection of secrecy.** The election judges shall make no entry or notation in the election register or anywhere else showing the political party to which a voter belongs or for which political party the voter voted. No election judge shall knowingly permit anyone in the polling place to make such an entry or notation.

Subd. 2. **Ballots; identifying marks; penalty.** No voter, election judge, or other individual shall place at any time a mark as a means of identification upon any ballot handed to or cast by a voter or upon spoiled or discarded ballots, except the initials authorized by section 204C.09. A violation of this subdivision is a gross misdemeanor.

**History:** 1981 c 29 art 5 s 18; 1986 c 444

**204C.19 COUNTING VOTES; PENALTY.**

Subdivision 1. **Procedure.** When the hours for voting have ended and all voting has concluded, the election judges shall immediately count the votes cast at the election. The count shall be held at the polling place and shall be public. It shall be continued without intermission until it is completed and the results are declared, except that the election judges may recess for meals or other necessary purposes. During the count no one except the election judges shall handle the ballots. Any other individual who touches or interferes with ballots during the counting or any election judge who permits such touching or interference is guilty of a misdemeanor.

Subd. 2. **Ballots; order of counting.** Except as otherwise provided in this subdivision, the ballot boxes shall be opened, the votes counted, and the total declared one box at a time in the following order: the white box, the pink box, the canary box, the light green box, the blue box, the buff box, the goldenrod box, the gray box, and then the other kinds of ballots voted at the election. If enough election judges are available to provide counting teams of four or more election judges for each box, more than one box may be opened and counted at the same time. The election judges on each counting team shall be evenly divided between the major political parties. The numbers entered on the summary sheet shall not be considered final until the ballots in all the boxes have been counted and corrections have been made if ballots have been deposited in the wrong boxes.

Subd. 3. **Premature disclosure of count results.** No count results from any precinct shall be disclosed by any election judge or other individual until all count results from that precinct are available, nor shall the public media disclose any count results from any precinct before the time when voting is scheduled to end in the state.

**History:** 1981 c 29 art 5 s 19; 1987 c 266 art 1 s 38; 1991 c 227 s 17

**204C.20 BALLOTS; NUMBER TO BE COUNTED.**

Subdivision 1. **Determination of proper number.** The election judges shall determine the number of ballots to be counted by adding the number of return envelopes from accepted absentee ballots to the number of signed voter's certificates, or to the number of names entered in the election register. The election judges shall then remove all the ballots from the box. Without considering how the ballots are marked,



the election judges shall ascertain that each ballot is separate and shall count them to determine whether the number of ballots in the box corresponds with the number of ballots to be counted.

Subd. 2. **Excess ballots.** If two or more ballots are found folded together like a single ballot, the election judges shall lay them aside until all the ballots in the box have been counted. If it is evident from the number of ballots to be counted that the ballots folded together were cast by one voter, the election judges shall preserve but not count them. If the number of ballots in one box exceeds the number to be counted, the election judges shall examine all the ballots in the box to ascertain that all are properly marked with the initials of the election judges. If any ballots are not properly marked with the initials of the election judges, the election judges shall preserve but not count them. If there is still an excess of properly marked ballots, the election judges shall replace them in the box, and one election judge, without looking, shall withdraw from the box a number of ballots equal to the excess. The withdrawn ballots shall not be counted but shall be preserved as provided in subdivision 4.

Subd. 3. **Ballots in wrong box.** If the election judges find in a ballot box any ballots that are not the kind properly belonging in it, they shall lay those ballots aside. If the number of ballots found in any box equals or exceeds the number of ballots to be counted, the ballots which should have been placed in that box, but which are found in another box, shall not be counted. If the number of ballots found in a box is less than the number of ballots to be counted, and a number of ballots equal to or less than the deficiency and properly belonging in that box are found in another box, the latter ballots shall be counted. If the number of ballots found in another box exceeds the deficiency, the excess ballots shall be placed in the proper ballot box and, without looking, an election judge shall withdraw a number of ballots equal to the deficiency and the withdrawn ballots shall then be counted.

Subd. 4. **Ballots not counted; disposition.** When the final count of ballots agrees with the number of ballots to be counted, those ballots not counted shall be attached to a certificate made by the election judges which states why the ballots were not counted. The certificate and uncounted ballots shall be sealed in a separate envelope and returned to the county auditor or municipal or school district clerk from whom they were received.

**History:** 1981 c 29 art 5 s 20; 1987 c 266 art 1 s 39

#### 204C.21 COUNTING BALLOTS; PILING SYSTEM.

Subdivision 1. **Method.** The election judges shall take all the ballots of the same kind and count the votes cast for each office or question, beginning with the first office or question on the ballot. They shall make one pile of the ballots for each candidate who received votes for that office, or one pile for the "Yes" votes and one pile for the "No" votes on a question. They shall make a pile of totally defective ballots and a pile of totally blank ballots. They shall make a pile of ballots that are not totally defective but are defective with respect to the office or question being counted and a pile of ballots that are not totally blank but are blank with respect to the office or question being counted. After the separation into piles, the election judges shall examine each pile and remove and place in the proper pile any ballots that are found in the wrong pile. The election judges shall count the totally blank and totally defective ballots and set them aside until the counting is over for that ballot. The election judges may pile ballots crosswise in groups of 25 in the same pile to facilitate counting. When their counts agree, the election judges shall announce the number of ballots in each pile, and shall write the number in the proper place on the summary statements.

