

**State of Rhode Island and Providence Plantations
Rhode Island Board of Elections**

Public Notice of Proposed Rule-Making

Pursuant to the provisions of Title 17 of the General Laws of Rhode Island, and in accordance with the Administrative Procedures Act Chapter 42-35 of the General Laws, the Rhode Island Board of Elections hereby gives notice of its intent to amend the following; Rules and Regulations Relating to Recounts

The purpose of this amendment is to remove the attached Exhibit A (Guide to Election Recounts) as it is now out of date.

The proposed Rules and Regulations are available for public inspection online at www.elections.ri.gov, in person at the Rhode Island Board of Elections, 50 Branch Ave. Providence, R.I. 02904, requested by email at GMcBurney@elections.ri.gov or by calling Gregory McBurney at 401-222-1914.

In the development of the proposed amendment consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

All interested parties are invited to submit written or oral comments concerning the amended regulations by 7/13/2010 to Robert Kando, Rhode Island Board of Elections, 50 Branch Ave. Providence, R.I. 02904, 401-222-2345, Feedback@elections.ri.gov. A public hearing to consider the proposed adoption shall be held on 7/13/2010 at 4:00 p.m. at 50 Branch Ave. Providence, R.I. 02904 at which time and place all persons interested will be heard. The room is accessible to the disabled and interpreter services for the hearing impaired will be provided if requested 48 hours prior to the hearing. Requests for this service can be made in writing or by calling 401-222-2345.

State of Rhode Island and Providence Plantations Board of Elections

Concise Summary of Proposed Non-technical Amendments To RULES AND REGULATIONS RELATING TO RECOUNTS

In accordance with the Administrative Procedures Act, Section 42-35-3(a)(1) of the General Laws of Rhode Island, the following is a concise summary of proposed non-technical amendments:

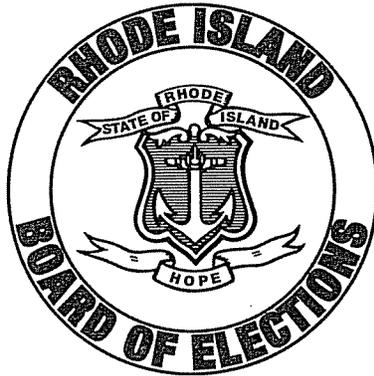
Cover Page – Created a cover page for the Rule and Regulation

Introduction – Format change on the title, and changed the words adopts and adopted to amends and amended in the introduction.

Section 3 – Removed the last few lines of the first paragraph that mentions “Exhibit A”. The Guide to Election Recounts (Exhibit A) will no longer be attached to this Rule and Regulation

Section 4 – Created a new implementation section

Exhibit A – Deleted the “Guide to Election Recounts” (Exhibit A) as it is out of date and will no longer be attached to this Rule and Regulation



RULES AND REGULATIONS
RELATING TO RECOUNTS

As Amended

July 13, 2010

Promulgated by order of
The Rhode Island State Board of Elections
John A. Daluz, Chairman

Board of Elections
50 Branch Avenue
Providence, RI 02904
401-222-2345 Telephone
401-222-3135 Fax

RULES AND REGULATIONS ADOPTED BY THE BOARD OF ELECTIONS RELATING
TO RECOUNTS
~~RULES & REGULATIONS~~
~~ADOPTED BY THE~~
~~RHODE ISLAND BOARD OF ELECTIONS~~
~~RELATING TO RECOUNTS~~

The Rhode Island Board of Elections hereby ~~adopts~~ amends the within rules and regulations ("rules") relating to election recounts pursuant to, and in accordance with, the provisions of sections 17-7 et seq., 17-19-31, 17-19-37.1, 17-19-37.2, 17-19-37.3 and 17-12.1-14 of the Rhode Island General Laws of 1956, as amended.

Said rules and regulations are ~~adopted~~ amended pursuant to the Administrative Procedures Act (R.I.G.L. 42-35 et seq.) and are available for public inspection at the offices of the Rhode Island Board of Elections, 50 Branch Avenue, Providence, Rhode Island.

Section 1. **Purpose**

The following rules and regulations are adopted by the Board of Elections for the purpose of facilitating the accurate and efficient administration of election recounts which may be required to be conducted pursuant to the Rhode Island General Laws.

Section 2. **Application**

A. Candidates & Write-In Candidates

A candidate or write-in candidate seeking a recount of the votes cast in his or her race and meeting the eligibility requirements set forth in the Rhode Island General Laws must make a written application to the Board of Elections to request said recount. Said application shall include the following:

- the name, address and daytime & evening telephone numbers of the candidate (if applicable, the application should also include the name, address and telephone numbers of an attorney or person who the candidate designates to represent him or her);
- the office for which the recount is being sought (including district number, if applicable);
- the date on which the application is made; and
- the signature of the candidate which shall be attested to by a notary public.

