

1 Introduced by Committee on Government Operations

2 Date:

3 Subject: Elections; recounts; procedure for recounts

4 Statement of purpose of bill as introduced: This bill proposes to amend the  
5 procedure for conducting recounts.

6 An act relating to the procedure for conducting recounts

7 It is hereby enacted by the General Assembly of the State of Vermont:

8 Sec. 1. 17 V.S.A. chapter 51, subchapter 9 is amended to read:

9 Subchapter 9. Recounts and Contest of Elections

10 § 2601. ~~RECOUNTS~~ RECOUNT THRESHOLD

11 (a) In an election for statewide office, county office, ~~or~~ State Senator, or  
12 State Representative, if the difference between the number of votes cast for a  
13 winning candidate and the number of votes cast for a losing candidate is less  
14 than two percent of the total votes cast for all the candidates for an office,  
15 divided by the number of persons to be elected, that losing candidate shall have  
16 the right to have the votes for that office recounted.

17 (b) ~~In an election for all other offices, if the difference between the number~~  
18 ~~of votes cast for a winning candidate and the number of votes cast for a losing~~  
19 ~~candidate is less than five percent of the total votes cast for all the candidates~~  
20 ~~for an office, divided by the number of persons to be elected, that losing~~

**Comment [BAW1]:** Added State Rep.

Local officials and JoPs still at less than 5% under this draft via subsection (b).

Same threshold for all?

Should it be "two percent or less"? If so, should local and JoP candidates be "five percent or less" in § 2683?

1 ~~candidate shall have the right to have the votes for that office recounted~~ In the  
2 case of a recount for a local election or for the office of justice of the peace, the  
3 threshold and procedures for conducting the recount shall be as provided in  
4 chapter 55, subchapter 3 of this title.

5 § 2602. PETITIONS FOR RECOUNTS; SETTING DATE OF RECOUNT

6 (a) ~~In the case of recounts for local elections and recounts for the office of~~  
7 ~~justice of the peace, the procedures for conducting the recount shall be as~~  
8 ~~provided in subchapter 3 of chapter 55 of this title. [Repealed.]~~

9 (b) In the case of recounts ~~other than specified~~ described in subsection  
10 2601(a) of this section subchapter, the following procedure shall apply.

11 (1) A petition for a recount shall be filed within seven calendar days  
12 after the election.

13 (2) The petition shall be filed with:

14 (A) the Civil Division of the Superior Court, Washington County, in  
15 the case of candidates for State or congressional office, or for a presidential  
16 election; ~~the petition shall be filed with or~~

17 (B) the Superior Court in any county in which votes were cast for the  
18 office to be recounted, in the case of any other office.

19 (3) The petition shall be supported, if possible, by a certified copy of the  
20 certificate of election prepared by the canvassing committee, verifying the total  
21 number of votes cast and the number of votes cast for each candidate.

1 (c)(1) The Superior Court shall;

2 (A) set the date of the recount to be;

3 (i) five business days after the Court receives the petition ~~for~~, in  
4 the case of a primary recount; or

5 (ii) 10 business days after the Court receives the petition, in the  
6 case of a general election recount; and ~~shall~~

7 (B) notify all candidates of ~~that~~ the recount date no later than the next  
8 business day after the petition is received.

9 (2)(A) The Superior Court shall forward a copy of the petition to the  
10 county clerk.

11 (B) The Court shall order the town clerk or clerks having custody of  
12 the ballots to be recounted or their designees to transport them to the county  
13 clerks of their respective counties before the day set for the recount.

14 (C) ~~County clerks~~ The county clerk shall store all ballots, still in their  
15 sealed containers, in ~~their vaults~~ his or her vault until the day of the recount.

16 (d)-(h) [Repealed.]

17 (i) ~~The Secretary of State shall bear the costs of recounts covered under this~~  
18 ~~chapter.~~ [Repealed.]

Comment [BAW2]: Five days for primary, 10 for general?