The election judges shall then return all the counted ballots, and all the partially defective or partially blank ballots, to the original pile to be separated and counted in the same manner for the next office or question.

Subd. 2. **More than one candidate to be elected; piling.** Where more than one candidate is to be elected to an office, the votes for that office shall be counted and canvassed in the manner provided in subdivision 1 as far as practicable.

Subd. 3. **Primary.** At a primary the election judges shall first separate the partisan ballots by major political party and then count the votes for each office as provided in subdivision 1. The nonpartisan primary ballots shall be counted separately after the partisan primary ballots have been counted.

**History:** 1981 c 29 art 5 s 21

#### 204C.22 DETERMINING VOTER'S INTENT.

Subdivision 1. **Ballot valid if intent determinable.** A ballot shall not be rejected for a technical error that does not make it impossible to determine the voter's intent. In determining intent the principles contained in this section apply.

Subd. 2. **From face of ballot only.** Intent shall be ascertained only from the face of the ballot.

Subd. 3. **Votes for too many candidates.** If a voter places a mark (X) beside the names of more candidates for an office than are to be elected or nominated, the ballot is defective with respect only to that office. No vote shall be counted for any candidate for that office, but the rest of the ballot shall be counted if possible. At a primary, if a voter has not indicated a party preference and places a mark (X) beside the names of candidates of more than one party on the partisan ballot, the ballot is totally defective and no votes on it shall be counted. If a voter has indicated a party preference at a primary, only votes cast for candidates of that party shall be counted.

Subd. 3a. **Votes yes and no.** If a voter votes both yes and no on a question, no vote may be counted for that question, but the rest of the ballot must be counted if possible.

Subd. 4. **Name written in proper place.** If a voter has written the name of an individual in the proper place on a general or special election ballot a vote shall be counted for that individual whether or not the voter makes a mark (X) in the square opposite the blank.

Subd. 4a. **Write-in vote for candidate team.** A write-in vote cast for a candidate for governor without a write-in vote for a candidate for lieutenant governor must be counted as a vote for the candidate team including the lieutenant governor candidate selected by that candidate for governor.

Subd. 5. **Name written on primary ballot.** If a voter has written the name of an individual on a primary or special primary ballot, a vote shall not be counted for that office.

Subd. 6. **Mark out of place.** If a mark (X) is made out of its proper place, but so near a name or space as to indicate clearly the voter's intent, the vote shall be counted.

Subd. 7. **All written names or marks counted up to limit.** If a number of individuals are to be elected to the same office, the election judges shall count all names written in and all printed names with (X) marks in squares opposite them, not exceeding the whole number to be elected. When fewer names than the number to be elected are marked with an (X) or written in, only the marked or written in names shall be counted. When more names than the number to be elected are marked or written in, the ballot is defective with respect to that office and no vote shall be counted for that office.

Subd. 8. **Misspelling; abbreviations.** Misspelling or abbreviations of the names of write-in candidates shall be disregarded if the individual for whom the vote was intended can be clearly ascertained from the ballot.

Subd. 9. **Votes for only some offices or questions determined.** If the voter's choice for only some of the offices or questions can be determined from a ballot, the ballot shall be counted for those offices or questions only.

Subd. 10. **Different marks.** If a voter uniformly uses a mark other than (X) which clearly indicates an intent to mark a name or to mark yes or no on a question, and the voter does not use (X) anywhere else on the ballot, a vote shall be counted for each candidate or response to a question marked. If a voter uses two or more distinct marks, such as (X) and some other mark, a vote shall be counted for each candidate or

response to a question marked, unless the ballot is marked by distinguishing characteristics that make the entire ballot defective as provided in subdivision 13.

Subd. 11. **Attempted erasures.** If the names of two candidates have been marked, and an attempt has been made to erase or obliterate one of the marks, a vote shall be counted for the remaining marked candidate. If an attempt has been made to obliterate a write-in name a vote shall be counted for the remaining write-in name or marked candidate.

Subd. 12. **Soil; defacement.** A ballot shall not be rejected merely because it is slightly soiled or defaced.

Subd. 13. **Identifying ballot.** If a ballot is marked by distinguishing characteristics in a manner making it evident that the voter intended to identify the ballot, the entire ballot is defective.

Subd. 14. **No votes for certain offices.** If the number of candidates for an office is equal to the number of individuals to be elected to that office, and the voter has not marked any name, no vote shall be counted for any candidate for that office.

Subd. 15. **Blank ballot for one or more offices valid.** If no name or response to a question is marked and no name is written in, the ballot is blank with respect to that office or question. A ballot that is blank with respect to one or more offices or questions is not defective.

