

# State of Vermont House of Representatives



Montpelier, Vermont

## House Resolution

H.R. 10

House resolution relating to policies and procedures for the Orange-1 legislative recount

Offered by: Committee on Government Operations

Resolved by the House of Representatives:

That this legislative body approves the following policies and procedures for the Orange-1 legislative recount:

### PART 1. PRE-RECOUNT LOGISTICS

#### *I. Subpoenaing Ballot Containers, Entrance Checklists, and Ballot Container Tag IDs*

(a)(1) The Director and Chief Counsel of Legislative Council shall issue on behalf of the Committee on Government Operations subpoenas for the Orange-1 district ballot containers from the November 8, 2016 general election, unused ballots from that election that are inside or outside the ballot containers, and any entrance checklists from that election not in ballot containers.

(2) In addition, the Orange County Clerk subpoena shall include the ballot container tag identification.

(b) A sheriff shall deliver the subpoenas. The Office of Legislative Council shall arrange for this delivery.

#### *II. Obtaining and Transporting Ballots and Entrance Checklists*

The Office of Legislative Council shall arrange for a sheriff to pick up and deliver the subpoenaed materials to the State House on the day preceding the recount, and to return those materials as soon as practicable following the recount.

#### *III. Storage and Security of Ballots and Entrance Checklists*

(a) Upon arrival at the State House, subpoenaed materials shall be stored in the closet of Room 11.

(b) The Sergeant at Arms shall keep this room locked at all times until the morning of the recount. The lock shall be changed using a core key. The Sergeant at Arms shall restrict access to this room and the room key.

*IV. Obtaining Vote Tabulators, Vote Tabulator Memory Cards, Blank Ballots, and Other Election Materials*

(a) Vote tabulators.

(1) Number. The Recount Panel shall obtain at least two vote tabulators. One shall be used at the recount, and the second shall be reserved as a backup.

(2) Source. The Office of the Secretary of State will request that the City of Montpelier loan these tabulators to the Recount Panel.

(3) Pickup and return. One or more legislators or legislative staff shall pick up these tabulators by car on the morning of the recount and shall return them to the City of Montpelier during the soonest office hours following the recount.

(b) Vote tabulator memory cards.

(1) Number and price.

(A) A total of two memory cards are needed. One shall be used at the recount, and the second shall be reserved as a backup.

(B) The cost is currently estimated at approximately \$250.00 total.

(2) Source. The Office of the Secretary of State will contact and work with vote tabulator company LHS to prepare the memory cards.

(3) Delivery and storage.

(A) LHS will mail the memory cards to the State House.

(B) The Chief of the Capitol Police shall store the memory cards in a locked drawer within his or her office and shall keep this drawer locked at all times until the morning of the recount. The Chief shall restrict access to this drawer and the drawer key and shall deliver the memory cards to the location of the recount on the morning thereof.

(C) The Office of the Secretary of State will provide a chain of custody form that shall be completed by any person who handles the memory cards.

(c) Other election materials.

(1)(A) The Office of the Secretary of State will provide tally sheets, summary sheets, and returns. The Office of the Secretary of State will also provide a copy of its Rules for Counting Ballots to assist the Recount Panel.

(B) The Office of the Secretary of State will deliver these materials on the day of the recount.

(2) The Sergeant at Arms shall provide a stanchion to separate the recount area from the rest of the room in which the recount is held.

(3) The Office of the Secretary of State will arrange for an LHS representative to be available by telephone on the day of the recount.

*V. General Information Regarding Recount*

(a) Location. The recount shall be held in Room 11.

(b) Notice. The Committee on Government Operations shall provide advance notice of the recount in a press release and on the website of the General Assembly.

(c) Costs. Payments for all costs associated with conducting the recount shall be paid from the legislative appropriation.

(d) Access.

(1) Members of the public and of the press and the two candidates and their attorneys shall remain outside the stanchion during the recount and shall not interfere or communicate with the Recount Panel.

(2) Only Recount Panel members and their chosen assistants, including staff of the Office of Legislative Council and of the Office of the Secretary of State, shall be permitted on the side of the stanchion in which the recount is taking place.

(e) Maintaining order. The Sergeant at Arms and the Capitol Police shall maintain order during the recount.