Comment [BAW3]: Moved to 2602i (costs)

1 § 2602a. APPOINTMENT OF RECOUNT COMMITTEE; ~~SETTING DATE~~  
2 ~~OF RECOUNT~~

3 **OPTION A:**

4 (a)(1) Upon receipt of a petition, the county clerk shall notify ~~the chairs of~~  
5 ~~the relevant county political committees that a petition has been filed~~  
6 ~~requesting a recount and advising them to submit immediately a list of~~  
7 ~~nominees for individuals to serve on a recount committee.~~

8 (2) ~~In the case of a recount in a primary election, the county clerk shall~~  
9 ~~notify all candidates for the office which is the subject of the recount the~~  
10 ~~petitioning candidate and the winning candidate who received the lowest~~  
11 ~~number of votes, advising them to each submit immediately a list of a~~  
12 ~~minimum of 10 nominees for individuals to serve on a recount committee.~~

13 (3) ~~If a candidate for an office which is the subject of a recount is from a~~  
14 ~~party which does not have a county committee, the county clerk shall send a~~  
15 ~~copy of the notice to the State committee of the party advising them to submit~~  
16 ~~immediately a list of nominees for individuals to serve on a recount committee.~~

17 (4) ~~If a candidate for an office which is the subject of a recount is~~  
18 ~~independent, the county clerk shall send that candidate a copy of the notice and~~  
19 ~~request him or her to submit immediately a similar list of nominees for~~  
20 ~~individuals to serve on a recount committee.~~

**Comment [BAW4]:** Only the petitioning candidate and the lowest-winning candidate are asked to submit a list of nominees.

See (a)(1).

1           ~~(5)(2)(A)~~ If a list of nominees is not delivered to the county clerk within  
2 two business days, the clerk shall notify the appropriate candidates that they  
3 have 24 hours to submit lists of nominees for individuals to serve on the  
4 recount committee.

5           (B) If the petitioning candidate fails to submit a complete list of  
6 nominees by this deadline, the recount shall not move forward.

7           (C) If the other candidate fails to submit a complete list of nominees,  
8 the county clerk shall request the petitioning candidate to submit additional  
9 nominees.

10          (b)(1) The Superior Court shall make **a minimum of eight** appointments to  
11 the recount committee from among those nominated under this section.

**Comment [BAW5]:** Minimum of eight to fill one of each needed team.

12          (2) In making these appointments, the court shall appoint an equal  
13 number of persons ~~from each party and from those persons~~ representing an  
14 ~~independent~~ each candidate to the extent practicable.

15 **OPTION B:**

**Comment [BAW6]:** The petitioning candidate and all winning candidates are asked to submit a list of nominees.

16          (a)(1) Upon receipt of a petition, the county clerk shall notify ~~the chairs of~~  
17 ~~the relevant county political committees that a petition has been filed~~  
18 ~~requesting a recount and advising them to submit immediately a list of~~  
19 ~~nominees for individuals to serve on a recount committee.~~

See (a)(1).

20          (2) ~~In the case of a recount in a primary election, the county clerk shall~~  
21 ~~notify~~ all candidates for the office ~~which~~ that is the subject of the recount,

1       advising them to each submit immediately a list of a minimum of 10 nominees  
2       for individuals to serve on a recount committee.

3               ~~(3) If a candidate for an office which is the subject of a recount is from a~~  
4       ~~party which does not have a county committee, the county clerk shall send a~~  
5       ~~copy of the notice to the State committee of the party advising them to submit~~  
6       ~~immediately a list of nominees for individuals to serve on a recount committee.~~

7               ~~(4) If a candidate for an office which is the subject of a recount is~~  
8       ~~independent, the county clerk shall send that candidate a copy of the notice and~~  
9       ~~request him or her to submit immediately a similar list of nominees for~~  
10       ~~individuals to serve on a recount committee.~~

11               ~~(5)(2)(A)~~ If a list of nominees is not delivered to the county clerk within  
12       two business days, the clerk shall notify the appropriate candidates that they  
13       have 24 hours to submit lists of nominees for individuals to serve on the  
14       recount committee.

15               (B) If the petitioning candidate fails to submit a complete list of  
16       nominees by this deadline, the recount shall not move forward.

17               (C) If any other candidate fails to submit a complete list of nominees,  
18       the county clerk shall request additional nominees from the other candidates.

1 (b)(1) The Superior Court shall make a minimum of eight appointments to  
2 the recount committee from among those nominated under this section.

3 (2) In making these appointments, the court shall appoint an equal  
4 number of persons ~~from each party and from those persons~~ representing an  
5 ~~independent~~ each candidate, to the extent practicable.