RULES & REGULATIONS – ELECTION RECOUNTS

Section 2 (Cont.)

Applications will be considered to have been filed only when the signed original application is received at the Board of Elections, 50 Branch Avenue, Providence, Rhode Island and must be received by the appropriate deadline as stated below. Applications not received by the appropriate deadline or not executed pursuant to the requirements stated herein shall be rejected.

As soon as possible after the filing of an application submitted in conformance with the requirements of this section the Executive Director of the Board shall review and examine the results of the race for which the recount is sought and determine whether the applicant meets the eligibility requirements for a recount. Upon making said determination the Director shall proceed to notify the applicant of the disposition of his or her application and, if required, schedule said recount.

<u>Deadlines for filing applications:</u>	For a primary	By 4:00 p.m. the day after the primary
	For an election	By 4:00 p.m. on the seventh (7 th) day following the election

B. Ballot Questions – Person, Group Or Organization Of “Recognized Standing”

A person, group or organization of “recognized standing” seeking a recount of the votes cast for a ballot question shall be required to adhere to the application requirements and deadlines set forth in Section 2A of these rules. Moreover, the party seeking said recount shall identify in the recount application the ballot question for which the recount is being sought as well as provide evidence as to the party’s assertion of “recognized standing” relative to the ballot question.

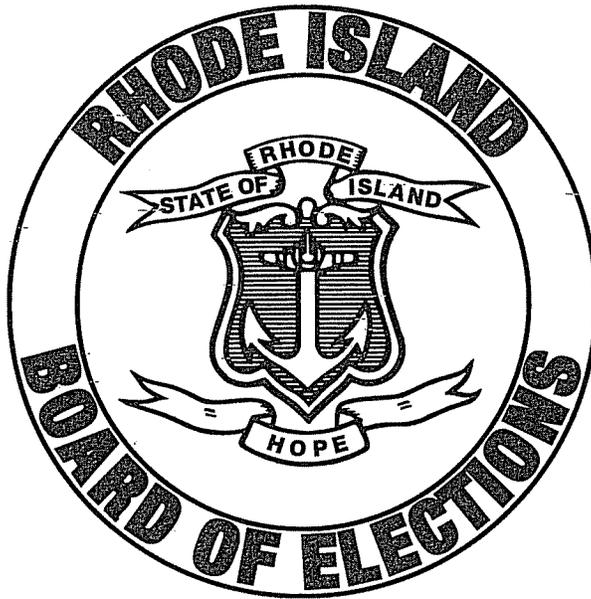
At the time of reviewing the application for a recount, it shall be determined whether the person, group or organization is of “recognized standing” and deemed eligible to request said recount.

Section 3. Procedures For The Recounting Of Ballots

The Board of Elections shall establish the policies and procedures to be used in conducting election recounts. The Board shall implement the measures necessary to secure the ballots to be recounted and to protect and ensure the integrity of the election and recount process. Moreover, the Board shall take the steps necessary to conduct an efficient, orderly and accurate recounting of the ballots cast in elections qualifying for recounts pursuant to the Rhode Island General Laws, including the publication of a “Guide To Election Recounts”. ~~(see attached Exhibit A) which is made a part of these rules and shall generally serve to direct and inform persons as to the requirements and manner in which election recounts shall be conducted.~~

Notwithstanding any other provision of these rules, the Board of Elections may, acting upon its own motion and at its sole discretion, adopt and implement the measures it deems appropriate to facilitate the accurate and orderly conduct of election recounts.

GUIDE
TO
ELECTION RECOUNTS



STATE OF RHODE ISLAND
BOARD OF ELECTIONS

50 Branch Avenue
Providence, Rhode Island 02904

GUIDE TO ELECTION RECOUNTS

The Board of Elections is responsible for conducting recounts in all local, state and federal elections held in Rhode Island. This guide reflects the laws of the State of Rhode Island as well as the rules, regulations, policies and procedures established by the Board for the purpose of conducting election recounts in a timely, orderly and accurate manner. Included herein are the eligibility requirements for a recount and the steps to be followed by a person seeking a recount. **A person seeking a recount of the votes cast in a race must do so in the manner prescribed herein.**

#####

Section 1. — Deadline For Submitting An Application For A Recount

The deadline for filing an application for a recount is as follows:

_____ For a primary _____ By 4:00 p.m. on the day after the primary
_____ For an election _____ By 4:00 p.m. on the seventh (7th) day following the election

Section 2. — Application For A Recount

_____ A candidate or write-in candidate seeking a recount of the votes cast in his or her race must make a written application to the Board of Elections requesting said recount. The application shall include the following:

_____ the name, address and daytime & evening telephone number of the candidate (if
_____ applicable, the application should also include the name, address and telephone numbers
_____ of an attorney or person who the candidate designates to represent him or her);
_____ the office for which the recount is being sought (including district number, if
_____ applicable);
_____ the date on which the application is made; and
_____ the signature of the candidate which shall be attested to by a notary public.

