

Recounts for Offices

669:30 Recounts; Application. – Any person for whom a vote was cast and recorded for any office at a town election may, no later than the Friday following the election, apply in writing to the town clerk for a recount of the ballots cast for such office, the clerk shall appoint a time for the recount not earlier than 5 days nor later than 10 days after the receipt of said application.

669:31 Notice; Fee. –

I. The clerk shall notify each of the candidates for the office for which there is to be a recount at least 3 days prior to the day appointed for the recount of ballots. No other notice shall be required.

II. The applicant shall pay to the town clerk, for the use of the town, the following fee:

(a) If the difference between the vote cast for the applying candidate and a candidate declared elected is less than one percent of the total votes cast, the fee shall be \$10.

(b) If the difference between the vote cast for the applying candidate and a candidate declared elected is between one percent and 2 percent of the total votes cast, the fee shall be \$20.

(c) If the difference between the vote cast for the applying candidate and a candidate declared elected is between 2 percent and 3 percent of the total votes cast, the fee shall be \$40.

(d) If the difference between the vote cast for the applying candidate and a candidate declared elected is greater than 3 percent of the total votes cast, the candidate shall pay the fee as provided in RSA 669:31, II(c) and shall agree in writing with the town clerk to pay any additional costs of the recount.

III. If any person who has applied for a recount is declared elected by reason of the recount, the town clerk shall return to the person within 10 days of the recount all fees paid at the time of applying.

IV. If any person who has applied for a recount loses the recount by a margin of less than one percent of the total votes cast, the town clerk shall return to the person within 10 days of the recount any fees that were paid in excess of those required by subparagraph II(a).

669:32 Board of Recount. – At the time and place so appointed and notified, the clerk shall publicly break the seal of and open the package in which the ballots of said election are kept; and, thereupon, said ballots shall be recounted by the clerk, the moderator, and the selectmen of said town who shall constitute the board of recount. When counting the ballots, the board of recount or their assistants shall visually inspect each ballot. No mechanical, optical, or electronic device shall be used for the counting of ballots. Any member of the board of recount who is one of the candidates for the office being recounted shall disqualify himself or herself from the board of recount for all official duties of said board. The moderator shall appoint an assistant who shall take the same oath as, serve in the same capacity as, and have all the powers of the recount official whom he or she has replaced.

669:33 Preservation of Ballots After Recount. –

I. Upon the conclusion of the recount, the clerk shall place the ballots and all envelopes or wrappers which had previously contained them in a suitable container showing the contents and the date when and the reason why it was opened; and said clerk shall retain said ballots until the

expiration of 60 days from the date of the recount unless some action is pending which makes their further preservation necessary or unless enjoined by action brought before the superior court.

II. Ballots, including cast, cancelled, and uncast ballots and successfully challenged absentee ballots still contained in their envelopes, prepared or preserved in accordance with the election laws shall be exempt from the provisions of RSA 91-A. This exemption shall apply to any ballots or absentee voter affidavit envelopes prepared for or used in any election conducted by the state or any political subdivision, including federal elections.

669:34 Declaration of Results. –

I. Upon completion of the recount, the board of recount shall publicly declare the results and certify such declaration to the town clerk.

II. The town clerk shall record the certificate received under paragraph I; and the person so declared to have been elected shall, unless the result is changed upon appeal to the superior court, be the duly elected officer of such town.

III. A person declared elected at the election whose election is affirmed by the recount may take the oath of office and assume office at any time following declaration of the results of the recount, provided the oath is taken by the deadline established by RSA 42:6.

IV. When a different person is declared elected following the recount, if no appeal is taken that person may take the oath of office and assume office on the sixth day following the date of the recount, provided that the oath is taken by the deadline established by RSA 42:6.

V. If a different person is declared elected following the recount, and an appeal is taken, that person may not assume office until the superior court has issued a final ruling on the appeal. The person holding the office prior to the election shall continue to hold the office until a successor is declared elected by the superior court and the person declared elected by the court takes the oath of office.

VI. When an appeal involves a multi-seat office, every declared candidate for that office and any write-in candidate who received 5 percent or more of the votes cast shall be entitled to notice of the appeal and may choose to become a party to the appeal. When ruling on an appeal involving an election where voters elected more than one person to a multi-seat office, the court may remove from office any person who was declared elected at the election and at the recount who has already taken the oath of office and assumed office if the court determines that it is more likely than not that a different person was elected to that seat. The validity of any actions taken by a person who assumes office pursuant to this section and is later removed as a result of an appeal may not be challenged on the basis that the person was subsequently removed as a result of the appeal.

669:35 Appeal From Recount. – Any person aggrieved by a ruling of the board of recount with respect to any ballot may, within 5 days thereafter, appeal to the superior court for the county in which such town is located; and such court shall have jurisdiction in equity to hear and determine the question presented. The person shall also file a copy of the appeal with the town clerk by 5:00 p.m. on the fifth day following the date of the recount.