6 § 2602b. ASSIGNMENT OF DUTIES; RECOUNT MATERIALS

7 (a)(1) The county clerk shall supervise the recount and ~~may appoint a~~  
8 ~~sufficient number of impartial assistants to perform appropriate tasks which~~  
9 ~~have not been assigned to recount committee members.~~ The county clerk shall  
10 recruit town clerks or their designees to serve as impartial assistants to the  
11 county clerk for operating the vote tabulators, and shall consult with the  
12 Secretary of State to identify any vote tabulators to be used.

13 (2) The county clerk ~~shall store all ballots, still in their sealed~~  
14 ~~containers, in his or her vault until the day of the recount~~ may appoint a  
15 sufficient number of additional impartial assistants to perform tasks that have  
16 not been assigned to recount committee members.

Comment [BAW7]: [Already covered in § 2602\(c\)](#)

17 (b)(1) ~~The county clerk shall assign committee members to the following~~  
18 ~~teams of at least four persons, consisting of one caller and one observer,~~  
19 ~~representing different candidates, and one tally person and one double check~~  
20 ~~person, representing different candidates;~~

Comment [BAW8]: [Review](#)

1           (A) Counting teams comprising at least four persons each, consisting  
2 of an equal number of persons from each of the lists of nominees;

3           (B) One vote tabulator team, comprising two persons who are each  
4 from a different list of nominees; and

5           (C) One clerk observer team, comprising two persons who are each  
6 from a different list of nominees.

7           (2) Any additional team members shall be additional observers and  
8 double check persons, who shall be assigned to ensure that each candidate has  
9 one person assigned as either a caller or an observer and one person assigned  
10 as either a tally person or a double check person. One team shall be designated  
11 as the clerk observer team, which shall perform only the functions established  
12 under this subchapter for that team remain unassigned and shall be used as  
13 necessary on the day of the recount.

14           (c) ~~The recount committee shall use~~ Secretary of State shall provide to the  
15 recount committee:

16           (1) fresh seals, manila tags, tally sheets, double check sheets, summary  
17 sheets for each polling place town, master lists for the entire election to be  
18 recounted, and other appropriate material provided deemed appropriate by the  
19 Secretary of State; and

20           (2) the official return of votes for each town subject to the recount.

1 § 2602c. PREPARATION FOR RECOUNT; GENERAL RULES

2 (a) Recount area; preserving order.

**Comment [BAW9]:** Moved from current § 2602j(a) and (b) at end of subchapter.

3 (1)(A) The county clerk shall designate an area within which the recount  
4 shall take place.

5 (B) Persons who are not committee members or who have not been  
6 designated as impartial assistants by the county clerk shall be permitted to  
7 view the recount in progress, but shall not be permitted within the recount area.

8 (2) The county clerk shall preserve order. If a person, after notice, is  
9 persistently disorderly and refuses to withdraw from the premises, the county  
10 clerk may cause the person to be removed from the premises.

11 (b) Preliminary requirements. Before the recount begins, ~~the~~ and any  
12 containers are opened:

13 (1) Explaining procedures. The county clerk shall explain the recount  
14 procedures ~~which~~ that are to be followed and shall answer questions relating to  
15 such procedures. ~~The county clerk shall use volunteer town clerks to operate~~  
16 ~~and instruct on the use of vote tabulators.~~

**Comment [BAW10]:** Already addressed in § 2602b

17 (2) Blank ballots; vote tabulator test.

18 (A) The county clerk shall obtain blank ballots from the town clerks  
19 of the towns subject to the recount. These blank ballots shall be used as test  
20 ballots to perform the vote tabulator test described in this subdivision (2).

**Comment [BAW11]:** County clerk gets blank ballots from town clerks

1           (B)(i) The vote tabulator team shall perform a test of the vote  
2 tabulators that will be used by marking and feeding into each tabulator a  
3 minimum of 10 test ballots. The test ballots shall be marked with various  
4 votes for each candidate for the office subject to the recount.

5           (ii) If more than one memory card is to be used, such a test shall  
6 be performed for each memory card.

7           (C) If a vote tabulator does not tabulate these votes accurately, it  
8 shall not be used.

