

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

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SENATE BILL 14  
Judiciary I Committee Substitute Adopted 4/16/01  
House Committee Substitute Favorable 8/1/01

Short Title: Election Rewrite - 2.

(Public)

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Sponsors:

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Referred to:

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January 29, 2001

1 A BILL TO BE ENTITLED  
2 AN ACT TO REWRITE ARTICLE 15 AND ARTICLE 16 OF CHAPTER 163 OF  
3 THE GENERAL STATUTES, AS RECOMMENDED BY THE ELECTION LAWS  
4 REVISION COMMISSION; AND TO MAKE CONFORMING CHANGES.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Articles 15 and 16 of Chapter 163 of the General Statutes are  
7 repealed.

8 SECTION 2. G.S. 163-22.1 is repealed.

9 SECTION 3. Chapter 163 of the General Statutes is amended by adding a  
10 new Article to read:

11 "Article 15A.

12 "Counting Official Ballots, Canvassing Votes, Hearing Protests, and Certifying Results.

13 "§ 163-182. Definitions.

14 In addition to the definitions stated below, the definitions set forth in Article 13A of  
15 Chapter 163 of the General Statutes also apply to this Article. As used in this Article,  
16 the following definitions apply:

17 (1) 'Abstract' means a document signed by the members of the board of  
18 elections showing the votes for each candidate and ballot proposal on  
19 the official ballot in the election. The abstract shall show a total  
20 number of votes for each candidate in each precinct and a total for  
21 each candidate in the county. It shall also show the number of votes for  
22 each candidate among the absentee official ballots, among the  
23 provisional official ballots, and in any other category of official ballots  
24 that is not otherwise reported.

25 (2) 'Composite abstract' means a document signed by the members of the  
26 State Board of Elections showing the total number of votes for each  
27 candidate and ballot proposal and the number of votes in each county.  
28 A composite abstract does not include precinct returns.

- 1           (3) 'Certificate of election' means a document prepared by the official or  
2 body with the legal authority to do so, conferring upon a candidate the  
3 right to assume an elective office as a result of being elected to it.  
4           (4) 'Protest' means a complaint concerning the conduct of an election  
5 which, if supported by sufficient evidence, may require remedy by one  
6 or more of the following:  
7           a. A correction in the returns.  
8           b. A discretionary recount as provided in G.S. 163-182.7.  
9           c. A new election as provided in G.S. 163-182.8.

10 **"§ 163-182.1. Principles and rules for counting official ballots.**

- 11       (a) General Principles That Shall Apply. – The following general principles shall  
12 apply in the counting of official ballots, whether the initial count or any recount:  
13       (1) Only official ballots shall be counted.  
14       (2) No official ballot shall be rejected because of technical errors in  
15 marking it, unless it is impossible to clearly determine the voter's  
16 choice.  
17       (3) If it is impossible to clearly determine a voter's choice in a ballot item,  
18 the official ballot shall not be counted for that ballot item, but shall be  
19 counted in all other ballot items in which the voter's choice can be  
20 clearly determined.  
21       (4) If an official ballot is marked in a ballot item with more choices than  
22 there are offices to be filled or propositions that may prevail, the  
23 official ballot shall not be counted for that ballot item, but shall be  
24 counted in all other ballot items in which there is no overvote and the  
25 voter's choice can be clearly determined.  
26       (5) If an official ballot is rejected by a scanner or other counting machine,  
27 but human counters can clearly determine the voter's choice, the  
28 official ballot shall be counted by hand and eye.  
29       (6) Write-in votes shall not be counted in party primaries or in referenda,  
30 but shall be counted in general elections if all of the following are true:  
31       a. The write-in vote is written by the voter or by a person  
32 authorized to assist the voter pursuant to G.S. 163-166.8.  
33       b. The write-in vote is not cast for a candidate who has failed to  
34 qualify under G.S. 163-123 as a write-in candidate.  
35       c. The voter's choice can be clearly determined.  
36       (7) Straight-party ticket and split-ticket votes shall be counted in general  
37 elections according to the following guidelines:  
38       a. If a voter casts a vote for a straight-party ticket, that vote shall  
39 be counted for all the candidates of that party, other than those  
40 for President and Vice President, in the partisan ballot items on  
41 that official ballot except as otherwise provided in this  
42 subdivision.

1           b. If a voter casts a vote for a straight-party ticket and also votes in  
2           a partisan ballot item for a candidate not of that party, the  
3           official ballot shall be counted in that ballot item only for the  
4           individually marked candidate. In partisan ballot items where  
5           no mark is made for an individual candidate, the official ballot  
6           shall be counted for the candidates of the party whose straight  
7           ticket the voter voted.

8           c. If a voter casts a vote for a straight-party ticket and also casts a  
9           write-in vote in any partisan ballot item, the straight-party ticket  
10           vote shall not control the way the official ballot is counted in  
11           that ballot item, except to the extent it would control in the case  
12           of crossover voting under this subdivision. The following  
13           principles shall apply:

14           1. If the write-in vote is proper under subdivision (6) of this  
15           subsection, that write-in candidate shall receive a vote.

16           2. If the write-in vote is not proper under subdivision (6) of  
17           this subsection and no other candidate is individually  
18           marked in that ballot item, then no vote shall be counted  
19           in that ballot item.

20           3. If the straight-ticket voter casts both write-in votes and  
21           individually marked votes for ballot candidates in a  
22           ballot item, then the write-in and individually marked  
23           votes shall be counted unless the write-in is not proper  
24           under subdivision (6) of this subsection or an overvote  
25           results.

