

POST ELECTION REVIEW (PER) – KEY POINTS – November 2020

Key provisions from the PER Guide 2018 – You are the Observer/participant!

- Please review before the PER worksheet and this guide first*
- Call ASAP your county auditor/elections board to reserve a spot due to COVID changes*
- Take pictures/videos of suspect activity and take notes (you may be a witness later)*
- Write down final hand count that Judges write down at the end and take a picture!*
- Fill out the Worksheet provided and send back right away (instructions on sheet)*

Thank you for your patriotic contribution!

MN Elections Integrity Team

MN Rev. Stat. 206.89 POSTELECTION REVIEW OF VOTING SYSTEMS.

Subdivision 1. Definition.

For purposes of this section "postelection review official" means the county auditor, unless the county auditor designates the municipal clerk as the "postelection review official" within 24 hours after the canvass of the state general election.

Subd. 2. Selection for review; notice.

At the canvass of the state primary, the county canvassing board in each county must set the date, time, and place for the postelection review of the state general election to be held under this section. The postelection review must not begin before the 11th day after the state general election and must be complete no later than the 18th day after the state general election.

At the canvass of the state general election, the county canvassing boards must select the precincts to be reviewed by lot. The ballots to be reviewed for a precinct include both the ballots counted at the polling place for that precinct and the absentee ballots counted centrally by a ballot board for that precinct. The county canvassing board of a county with fewer than 50,000 registered voters must conduct a postelection review of a total of at least two precincts. The county canvassing board of a county with between 50,000 and 100,000 registered voters must conduct a review of a total of at least three precincts. The county canvassing board of a county with over 100,000 registered voters must conduct a review of a total of at least four precincts, or three percent of the total number of precincts in the county, whichever is greater. At least one precinct selected in each county must have had more than 150 votes cast at the general election.

The county auditor must notify the secretary of state of the precincts that have been chosen for review and the time and place the postelection review for that county will be conducted, as soon as the decisions are made. If the selection of precincts has not resulted in the selection of at least four precincts in each congressional district, the secretary of state may require counties to select by lot additional precincts to meet the congressional district requirement. The secretary of state must post this information on the office website.

Subd. 2a. Exception.

No review is required under this section if the election for the office will be subject to a recount as provided in section [204C.35, subdivision 1](#).

Subd. 3. Scope and conduct of review.

The county canvassing board shall appoint the postelection review official as defined in subdivision 1. The postelection review must be conducted of the votes cast for president or governor; United States senator; and United States representative. The postelection review official may conduct postelection review of the votes cast for additional offices.

The postelection review must be conducted in public at the location where the voted ballots have been securely stored after the state general election or at another location chosen by the county canvassing board. The postelection review official for each precinct selected must conduct the postelection review and may be assisted by election judges designated by the postelection review official for this purpose. The party balance requirement of section [204B.19](#) applies to election judges designated for the review. The postelection review must consist of a manual count of the ballots used in the precincts selected and must be performed in the manner provided by section [204C.21](#). The postelection review must be conducted in the manner provided for recounts under section [204C.361](#) to the extent practicable. The review must be completed no later than two days before the meeting of the state canvassing board to certify the results of the state general election.

Subd. 4. Standard of acceptable performance by voting system.

A comparison of the results compiled by the voting system with the postelection review described in this section must show that the results of the electronic voting system differed by no more than one-half of one percent from the manual count of the offices reviewed. Valid votes that have been marked by the voter outside the vote targets or using a manual marking device that cannot be read by the voting system must not be included in making the determination whether the voting system has met the standard of acceptable performance for any precinct.

Subd. 5. Additional review.

(a) If the postelection review in one of the reviewed precincts reveals a difference greater than one-half of one percent, or greater than two votes in a precinct where 400 or fewer voters cast ballots, the postelection review official must, within two days, conduct an additional review of the races indicated in subdivision 3 in at least three precincts in the same jurisdiction where the discrepancy was discovered. If all precincts in that jurisdiction have been reviewed, the county auditor must immediately publicly select by lot at least three additional precincts for review. The postelection review official must complete the additional review within two days after the precincts are selected and report the results immediately to the county auditor. If the second review in any of the reviewed precincts also indicates a difference in the vote totals compiled by the voting system that is greater than one-half of one percent from the result indicated by the postelection review, or greater than two votes in a precinct where 400 or fewer voters cast ballots, the county auditor must conduct a review of the ballots from all the remaining precincts in the county for the races indicated in subdivision 3. This review must be completed and the results must be reported to the secretary of state within one week after the second review was completed.