9           (D) Once the test is completed, these ballots and the tabulator tape  
10 containing the results of the test shall be sealed in an envelope that shall be  
11 dated and marked “TEST BALLOTS—DO NOT COUNT.” This envelope  
12 shall then be kept separate from the rest of the containers.

13           (b)(c) Tables. Each team shall have a separate table and the county clerk  
14 shall have a separate table, and all of these tables shall be spaced apart.

Comment [BAW12]: From below.

15           (d) Separating containers, polling places, and towns. Each recount team  
16 shall:

17           (1) recount the contents of one container before opening another  
18 container at its table, shall;

19           (2) recount the contents of all the containers relating to one polling place  
20 before moving to those of another polling place; and shall

1           (3) complete the recount for one town before moving to material relating  
2 to another town.

3           ~~(e)~~(e) Recording containers. For each ~~polling place~~ town, the number of  
4 containers shall be counted and recorded on the ~~master list~~ summary sheet for  
5 that town.

Comment [BAW13]: Revised

6           ~~(d)~~(f) Inspecting containers and seals.

7           (1) Containers. Before opening, each container shall be inspected, and  
8 if no tag is present, replacement manila tags shall be affixed, specifying date of  
9 election and name of town and polling place.

10          (2) Seals.

11          (A) ~~Likewise, each~~ Each seal shall be ~~examined~~ inspected to see if it  
12 is intact, and the county clerk shall attach to any ~~bag~~ container with a defective  
13 seal a tag stating that the seal was defective and containing the information  
14 ~~which~~ that was contained on the defective seal.

15          (B) If a seal number does not match the seal number reported by the  
16 town clerk on the official return of votes, the county clerk shall contact the  
17 town clerk to request an explanation for that difference. The county clerk shall  
18 record any explanation on the summary sheet for that town.

19          ~~(e)~~(g) Uncounted containers. Uncounted containers shall be kept in one  
20 part of the room and moved to the other side as they are counted; ~~each team~~

1 ~~shall have a separate table and the county clerk shall have a separate table, all~~  
2 ~~of which tables shall be spaced apart.~~

**Comment [BAW14]:** Moved to (c) above.

3 ~~(f)(h) Checklist container.~~ If there is more than one container from a  
4 polling place, the county clerk shall open first the container ~~which~~ that is  
5 identified as containing the checklist, if applicable.

6 ~~(i) Opening containers. Upon opening the first container in the presence of~~  
7 ~~the clerk observer team, the~~ The county clerk shall empty the contents of each  
8 container onto the clerk's his or her table in the presence of the clerk observer  
9 team.

10 ~~(j) Materials not to be distributed.~~ The county clerk shall ensure that teams  
11 are not given, and the teams shall not count:

12 ~~(1) ballots marked defective or contained in a defective ballot envelope;~~

**Comment [BAW15]:** Discuss

13 ~~(2) unused ballots, early or absentee ballots which arrived after the close~~  
14 ~~of polls, that were not distributed to voters; or~~

*Should these be reviewed? If so, what are the standards?*

15 ~~(3) ballots spoiled returned by voters and turned in by voters requesting~~  
16 ~~fresh who requested replacement ballots, or ballots contained in a replaced~~  
17 ~~ballot envelope.~~

**Comment [BAW16]:** In accordance with misc. elections corrections bill

18 ~~(k) Recording defective ballots. In the presence of the clerk observer team,~~  
19 ~~the county clerk shall mark the number of defective ballots from the official~~  
20 ~~return of votes for each town on the summary sheet for that town.~~

1 § 2602d. EXAMINATION OF CHECKLISTS

2 **OPTION A:**

3 (a) The checklist from the first ~~bag~~ container shall be assigned to a team.  
4 ~~The caller and observer~~ Two persons who represent different candidates, each  
5 acting independently, shall examine the checklist and determine how many  
6 voters voted at the polling place, repeating the process until they agree on a  
7 number or until they agree to disagree on a number.

8 (b) Then the checklist shall be examined by ~~the tally person and the~~  
9 ~~double-check person~~ the remaining members of the team, repeating the process  
10 until they agree on a number or they agree to disagree on the number.

11 (c) The results obtained from the two subgroups will be compared and if  
12 they do not match, the process shall be repeated until there is agreement among  
13 all the members of the team or until team members agree to disagree.

14 (d)(1) The number finally determined by a majority of team members shall  
15 be submitted to the county clerk in the presence of the clerk observer team,  
16 together with an indication of the nature and extent of the disagreement.

