# CHAPTER 660

## POST-ELECTION PROCEDURE

### State General Election Recounts

**660:1 Application.** Any candidate for whom a vote was cast for any office at a state general election may apply for a recount, provided that the difference between the votes cast for the applying candidate and a candidate declared elected is less than 20 percent of the total votes cast in the towns which comprise the office to be recounted. The application shall be made in writing to the secretary of state and shall be submitted no later than the Friday following the election. Each candidate requesting a recount shall pay the secretary of state fees as provided in RSA 660:2.

**660:2 Fees**. I. If the difference between the vote cast for the applying candidate and a candidate declared elected shall be less than one percent of the total votes cast in the towns which comprise the office to be recounted, the following fees shall apply:

(a) Candidate for president, United States senator or governor, $500.
(b) Candidate for United States representative, $250.
(c) Candidate for executive councilor, $100.
(d) Candidate for state senator or county officer, $50.
(e) Candidate for state representative, $10.

II. If the difference between the vote cast for the applying candidate and a candidate declared elected shall be between one percent and 2 percent of the total votes cast in the towns which comprise the office to be recounted, the following fees shall apply:

(a) Candidate for president, United States senator or governor, $1,000.
(b) Candidate for United States representative, $500.
(c) Candidate for executive councilor, $200.
(d) Candidate for state senator or county officer, $100.
(e) Candidate for state representative, $20.

III. If the difference between the vote cast for the applying candidate and a candidate declared elected shall be between 2 percent and 3 percent of the total votes cast in the towns which comprise the office to be recounted, the following fees shall apply:

(a) Candidate for president, United States senator or governor, $2,000.
(b) Candidate for United States representative, $1,000.
(c) Candidate for executive councilor, $400.
(d) Candidate for state senator or county officer, $200.
(e) Candidate for state representative, $40.

IV. If the difference between the vote cast for the applying candidate and a candidate declared elected shall be greater than 3 percent of the total votes cast in the towns which comprise the office to be recounted, the candidate shall pay the fees as provided in RSA 660:2, III and shall agree in writing with the secretary of state to pay any additional costs of the recount. The secretary of state may require that the applying candidate pay the estimated additional costs of the recount prior to commencing the recount.

**660:3 Number of Recounts**. Any candidate for whom a vote was cast for any office at a state general election, provided that the difference between the votes cast for the applying candidate and a candidate declared elected is less than 20 percent of the total votes cast in the towns which comprise the office to be recounted, shall be entitled to apply for only one recount under this chapter, and the declaration made by the secretary of state under RSA 660:6 shall be final, subject to a change in the result following an appeal to the ballot law commission, as provided in RSA 665:8, II. If more than one candidate for the same office in the same district applies for a recount under this chapter, and a recount is completed, such applications shall not result in a second recount.

**660:4 Time and Notice**. Upon satisfactory application for a recount as provided in RSA 660:1, the secretary of state shall begin the process of recounting the ballots on a date selected by the secretary of state, which shall be no later than the Wednesday following the deadline for requesting a recount. A recount shall take place at any suitable state facility in the city of Concord as may be designated by the secretary of state. The secretary of state shall give a reasonable notice thereof to the applicant and to each of the opposing candidates. The secretary of state shall also prepare and distribute to the applicant and to each of the opposing candidates the rules and procedures governing the recount at the same time notice of the time and place for holding the recount is given to the applicant and to each opposing candidate.