26           (b) Rules and Directions by State Board of Elections. – The State Board of  
27           Elections shall promulgate rules where necessary to apply the principles in subsection  
28           (a) of this section to each voting system in use in the State. The rules shall prescribe  
29           procedures and standards for each type of voting system. Those procedures and  
30           standards shall be followed uniformly throughout the State in all places where that type  
31           of voting system is used. The State Board shall direct the county boards of elections in  
32           the application of the principles and rules in individual circumstances.

33           **§ 163-182.2. Initial counting of official ballots.**

34           (a) The initial counting of official ballots shall be conducted according to the  
35           following principles:

36           (1) Vote counting at the precinct shall occur immediately after the polls  
37           close and shall be continuous until completed.

38           (2) Vote counting at the precinct shall be conducted with the participation  
39           of precinct officials of all political parties then present. Vote counting  
40           at the county board of elections shall be conducted in the presence or  
41           under the supervision of board members of all political parties then  
42           present.

- 1           (3) Any member of the public wishing to witness the vote count at any  
2 level shall be allowed to do so. No witness shall interfere with the  
3 orderly counting of the official ballots. Witnesses shall not participate  
4 in the official counting of official ballots.
- 5           (4) Provisional official ballots shall be counted by the county board of  
6 elections before the canvass. If the county board finds that an  
7 individual voting a provisional official ballot is not eligible to vote in  
8 one or more ballot items on the official ballot, the board shall not  
9 count the official ballot in those ballot items, but shall count the  
10 official ballot in any ballot items for which the individual is eligible to  
11 vote.
- 12           (5) Precinct officials shall provide a preliminary report of the vote  
13 counting to the county board of elections as quickly as possible. The  
14 preliminary report shall be unofficial and has no binding effect upon  
15 the official county canvass to follow.

16       (b) The State Board of Elections shall promulgate rules for the initial counting of  
17 official ballots. All election officials shall be governed by those rules. In promulgating  
18 those rules, the State Board shall adhere to the following guidelines:

- 19           (1) For each voting system used, the rules shall specify the role of precinct  
20 officials and of the county board of elections in the initial counting of  
21 official ballots.
- 22           (2) The rules shall provide for accurate unofficial reporting of the results  
23 from the precinct to the county board of elections with reasonable  
24 speed on the night of the election.
- 25           (3) The rules shall provide for the prompt and secure transmission of  
26 official ballots from the voting place to the county board of elections.

27 The State Board shall direct the county boards of elections in the application of the  
28 principles and rules in individual circumstances.

29 **§ 163-182.3. Responsibility of chief judge.**

30 The chief judge of each precinct shall be responsible for the adherence of the  
31 precinct officials to the State Board rules for counting, reporting, and transmitting  
32 official ballots.

33 **§ 163-182.4. Jurisdiction for certain ballot items.**

34       (a) Jurisdiction of County Board of Elections. – As used in this Article, the  
35 county board of elections shall have jurisdiction over the following:

- 36           (1) Offices of that county, including clerk of superior court and register of  
37 deeds.
- 38           (2) Membership in either house of the General Assembly from a district  
39 lying entirely within that county.
- 40           (3) Offices of municipalities, unless the municipality has a valid board of  
41 election.
- 42           (4) Referenda in which only residents of that county are eligible to vote.

1       (b) Jurisdiction of State Board of Elections. – As used in this Article, the State  
2 Board of Elections shall have jurisdiction over the following:

3           (1) National offices.

4           (2) State offices.

5           (3) District offices (including General Assembly seats) in which the  
6 district lies in more than one county.

7           (4) Superior court judge, district court judge, and district attorney,  
8 regardless of whether the district lies entirely in one county or in more  
9 than one county.

10          (5) Referenda in which residents of more than one county are eligible to  
11 vote.

12       (c) For the purposes of this Article, having jurisdiction shall mean that the  
13 appropriate board shall do all of the following with regard to the ballot item:

14           (1) Canvass for the entire electorate for the ballot item.

15           (2) Prepare abstracts or composite abstracts for the entire electorate for the  
16 ballot item.

17           (3) Issue certificates of nomination and election.

18 **"§ 163-182.5. Canvassing votes.**

19       (a) The Canvass. – As used in this Article, the term 'canvass' means the entire  
20 process of determining that the votes have been counted and tabulated correctly,  
21 culminating in the authentication of the official election results. The board of elections  
22 conducting a canvass has authority to send for papers and persons and to examine them  
23 and pass upon the legality of disputed ballots.

24       (b) Canvassing by County Board of Elections. – The county board of elections  
25 shall meet at 11:00 A.M. on the third day (Sunday excepted) after every election to  
26 complete the canvass of votes cast and to authenticate the count in every ballot item in  
27 the county by determining that the votes have been counted and tabulated correctly. If,  
28 despite due diligence by election officials, the initial counting of all the votes has not  
29 been completed by that time, the county board may hold the canvass meeting a  
30 reasonable time thereafter. The canvass meeting shall be at the county board of elections  
31 office, unless the county board, by unanimous vote of all its members, designates  
32 another site within the county. The county board shall examine the returns from  
33 precincts, from absentee official ballots, and from provisional official ballots and shall  
34 conduct the canvass.

35       (c) Canvassing by State Board of Elections. – After each general election, the  
36 State Board of Elections shall meet at 11:00 A.M. on the Tuesday three weeks after  
37 election day to complete the canvass of votes cast in all ballot items within the  
38 jurisdiction of the State Board of Elections and to authenticate the count in every ballot  
39 item in the county by determining that the votes have been counted and tabulated  
40 correctly. After each primary, the State Board shall fix the date of its canvass meeting.  
41 If, by the time of its scheduled canvass meeting, the State Board has not received the  
42 county canvasses, the State Board may adjourn for not more than 10 days to secure the  
43 missing abstracts. In obtaining them, the State Board is authorized to secure the

1 originals or copies from the appropriate clerks of superior court or county boards of  
2 elections, at the expense of the counties.