17 (2) If one or more team members do not agree with the number  
18 submitted, the county clerk shall note on the ~~master list~~ summary sheet for the  
19 town the fact that the number of people appearing as having voted on a  
20 specified checklist was subject to dispute.

1 **OPTION B:** *[repeal all language of § 2602d and replace with following:]*

**Comment [BAW17]:** See § 2602h re: completing the tally

2 The county clerk shall record on the summary sheet for the town the  
3 number of ballots counted and the number of voters checked off the checklist  
4 as reported on the official return of votes for each town.

5 **OPTION C:**

**Comment [BAW18]:** Only examine the checklist if the ORV's number of ballots counted and number of voters checked off checklist do not match.

6 The county clerk shall review the official return of votes for each town and  
7 if the number of ballots counted and the number of voters checked off the  
8 checklist on a town's return are the same, the county clerk shall record those  
9 numbers on the summary sheet for that town. If they are not the same [. . . use  
10 existing § 2602d process for examining checklist].

11 § 2602e. SORTING BALLOTS; BALLOT REVIEW; RECOUNT OF

12 REMOVED BALLOTS BY HAND

13 (a) Sorting ballots.

14 (1) While the checklist is being examined, after emptying a container  
15 onto his or her table, the county clerk shall separate ballots from the container  
16 into a number of batches equal to the number of counting teams, with each  
17 batch being of approximately equal size.

**Comment [BAW19]:** Not necessary under **OPTION B**

Or "While the checklist is being examined, if applicable," for **OPTION C**.

18 (2) Each counting team shall take a batch of ballots from the county  
19 clerk's table and take that batch to the counting team's table.

1           (3) Two persons who represent different candidates on a counting team  
2 shall sort that batch into stacks of 50 ballots, and the remaining members of the  
3 team shall recount each stack to ensure that there are 50 ballots in it.

4           (4)(A) The counting teams shall combine any ballots not placed into a  
5 stack of 50, and one of those counting teams shall separate those combined  
6 ballots into stacks of 50 and recount them in accordance with subdivision (3)  
7 of this subsection.

8           (B) For any final stack that contains fewer than 50 ballots, the county  
9 clerk shall affix to the top of that stack a note indicating how many ballots are  
10 contained in it.

11           (b) Ballot review and removal.

12           (1)(A) For each stack, a counting team shall review each ballot within  
13 the stack and remove from that stack each ballot upon which, for the office in  
14 question, the voter recorded his or her vote or votes in that race in any manner  
15 other than completely filling in the oval to the right of the candidate's name.

16           (B) Each counting team shall also remove any plain paper or  
17 damaged ballots.

18           (2) A ballot shall be removed only if at least two members of the  
19 counting team agree to its removal.

20           (3) A ballot without markings for the office in question shall not be  
21 removed.

**Comment [BAW20]:** *Threshold question.*  
Should it be two members representing different candidates?

Three members?

1           (4) A ballot that is not removed upon this first review shall not be  
2 reviewed again.

3           (c) Delivery of remaining ballots.

4           (1) Each counting team shall then count the number of ballots that  
5 remain in a stack in accordance with the process set forth in subdivision (a)(3)  
6 of this section and attach to that stack a note with that number.

7           (2) Two members representing different candidates on a counting team  
8 shall deliver those ballots to the vote tabulator team, while the remaining  
9 members of the counting team stay at the table with the removed ballots.

10          (d) Hand count of removed ballots; questionable votes.

11          (1) Each counting team shall then separate the removed ballots into  
12 stacks of 50 in accordance with the process set forth in subdivision (a)(3) of  
13 this section.

14          (2) The counting team shall then hand count the votes for the office in  
15 question on the removed ballots, and mark the results on a tally sheet for each  
16 stack of 50 removed ballots and any remaining stack with less than 50.

17          (3)(A) This hand count shall be in accordance with the rules for  
18 counting ballots set forth in section 2587 of this chapter, except that if one  
19 person on the counting team does not agree on how to count a vote, the ballot  
20 shall be set aside as containing a questionable vote.