**660:5 Conduct of Recount**. If directed by the secretary of state, the state police shall collect all ballots requested from the town or city clerks having custody of them and shall deliver them to the public facility designated by the secretary of state. At the time and place so appointed, the ballots cast for such office shall be counted by the secretary of state and such assistants as the secretary of state may require. When counting the ballots, the secretary of state or his or her assistants shall visually inspect each ballot. No mechanical, optical, or electronic device shall be used for the counting of ballots. The candidates, their counsel, and assistants shall have the right to inspect the ballots and participate in the recount under such suitable rules as the secretary of state may adopt. If the candidate requesting the recount cannot attend the recount, the candidate shall designate, in writing, to the secretary of state the name of an individual who will attend the recount and who will be authorized to make decisions on the candidate's behalf. Each candidate or his or her counsel or designee shall have the right to protest the counting of or failure to count any ballot. The secretary of state shall thereupon rule on said ballot and shall attach thereto a memorandum stating such ruling and the name of the candidate making the protest. If, at any time during the counting of the ballots, a discrepancy appears in any ballot for any reason, the secretary of state shall suspend the recount until the discrepancy is resolved, at which time the secretary of state shall continue the recount. In no event shall a discrepancy result in a second recount for the same candidate, as provided in RSA 660:3.

**660:6 Declaration; Certificate**. I. If the recount shall show that some candidate other than the one declared elected upon the original canvass of votes has the greatest number of votes cast for the office, the secretary of state shall declare said candidate to be elected; and, unless the result is changed upon an appeal taken to the ballot law commission, as provided in RSA 665:8, II, such candidate shall be entitled to a certificate of election.

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

III. 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 in the towns which comprise the district for the office recounted, the secretary of state shall return to the person within 10 days of the recount any fees that were paid in excess of those required by RSA 660:2, I.

**State or Presidential Primary Recounts**

**660:7 Application.** I. Any person for whom a vote was cast for any nomination of any party at a state primary may apply for a recount, provided that the difference between the votes cast for the applying candidate and a candidate of that party declared nominated is less than 10 votes or less than 1.5 percent of the total ballots cast in the primary for that party in the towns which comprise the office to be recounted. The application shall be made in writing to the secretary of state and shall be submitted no later than 5:00 p.m. on the Friday after the primary election. Each candidate requesting a recount shall pay the secretary of state fees as provided in RSA 660:2.

II. Any person receiving at least 9 percent of the votes cast in any party's presidential primary may apply for a recount. The application shall be made in writing to the secretary of state and shall be submitted no later than the Friday after the primary for a recount of all ballots cast for such nomination. Each candidate requesting a recount shall pay the secretary of state fees as provided in RSA 660:2.

**660:8 Notice of Conduct**. Notice shall be given and the recount shall be conducted as provided for in RSA 660:4 and 660:5.

**660:9 Declaration of Result, State Primary**. If the recount after a state primary election shall show that some candidate other than the one declared nominated upon the original canvass of votes has the greatest number of votes cast for the nomination, such candidate shall be declared nominated and shall be placed upon the official ballot at the

following election unless appeal is taken to the ballot law commission in accordance with RSA 665:6, I, I. If the person who applied for the recount was thereby shown to be the one chosen as the candidate of the party, the person shall also have any fee paid returned.

**660:9-a Declaration of Result, Presidential Primary**. If the recount after a presidential primary election shall show that the applying candidate qualified under RSA 659:93 for at least one more delegate than the original count indicated or that such candidate did qualify for federal election funding, such candidate shall receive such funding or shall be apportioned delegates to the national party convention in accordance with RSA 659:93 unless appeal is taken to the ballot law commission in accordance with RSA 665:6, I. If the person who applied for the recount was thereby shown to be entitled to federal funding or at least one more delegate under RSA 659:93, the person shall also have any fee paid returned.

## Constitutional Amendments Recount

**660:10 Application**. Upon receipt of petitions of 100 voters made no later than the fourth Friday following the date of the election, the secretary of state shall recount the ballots cast on any question to amend the constitution if the proposal was adopted or failed by no more than one percent of the vote cast. The recount shall take place at any suitable state facility in the city of Concord as may be designated by the secretary of state and under such rules of procedure as he shall determine and at such time as he may appoint.