3 **"§ 163-182.6. Abstracts.**

4 (a) Abstracts to Be Prepared by County Board of Elections. – As soon as the  
5 county canvass has been completed, the county board of elections shall prepare  
6 abstracts of all the ballot items in a form prescribed by the State Board of Elections. The  
7 county board shall prepare those abstracts in triplicate originals. The county board shall  
8 retain one of the triplicate originals, and shall distribute one each to the clerk of superior  
9 court for the county and the State Board of Elections. The State Highway Patrol may,  
10 upon request of the State Board of Elections, be responsible for the delivery of the  
11 abstracts from each county to the State Board of Elections. The State Board of Elections  
12 shall forward the original abstract it receives to the Secretary of State.

13 (b) Composite Abstracts to Be Prepared by the State Board of Elections. – As  
14 soon as the State canvass has been completed, the State Board shall prepare composite  
15 abstracts of all those ballot items. It shall prepare those composite abstracts in duplicate  
16 originals. It shall retain one of the originals and shall send the other original to the  
17 Secretary of State.

18 (c) Duty of the Secretary of State. – The Secretary of State shall maintain the  
19 certified copies of abstracts received from the county and State boards of elections. The  
20 Secretary shall keep the abstracts in a form readily accessible and useful to the public.

21 (d) Forms by State Board of Elections. – The State Board of Elections shall  
22 prescribe forms for all abstracts. Those forms shall be uniform and shall, at a minimum,  
23 state the name of each candidate and the office sought and each referendum proposal,  
24 the number of votes cast for each candidate and proposal, the candidate or proposal  
25 determined to have prevailed, and a statement authenticating the count.

26 **"§ 163-182.7. Ordering recounts.**

27 (a) Discretionary Recounts. – The county board of elections or the State Board of  
28 Elections may order a recount when necessary to complete the canvass in an election.  
29 The county board may not order a recount where the State Board of Elections has  
30 already denied a recount to the petitioner.

31 (b) Mandatory Recounts for Ballot Items Within the Jurisdiction of the County  
32 Board of Elections. – In a ballot item within the jurisdiction of the county board of  
33 elections, a candidate shall have the right to demand a recount of the votes if the  
34 difference between the votes for that candidate and the votes for a prevailing candidate  
35 is not more than one percent (1%) of the total votes cast in the ballot item, or in the case  
36 of a multiseat ballot item not more than one percent (1%) of the votes cast for those two  
37 candidates. The demand for a recount must be made in writing and must be received by  
38 the county board of elections by noon on the fourth day after the canvass. The recount  
39 shall be conducted under the supervision of the county board of elections.

40 (c) Mandatory Recounts for Ballot Items Within the Jurisdiction of the State  
41 Board of Elections. – In a ballot item within the jurisdiction of the State Board of  
42 Elections, a candidate shall have the right to demand a recount of the votes if the

1 difference between the votes for that candidate and the votes for a prevailing candidate  
2 are not more than the following:

3 (1) For a nonstatewide ballot item, one percent (1%) of the total votes cast  
4 in the ballot item, or in the case of a multiseat ballot item, one percent  
5 (1%) of the votes cast for those two candidates.

6 (2) For a statewide ballot item, one-half of one percent (0.5%) of the votes  
7 cast in the ballot item, or in the case of a multiseat ballot item, one-half  
8 of one percent (0.5%) of the votes cast for those two candidates, or  
9 10,000 votes, whichever is less.

10 The demand for a recount must be in writing and must be received by the State Board of  
11 Elections by noon on the second Wednesday after the election. If on that Wednesday the  
12 available returns show a candidate not entitled to a mandatory recount, but the  
13 Executive Secretary-Director determines subsequently that the margin is within the  
14 threshold set out in this subsection, the Executive Secretary-Director shall notify the  
15 eligible candidate immediately and that candidate shall be entitled to a recount if that  
16 candidate so demands within 48 hours of notice. The recount shall be conducted under  
17 the supervision of the State Board of Elections.

18 (d) Rules for Conducting Recounts. – The State Board of Elections shall  
19 promulgate rules for conducting recounts. Those rules shall be subject to the following  
20 guidelines:

21 (1) The rules shall specify, with respect to each type of voting system,  
22 when and to what extent the recount shall consist of machine recounts  
23 and hand-to-eye recounts.

24 (2) The rules shall provide guidance in interpretation of the voter's choice.

25 (3) The rules shall specify how the goals of multipartisan participation,  
26 opportunity for public observation, and good order shall be balanced.

27 **§ 163-182.8. Determining result in case of a tie.**

28 If the count, upon completion of canvass by the proper board of elections, shows a  
29 tie vote other than in a primary, the tie shall be resolved as follows:

30 (1) If more than 5,000 voters cast official ballots in the ballot item, the  
31 State Board of Elections shall order a new election in which only the  
32 candidates or positions tied will be on the official ballot. The State  
33 Board of Elections shall set the schedule for publication of the notice,  
34 preparation of absentee official ballots, and the other actions necessary  
35 to conduct the election. Eligibility to vote in the new election shall be  
36 determined by the voter's eligibility at the time of the new election.

37 (2) If 5,000 or fewer voters cast official ballots in the ballot item, the  
38 board of elections with jurisdiction to certify the election shall break  
39 the tie by a method of random selection to be determined by the State  
40 Board of Elections.

41 **§ 163-182.9. Filing an election protest.**

42 (a) Who May File a Protest With County Board. – A protest concerning the  
43 conduct of an election may be filed with the county board of elections by any registered

1 voter who was eligible to vote in the election or by any person who was a candidate for  
2 nomination or election in the election.