**Comment [BAW21]:** Note that the misc. elections bill would amend § 2587 for clarity.

**Comment [BAW22]:** Ability of one person to disagree taken from 2602f(c).

1 (B)(i) For any questionable vote, a copy of the ballot shall be made,  
2 and this copy shall be clearly marked on its face identifying it as a copy. Once  
3 the recount of a container is completed, any such copies shall be placed on the  
4 top of the other ballots and shall remain together with the other ballots.

Comment [BAW23]: From current § 2602f(c).

5 (ii) Each original ballot with a questionable vote shall be attached  
6 to a note that identifies it by town, county, polling place, and container seal  
7 number. The originals of these ballots with questionable votes shall be clipped  
8 to the summary sheet for that town, along with a copy of the official return of  
9 votes, and submitted to the court for a final decision.

Comment [BAW24]: Discuss

10 (iii) The county clerk shall record the number of ballots containing  
11 questionable votes to be submitted to the court on the summary sheet for the  
12 town.

13 (C) At the end of the hand count for a container, two persons from  
14 each counting team who represent different candidates shall deliver any tally  
15 sheets from their table to the county clerk in the presence of the clerk observer  
16 team.

17 (D) The county clerk, in the presence of the clerk observer team,  
18 shall record the totals from each tally sheet onto the summary sheet for the  
19 town.

20 (e) This process shall be completed for as many containers as there are for  
21 each town.

1 § 2602f. RECOUNT OF REMAINING BALLOTS BY VOTE TABULATOR

2 (a) The vote tabulator team shall operate any vote tabulator used in the  
3 recount, with the assistance of the recruited town clerks or designees.

4 (b) The vote tabulator memory card shall be programmed to read only the  
5 votes for the election that is the subject of the recount.

Comment [BAW25]: Added.

6 (c)(1) ~~Vote tabulator readable~~ At the same time as any removed ballots are  
7 being hand counted, the vote tabulator team shall take any ballots from each  
8 container shall be fed delivered to them, and feed them through a vote  
9 tabulator by one team until all vote tabulator readable ballots from the

10 container have been entered. ~~For ballots unable to be read by a vote tabulator,~~  
11 ~~such as damaged or plain paper ballots, a second team shall collect these~~  
12 ~~ballots from the pile and transfer the voter's choices on those ballots to blank~~  
13 ~~ballots provided by the Secretary of State. After all of the vote tabulator-~~  
14 ~~readable ballots have been fed through the vote tabulator, the first team shall~~  
15 ~~feed through the vote tabulator any transfer ballots created by the second team.~~

Comment [BAW26]: Addressed by (c)(4), below.

16 (2) ~~The recount teams shall switch roles for each subsequent container~~  
17 ~~of ballots of a polling place that are to be fed through the vote tabulator, if~~  
18 ~~there is more than one container per polling place. The vote tabulator team~~  
19 shall attempt to feed ballots into the vote tabulator in the same direction.

1           (3)(A) If the tabulator refuses a ballot, the vote tabulator team shall  
2 announce that occurrence and whether the ballot was counted, and may  
3 override that refusal.

Comment [BAW27]: Discuss.

4           (B) If the tabulator continues to refuse the ballot, the vote tabulator  
5 team shall announce that occurrence and return it to a counting team for hand  
6 counting.

7           (4) This process shall be used until all ballots from a polling place  
8 container have been tabulated by a vote tabulator or otherwise returned to a  
9 counting team for hand counting.

Comment [BAW28]: Added.

10           ~~(b)~~(d)(1) This process shall be repeated until all ballots from a town have  
11 been fed through a vote tabulator.

12           (2) If there is more than one container for a town, the tabulator tape shall  
13 not be printed until ballots from all containers for that town have been  
14 tabulated.

15           (e)(1) After all ballots from a polling place town have been tabulated by a  
16 vote tabulator, a recount team the vote tabulator team shall print the tabulator  
17 tape containing the unofficial results and document those results on a tally  
18 sheet for that town, and deliver that tabulator tape to the county clerk in the  
19 presence of the clerk observer team.

20           (2) The county clerk shall then record the totals from the tabulator tape  
21 onto the summary sheet for the town in the same manner that he or she

1 recorded the individual tally sheet totals from the hand-counted ballots.