_____ Applications will be considered to have been filed only when the signed original application is *received* at the Board of Elections, 50 Branch Avenue, Providence, Rhode Island. Applications not received by the deadline stated above or not executed pursuant to the requirements stated herein shall be rejected.

Section 3. — Eligibility Requirements — Candidates For Public Office

_____ A candidate for public office is defined as a person who has qualified under law to have his or her name appear on the ballot for nomination for election or election to any federal, state, municipal, school, or district office that is filled by popular election; except it shall not include political party offices which shall mean any state, city, town, ward, or representative or senatorial

~~district committee office of a political party or delegate to a political party convention, or any similar office.~~

Section 3. Eligibility Requirements - Candidates For Public Office (Cont.)

~~A candidate for public office shall be eligible to request a manual re-feeding of the computer ballots cast at each precinct in his or her race pursuant to the eligibility requirements listed in **a** or **b** below, as may be applicable; provided, however, that a candidate who does not qualify for a manual re-feeding of the ballots, but who trails the winning candidate by 5% or less, shall be eligible to request a recount pursuant to the recount procedure outlined in Section 6.~~

~~_____ **a) When One Candidate Is Elected:**~~

~~**If the Total Votes*** _____ **A candidate must trail the**
cast in a race is: _____ **winning candidate by:**~~

~~_____ Less than or equal to 20,000 _____ 2% or 200 votes; whichever is less
_____ 20,001 - 100,000 _____ 1% or 500 votes; whichever is less
_____ Greater than 100,000 _____ .5% or 1,500 votes; whichever is less~~

~~* Total Votes shall include the total votes cast for candidates and write-in votes; it shall not include over/undervoted ballots.~~

~~**b) When More Than One Candidate Is Elected:** (A race in which voters are permitted to vote for more than one candidate.)~~

~~**If the Total Votes*** _____ **A candidate must trail the**
cast in a race is: _____ **winning candidate by:**~~

~~_____ Less than or equal to 5,000 _____ 2% or 50 votes; whichever is less
_____ 5,001 - 20,000 _____ 1% or 100 votes; whichever is less
_____ Greater than 20,000 _____ .5% or 150 votes; whichever is less~~

~~* Total Votes shall include the total votes eligible to be cast divided by the number of candidates for whom each voter may cast votes.~~

~~**The results of a recount conducted pursuant to Section 3 shall be final.**~~

Section 4. Eligibility Requirements - Write-In Candidates

~~_____ A write-in candidate for public office is defined as a person receiving votes or seeking election to public office by virtue of having irregular ("write-in") ballots cast for him or her pursuant to §17-19-31.~~

A write-in candidate for public office shall be eligible to request a manual recounting of the irregular ballots cast at each precinct in his or her race pursuant to the following:

a) if, following the initial manual count of all irregular ballots, the write-in candidate shall have received a minimum of ten (10) votes or one percent (1%) of the votes cast in the race, whichever is greater; provided, however, that if no candidates appear on the ballot in said race and only write-in candidates receive votes a "write-in candidate" shall be required to receive at least 10 votes in the race;

and

Section 4. Eligibility Requirements — Write-In Candidates (Cont.)

b) the write-in candidate shall trail the winning candidate by less than the number of votes required to qualify for a recount pursuant to Section 3(a) or 3(b) above, as the case may be.

~~———— The results of a recount conducted pursuant to Section 4 shall be final.~~

Section 5. Eligibility Requirements — Ballot Questions & Candidates For Other Offices

~~———— a) **Ballot Questions**~~

In the case of a ballot question, a person, group or organization of "recognized standing," as determined by the Board of Elections, may request a manual re-feeding of the computer ballots cast at each precinct if the difference between "Approve" and "Reject" is less than one-half of one percent (1/2%) or 500 votes, whichever is less; provided, however, that if a ballot question does not qualify for a manual re-feeding of the ballots cast, a person, group or organization of "recognized standing" may request a re-reading of the memory packs and having the results compared to those obtained on election night if the difference between "Approve" and "Reject" is as follows:

~~———— If less than 100,000 total votes* were cast the difference is 2% or less;~~
~~———— If 100,000 or more total votes* were cast the difference is 1% or less.~~

The party seeking a recount of a ballot question shall be required to adhere to the deadlines and application requirements set forth in Sections 1 & 2 of this publication. As part of the recount application, the party shall identify the ballot question for which the recount is being sought as well as provide evidence as to the party's assertion of "recognized standing" vis-a-vis the ballot question.