**660:11 Conduct**. The secretary of state shall request that all town and city clerks forward ballots containing such proposed amendment to the secretary of state forthwith, and the clerks shall immediately forward them. At the time and place so appointed, the ballots shall be counted by the secretary of state and such assistants as the secretary of state may require. When counting the ballots, the secretary of state or his or her assistants shall visually inspect each ballot. No mechanical, optical, or electronic device shall be used the counting of ballots. The ballots shall be open to the inspection of the petitioners and other interested persons under such suitable rules as the secretary of state may prescribe. If, after the recount, it shall appear that the result of the voting on said question is other than that declared upon the original canvass of votes, the secretary of state shall declare the result found upon recount which shall be final unless the result is changed as a result of an appeal taken to the superior court.

## County Referendum

**660:12 County Referendum**. The secretary of state shall recount the ballots cast on any question which may be submitted to the voters of a county at a state general election under the provisions hereinafter set forth. Application for such recount shall be by written petition signed by at least 50 legal voters of said county presented to the secretary of state no later than the second Friday following the state general election. The recount shall take place at any suitable state facility in the city of Concord as may be designated by the secretary of state at such time as the secretary of state may appoint and under such rules of procedure as he or she shall determine. When counting the ballots, the secretary of state or his or her assistants shall visually inspect each ballot. No mechanical, optical, or electronic device shall be used for the counting of ballots. The secretary of state shall publish notice of the time and place of the recount once in a paper of general circulation throughout the county. The fee for such a recount on a question voted on throughout a county shall be $25 which shall be paid to the secretary of state by the person submitting the application. If, after the recount, it shall appear that the result of the voting on said question is other than that declared upon the original canvass of votes, the secretary of state shall declare the result found upon recount which shall be final unless the result is changed as a result of an appeal taken to the superior court.

## Local Questions Recounts

**660:13 Application**. Five legal voters of any city or town which has voted on any question other than constitutional amendments printed on the ballot at any state election as provided in RSA 663 may, no later than the second Friday after the election, petition the secretary of state for a recount of the votes cast upon said questions. Such application shall be accompanied by a fee of $10 for each 1000 ballots or fraction thereof cast at the election in said town; however, in no event, shall the fee exceed $50. The secretary of state shall fix a time for recount and shall notify the petitioners and the selectmen, clerk and moderator of the town or the mayor and clerk of the city of the time and place so fixed. He shall request the clerk having custody of the ballots to forward them forthwith to the secretary of state, and the clerk shall immediately forward them.

**660:14 Conduct**. At the time and place so appointed, the ballots shall be counted by the secretary of state and such assistants as the secretary of state may require. The ballots shall be open to the inspection of the petitioners, the officials of the city or town, counsel, if any, of the same, and other interested persons under such suitable rules as the secretary of state shall prescribe. When counting the ballots, the secretary of state or his or her assistants shall visually inspect each ballot. No mechanical, optical, or electronic device shall be used for the counting of ballots.

**660:15 Declaration of Result**. If after the recount it shall appear that the result of the voting on said question is other than that announced by the moderator at the election, the secretary of state shall declare said result which shall be final unless the result is changed because of an appeal taken within 10 days to the ballot law commission.

## General Provisions for Recounts

**660:16 Disposal of Ballots**. I. Upon the conclusion of every recount, the secretary of state shall replace the unprotested ballots and absentee voter envelopes in a suitable container for storage. The secretary of state shall retain the ballots and the absentee envelopes for at least 60 days following the recount. Upon an order of the ballot law commission, the secretary of state shall produce the ballots for the inspection of the commission. Following the commission's inspection, the secretary of state shall replace the ballots and envelopes, seal them, and certify the contents and the date when they were examined by the commission. The envelopes and ballots shall be subject to the order of the body to which such person claims to be elected or of the officers required by law to examine the records and to issue certificates of election to such office or of any court having jurisdiction over them.

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.

**660:17 Penalty for Violating Requirements**. Whosoever shall knowingly violate any of the provisions of RSA 660:1 - 660:16 shall be guilty of a violation.

## Contested Elections to General Court

**660:18 Notice**. Whenever any person intends to contest the election of a state senator or representative, he shall send to him a notice in writing of such contest with the reasons therefor, citing the acts constituting the violation and, if known, the specific sections of the law or of the constitution being violated. The notice shall be sent by certified mail and postmarked on or before the December 15 immediately following the election. At the same time the notice is sent to the senator or representative, a copy thereof shall be sent to the secretary of state.