**History:** 1981 c 29 art 5 s 22; 1987 c 222 s 2; 1990 c 453 s 7-10; 1991 c 320 s 14

#### 204C.23 DEFECTIVE BALLOTS.

A ballot that is defective to the extent that the election judges are unable to determine the voter's intent shall be marked on the back "Defective" if it is totally defective or "Defective as to ....., " naming the office or question if it is defective only in part.

**History:** 1981 c 29 art 5 s 23

#### 204C.24 ELECTION RETURNS; SUMMARY STATEMENTS.

Subdivision 1. **Information requirements.** Precinct summary statements shall be submitted by the election judges in every precinct. For state elections, the election judges shall complete three or more copies of the summary statements, and each copy shall contain the following information for each kind of ballot:

(a) the number of votes each candidate received or the number of yes and no votes on each question, the number of undervotes or partially blank ballots, and the number of overvotes or partially defective ballots with respect to each office or question;

(b) the number of totally blank ballots, the number of totally defective ballots, the number of spoiled ballots, and the number of unused ballots;

(c) the number of individuals who voted at the election in the precinct;

(d) the number of voters registering on election day in that precinct; and

(e) the signatures of the election judges who counted the ballots certifying that all of the ballots cast were properly piled, checked, and counted; and that the numbers entered by the election judges on the summary statements correctly show the number of votes cast for each candidate and for and against each question.

At least two copies of the summary statement must be prepared for elections not held on the same day as the state elections.

Subd. 2. **Sealing in envelopes.** The election judges shall place a full set of completed summary statements in each of three separate envelopes and seal them so that the envelopes cannot be opened without leaving evidence that they have been opened. The election judges shall then sign each envelope over the sealed part so that no envelope can be opened without disturbing the continuity of the signatures. Each of the envelopes shall show substantially the following information on its face:

"Summary statements of the returns of the .... election precinct, (Town) or (City) of ....., or (School District Number) ....., in the County of ....., State of Minnesota."

**History:** 1981 c 29 art 5 s 24; 1981 c 217 s 7; 1983 c 253 s 15; 1984 c 447 s 31; 1987 c 175 s 8; 1987 c 266 art 1 s 40; 1988 c 646 s 6; 1999 c 132 s 22

#### 204C.25 DISPOSITION OF BALLOTS.

After the count and the summary statements have been completed, in the presence of all the election judges, the counted, defective and blank ballots shall be placed in envelopes marked or printed to distinguish the color of the ballots contained, and the envelopes shall be sealed. The election judges shall sign each envelope over the sealed part so that the envelope cannot be opened without disturbing the continuity of the signatures. The number and kind of ballots in each envelope, the name of the town or city, and the name of the precinct shall be plainly written upon the envelopes. The number and name of the district must be plainly written on envelopes containing school district ballots. The spoiled ballots shall be placed in separate envelopes and returned with the unused ballots to the county auditor or municipal or school district clerk from whom they were received.

**History:** 1981 c 29 art 5 s 25; 1983 c 253 s 16; 1987 c 266 art 1 s 41

#### 204C.26 SUMMARY STATEMENTS AND ENVELOPES FOR BALLOT RETURNS; ELECTION OFFICIALS TO FURNISH.

Subdivision 1. **Summary statements.** For state elections, each official responsible for printing ballots shall furnish three or more blank summary statement forms for the returns of those ballots for each precinct. At least two copies of the summary statement must be prepared for elections not held on the same day as the state elections. The blank summary statement forms shall be furnished at the same time and in the same manner as the ballots. The county auditor shall furnish blank summary statement forms containing separate space for the summary statement of the returns of the white ballot and the summary statement of the returns for the state pink ballot.

Subd. 2. **Summary statements; contents.** The blank summary statement forms furnished to each precinct shall identify the precinct, ward number if any, city, school district if applicable, or town, date, and kind of election and, under appropriate headings identifying each color ballot, shall contain spaces for the election judges to enter the information required by section 204C.24, subdivision 1.

Each blank summary statement form shall also contain a certificate to be signed by the election judges stating that the national flag was displayed on a suitable staff during voting hours; that all of the ballots cast were properly piled, checked, and counted; and that the numbers entered by the election judges on the summary statements correctly show the number of votes cast for each candidate and for and against each question.

Subd. 3. **Secretary of state.** On or before July 1 of each even-numbered year, the secretary of state shall prescribe the form for summary statements of election returns and the methods by which returns for the state primary and state general election shall be recorded by precinct, county, and state election officials. Each county auditor and municipal or school district clerk required to furnish summary statements shall prepare them in the manner prescribed by the secretary of state. The summary statement of the primary returns shall be in the same form as the summary statement of the general election returns except that a separate part of the summary statement shall be provided for the partisan primary ballot and a separate part for the nonpartisan primary ballot.