* Total Votes cast shall be determined by adding the total number of votes cast for "Approve" and "Reject;" it shall not include over/undervoted ballots.

~~———— b) **Candidates For Other Offices (Non-Public Offices)**~~

A candidate for any office other than a public office shall be eligible to request a re-reading of the memory packs and having the results compared to those obtained on election night pursuant to the following eligibility requirements:

~~Number Of Candidates Elected~~ ~~A candidate must trail the winning candidate by:~~

~~1 Less than 2% or 100 votes; whichever is less~~

~~2 7 Less than 1% or 25 votes; whichever is less~~

~~≥ 8 Less than .5% or 25 votes; whichever is less~~

~~* Total Votes cast in a race for a Non Public Office shall be determined in the same manner as that of races for Candidates for Public Office.~~

~~The results of a recount conducted pursuant to Section 5 shall be final.~~

Section 6. Recounts:

~~Candidates For Public Office Who Fail To Meet The Eligibility Requirements Prescribed In Section 3 But Who Trail The "Winning" Candidate By 5% Or Less~~

~~A candidate in a race for public office who fails to qualify for a manual re-feeding of the computer ballots pursuant to the eligibility requirements in Section 3, but who trails the winning candidate in said race by 5% or less, may request a recount in his or her race as follows:~~

~~(1) The candidate may seek a recount of the votes cast by having the memory packs re-read and comparing the results and totals obtained at such recount with the results and totals obtained on election night. **IF THERE IS NO CHANGE IN THE TOTALS, THE ELECTION NIGHT TOTALS SHALL STAND AS REPORTED.**~~

~~(2) If the recount conducted in (1) above results in a discrepancy between the results obtained on election night and the results produced as a result of the recount AND, subsequent to said recount, the candidate shall meet the eligibility requirements as prescribed in Section 3, the candidate shall be eligible to request a manual re-feeding of the computer ballots cast at each precinct in said race into the optical scan voting equipment.~~

~~A candidate who wishes to have a recount conducted as defined in (2) above must notify the Board, in writing, within 24 hours of the conclusion of the recount conducted pursuant to (1) above.~~

~~A write-in candidate is not eligible for a recount pursuant to Section 6.~~

~~The results of a recount conducted pursuant to Section 6 shall be final.~~

Section 7. Mail Ballots & Provisional Ballots

~~Mail ballots and provisional ballots are tabulated in open session by the Board of Elections. This process takes place in full view of the public and all candidates are afforded the opportunity to witness and observe the tabulation process. Thus, as the task of tabulating mail~~

~~ballots and provisional ballots is executed by the Board and ample opportunity is available for candidates to witness and observe the process, said ballots shall not be recounted by the Board.~~

~~**Note:** For the dates and times of ballot tabulation contact the Board of Elections at 222-2345.~~

Section 8. — Scheduling & Notification Of Recount

~~— Upon receipt of a recount application the Board of Elections shall review said application and determine the eligibility of the candidate for the recount requested. Shortly thereafter, the Board will notify the candidate (or the representative designated by the candidate in the application) of the disposition of his or her application and, if the candidate qualifies, schedule the recount. The Board will then contact other parties who may have an interest in the recount.~~

~~**Note:** Recounts will be scheduled and conducted as soon as practicable after it has been determined that the candidate is eligible for a recount. It is the responsibility of the candidate to provide the Board with the contact information necessary to ease and facilitate swift communication between the Board of Elections and the candidate. Notwithstanding any other recount or notice provisions, the Board of Elections shall not be responsible or held liable for its inability to give notice to a candidate who fails to provide the necessary contact information.~~

Section 9. — Conduct Of Recount

~~— All recounts are held at the Board of Elections, 50 Branch Avenue, Providence, Rhode Island. Candidates and/or their representatives are welcome to be present during recounts. In addition, the public and members of the media are invited to observe the proceedings. For information regarding the manner in which election recounts are conducted, including the role of the candidate during the recounting of his or her race, contact the Board of Elections.~~

#####

**RHODE ISLAND
BOARD OF ELECTIONS**

50 Branch Avenue
Providence, Rhode Island 02904
Tel.: (401) 222-2345
Fax: (401) 222-3135
<http://www.elections.state.ri.us>

Roger N. Begin
Chairman

Thomas V. Iannitti
Vice Chairman

————— **Judith H. Bailey** ————— **Florence G. Johnson**
————— **John A. Daluz** ————— **Frank J. Rego**
Raymond A. Xavier

Robert J. Fontaine
Executive Director