2 ~~Another recount team shall then open the tabulator's ballot box and remove all~~  
3 ~~ballots. The ballots shall then be divided among the recount teams to be~~  
4 ~~examined to find write in names and markings of voter intent that were not~~  
5 ~~vote tabulator readable as outlined in the Secretary of State's vote tabulator~~  
6 ~~guide and most recent elections procedures manual. A caller, tally person, and~~  
7 ~~double check person shall be used to examine the ballots removed from the~~  
8 ~~ballot box. If the caller and the observer or observers do not agree on how a~~  
9 ~~ballot should be counted, the entire team shall review the ballot and if all~~  
10 ~~members agree, it shall be counted that way.~~

11 (c) ~~If one person does not agree, that ballot shall be set aside as a~~  
12 ~~questioned ballot and a copy shall be made, which copy shall be clearly~~  
13 ~~marked on its face identifying it as a copy. Any copies shall be placed on the~~  
14 ~~top of the other ballots and shall remain together with the other ballots. Each~~  
15 ~~original ballot deemed questionable shall be attached to a note which identifies~~  
16 ~~it by town, county, polling place, and bag seal number. The originals of these~~  
17 ~~questionable ballots shall be clipped to the summary sheet for that polling~~  
18 ~~place and returned to the court for a final decision.~~

19 (d) ~~After the court has rendered a final decision on a given questionable~~  
20 ~~ballot, it shall be returned to the county clerk who shall keep it in a sealed~~  
21 ~~container for a period of two years.~~

Comment [BAW29]: Moved to § 2602j

1 ~~(e) Write in votes for preprinted candidates shall be counted as votes for~~  
2 ~~that candidate.~~

**Comment [BAW30]:** Would be added to § 2587  
in misc. elections bills

3 ~~(f) If the tally persons do not agree on the number of votes for a candidate~~  
4 ~~on ballots not able to be read by the vote tabulator, the ballots shall be retallied~~  
5 ~~until they do agree. Then the team shall notify the clerk that it has completed~~  
6 ~~its recount.~~

7 § 2602h. COMPLETING THE TALLY

8 ~~(a) The county clerk shall return all ballots to their container, seal the~~  
9 ~~container, record the seal number on the summary sheet, and write “recounted”~~  
10 ~~and specify the date of the recount on the tag.~~

**Comment [BAW31]:** Moved from (b), below.

11 ~~(b) After~~ The county clerk shall add together the hand count and vote  
12 tabulator totals for a polling place have been listed each town, as recorded on  
13 the tally sheets and vote tabulator tape submitted to him or her, the county  
14 clerk and shall add them up in the presence of the clerk observer team, and  
15 record those totals on the summary sheet for that town, and affix his or her seal  
16 to that summary sheet.

17 ~~(c)(1) The county clerk shall compare the number of ballots recounted for~~  
18 ~~that town with the number of voters who voted at that~~ ballots counted at the  
19 polling place, according to the number obtained from the team that examined  
20 the certified checklist as reported on the official return of votes and recorded

1 by the county clerk on the summary sheet in accordance with section 2602d of  
2 this subchapter.

Comment [BAW32]: See § 2602d **OPTION B**

3 (2) If these numbers differ, the county clerk shall note the amount of the  
4 difference on the summary sheets for that polling place town.

5 (d) If there is more than one town subject to the recount:

6 (1) this process shall be repeated for each town; and

7 (2) once all towns have been recounted, the county clerk shall add  
8 together the totals from each town and record the total for all towns on a  
9 master summary sheet and affix his or her seal to that sheet.

10 (b) ~~The county clerk shall return all ballots to the container, seal it, record~~  
11 ~~the seal number on the summary sheet, write “recounted” and specify the date~~  
12 ~~of the recount on the tag, and move it to the other side of the room, making~~  
13 ~~sure that there is never more than one bag open at any one time.~~

Comment [BAW33]: Moved to (a) for  
chronological order.

Comment [BAW34]: Not needed. Addressed in  
2602c.

14 (c) ~~This procedure shall be repeated for each container, until the results~~  
15 ~~from a polling place have been recounted, and then it shall be repeated until the~~  
16 ~~results from all polling places in a town have been recounted, and then until the~~  
17 ~~results from all towns have been recounted.~~

18 (d) ~~The county clerk shall add the totals on each summary sheet, affix the~~  
19 ~~clerk’s seal, and~~

20 (e) The county clerk shall send the summary sheets for all polling places  
21 together with the any master list summary sheet and any questionable

1 original ballots containing questionable votes to the court by certified mail,  
2 return receipt requested, or shall certify the results to the judge.