(f) Securing election materials overnight. If the recount cannot be completed within one day or if election materials cannot be returned during business hours on the day of the recount, the Sergeant at Arms shall:

(1) store and lock any election materials in the Room 11 closet with the core lock; and

(2) change the locks on the Room 11 doors using a core lock and keep those doors locked overnight.

## PART 2. RECOUNT PROCEDURES ON THE DAY(S) OF THE RECOUNT

### *I. Necessary Designees*

(a) If for any reason the Chair of the Committee on Government Operations cannot attend the recount, the Vice Chair of the Committee shall serve as Chair. In this instance, the Republican Party caucus leader shall serve on the Recount Panel and the Majority Leader of the Democratic Party caucus shall take the Republican Party caucus leader's place on the Chair Observer Team.

(b) If for any reason any other Recount Panel member cannot attend the recount, his or her party caucus leader shall appoint a person of his or her party to act as designee.

### *II. Vote Tabulator Test*

(a) Before any containers are opened or removed from the Room 11 closet, the Recount Panel shall perform a test of the vote tabulator using a minimum of 10 blank ballots provided by LHS.

(b) After this test, these ballots shall be sealed in an envelope that shall be dated and marked "TEST BALLOTS—DO NOT COUNT." This envelope shall then be kept separate from the rest of the ballots.

### *III. Assignment of Duties*

(a) The Chair of the Committee on Government Operations (Chair) shall supervise the recount.

(b) The Chair shall assign Recount Panel members to the following teams. Half of each team shall be made up of Republican Party representatives and the other half of each team shall be made up equally of Progressive and Democratic representatives, except as otherwise agreed upon by the Recount Panel.

(1) One Checklist Team, comprising four members.

(2) Three Pile Teams, each comprising four members.

(3) One Pile/Tally Team, comprising four members.

(4) One Vote Tabulator Team, comprising two members.

(c) Each four-member team shall consist of one caller and one observer, one representing the Republican Party and the other representing either the Progressive or Democratic Party, and one tally person and one double-check person, likewise representing those different parties.

(d) The Chair may require the teams to switch roles for each subsequent container of ballots.

(e) The Republican and Progressive Party caucus leaders shall be the Chair Observer Team.

#### *IV. General Rules Regarding the Recount*

(a) Explaining recount. Before the recount begins, the Chair or his or her designee shall explain the recount procedures that are to be followed and shall answer questions relating to such procedures.

(b) Separating containers and towns.

(1) The Recount Panel shall recount the contents of one container before opening another container, and shall complete the recount for one town before moving onto another town.

(2) A town shall not be left partially counted overnight.

(3) Uncounted containers shall be kept in one part of the room and moved to the other side as they are counted.

(c) Separating tables. Each team shall have a separate table and the Chair shall have a separate table, and each table shall be spaced apart.

#### *V. Inspecting Containers, Tags, and Seals*

(a) Containers. The Chair shall count and record the number of containers for each town on the master list.

(b) Tags. Before opening, each container shall be inspected, and if no tag is present, replacement manila tags shall be affixed, specifying the date of election and the name of the town.

(c) Seals.

(1) The Chair and the Chair Observer Team shall compare each seal number to that listed by the county clerk following the recount. Each seal shall be examined to see if it is intact, and the Chair shall attach to any container with a defective seal a tag stating that the seal was defective and containing the information that was contained on the defective seal.

(2) If it is found that any seal or container has been tampered with, the recount shall not move forward and Representative Frenier shall retain his seat.

#### *VI. Opening Containers*

(a) If there is more than one container from a town, the Chair shall open first the container that is identified as containing the checklist, if applicable.

(b) The Chair shall open each container in the presence of the Chair Observer Team and shall empty the contents onto the Chair's table.

(c) The Chair shall ensure that teams are not given unused ballots, early or absentee ballots that arrived after the close of polls, any ballots marked defective or placed in a defective ballot envelope, or ballots spoiled by voters and turned in by voters requesting fresh ballots.

(d) In the presence of the Chair Observer Team, the Chair shall mark the number of defective ballots from the official return of votes for each town on the summary sheet.