Subd. 4. **Envelopes for counted ballots.** Each official responsible for printing ballots shall also furnish envelopes to contain those ballots after they have been counted. The envelopes shall be made of heavy paper, printed or marked to distinguish the color of the ballots to be contained in them. They shall be of convenient size to hold the ballots and shall be furnished at the same time and in the same manner as the ballots.

**History:** 1981 c 29 art 5 s 26; 1981 c 217 s 8; 1987 c 266 art 1 s 42,43; 1999 c 132 s

**204C.27 DELIVERY OF RETURNS TO COUNTY AUDITORS.**

One or more of the election judges in each precinct shall deliver two sets of summary statements; all spoiled white, pink, canary, and gray ballots; and the envelopes containing the white, pink, canary, and gray ballots either directly to the municipal clerk for transmittal to the county auditor's office or directly to the county auditor's office as soon as possible after the vote counting is completed but no later than 24 hours after the end of the hours for voting. One or more election judges shall deliver the remaining set of summary statements and returns, all unused and spoiled municipal and school district ballots, the envelopes containing municipal and school district ballots, and all other things furnished by the municipal or school district clerk, to the municipal or school district clerk's office within 24 hours after the end of the hours for voting. The municipal or school district clerk shall return all polling place rosters and completed voter registration cards to the county auditor within 48 hours after the end of the hours for voting.

**History:** 1981 c 29 art 5 s 27; 1984 c 560 s 16; 1987 c 175 s 9; 1987 c 266 art 1 s 44; 1990 c 585 s 29

**204C.28 ELECTION NIGHT; DUTIES OF COUNTY AUDITORS AND MUNICIPAL CLERKS.**

Subdivision 1. **County auditor.** Every county auditor shall remain at the auditor's office to receive delivery of the returns, to permit public inspection of the summary statements, and to tabulate the votes until all have been tabulated and the results made known, or until 24 hours have elapsed since the end of the hours for voting, whichever occurs first. The county auditor shall file all envelopes containing ballots in a safe place with seals unbroken. If the envelopes were previously opened by proper authority for examination or recount, the county auditor shall have the envelopes sealed again and signed by the individuals who made the inspection or recount. The envelopes may be opened by the county canvassing board if necessary to procure election returns that the election judges inadvertently may have sealed in the envelopes with the ballots. In that case, the envelopes shall be sealed again and signed in the same manner as otherwise provided in this subdivision.

Subd. 2. **Clerks.** The clerk of every first, second, and third class city shall remain at the clerk's office to receive delivery of returns, or until 24 hours have elapsed since the end of the hours for voting, whichever occurs first. The clerk of every first class city shall keep a book in which, in the presence of the election judges or other individuals who deliver the returns, the clerk shall make a record of all materials delivered, the time of delivery, and the names of the election judges or other individuals who made delivery. The book shall be retained in the clerk's office for the same period as the ballots as provided in section 204B.40.

Subd. 3. **School district returns and materials.** At a school district election held in conjunction with a state election, the county auditor or municipal clerk shall deliver the summary statements of the school district election returns, all unused and spoiled school district ballots, and the envelope containing the school district ballots from each precinct to the clerk of the appropriate school district within 48 hours after the polls close.

**History:** 1981 c 29 art 5 s 28; 1986 c 444; 1987 c 266 art 1 s 45

**204C.29 IMPROPER DELIVERY OF RETURNS.**

Subdivision 1. **Failure of election judges to make delivery; penalty.** If the election judges fail to deliver returns as required by section 204C.27, the county auditor or municipal or school district clerk to whom the returns should have been delivered shall dispatch a special messenger to obtain them. The messenger shall receive the same compensation as an election judge would receive for performing the same service and shall be subject to the same penalties as an election judge for violation of any provision of the Minnesota Election Law.



Subd. 2. **Irregularities in delivery.** An officer to whom election returns are required to be made shall not refuse to receive them because they are delivered in any manner other than that prescribed by law, except that the returns must be sealed. No canvassing board shall refuse to include any returns in its canvass of votes because of any informality in holding the election or making returns. All returns shall be received and the votes canvassed by the canvassing board and included in its statements when there is substantial compliance with the provisions of the Minnesota Election Law.

Subd. 3. **Damaging returns or preventing delivery; penalty.** No individual who is appointed to carry a report, certificate, or certified copy of election returns shall intentionally mutilate, tear, deface or obliterate any portion of it or do any act to prevent its delivery. No individual shall take or accept from a messenger any report, certificate or certified copy of election returns with intent to prevent its delivery, or having taken or accepted it, shall mutilate, tear, deface, obliterate or destroy any portion of it. A violation of this subdivision is a felony.

**History:** 1981 c 29 art 5 s 29; 1987 c 266 art 1 s 46

#### 204C.30 ELECTION RETURNS; ADDITIONAL DUTIES OF COUNTY AUDITOR.

Subdivision 1. **Delivery of summary statements to secretary of state.** The county auditor shall promptly deliver to the secretary of state one of the sets of summary statements received from each precinct.