3 (b) How Protest May Be Filed. – The following principles shall apply to the  
4 filing of election protests with the county board of elections:

5 (1) The protest shall be in writing and shall be signed by the protester. It  
6 shall include the protester's name, address, and telephone number and  
7 a statement that the person is a registered voter in the jurisdiction or a  
8 candidate.

9 (2) The protest shall state whether the protest concerns the manner in  
10 which votes were counted and results tabulated or concerns some other  
11 irregularity.

12 (3) The protest shall state what remedy the protester is seeking.

13 (4) The timing for filing a protest shall be as follows:

14 a. If the protest concerns the manner in which votes were counted  
15 or results tabulated, the protest shall be filed before the  
16 beginning of the county board of election's canvass meeting.

17 b. If the protest concerns the manner in which votes were counted  
18 or results tabulated and the protest states good cause for delay  
19 in filing, the protest may be filed until 6:00 P.M. on the second  
20 day after the county board of elections has completed its  
21 canvass and declared the results.

22 c. If the protest concerns an irregularity other than vote counting  
23 or result tabulation, the protest shall be filed no later than 6:00  
24 P.M. on the second day after the county board has completed its  
25 canvass and declared the results.

26 d. If the protest concerns an irregularity on a matter other than  
27 vote counting or result tabulation and the protest is filed before  
28 election day, the protest proceedings shall be stayed, unless a  
29 party defending against the protest moves otherwise, until after  
30 election day if any one of the following conditions exists:

31 1. The ballot has been printed.

32 2. The voter registration deadline for that election has  
33 passed.

34 3. Any of the proceedings will occur within 30 days before  
35 election day.

36 (c) State Board to Prescribe Forms. – The State Board of Elections shall  
37 prescribe forms for filing protests.

38 **§ 163-182.10. Consideration of protest by county board of elections.**

39 (a) Preliminary Consideration. – The following principles shall apply to the  
40 initial consideration of election protests by the county board of elections:

41 (1) The county board shall, as soon as possible after the protest is filed,  
42 meet to determine whether the protest substantially complies with G.S.  
43 163-182.9 and whether it establishes probable cause to believe that a



1 violation of election law or irregularity or misconduct has occurred. If  
2 the board determines that one or both requirements are not met, the  
3 board shall dismiss the protest. The board shall notify both the  
4 protester and the State Board of Elections. The protester may file an  
5 amended protest or may appeal to the State Board. If the board  
6 determines that both requirements are met, it shall schedule a hearing.

7 (2) If a protest was filed before the canvass and concerns the counting and  
8 tabulating of votes, the county board shall resolve the protest before  
9 the canvass is completed. If necessary to provide time to resolve the  
10 protest, the county board may recess the canvass meeting, but shall not  
11 delay the completion of the canvass for more than three days unless  
12 approved by the State Board of Elections. Resolution of the protest  
13 shall not delay the canvass of ballot items unaffected by the protest.  
14 The appeal of a dismissal shall not delay the canvass.

15 (3) If a protest concerns an irregularity other than the counting or  
16 tabulating of votes, that protest shall not delay the canvass.

17 (b) Notice of Hearing. – The county board shall give notice of the protest hearing  
18 to the protester, any candidate likely to be affected, any election official alleged to have  
19 acted improperly, and those persons likely to have a significant interest in the resolution  
20 of the protest. Each person given notice shall also be given a copy of the protest or a  
21 summary of its allegations. The manner of notice shall be as follows:

22 (1) If the protest concerns the manner in which the votes were counted or  
23 the results tabulated, the protester shall be told at the time of filing that  
24 the protest will be heard at the time of the canvass. Others shall be  
25 notified as far in advance of the canvass as time permits.

26 (2) If the protest concerns a matter other than the manner in which votes  
27 were counted or results tabulated, the county board shall comply with  
28 rules to be promulgated by the State Board of Elections concerning  
29 reasonable notice of the hearing.

30 Failure to comply with the notice requirements in this subsection shall not delay the  
31 holding of a hearing nor invalidate the results if it appears reasonably likely that all  
32 interested persons were aware of the hearing and had an opportunity to be heard.

33 (c) Conduct of Hearing. – The following principles shall apply to the conduct of  
34 a protest hearing before the county board of elections:

35 (1) The county board may allow evidence to be presented at the hearing in  
36 the form of affidavits or it may examine witnesses. The chair or any  
37 two members of the board may subpoena witnesses or documents.  
38 Each witness must be placed under oath before testifying.

39 (2) The county board may receive evidence at the hearing from any person  
40 with information concerning the subject of the protest. The person who  
41 made the protest shall be permitted to present allegations and introduce  
42 evidence at the hearing. Any other person to whom notice of hearing  
43 was given, if present, shall be permitted to present evidence. The board

1                   may allow evidence by affidavit. The board may permit evidence to be  
2                   presented by a person to whom notice was not given, if the person  
3                   apparently has a significant interest in the resolution of the protest that  
4                   is not adequately represented by other participants.

5           (3)       The hearing shall be recorded by a reporter or by mechanical means,  
6                   and the full record of the hearing shall be preserved by the county  
7                   board until directed otherwise by the State Board.

8       (d)       Findings of Fact and Conclusions of Law by County Board. – The county  
9       board shall make a written decision on each protest which shall state separately each of  
10       the following:

11           (1)       Findings of fact. – The findings of fact shall be based exclusively on  
12                   the evidence and on matters officially noticed. Findings of fact, if set  
13                   forth in statutory language, shall be accompanied by a concise and  
14                   explicit statement of the underlying facts supporting them.

15           (2)       Conclusions of law. – The conclusions the county board may state, and  
16                   their consequences for the board's order, are as follows:

17           a.       'The protest should be dismissed because it does not  
18                   substantially comply with G.S. 163-182.9.' If the board makes  
19                   this conclusion, it shall order the protest dismissed.