(b) If the results from the countywide reviews from one or more counties comprising in the aggregate more than ten percent of the total number of persons voting in the election clearly indicate that an error in vote counting has occurred, the secretary of state must notify the postelection review official of each county in the district that

they must conduct manual recounts of all the ballots in the district for the affected office using the procedure outlined in section 204C.35. The recount must be completed and the results reported to the appropriate canvassing board within two weeks after the postelection review official received notice from the secretary of state.

Subd. 6. Report of results.

Upon completion of the postelection review, the postelection review official must immediately report the results to the county auditor. The county auditor must then immediately submit the results of the postelection review electronically or in writing to the secretary of state not later than two days before the State Canvassing Board meets to canvass the state general election. The secretary of state shall report the results of the postelection review at the meeting of the State Canvassing Board to canvass the state general election.

Subd. 7. Update of vote totals.

If the postelection review under this section results in a change in the number of votes counted for any candidate, the revised vote totals must be incorporated in the official result from those precincts.

Subd. 8. Effect on voting systems.

If a voting system is found to have failed to record votes accurately and in the manner provided by the Minnesota Election Law, the voting system must not be used at another election until it has been examined and recertified by the secretary of state. If the voting system failure is attributable to either its design or to actions of the vendor, the vendor must forfeit the vendor bond required by section [206.57](#) and the performance bond required by section [206.66](#).

Subd. 9. Costs of review.

The costs of the postelection review required by this section must be allocated as follows:

- (1) the governing body responsible for each precinct selected for review must pay the costs incurred for the review conducted under subdivision 2 or 5, paragraph (a);
- (2) the vendor of the voting system must pay any costs incurred by the secretary of state to examine and recertify the voting system; and
- (3) the secretary of state must reimburse local units of government for the costs of any recount required under subdivision 5, paragraph (b).

Subd. 10. Time for filing election contest.

The appropriate canvass is not completed and the time for notice of a contest of election does not begin to run until all reviews under this section have been completed.

WHAT TO EXPECT THE DAY OF THE PER – THIS IS WHAT THE AUDITOR HAS TO DO WITH THE TEAMS

APPENDIX B – PROCEDURES FOR CONDUCTING POST-ELECTION REVIEW

1. Organize teams – one for each precinct to be reviewed.
2. Assign three election judges to each team.
3. Review the provisions of M.S. 204C.21 and 204C. 22.
4. Open sealed transfer cases and remove voted ballots.
5. The review must be conducted of the votes cast for President or Governor, U.S. Senator and U.S. Representative.

The election judge will then take the ballots from each counter group in turn and separate them into piles. There should be one pile for Republican candidate, one for DFL candidate, one pile for each minor party candidate, one pile for all write-in candidates, one pile for ballots blank for that office, one pile of for ballots defective for that office, one pile for completely defective ballots. 6.The election judge will set aside any ballots that are obviously: a) marked outside the target but close enough to the candidate’s name to determine the voter’s intent or b) marked with a pen or pencil that obviously cannot be read; this could be red ink, yellow ink, mark not dark enough, mark not in scan path, etc. 7.After all ballots have been piled, the election judges will count the ballots in each pile, by groups of 25.8.The election judge will then record the results on the post-election review worksheet that already has the election day totals. 9.The election judges will note any differences due to the criteria in 6(a) and 6(b), plus any other factors that may have caused a change, such as poor duplication of ballot, excessively folded or torn ballot, etc. 10.Repeat this process for U.S. Senator and U.S. Representative. 11.When both polling place and absentee/mail ballots are counted for the precinct reseal ballots into transfer cases. 12.Have election judges sign post-election review worksheet. 13.If changes are greater than 2 votes in a precinct where 400 or fewer votes cast ballot and cannot be explained due to the criteria in 6(a) or 6(b) or 9, make preparations to schedule a review of additional precincts.