Subd. 2. [Repealed, 1984 c 560 s 26]

**History:** 1981 c 29 art 5 s 30

#### 204C.31 CANVASSING BOARDS; MEMBERSHIP.

Subdivision 1. **County canvassing board.** The county canvassing board shall consist of the county auditor, the court administrator of the district court, the mayor or chair of the town board of the county's most populous municipality, and two members of the county board selected by the board from its members who are not candidates at the election. Any member of the canvassing board may appoint a designee to appear at the meeting of the board, except that no designee may be a candidate for public office. If one of these individuals fails to appear at the meeting of the canvassing board and in the absence of any selection by the county board from among its own members, the county auditor shall appoint an eligible voter of the county who is not a public official or a candidate for public office to fill the vacancy. Three members constitute a quorum.

Subd. 2. **State canvassing board.** The state canvassing board shall consist of the secretary of state, two judges of the supreme court, and two judges of the district court selected by the secretary of state. None of the judges shall be a candidate at the election. If a judge fails to appear at the meeting of the canvassing board, the secretary of state shall fill the vacancy in membership by selecting another judge who is not a candidate at the election. Not more than two judges of the supreme court shall serve on the canvassing board at one time.

Subd. 3. **Duties of canvassing boards.** The returns from every election held in this state must be reported to a legally constituted canvassing board. The duties of each canvassing board are limited to those duties specified in sections 204C.32 to 204C.39.

**History:** 1981 c 29 art 5 s 31; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1987 c 175 s 10; 1989 c 291 art 1 s 13; 1993 c 223 s 13; 1997 c 147 s 39

#### 204C.32 CANVASS OF STATE PRIMARIES.

Subdivision 1. **County canvass.** The county canvassing board shall meet at the county auditor's office on or before the third day following the state primary. After taking the oath of office, the canvassing board shall publicly canvass the election returns delivered to the county auditor. The board shall complete the canvass no later than the third day following the state primary and shall promptly prepare and file with the county auditor a report that states:

- (a) The number of individuals voting at the election in the county, and in each precinct;
- (b) The number of individuals registering to vote on election day and the number of individuals registered before election day in each precinct;
- (c) For each major political party, the names of the candidates running for each partisan office and the number of votes received by each candidate in the county and in each precinct;
- (d) The names of the candidates of each major political party who are nominated; and
- (e) The number of votes received by each of the candidates for nonpartisan office in each precinct in the county and the names of the candidates nominated for nonpartisan office.

Upon completion of the canvass, the county auditor shall mail or deliver a notice of nomination to each nominee for county office voted for only in that county. The county auditor shall transmit one of the certified copies of the county canvassing board report for state and federal offices to the secretary of state by express mail or similar service immediately upon conclusion of the county canvass. The secretary of state shall mail a notice of nomination to each nominee for state or federal office.

**Subd. 2. State canvass.** The state canvassing board shall meet at the secretary of state's office seven days after the state primary to canvass the certified copies of the county canvassing board reports received from the county auditors. Immediately after the canvassing board declares the results, the secretary of state shall certify the names of the nominees to the county auditors. The secretary of state shall mail to each nominee a notice of nomination.

**History:** 1981 c 29 art 5 s 32; 1983 c 303 s 14; 1984 c 560 s 17; 1993 c 223 s 14; 1997 c 147 s 40; 2000 c 467 s 20

### 204C.33 CANVASS OF STATE GENERAL ELECTIONS.

**Subdivision 1. County canvass.** The county canvassing board shall meet at the county auditor's office on or before the seventh day following the state general election. After taking the oath of office, the board shall promptly and publicly canvass the general election returns delivered to the county auditor. Upon completion of the canvass, the board shall promptly prepare and file with the county auditor a report which states:

- (a) The number of individuals voting at the election in the county and in each precinct;
- (b) The number of individuals registering to vote on election day and the number of individuals registered before election day in each precinct;
- (c) The names of the candidates for each office and the number of votes received by each candidate in the county and in each precinct;
- (d) The number of votes counted for and against a proposed change of county lines or county seat; and
- (e) The number of votes counted for and against a constitutional amendment or other question in the county and in each precinct.

The result of write-in votes cast on the general election ballots must be compiled by the county auditor before the county canvass, except that write-in votes for a candidate for state or federal office must not be counted unless the candidate has timely filed a request under section 204B.09, subdivision 3. The county auditor shall arrange for each municipality to provide an adequate number of election judges to perform this duty or the county auditor may appoint additional election judges for this purpose. The county auditor may open the envelopes or containers in which the voted ballots have been sealed in order to count and record the write-in votes and must reveal the voted ballots at the conclusion of this process.

Upon completion of the canvass, the county canvassing board shall declare the candidate duly elected who received the highest number of votes for each county and



state office voted for only within the county. The county auditor shall transmit one of the certified copies of the county canvassing board report for state and federal offices to the secretary of state by express mail or similar service immediately upon conclusion of the county canvass.

**Subd. 2. County canvassing board reports; public availability.** The county auditor of each county shall provide a certified copy of the county canvassing board report to anyone who requests it upon payment to the auditor of costs of reproduction actually incurred by the auditor's office. The auditor shall not take into account the general office expenses or other expenses.

