

4825 Bayfield Terrace
Madison, WI 53705
December 11, 2007

Dear Representative Terese Berceau:

Please draft legislation to improve aspects of election recounts. The purpose is to promote public confidence in the transparency, accuracy and thoroughness of recounts.

This proposed legislation would include the following:

1. Option to hand count

The legislation shall give the Board of Canvassers the option to conduct the recount by machine or by hand. This was the law until Act 451 changed it on July 1, 2006. There are situations when manual counts are simpler and faster, and will lead to greater confidence in the accuracy. Current statutory reference: 5.90

2. Pre-screen for voter intent

If the Board of Canvassers decides to recount optical scan ballots by machine, the legislation shall require that they pre-screen the ballots to separate any that are likely to be miscounted or not counted by the machine. (This is currently optional.) These ballots would be examined for voter intent per 7.50 (2), and then added to the count. The pre-screening requirement would be waived if the voting machine were programmed to separate undervotes in the contest of interest. The undervotes would then be examined for voter intent. Perhaps the legislation should require the GAB to improve their criteria for judging voter intent, and develop a detailed manual similar to the one recently developed by the state of Washington.

<http://www.secstate.wa.gov/elections/pdf/FINAL%202007%20Statewide%20Standards%20on%20What%20is%20a%20Vote.pdf>

Current statutory reference: 9.01 (1) (b) 8s

3. Rule for partial manual count

Within six months of passage, the GAB staff must recommend to the GAB procedures for a partial manual count of voted optical scan ballots, should the Board of Canvassers decide to use voting machines for the recount. Within twelve months of passage, the recommendations must be submitted to the Legislative Council for review as an administrative rule. This partial manual count of ballots cast by voters is intended as a crosscheck of the machine counts.

The procedure could involve a random sample of wards, or some ballots from some or all wards. The rule shall include escalation procedures should the partial manual count diverge from the machine results. Escalation procedures would involve more manual counts.

On November 28, 2007, the State Elections Board, at my request, directed staff to begin to promulgate rules for minimum statewide standards for conducting the pre-recount test of the voting machine that is required by statute 5.90. The above proposed legislation will be another significant step in improving Wisconsin's recounts.

Sincerely,

Paul Malischke
malischke@yahoo.com