**660:19 Petition**. In a contested election case, neither party shall be entitled to a hearing before the general court unless their remonstrance or petition shall be presented to the clerk of the senate or house before the second Wednesday of the first session thereof.

**660:20 Depositions**. In any case of contested elections, depositions may be taken as in civil causes. The magistrate taking depositions shall prepare captions therefor, shall seal up the depositions and shall transmit the package to the clerk of the senate or house, as the case may be, with a notation stating the session at which and the case in which the depositions are to be used.

**660:21 Evidence**. But for good cause shown, neither party shall be entitled to have any evidence considered before the committee conducting the hearing which is not in readiness to be submitted before the third Wednesday of the first session of the general court.

**660:22 Compensation**. The party failing to sustain his right to a seat shall not be entitled to any compensation for his services or for any expenses he may have incurred in the contest therefor. However, any person who has received a certificate of election as representative or senator and who has taken his seat but who is unsuccessful in retaining it shall be paid for his mileage for the period during which he has served.

## Resolution of Ties

**660:23 Primaries; County Offices in a General Election**. If the candidates having the highest number of votes for any nomination made at a state or presidential primary or for election to county office made at a state general election shall have an equal number, the secretary of state shall determine the nomination by lot in the presence of the candidates who are tied if, after notice from him, they elect to be present.

**660:24 State Offices in State General Elections**. If the candidates having the highest number of votes for the office of governor, councilor, state senator, or state representative shall have an equal number, the choice shall be made as provided in the state constitution. Such candidate chosen shall then be declared duly elected.

**660:25 United States Senator or Representative**. If 2 or more candidates for United States representative in any district or United States senator shall receive the largest and equal number of votes in any state general election so that no choice is made, the governor, with advice of the council, shall cause precepts to be issued to the selectmen of the several towns within such district for another election, requiring them to warn meetings to be held at the time specified in such precepts for the choice of a representative or senator. The votes given at any such meeting shall be received, sorted, counted, declared, recorded and certified, and the returns thereof made out, signed, certified, sealed, directed and forwarded in the manner prescribed by RSA 659.

**660:26 Canvass**. The secretary of state, as soon as may be, shall lay all returns received pursuant to RSA 660:25 before the governor and council, and the votes shall be examined and counted and the election of the person having the largest number of votes declared and certified, and the certificate thereof shall be made out and transmitted in the manner described in RSA 659:84. If upon second balloting 2 or more persons shall have the largest and equal number of votes in any district, so that no choice is made therein, the same proceedings shall be again had as are provided in RSA 660:25; and so from time to time, so long as may be necessary, until some one shall have the largest number of votes.

## Meetings of Presidential Electors

**660:27 Time**. The electors of the president and vice-president shall meet in the state house in Concord on the day fixed by law and, by 12 o'clock at midday, shall give notice to the governor and council of the number of electors present who accept the office.

**660:28 Vacancies**. If the requisite number of electors are not present or do not accept, or if the requisite number of electors shall not be chosen by reason of 2 or more persons having an equal number of votes, the electors present who do accept, in the presence of the governor and council, shall forthwith choose by ballot the number needed.

**660:29 Conduct**. The electors shall give their votes for president and vice-president of the United States in Concord on said day and shall proceed according to law.

**660:30 Compensation**. Each elector shall be paid $3; and each shall receive $.10 a mile for their travel to and from Concord. Also, the electors shall be allowed a reasonable sum, not to exceed $25, to pay for the services of a secretary.

**660:31 Depositing Fees and Assessments**. There is established in the state treasury a separate nonlapsing account to be known as the recount administrative account. The account shall be used by the secretary of state for the administration of recounts under RSA 660. Notwithstanding any other provision of law, all fees which are paid to the secretary of state under RSA 660:1 shall be credited to this account. All fees which are credited to this account shall be continually appropriated to the secretary of state.