#### *VII. Examination of Checklists by the Checklist Team*

(a) The checklist from the first container shall be assigned to the Checklist Team. The caller and observer, each acting independently, shall examine the checklist and determine how many voters voted in the town, repeating the process until they agree on a number or until they agree to disagree on a number.

(b) Then the checklist shall be examined by the tally person and the double-check person, repeating the process until they agree on a number or they agree to disagree on the number.

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

(d)(1) The number finally determined by a majority of Checklist Team members shall be submitted to the Chair in the presence of the Chair Observer Team, together with an indication of the nature and extent of the disagreement.

(2) If one or more team members do not agree with the number submitted, the Chair shall note on the master list the fact that the number of people appearing as having voted on a specified checklist was subject to dispute.

#### *VIII. Ballot Review and Hand Count*

(a) While the checklist count is occurring, each Pile Team shall take a stack of ballots from the Chair's table and take those ballots to its own table.

(b) The caller and the observer shall sort ballots into piles of 50, and the tally and double-check persons shall recount that pile to ensure that there are 50 ballots in the pile.

(c)(1) Then, for each pile of 50, each Pile Team shall review each ballot within the pile and remove from that pile each ballot upon which, for the office in question, the voter recorded his or her vote or votes in that race in any manner other than completely filling in the oval to the right of the candidate's name. These teams shall also remove any plain paper or damaged ballots.

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

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

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

(d) Each Pile Team shall then count the number of ballots that remain in a pile, attach to that pile a note with that number, and deliver those ballots to the Vote Tabulator Team.

(e)(1) Each Pile Team shall then take any removed ballots, hand count the votes for the office in question on those ballots, and mark the results on a tally sheet for the town.

(2) If a team cannot unanimously agree on how to count a vote in this race, it shall be delivered the Chair and the Chair Observer Team for a final determination.

(f) At the end of the hand count for a town, the caller and observer on the Pile/Tally Team shall add together all of the hand counted tally sheets. The tally and double-check persons on that team shall then double-check that calculation for accuracy.

#### *IX. Rules for hand counting ballots*

(a) In counting ballots, Pile Team members shall attempt to ascertain the intent of the voter, as expressed by markings on the ballot that is consistent with rules adopted by the Secretary of State.

(b) If the voter marks more names than there are persons to be elected to the office in question, his or her ballot shall not be counted for that office and the Pile Team shall record two overvotes on the tally sheet.

(c)(1) If the Pile Team decides by majority vote that any markings on a ballot were made for the purpose of enabling it to be identified and the vote traced, so as to defeat the secrecy of the ballot, that ballot shall be submitted to the Chair and Chair Observer Team for a final determination.

(2) If the Pile Team cannot reach a decision on such a ballot by majority vote, the ballot shall be submitted to the Chair and Chair Observer Team for a final determination.

(d) If it is impossible to determine the intent of the voter for the office in question, the ballot shall be counted as blank.

(e)(1) In the case of “write-in” votes, the act of writing in the name of a candidate, or pasting a label containing a candidate’s name upon the ballot, without other indications of the voter’s intent, shall constitute a vote for that candidate, even though the voter did not fill in the square or oval after the name.

(2)(A) Write-in votes for a preprinted candidate, including the use of a nickname or last name, shall be counted as a vote for that candidate.

(B) For any other write-in candidate, the Pile Team shall only mark on the tally sheet the number of those write-in votes.

(3) A person who receives more than one vote for the same office on any ballot shall be entitled to one vote, and one vote only.

#### *X. Vote Tabulator Count*

(a) At the same time as any removed ballots are being hand counted, the Vote Tabulator Team shall take any ballots delivered to it and shall feed them through a vote tabulator until all the ballots from the container have been entered into the tabulator.

(b) The Vote Tabulator Team shall attempt to feed ballots into the tabulator in the same direction.

(c)(1) If the tabulator refuses a ballot, a member of the Vote Tabulator Team shall announce that occurrence and whether the ballot was counted, and attempt to override that refusal.

(2) If the tabulator continues to refuse the ballot, a member of the Vote Tabulator Team shall announce that occurrence and return it to a Pile Team for hand counting.

(d) This process shall be used until all applicable ballots from a town have been tabulated by a vote tabulator.

(e)(1) The Vote Tabulator Team shall then print the tabulator tape containing the unofficial results.