**Subd. 3. State canvass.** The state canvassing board shall meet at the secretary of state's office on the second Tuesday following the state general election to canvass the certified copies of the county canvassing board reports received from the county auditors and shall prepare a report that states:

- (a) The number of individuals voting in the state and in each county;
- (b) The number of votes received by each of the candidates, specifying the counties in which they were cast; and
- (c) The number of votes counted for and against each constitutional amendment, specifying the counties in which they were cast.

All members of the state canvassing board shall sign the report and certify its correctness. The state canvassing board shall declare the result within three days after completing the canvass.

**History:** 1981 c 29 art 5 s 33; 1983 c 303 s 15; 1997 c 147 s 41; 2000 c 467 s 21

#### 204C.34 TIE VOTES.

In case of a tie vote for nomination or election to an office, the canvassing board with the responsibility for declaring the results for that office shall determine the tie by lot.

**History:** 1981 c 29 art 5 s 34

#### 204C.35 FEDERAL, STATE, AND JUDICIAL RACES.

**Subdivision 1. Automatic recounts.** (a) In a state primary when the difference between the votes cast for the candidates for nomination to a statewide federal office, state constitutional office, statewide judicial office, congressional office, state legislative office, or district judicial office:

- (1) is less than one-half of one percent of the total number of votes counted for that nomination; or
- (2) is ten votes or less and the total number of votes cast for the nomination is 400 votes or less;

and the difference determines the nomination, the canvassing board with responsibility for declaring the results for that office shall recount the vote.

(b) In a state general election when the difference between the votes of a candidate who would otherwise be declared elected to a statewide federal office, state constitutional office, statewide judicial office, congressional office, state legislative office, or district judicial office and the votes of any other candidate for that office:

- (1) is less than one-half of one percent of the total number of votes counted for that office; or
- (2) is ten votes or less if the total number of votes cast for the office is 400 votes or less,

the canvassing board shall recount the votes.

(c) A recount must not delay any other part of the canvass. The results of the recount must be certified by the canvassing board as soon as possible.

(d) Time for notice of a contest for an office which is recounted pursuant to this section shall begin to run upon certification of the results of the recount by the canvassing board.

(e) A losing candidate may waive a recount required pursuant to this section by filing a written notice of waiver with the canvassing board.

**Subd. 2. Optional recount.** (a) A losing candidate for nomination or election to a statewide federal office, state constitutional office, statewide judicial office, congressional office, state legislative office, or district judicial office may request a recount in a manner provided in this section at the candidate's own expense when the vote difference is greater than the difference required by this section. The votes shall be recounted as provided in this section if the candidate files a request during the time for filing notice of contest of the primary or election for which a recount is sought.

(b) The requesting candidate shall file with the filing officer a bond, cash, or surety in an amount set by the filing officer for the payment of the recount expenses. The requesting candidate is responsible for the following expenses: the compensation of the secretary of state, or designees, and any election judge, municipal clerk, county auditor, administrator, or other personnel who participate in the recount; the costs of computer operation, preparation of ballot counting equipment, necessary supplies and travel related to the recount; the compensation of the appropriate canvassing board and costs of preparing for the canvass of recount results; and any attorney fees incurred in connection with the recount by the governing body responsible for the recount.

**History:** 1981 c 29 art 5 s 35; 1981 c 187 s 1; 1983 c 253 s 17; 1989 c 291 art 1 s 14; 1990 c 486 s 1; 1993 c 68 s 1; 1998 c 254 art 2 s 24; 1Sp2001 c 10 art 18 s 28

## **204C.36 RECOUNTS IN COUNTY, SCHOOL DISTRICT, AND MUNICIPAL ELECTIONS.**

**Subdivision 1. Required recounts.** (a) Except as provided in paragraph (b), a losing candidate for nomination or election to a county, municipal, or school district office may request a recount of the votes cast for the nomination or election to that office if the difference between the vote cast for that candidate and for a winning candidate for nomination or election is less than one-half of one percent of the total votes counted for that office. In case of offices where two or more seats are being filled from among all the candidates for the office, the one-half of one percent difference is between the elected candidate with the fewest votes and the candidate with the most votes from among the candidates who were not elected.

(b) A losing candidate for nomination or election to a county, municipal, or school district office may request a recount of the votes cast for nomination or election to that office if the difference between the vote cast for that candidate and for a winning candidate for nomination or election is ten votes or less, and the total number of votes cast for the nomination or election of all candidates is no more than 400. In cases of offices where two or more seats are being filled from among all the candidates for the office, the ten vote difference is between the elected candidate with the fewest votes and the candidate with the most votes from among the candidates who were not elected.

(c) Candidates for county offices shall file a written request for the recount with the county auditor. Candidates for municipal or school district offices shall file a written request with the municipal or school district clerk as appropriate. All requests shall be filed during the time for notice of contest of the primary or election for which a recount is sought.