20           b.       'The protest should be dismissed because there is not substantial  
21                   evidence of a violation of the election law or other irregularity  
22                   or misconduct.' If the county board makes this conclusion, it  
23                   shall order the protest dismissed.

24           c.       'The protest should be dismissed because there is not substantial  
25                   evidence of any violation, irregularity, or misconduct sufficient  
26                   to cast doubt on the results of the election.' If the county board  
27                   makes this conclusion, it shall order the protest dismissed.

28           d.       'There is substantial evidence to believe that a violation of the  
29                   election law or other irregularity or misconduct did occur, and  
30                   might have affected the outcome of the election, but the board  
31                   is unable to finally determine the effect because the election  
32                   was a multicounty election.' If the county board makes this  
33                   conclusion, it shall order that the protest and the county board's  
34                   decision be sent to the State Board for action by it.

35           e.       'There is substantial evidence to believe that a violation of the  
36                   election law or other irregularity or misconduct did occur and  
37                   that it was sufficiently serious to cast doubt on the apparent  
38                   results of the election.' If the county board makes this  
39                   conclusion, it may order any of the following as appropriate:

40                   1.       That the vote total as stated in the precinct return or  
41                   result of the canvass be corrected and new results  
42                   declared.

43                   2.       That votes be recounted.

1                                   3.     That the protest and the county board's decision be sent  
2   to the State Board for action by it.

3                                   4.     Any other action within the authority of the county  
4   board.

5                   (3)     An order. – Depending on the conclusion reached by the county board,  
6                                     its order shall be as directed in subdivision (c)(2). If the county board  
7                                     is not able to determine what law is applicable to the Findings of Fact,  
8                                     it may send its findings of fact to the State Board for it to determine  
9                                     the applicable law.

10           (e)     Rules by State Board of Elections. – The State Board of Elections shall  
11                   promulgate rules providing for adequate notice to parties, scheduling of hearings, and  
12                   the timing of deliberations and issuance of decision.

13     **"§ 163-182.11. Appeal of a protest decision by the county board to the State Board**  
14                   **of Elections.**

15           (a)     Notice and Perfection of Appeal. – The decision by the county board of  
16                   elections on an election protest may be appealed to the State Board of Elections by any  
17                   of the following:

18                   (1)     The person who filed the protest.

19                   (2)     A candidate or elected official adversely affected by the county board's  
20                                     decision.

21                   (3)     Any other person who participated in the hearing and has a significant  
22                                     interest adversely affected by the county board's decision.

23                   Written notice of the appeal must be given to the county board within 24 hours after  
24                   the county board files the written decision at its office. The appeal to the State Board  
25                   must be in writing. The appeal must be delivered or deposited in the mail, addressed to  
26                   the State Board, by the appropriate one of the following: (i) the end of the second day  
27                   after the day the decision was filed by the county board in its office, if the decision  
28                   concerns a first primary; or (ii) the end of the fifth day after the day the decision was  
29                   filed in the county board office, if the decision concerns an election other than a first  
30                   primary.

31                   The State Board shall prescribe forms for filing appeals from the county board.

32           (b)     Consideration of Appeal by State Board. – In its consideration of an appeal  
33                   from a decision of a county board of elections on a protest, the State Board of Elections  
34                   may do any of the following:

35                   (1)     Decide the appeal on the basis of the record from the county board, as  
36                                     long as the county board has made part of the record a transcript of the  
37                                     evidentiary hearing.

38                   (2)     Request the county board or any interested person to supplement the  
39                                     record from the county board, and then decide the appeal on the basis  
40                                     of that supplemented record.

41                   (3)     Receive additional evidence and then decide the appeal on the basis of  
42                                     the record and that additional evidence.

1           (4) Hold its own hearing on the protest and resolve the protest on the basis  
2           of that hearing.

3           (5) Remand the matter to the county board for further proceedings in  
4           compliance with an order of the State Board.

5           The State Board shall follow the procedures set forth in subsections (c) and (d) of  
6           G.S. 163-182.10 except where they are clearly inapplicable.

7           The State Board shall give notice of its decision as required by G.S. 163-182.14, and  
8           may notify the county board and other interested persons in its discretion.

9           **"§ 163-182.12. Authority of State Board of Elections over protests.**

10          The State Board of Elections may consider protests that were not filed in compliance  
11          with G.S. 163-182.9, may initiate and consider complaints on its own motion, may  
12          intervene and take jurisdiction over protests pending before a county board, and may  
13          take any other action necessary to assure that an election is determined without taint of  
14          fraud or corruption.

15          **"§ 163-182.13. New elections.**

16          (a) When State Board May Order New Election. – The State Board of Elections  
17          may order a new election, upon agreement of at least four of its members, in the case of  
18          any one or more of the following:

19               (1) Ineligible voters sufficient in number to change the outcome of the  
20               election were allowed to vote in the election, and it is not possible  
21               from examination of the official ballots to determine how those  
22               ineligible voters voted and to correct the totals.

23               (2) Eligible voters sufficient in number to change the outcome of the  
24               election were improperly prevented from voting.

25               (3) Other irregularities affected a sufficient number of votes to change the  
26               outcome of the election.

27               (4) Irregularities or improprieties occurred to such an extent that, although  
28               it is not possible to determine whether those irregularities or  
29               improprieties affected the outcome of the election, they taint the results  
30               of the entire election and cast doubt on its fairness.

31          (b) State Board to Set Procedures. – The State Board of Elections shall determine  
32          when a new election shall be held and shall set the schedule for publication of the  
33          notice, preparation of absentee official ballots, and the other actions necessary to  
34          conduct the election.

35          (c) Eligibility to Vote in New Election. – Eligibility to vote in the new election  
36          shall be determined by the voter's eligibility at the time of the new election, except that  
37          in a primary, no person who voted in the initial primary of one party shall vote in the  
38          new election in the primary of another party. The State Board of Elections shall  
39          promulgate rules to effect the provisions of this subsection.

