EXHIBIT B

Procedural Guidelines for Manual Recount
Governor Race

The Secretary of State is providing the following procedural guidelines to assist County Auditors in the upcoming manual recount. These procedural guidelines are not new law or a change in the current law governing the November 2004 election. They do not in any way change the statewide substantive standards with respect to determining the validity of or vote on a ballot. Instead, these procedural guidelines are a recitation of current law focusing on the process and procedures of a manual recount.

Title 29A of the Revised Code of Washington sets forth the election laws of this state, and Chapter 29A.64 is the section that deals specifically with recounts. No rules have been promulgated in the Washington Administrative Code addressing recounts specifically. Counties should, however, review WAC 434-261-070 through WAC 434-261-090 regarding inspection of ballots and other issues which may be pertinent to a manual recount. The provisions contained in these rules should, where appropriate, be applied throughout the manual recount process in the same manner as applied in the original count and the mandatory machine recount.

Canvass Results

Final results for the manual recount should be reported in the same manner as the machine recount of ballots. If the machine recount was reported by precinct, with poll site and absentee totals separate, the manual recount results should be in the same format.

Overvotes and undervotes need not to be reported on the amended abstract submitted to the Secretary of State. Overvotes and undervotes should be available in each county, however, for any party review and for purposes of ballot reconciliation.

Preparation for the Recount

Opening sealed boxes and preparing ballots is part of the recount. The two day notification of candidates and observers applies to this part of the recount. RCW 29A.64.041 Thus, counties should not begin opening sealed boxes or preparing ballots until the required 2-day notice has been provided to the candidates and the recount process begins.

Recount Procedures

We are not aware of any statutory authority that prevents each county from determining the order in which the ballots will be recounted.

Counties should use recount procedures adopted by their canvassing board if such procedures have been adopted. No local procedure should be adopted that conflicts with state law or the Washington Administrative Code.

EXHIBIT 3

Such procedures should include provisions regarding:

- recount location;
- counting team procedures;
- totaling precinct results;
- discrepancies between manual and machine recount results;
- numbers of observers;
- observer guidelines;
- removal of observers and authorizing circumstances;
- procedures for the physical handling of ballots needing further consideration;
- procedures for ballots sorted in wrong precincts; and
- security measures.

Ballots

All ballots cast for the office of Governor must be included in the recount. RCW 29A.64.011

Counties are reminded that RCW 29A.60.210 provides that whenever the canvassing board finds that there is an apparent discrepancy or an inconsistency in the returns of an election, the board may recanvass the ballots or voting devices in any precincts of the county, and that the canvassing board shall conduct any necessary recanvass activity on or before the last day to certify the election and correct any error and document the correction of any error that it finds.

Ballots needing enhancement, duplication, or canvassing board determination should be handled in the same manner as during the machine recount. WAC 434-261-080; WAC 434-261-085; WAC 434-261-090.

Snohomish and Yakima Counties will be required to print out poll site ballots to recount, unless exempted by the recount request. (That is because they are the only two electronic poll site system counties in Washington.)

Skamania and Yakima Counties will need to recount the original absentee and vote-by-mail ballots. (That is because they are the only Hart ballot system counties in Washington.)

Any write-in votes for Christine Gregoire, Dino Rossi, or Ruth Bennett must be added to final results for those candidates. As a reminder, the following situations are counted under the existing statewide standards:

- A write-in vote is valid if the voter included the candidate's name, office, and party. For optical scan counties, the voter indicates the office by writing in the name in the spot for write-ins under the office heading. RCW 29A.60.021.

- As Christine Gregoire, Dino Rossi, and Ruth Bennett were declared candidates, exact spelling of the candidate's name and including the office and party would not be required for the write-in to be valid. RCW 29A.60.021

- In an optical scan county, the oval or arrow does not need to be marked for the write-in to be valid.

- If a voter marks a candidate for a race and writes in the same candidate, it is not an overvote. It is a valid vote for that candidate. WAC 434-261-075

Security

Secretary of State recommendations are as follows:

- all precincts should be counted to conclusion;

- a record of each precinct should be kept as it is recounted;

- tally results should be secured from day to day by:
  - securing the results in a sealed container, with one observer from each party initialing the seal log, and/or
  - having one observer from each party initial the tally sheets at the end of the day, and
  - each morning confirming with the observers that the tally sheets are the same as from the day before;

- provide security for off-site counting; and

- use full security measures before and during the recount.

Observers

Notice of the recount must be made to all candidates by mail plus by telephone, fax, e-mail or other electronic means. At least three attempts must be made over a two-day period to notify the affected parties or until the affected parties have received notification. RCW 29A.64.030.

Observers shall be permitted to observe the ballots and the process of tabulating the votes, but they shall not be permitted to handle the ballots. RCW 29A.64.041(1). Observers may not make a record of the names, addresses, or other information on the ballots, poll books, or applications for absentee ballots. RCW 29A.64.041(3). Each candidate is allowed to have at least two observers present during the recount. The county may limit the number of additional observers over the two allowed for each candidate if, in his or her opinion additional observers would cause undue delay or disruption of the recount process. RCW 29A.64.041(3). Legal counsel may accompany the observers. RCW 29A.64.030.

We are not aware of any statutory authority for observers to challenge any ballot or request that a ballot be considered or reconsidered by the canvassing board.

Secretary of State makes the following recommendations regarding observers.

- Counties should provide written instructions and rules for observers to ensure their observation activity does not disrupt the recount process.

- Counties should provide training for the official observers to ensure each observer understands and agrees to follow those written instructions and rules.

- Counties should allow as many observers as possible to observe the ballots and the process of tabulating the votes, but not fewer than two observersfor each candidate.

- Counties should ensure that our State's upcoming manual recount is as open and transparent as possible, allowing observers as much access to view each ballot and each ballot's tabulation as staff and space reasonably permit. Reasonable rules and restrictions on the conduct of such observers should be able to maintain the orderly, trustworthy, and accurate recount process essential to preserving public confidence in the ultimate recount results.

Canvassing Board

The Canvassing Board or their designee does not need to be present during the entire recount if they have delegated that responsibility to the County Auditor in writing. RCW 29A.60.140.

The Canvassing Board or their designee must meet to certify the final results of the manual recount. RCW 29A.64.061.

Canvassing Board meeting notices can be posted as an emergency meeting, requiring 24 hours notification of the media. RCW 42.30.080.

Certifying the Results

Counties should not enter any interim results into the Secretary of State website—only final results.

The canvassing board must meet to certify the results. RCW 29A.64.061.

Once the ballot counting is finished, counties are requested to promptly enter the results on the Secretary of State's website. Only votes for Christine Gregoire, Dino Rossi, and Ruth Bennett (including any valid write-in votes for those candidates) should be entered on the website. Vote tallies for other write-in candidates are submitted with the hard copy report.

Hard copy results should be sent by overnight mail (FedEx or other) to the Office of the Secretary of State, 1007 Washington St. SE, Olympia WA 98501, immediately after the canvassing board certifies the results.

December 3, 2004
Secretary of State
Elections Division