(d) Upon receipt of a request made pursuant to this section, the county auditor shall recount the votes for a county office at the expense of the county, the governing body of the municipality shall recount the votes for a municipal office at the expense of the municipality, and the school board of the school district shall recount the votes for a school district office at the expense of the school district.

**Subd. 2. Discretionary candidate recounts.** A losing candidate for nomination or election to a county, municipal, or school district office may request a recount in the

manner provided in this section at the candidate's own expense when the vote difference is greater than the difference required by subdivision 1, clauses (a) to (e). The votes shall be recounted as provided in this section if the requesting candidate files with the county auditor, municipal clerk, or school district clerk a bond, cash, or surety in an amount set by the governing body of the jurisdiction or the school board of the school district for the payment of the recount expenses.

**Subd. 3. Discretionary ballot question recounts.** A recount may be conducted for a ballot question when the difference between the votes for and the votes against the question is less than or equal to the difference provided in subdivision 1. A recount may be requested by any person eligible to vote on the ballot question. A written request for a recount must be filed with the filing officer of the county, municipality, or school district placing the question on the ballot and must be accompanied by a petition containing the signatures of 25 voters eligible to vote on the question. If the difference between the votes for and the votes against the question is greater than the difference provided in subdivision 1, the person requesting the recount shall also file with the filing officer of the county, municipality, or school district a bond, cash, or surety in an amount set by the appropriate governing body for the payment of recount expenses. The written request, petition, and any bond, cash, or surety required must be filed during the time for notice of contest for the election for which the recount is requested.

**Subd. 4. Expenses.** In the case of a question, a person, or a candidate requesting a discretionary recount, is responsible for the following expenses: the compensation of the secretary of state, or designees, and any election judge, municipal clerk, county auditor, administrator, or other personnel who participate in the recount; the costs of computer operation, preparation of ballot counting equipment, necessary supplies and travel related to the recount; the compensation of the appropriate canvassing board and costs of preparing for the canvass of recount results; and any attorney fees incurred in connection with the recount by the governing body responsible for the recount.

**Subd. 5. Notice of contest.** Time for notice of contest of a nomination or election to a county office which is recounted pursuant to this section shall begin to run upon certification of the results of the recount by the county canvassing board. Time for notice of contest of a nomination or election to a municipal office which is recounted pursuant to this section shall begin to run upon certification of the results by the governing body of the municipality. Time for notice of contest of a school district election that is recounted under this subdivision begins to run on certification of the results of the recount by the school board.

**History:** 1981 c 29 art 5 s 36; 1987 c 266 art 1 s 47; 1989 c 291 art 1 s 15; 1Sp2001 c 10 art 18 s 29,30

## 204C.361 RULES FOR RECOUNTS.

The secretary of state shall adopt rules according to the Administrative Procedure Act establishing uniform recount procedures. All recounts provided for by sections 204C.35, 204C.36, and 206.88, shall be conducted in accordance with these rules.

**History:** 1983 c 253 s 18; 1989 c 291 art 1 s 16; 1990 c 426 art 1 s 25

## 204C.37 COUNTY CANVASS; RETURN OF REPORTS TO SECRETARY OF STATE.

Two copies of the reports required by sections 204C.32, subdivision 1 and 204C.33, subdivision 1 shall be certified under the official seal of the county auditor. Each copy shall be enclosed in an envelope addressed to the secretary of state, with the county auditor's name and official address and the words "Election Returns" endorsed on the envelope. The copy of the canvassing board report not sent by express mail and the precinct summary statements must be mailed or delivered to the secretary of state. If neither copy is received by the secretary of state within ten days following the applicable election, the secretary of state shall immediately notify the county auditor, who shall deliver another copy to the secretary of state by special messenger.

**History:** 1981 c 29 art 5 s 37; 2000 c 467 s 22

**204C.38 CORRECTION OF OBVIOUS ERRORS; WHEN CANDIDATES AGREE.**

Subdivision 1. **Errors of election judges.** If the candidates for an office unanimously agree in writing that the election judges in any precinct have made an obvious error in the counting or recording of the votes for that office, they shall deliver the agreement to the county auditor of that county who shall reconvene the county canvassing board, if necessary, and present the agreement to it. The county canvassing board shall correct the error as specified in the agreement.

Subd. 2. **Errors of county canvassing board.** If the candidates for an office unanimously agree in writing that the county canvassing board has made an obvious error in the counting and recording of the vote for that office they shall notify the county auditor who shall reconvene the canvassing board. The county canvassing board shall promptly correct the error as specified in the agreement and file an amended report. When an error is corrected pursuant to this subdivision, the county canvassing board and the county auditor shall proceed in accordance with sections 204C.32 to 204C.36.

Subd. 3. **Errors of state canvassing board.** If the candidates for an office unanimously agree in writing that the state canvassing board has made an obvious error in the counting and recording of the vote for that office they shall deliver the agreement to the secretary of state. If a certificate of election has not been issued, the secretary of state shall reconvene the state canvassing board and present the agreement to it. The board shall promptly correct the error as specified in the agreement and file an amended statement. When an error is corrected pursuant to this subdivision by the state canvassing board, the state canvassing board and the secretary of state shall proceed in accordance with sections 204C.32 to 204C.36.