40          (d) Jurisdiction in Which New Election Held. – The new election shall be held in  
41          the entire jurisdiction in which the original election was held.

1       (e) Which Candidates to Be on Official Ballot. – All the candidates who were  
2 listed on the official ballot in the original election shall be listed in the same order on  
3 the official ballot for the new election, except in either of the following:

4           (1) If a candidate dies or otherwise becomes ineligible between the time of  
5 the original election and the new election, that candidate may be  
6 replaced in the same manner as if the vacancy occurred before the  
7 original election.

8           (2) If the election is for a multiseat office, and the irregularities could not  
9 have affected the election of one or more of the leading vote getters,  
10 the new election, upon agreement of at least four members of the State  
11 Board, may be held among only those remaining candidates whose  
12 election could have been affected by the irregularities.

13       (f) Tie Votes. – If ineligible voters voted in an election and it is possible to  
14 determine from the official ballots the way in which those votes were cast and to correct  
15 the results, and consequently the election ends in a tie, the provisions of G.S. 163-182.8  
16 concerning tie votes shall apply.

17 **"§ 163-182.14. Appeal of a final decision to superior court.**

18       A copy of the final decision of the State Board of Elections on an election protest  
19 shall be served on the parties personally or by certified mail. A decision to order a new  
20 election is considered a final decision for purposes of seeking review of the decision.  
21 An aggrieved party has the right to appeal the final decision to the Superior Court of  
22 Wake County within 10 days of the date of service.

23       After the decision by the State Board of Elections has been served on the parties, the  
24 certification of nomination or election or the results of the referendum shall issue  
25 pursuant to G.S. 163-182.15 unless an appealing party obtains a stay of the certification  
26 from the Superior Court of Wake County within 10 days after the date of service. The  
27 court shall not issue a stay of certification unless the petitioner shows the court that the  
28 petitioner has appealed the decision of the State Board of Elections, that the petitioner is  
29 an aggrieved party, that the petitioner is likely to prevail, and that the results of the  
30 election would be changed in the petitioner's favor. Mere irregularities in the election  
31 which would not change the results of the election shall not be sufficient for the court to  
32 issue a stay of certification.

33 **"§ 163-182.15. Certificate of nomination or election, or certificate of the results of a**  
34 **referendum.**

35       (a) Issued by County Board of Elections. – In ballot items within the jurisdiction  
36 of the county board of elections, the county board shall issue a certificate of nomination  
37 or election, or a certificate of the results of the referendum, as appropriate. The  
38 certificate shall be issued by the county board five days after the completion of the  
39 canvass pursuant to G.S. 163-182.5, unless there is an election protest pending. If there  
40 is an election protest, the certificate of nomination or election or the certificate of the  
41 result of the referendum shall be issued in one of the following ways, as appropriate:

- 1           (1)    The certificate shall be issued five days after the protest is dismissed or  
2                   denied by the county board of elections, unless that decision has been  
3                   appealed to the State Board of Elections.
- 4           (2)    The certificate shall be issued 10 days after the final decision of the  
5                   State Board, unless the State Board has ordered a new election or the  
6                   issuance of the certificate is stayed by the Superior Court of Wake  
7                   County pursuant to G.S. 163-182.14.
- 8           (3)    If the decision of the State Board has been appealed to the Superior  
9                   Court of Wake County and the court has stayed the certification, the  
10                  certificate shall be issued five days after the entry of a final order in  
11                  the case in the Superior Court of Wake County, unless that court or an  
12                  appellate court orders otherwise.

13       (b)    Issued by State Board of Elections. – In ballot items within the jurisdiction of  
14              the State Board of Elections, the State Board of Elections shall issue a certificate of  
15              nomination or election, or a certificate of the results of the referendum, as appropriate.  
16              The certificate shall be issued by the State Board five days after the completion of the  
17              canvass pursuant to G.S. 163-182.5, unless there is an election protest pending. If there  
18              is an election protest, the certificate of nomination or election or the certificate of the  
19              result of the referendum shall be issued in one of the following ways, as appropriate:

- 20           (1)    The certificate shall be issued 10 days after the final decision of the  
21                   State Board on the election protest, unless the State Board has ordered  
22                   a new election or the issuance of the certificate is stayed by the  
23                   Superior Court of Wake County pursuant to G.S. 163-14.
- 24           (2)    If the decision of the State Board has been appealed to the Superior  
25                   Court of Wake County and the court has stayed the certification, the  
26                   certificate shall be issued five days after the entry of a final order in  
27                   the case in the Superior Court of Wake County, unless that court or an  
28                   appellate court orders otherwise.

29       (c)    Copy to Secretary of State. – The State Board of Elections shall provide to  
30              the Secretary of State a copy of each certificate of nomination or election, or certificate  
31              of the results of a referendum, issued by it. The Secretary shall keep the certificates in a  
32              form readily accessible and useful to the public.

33       **"§ 163-182.16. Governor to issue commissions for certain offices.**

34              The Secretary of State shall send a notice to the Governor that a certificate of  
35              election has been issued for any of the following offices, and upon receiving the notice,  
36              the Governor shall provide to each such elected official a commission attesting to that  
37              person's election:

- 38           (1)    Members of the United States House of Representatives.  
39           (2)    Justices, judges, and district attorneys of the General Court of Justice.

40       **"§ 163-182.17. Summary of officials' duties under this Article.**

41              (a) This Section a Summary. – The provisions of this section provide a  
42              nonexclusive summary of the duties given to officials under this Article. The legal duty  
43              is contained, not in this section, but in the other sections of this Article.