3 § 2602i. COSTS

4 (a) Recount committee members and assistants designated by the county  
5 clerk shall be paid by the State at the same per diem and mileage rates and  
6 according to the same procedures by which jurors are paid.

7 (b)(1) These and other necessary expenses, as approved by the court, shall  
8 be paid by the State through the Court Administrator's Office.

9 (2) The Secretary of State shall bear the costs of recounts conducted  
10 under this subchapter and shall reimburse the Court Administrator's Office.

Comment [BAW35]: Moved from 2602

11 § 2602j. ~~OTHER RULES FOR CONDUCTING THE RECOUNT COURT~~  
12 HEARING AND JUDGMENT

13 (a) ~~The county clerk shall preserve order. If a person, after notice, is~~  
14 ~~persistently disorderly and refuses to withdraw from the premises, the county~~  
15 ~~clerk may cause the person to be removed from the premises. [Repealed.]~~

Comment [BAW36]: Moved to § 2602c re:  
general rules, toward beginning of subchapter

16 (b) ~~The county clerk shall designate an area within which the recount shall~~  
17 ~~take place. Persons who are not committee members shall be permitted to view~~  
18 ~~a recount in progress, but persons not authorized by the county clerk shall not~~  
19 ~~be permitted within the area designated by the county clerk. [Repealed.]~~

Comment [BAW37]: same as above

20 (c) Candidates and their attorneys shall be given the opportunity to present  
21 evidence to the court relating to the conduct of the recount.

1       (d) If the court determines that any violations of recount procedures have  
2 occurred and that they may have affected the outcome of the recount, a new  
3 recount shall be ordered.

4       (e) After such hearings or arguments as may be indicated under the  
5 circumstances, the Superior Court, within five working days, shall:

6           (1) issue a judgment, which shall supersede any certificate of election  
7 previously issued;

8           (2) send a certified copy of the judgment to the Secretary of State; and  
9 ~~shall~~

10           (3) return to the county clerk any ballots containing questionable ballots  
11 ~~which votes that~~ had been forwarded to the court.

12 § 2602k. ~~AFTER THE RECOUNT TIES~~

13       (a) If the a primary recount results in a tie, the provisions of subsection  
14 2369(b) of this title shall apply.

15       (b) If a general election recount results in a tie, the court shall order a  
16 recessed election to be held, within three weeks of the recount, on a date set by  
17 the court.

18           (1) The only candidates who shall appear on the ballot at the recessed  
19 election shall be those who tied in the previous election.

20           (2) The recessed election shall be considered a separate election for the  
21 purpose of voter registration under chapter 43 of this title.

**Comment [BAW38]:** From 2602k

**Comment [BAW39]:** Section solely re: ties.

**Comment [BAW40]:** Party decides a tie after primary if no recount, therefore same concept applied here.

Also helps ensure delivery of general election ballots to overseas voters 45 days before GE.

1           (3) If the recount confirms a tie as to any public question, no recessed  
2 election shall be held, and the question shall be certified not to have passed.

3           (4) Warnings for a recessed election shall be posted as required by  
4 subchapter 5 of this chapter, except that the warnings shall be posted not less  
5 than 10 days before the recessed election.

6           (5) The conduct of a recessed election shall be as provided in this  
7 chapter for general elections.

8           ~~(b) After the recount, the county clerk shall seal the ballots and other  
9 materials back in the containers and store them in the county clerk's vault until  
10 returned to the towns. The county clerk shall return all ballots to the respective  
11 town clerks after issuance of the court's judgment, together with a copy of the  
12 judgment. The respective town clerks or their designees shall transport the  
13 ballots to the towns from which they came.~~

Comment [BAW41]: Moved to 2602m(a)

14           ~~(c) The court shall send a certified copy of the judgment to the Secretary of  
15 State.~~

Comment [BAW42]: Moved to 2602j (court statute)

16           § 2602m. STORAGE AND RETURN OF ELECTION MATERIALS

17           ~~(a)(1) After the recount, the county clerk shall store the sealed containers  
18 and any other recount materials in the county clerk's vault until returned to the  
19 towns.~~

Comment [BAW43]: Moved from 2602k(b)

