

Secure, Accurate, Recountable – How is Wisconsin Doing?

Paul Malischke December 16, 2007

At the 2004 national convention, the League of Women US resolved to support “voting systems and procedures that are secure, accurate, recountable....”.

At Convention 2006, delegates passed a resolution to

“Affirm that LWVUS supports only voting systems that are designed so that...

- The vote totals can be verified by an independent hand count of the paper ballot/record; and
- Routine audits of the paper ballot/record in randomly selected precincts can be conducted in every election, and the results published by the jurisdiction.”

Over 80% of Wisconsin’s voters use paper ballots counted by optical scan tabulators. The remaining jurisdictions use either hand-counted paper ballots, or Direct Reading Equipment (DRE), often called touchscreens. The DRE’s are required by statute 5.91(18) to have a voter-verifiable printout, and the printout is the record used for recounts (Statute 5.90).

How Does Wisconsin Measure up to Secure, Accurate, and Recountable?

Secure - Ballot security

Wisconsin’s administrative rule (EIBd 5.01) for securing voted ballots has been in place for a long time. It is quite strict, and it has the force of law. It states that any access must leave “visibly discernible and indelible evidence of, or record of, that entry or access into the container.” However, election administrators across Wisconsin have been ignoring this requirement. On election night, the pollworkers typically use a simple plastic strap to close the neck of the ballot bag. This strap could be carefully removed, and later replaced by another one purchased from any hardware store, without leaving any sign of access. For a recount or an audit, how can we be sure the ballots that are being counted are really the ballots the voters filled out?

At the September 2007 meeting of the State Elections Board (SEB), I presented this situation to them. Their legal counsel agreed on the record that the ballot security rule was being largely ignored. The Board unanimously agreed to my proposal to enhance the rules with specifics on using more secure numbered seals. They also agreed to have the Board of Canvassers check a sample of ballot bags to ensure compliance. These enhancements to the rule are progressing through the rule approval process, which may involve a public hearing and legislative review.

Secure – Memory Cards

The security of the memory media used in voting machines became an issue in early 2006. The National Association of State Election Directors (NASSED) issued a directive for securing the memory cards as a requirement of certification of voting machines. This involved a perpetual chain of custody and sealing with numbered seals. Since then, the Secretaries of State of California, Colorado, and Ohio have overseen extensive studies by scientists of voting machine security. From the Ohio study: “*Unfortunately, the findings*

in this study indicate that the computer-based voting systems in use in Ohio do not meet computer industry security standards and are susceptible to breaches of security that may jeopardize the integrity of the voting process. Such safeguards were neither required by federal regulatory authorities, nor voluntarily applied to their systems by voting machine companies, as these products were certified for use in federal and state elections.”

In November 2007, the SEB approved new strict procedures for memory cards, and directed staff to complete the rules promulgation process. When finished, the rule will have the force of law. However, given the history of lax adherence to the ballot security rules, it is questionable how much effect the new rule will have.

Accurate

Accuracy of optical scan tabulators is verified by pre-election testing, audits, and occasional manual recounts.

Accurate - Pre-election testing consists of sending a test deck through the tabulator and checking that it counts correctly. A public test is required by statute 5.84, but there are no statewide standards for the procedures. For one test that I witnessed, the referendum test deck had two “yes” votes and two “no” votes. The clerk felt that the 2-2 result was adequate, but it could have meant that all votes were flip-flopped. Another dubious practice is to use the test mode built-in to the new voting machines. This makes it quicker to run the test, but a recent California report on voting machines found that the test mode software might differ from the Election Day software. At the November 2007 meeting of the SEB, I requested that they develop rules for minimum statewide standards for testing procedures. They unanimously directed staff to begin the rule promulgation process.

Accurate - Audits of the vote counts were discussed at a recent Audit Summit in Minnesota, attended by five Wisconsin election administrators and two people from the Wisconsin LWV. The summit defined audits as follows:

“The audit of election results, conducted after the polls have closed and before certification, by performing manual counts of paper ballots and voter-verifiable paper records in randomly selected units (e.g. precincts) and comparing them to the corresponding electronic or manual tallies, for the purpose of verifying the election result with a high level of confidence.”

Since the summit, a group of the attendees and others have been discussing establishing audits in Wisconsin. Contact the Wisconsin office of the LWV if you are interested in further information or willing to participate in the audits.

Recountable

In Wisconsin, candidates may request recounts. They are conducted at no cost to the candidate if the margin is less than one-half of one per cent.

For recounts of DRE’s, the paper tapes are counted by hand.

Optical scan ballots are recounted by machine, according to statute 5.90. Manual counts are rare since they are only allowed if there is a court order. From 1982 until 2006, the Board of Canvassers was able to decide whether the recount should be done by hand or by machine. This law resulted in some manual counts, which serve as a verification of the accuracy of the machine results.

The optical scan ballots are typically tabulated using the same optical scan memory pack that was used on election night. This means that if there was an error on the memory pack, it will be repeated during the recount.

One means of preventing an error is the pre-recount test required by statute 5.90. Unfortunately, in four of five recounts that I have witnessed recently, the clerks have skipped this public test. In two cases, it was skipped even after I inquired about it. I have proposed that the SEB develop an itemized ward-by-ward checklist for recounts that the Boards of Canvassers must initial, and that the results of the test are listed in the minutes of the recount.

Another problem is that the machines might not count certain ballots, such as those where the voter circles the name instead of filling in the oval or arrow. Boards of Canvassers are allowed to screen the ballots for these situations and manually count them, but they do not always do this. The method of evaluating these types of ballots is spelled out in statute 7.50(2), headed "Elector Intent".

Observers

Perhaps the best way to ensure that our election systems are secure, accurate, and recountable is to observe, and to raise questions. Wisconsin has great laws for open observation of elections, Board of Canvassers meetings, and recounts. The SEB has an excellent website with extensive information on rules and procedures. You don't have to be an expert in election law, but learning and focusing on one area is an excellent way to make a difference.