1       (b) Duties of the Precinct Officials. – Precinct officials, in accordance with rules  
2 of the State Board of Elections and under the supervision of the county board of  
3 elections, shall perform all of the following:

- 4           (1) Count votes when votes are required to be counted at the voting place.  
5               G.S. 163-182.2.
- 6           (2) Make an unofficial report of returns to the county board of elections.  
7               G.S. 163-182.2.
- 8           (3) Certify the integrity of the vote and the security of the official ballots  
9               at the voting place. G.S. 163-182.2.
- 10          (4) Return official ballots and equipment to the county board of elections.  
11               G.S. 163-182.2.

12       (c) Duties of the County Board of Elections. – The county board of elections, in  
13 accordance with rules of the State Board of Elections, shall perform all of the following:

- 14           (1) Count absentee and provisional official ballots and other official  
15 ballots required to be initially counted by the county board of  
16 elections. G.S. 163-182.2.
- 17           (2) Canvass results in all ballot items on the official ballot in the county.  
18               G.S. 163-182.5.
- 19           (3) Order a recount in any ballot item on the official ballot in the county,  
20 where necessary to complete the canvass, and where not prohibited  
21 from doing so. G.S. 163-182.7.
- 22           (4) Conduct any recount that has been ordered by the county board of  
23 elections or the State Board of Elections or that has been properly  
24 demande d in accordance with G.S. 163-182.7(b).
- 25           (5) Conduct hearings in election protests as provided in G.S. 163-182.10.
- 26           (6) Prepare abstracts of returns in all the ballot items in the county. G.S.  
27 163-182.6.
- 28           (7) Retain one original abstract and distribute the other two originals as  
29 follows:
  - 30               a. One to the clerk of superior court in the county.
  - 31               b. One to the State Board of Elections. G.S. 163-182.6.
- 32           (8) Issue a certificate of nomination or election or a certificate of the  
33 results of a referendum in each ballot item within the jurisdiction of  
34 the county board of elections. Provide a copy of the certificate to the  
35 clerk of court. G.S. 163-182.15.

36       (d) Duties of the State Board of Elections. – The State Board of Elections shall  
37 perform all the following:

- 38           (1) Promulgate rules as directed in this Article. G.S. 163-182.1,  
39 163-182.2, 163-182.7, 163-182.10, and 163-182.13.
- 40           (2) Provide supervisory direction to the county boards of elections as  
41 provided in this Article. G.S. 163-182.1 and G.S. 163-182.2.
- 42           (3) Canvass the results in ballot items within the jurisdiction of the State  
43 Board of Elections. G.S. 163-182.5.

- 1           (4)    Order and supervise a recount in any ballot item within the jurisdiction  
2                   of the State Board of Elections, where necessary to complete the  
3                   canvass. G.S. 163-182.7.
- 4           (5)    Hear and decide appeals from decisions of county boards of elections  
5                   in election protests. G.S. 163-182.11.
- 6           (6)    Order new elections in accordance with G.S. 163-182.15.
- 7           (7)    Prepare, in duplicate originals, composite abstracts of ballot items  
8                   within the jurisdiction of the State Board of Elections. G.S. 163-182.6.
- 9           (8)    Retain one original of the composite abstract and deliver to the  
10                   Secretary of State the other original composite abstract of the results of  
11                   ballot items within the jurisdiction of the State Board of Elections.  
12                   G.S. 163-182.6.
- 13          (9)    Certify the results of any election within the jurisdiction of the State  
14                   Board of Elections and provide a copy to the Secretary of State. G.S.  
15                   163-182.15.

16          (e)    Duties of the Secretary of State. – The Secretary of State shall retain and  
17                   compile in a useful form all the abstracts and returns provided by the county boards of  
18                   elections and the State Board of Elections. G.S. 163-182.6.

19          (f)    Duty of the Governor. – The Governor shall issue a commission to any  
20                   person elected to an office listed in G.S. 163-182.16 upon notification from the  
21                   Secretary of State that a certificate of election has been issued to the person. G.S. 163-  
22                   182.16."

23                   **SECTION 4.** G.S. 163-22(m) is repealed.

24                   **SECTION 5.** G.S. 163-46 reads as rewritten:

25   "**§ 163-46. Compensation of precinct officials and assistants.**

26           The precinct chief judge shall be paid the state minimum wage for his services on  
27           the day of a primary, special or general election. Judges of election shall each be paid  
28           the state minimum wage for their services on the day of a primary, special or general  
29           election. Assistants, appointed pursuant to G.S. 163-42, shall each be paid the state  
30           minimum wage for their services on the day of a primary, special or general election.  
31           Ballot counters appointed pursuant to G.S. 163-43 shall be paid a minimum of five  
32           dollars (\$5.00) for their services on the day of a primary, general or special election.

33           ~~Chief judges shall be paid the sum of twenty dollars (\$20.00) per day and judges~~  
34           ~~shall be paid the sum of fifteen dollars (\$15.00) per day for attendance at the county~~  
35           ~~canvass, pursuant to G.S. 163-173. If the county board of elections requests the presence~~  
36           of a chief judge or judge at the county canvass, the chief judge shall be paid the sum of  
37           twenty dollars (\$20.00) per day and judges shall be paid the sum of fifteen dollars  
38           (\$15.00) per day. If the county board of elections requests a precinct official, including  
39           chief judge or judge, to personally deliver official ballots or other official materials to  
40           the county board of elections, the precinct official shall be paid the sum of twenty  
41           dollars (\$20.00) per day and judges shall be paid the sum of fifteen dollars (\$15.00) per  
42           day.



1 The chairman of the county board of elections, along with the director of elections,  
2 shall conduct an instructional meeting prior to each primary and general election which  
3 shall be attended by each chief judge and judge of election, unless excused by the  
4 chairman, and such precinct election officials shall be paid the sum of fifteen dollars  
5 (\$15.00) for attending the instructional meetings required by this section.