**History:** 1981 c 29 art 5 s 38

**204C.39 CORRECTION OF OTHER OBVIOUS ERRORS.**

Subdivision 1. **Manner of correction.** A county canvassing board may determine by majority vote that the election judges have made an obvious error in counting or recording the votes for an office. The county canvassing board shall then promptly notify all candidates for that office of the determination, including a description of the error. A candidate who receives notification pursuant to this subdivision or any candidate who believes that the election judges in a precinct have made an obvious error in the counting or recording of the votes for an office may apply without unreasonable delay to the district court of the county containing the precinct in which the alleged error was made for an order determining whether or not an obvious error has been made. The applicant shall describe the alleged error in the application and may submit additional evidence as directed by the court. The applicant shall notify the county canvassing board and all candidates for the affected office in the manner directed by the court. If the court finds that the election judges made an obvious error it shall issue an order specifying the error and directing the county canvassing board to inspect the ballots and returns of the precinct in order to correct the error and to proceed further in accordance with this section or otherwise as the court may direct.

Subd. 2. **Inspection; time; place.** The county auditor shall schedule a meeting of the county canvassing board at the auditor's office as soon as practicable after the court issues an order under subdivision 1 and shall give sufficient advance notice of the meeting to the affected candidates. The board, in the presence of all the candidates for the office or their representatives shall inspect the ballots and returns, correct any error and proceed further in accordance with the order of the court.

Preparation of the county canvassing board report with respect to other offices on the ballot shall not be delayed because of an inspection required by this section.

Subd. 3. **Report of canvassing board; addendum.** After the canvassing board has inspected the ballots and returns, it shall promptly submit to the county auditor an addendum to its regular report, which addendum shall contain the following information:

- (a) A copy of the order of the court, if any;

(b) The minutes of the meeting showing the time, date, and place of the meeting, the names of the candidates or their representatives who were present, and the action taken by the board;

(c) A copy of the meeting notice given to each candidate and proof of service; and

(d) The names of the candidates for each office for which votes were inspected and the total number of votes received by each candidate for that office in the county and in each precinct.

**Subd. 4. Canvassing board; declaration of results; notification.** The canvassing board shall declare the results of the election upon completing the inspection for the office in question. The report and declaration shall be filed by the county auditor, who shall mail a certified copy to each candidate for that office. The county auditor shall promptly notify the secretary of state by certified mail of the action of the county canvassing board.

**History:** 1981 c 29 art 5 s 39; 1986 c 444

#### 204C.40 CERTIFICATES OF ELECTION.

**Subdivision 1. Preparation; method of delivery.** The county auditor shall prepare an election certificate for every county candidate declared elected by the county canvassing board, and the secretary of state shall prepare a certificate for every state and federal candidate declared elected by either a county canvassing board or the state canvassing board. Except as otherwise provided in this section, the secretary of state or county auditor, as appropriate, shall deliver an election certificate on demand to the elected candidate. In an election for United States representative, the secretary of state shall deliver the original election certificate to the chief clerk of the United States house of representatives. In an election for United States senator, the governor shall prepare an original certificate of election, countersigned by the secretary of state, and deliver it to the secretary of the United States senate. In an election for state representative or state senator, the secretary of state shall deliver the original election certificate to the chief clerk of the house or the secretary of the senate. The chief clerk of the house or the secretary of the senate shall give a copy of the certificate to the representative-elect or senator-elect. Upon taking the oath of office, the representative or senator shall receive the original certificate of election. If a recount is undertaken by a canvassing board pursuant to section 204C.35, no certificate of election shall be prepared or delivered until after the recount is completed. In case of a contest, the court may invalidate and revoke the certificate as provided in chapter 209.

**Subd. 2. Time of issuance; certain offices.** No certificate of election shall be issued until seven days after the canvassing board has declared the result of the election. In case of a contest, an election certificate shall not be issued until a court of proper jurisdiction has finally determined the contest. This subdivision shall not apply to candidates elected to the office of state senator or representative.

**History:** 1981 c 29 art 5 s 40; 1986 c 475 s 15; 1991 c 227 s 18; 1999 c 132 s 24

#### 204C.41 NEGLECT OF DUTY; OTHER OFFENSES BY ELECTION OFFICIALS; PENALTY.

An election officer or other individual required by law to safely keep and produce ballots on election day or to perform any other act, who intentionally fails or refuses to perform the act required, or who is required by law to abstain from any act, and intentionally does the act, or who in either of these cases is guilty of fraud, corruption, partiality or misbehavior in conducting or aiding in the conduct of an election, or in counting or making returns of votes, or who wrongfully refuses to make or deliver a certificate of election, or who falsely or corruptly performs any required act, for which a punishment has not been otherwise expressly provided for by law, is guilty of a felony.

**History:** 1981 c 29 art 5 s 41; 1986 c 444