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7.3 OBSERVATION - The post-election review official shall arrange the counting of ballots so that the public can view the ballots as they are recounted. The official shall ensure that this public observation does not interfere with the counting or security of the ballots. If other election materials are handled or examined by the review officials, the participants may observe them. Be cognizant of the chain of custody of the ballots as cases are collected from secure storage, as they await review in the PER location, and as they are returned to secure storage. Open the sealed containers only when the review team and observers are present. Keep all ballot access in full view. The review official shall prepare a summary of the review by precinct. (M.R. 8235.0700)

7.4 MANAGING THE PROCESS- The post-election review official is in charge. Acknowledge everyone present (your team, legal counsels, election officials, public and press); everyone has a role. Always explain what is about to occur and explain why. Be completely thorough and transparent. Never hold a private conversation with only one of the parties. Always appear in control of yourself and the situation.

Be sure to answer any questions and address the concerns of any observer. Orally review with all present:

- Roles of review officials, observers and staff.
- Procedures for the review including the sorting and counting processes. If observers have concerns or suggestions, listen. Make sure the actions of officials and staff in the review fills the process with accountability, credibility and trust. Make a defensible decision and carry it out consistently.

8.0 EXAMPLE INSTRUCTIONS

Provide the team with the following instructions: •This is a post-election review held pursuant to M.S. 206.89.

- It is not to determine: who was eligible to vote; if campaign laws were violated; or if absentee or mail ballots were properly accepted.
- It is not – except for reviewing the ballots – to determine if judges did things right.

•It is simply to physically recount the ballots for the races included in the post-election review. It is an opportunity for everyone, particularly the election officials, to satisfy themselves that ballots were, in fact, counted properly. If it is found that judges have counted votes wrong or the machine counted them wrong, you need to be aware that this is not unusual and that is why we have the review law. Normally any errors by judges or the machine are random errors and generally offset one another. Characteristically what we find is that a slight change one way in one precinct is balance by a corresponding change in the other direction in another precinct. Normally the results of the election are not changed by these adjustments, but it does happen. Only the review official handles ballots unless they specifically instruct another to handle them. Make any concerns regarding the process known immediately to review official. Ballots will be reviewed by precinct. We will count one precinct at a time, maintaining the separation of ballots by precinct and by counter group. (Polling place ballots and Absentee/Mail Ballots will be counted separately.) The review official, however, may review more than one precinct at a time in physically separate location within the room in which the review is administered.

Process Overview:

Ballots will be removed from the sealed case(s) and staff will turn all ballots so they are facing in the same direction, with the same side up.

- The review official will separate the ballots into several piles: One for each candidate; One for write-ins, and One for blank or defective or marked outside of the target area for the offices being reviewed. •Voter intent will be determined pursuant to M.S. 204C.22
- Staff will count the ballots by piling the ballots in groups of 25.
- Counts will be recorded for each precinct counter group on the review worksheet and summary statement.
- After counting, the ballots must be resealed in the transfer case. (Polling Place and Absentee ballots for a precinct may be sealed together in a single case.) See Appendix B for a printer-friendly procedures sheet.

9.0 COUNTING BALLOTS - Ballots must be reviewed on a precinct by precinct basis, first to determine votes cast for the affected offices (see section 10.0), then to determine if additional steps are required (see section 11.0). The post-election review official shall open the sealed envelopes and review them in accordance with M.S. 204C.41. When conducting the review, the total number of ballots counted for the PER offices in a given precinct must be equal, (i.e. the total ballots counted for Governor, the total ballots counted for U.S. Senator, and the total ballots counted for U.S. Representative should all be the same). Whenever there is a discrepancy among the total number of ballots counted for each office in a given precinct, the ballots should be recounted. If there is any doubt about a precinct's results, count again. If the manual count differs from the original results, you may want to have a different review team count again, looking in piles for incorrectly sorted ballots. After the count of votes (both Polling Place and Absentee/Mail Ballot) for the precinct has been determined, all ballots will be resealed in the ballot envelopes and returned with the other election materials to the custodian of the ballots. (Absentee and Polling Place ballots may be sealed together in a single precinct transfer case.) (M.S. 204C.361; M.R. 8235.0800