6 In its discretion, the board of county commissioners of any county may provide  
7 funds with which the county board of elections may pay chief judges, judges, assistants,  
8 and ballot counters in addition to the amounts specified in this section. Observers shall  
9 be paid no compensation for their services.

10 A person appointed to serve as chief judge, or judge of election when a previously  
11 appointed chief judge or judge fails to appear at the voting place or leaves his post on  
12 the day of an election or primary shall be paid the same compensation as the chief judge  
13 or judge appointed prior to that date.

14 For the purpose of this section, the phrase "the State minimum wage," means the  
15 amount set by G.S. 95-25.3(a). For the purpose of this section, no other provision of  
16 Article 2A of Chapter 95 of the General Statutes shall apply."

17 **SECTION 6.** G.S. 163-113 reads as rewritten:

18 **"§ 163-113. Nominee's right to withdraw as candidate.**

19 A person who has been declared the nominee of a political party for a specified  
20 office under the provisions of G.S. ~~163-175, G.S. 163-192, 163-182.15~~ or G.S. 163-110,  
21 shall not be permitted to resign as a candidate unless, at least 30 days before the general  
22 election, he submits to the board of elections which certified his nomination a written  
23 request that he be permitted to withdraw."

24 **SECTION 7.** G.S. 163-123 reads as rewritten:

25 "(f) Counting and Recording of Votes. – If a qualified voter has complied with the  
26 provisions of subsections (a), (b), and (c) and is not excluded by subsection (e), the  
27 board of elections with which petition has been filed shall count votes for him according  
28 to the procedures set out in G.S. ~~163-170(5), 163-182.1,~~ and the appropriate board of  
29 elections shall record those votes on the official abstract. Write-in votes for names other  
30 than those of qualified write-in candidates shall not be counted for any purpose and  
31 shall not be recorded on the abstract."

32 **SECTION 8.** G.S. 163-210 reads as rewritten:

33 **"§ 163-210. Governor to proclaim results; casting State's vote for President and**  
34 **Vice-President.**

35 Upon receipt of the ~~abstracts-certifications~~ prepared by the State Board of Elections  
36 and delivered to him in accordance with G.S. ~~163-192, 182.15,~~ the Secretary of State,  
37 under his hand and the seal of his the office, shall ~~certify to notify~~ the Governor of the  
38 names of the persons elected to the office of elector for President and Vice-President of  
39 the United States as stated in the abstracts of the State Board of Elections. Thereupon,  
40 the Governor shall immediately issue a proclamation setting forth the names of the  
41 electors and instructing them to be present in the old Hall of the House of  
42 Representatives in the State Capitol in the City of Raleigh at noon on the first Monday  
43 after the second Wednesday in December next after their election, at which time the

1 electors shall meet and vote on behalf of the State for President and Vice-President of  
2 the United States. The Governor shall cause this proclamation to be published in the  
3 daily newspapers published in the City of Raleigh. Notice may additionally be made on  
4 a radio or television station or both, but such notice shall be in addition to the  
5 newspaper and other required notice. The Secretary of State is responsible for making  
6 the actual arrangements for the meeting, preparing the agenda, and inviting guests.

7 Before the date fixed for the meeting of the electors, the Governor shall send by  
8 registered mail to the Archivist of the United States, either three duplicate original  
9 certificates, or one original certificate and two authenticated copies of the Certificates of  
10 Ascertainment, under the great seal of the State setting forth the names of the persons  
11 chosen as presidential electors for this State and the number of votes cast for each.  
12 These Certificates of Ascertainment should be sent as soon as possible after the election,  
13 but must be received before the Electoral College meeting. At the same time ~~he~~ the  
14 Governor shall deliver to the electors six duplicate originals of the same certificate, each  
15 bearing the great seal of the State. At any time prior to receipt of the certificate of the  
16 Governor or within 48 hours thereafter, any person elected to the office of elector may  
17 resign by submitting his resignation, written and duly verified, to the Governor. Failure  
18 to so resign shall signify consent to serve and to cast his vote for the candidate of the  
19 political party which nominated such elector.

20 In case of the absence, ineligibility or resignation of any elector chosen, or if the  
21 proper number of electors shall for any cause be deficient, the first and second  
22 alternates, respectively, who were nominated under G.S. 163-1(c), shall fill the first two  
23 vacancies. If the alternates are absent, ineligible, resign, or were not chosen, or if there  
24 are more than two vacancies, then the electors present at the required meeting shall  
25 forthwith elect from the citizens of the State a sufficient number of persons to fill the  
26 deficiency, and the persons chosen shall be deemed qualified electors to vote for  
27 President and Vice-President of the United States."

28 **SECTION 9.** G.S. 163-213.3 reads as rewritten:

29 "**§ 163-213.3. Conduct of election.**

30 The presidential preference primary election shall be conducted and canvassed by  
31 the same authority and in the manner provided by law for the conduct and canvassing of  
32 the primary election for the office of Governor and all other offices enumerated in G.S.  
33 ~~163-187~~ 163-182.4(b) and under the same provisions stipulated in G.S. ~~163-188.~~ 163-  
34 182.5(c). The State Board of Elections shall have authority to promulgate reasonable  
35 rules and regulations, not inconsistent with provisions contained herein, pursuant to the  
36 administration of this Article."

37 **SECTION 10.** G.S. 163-299(e) reads as rewritten:

38 "(e) The rules contained in G.S. ~~163-169~~ 163-182.1 and G.S. 163-182.2 for  
39 counting primary ballots shall be followed in counting ballots in municipal primaries  
40 and nonpartisan primaries."

41 **SECTION 11.** G.S. 163-299(f) reads as rewritten:

42 "(f) The requirements contained in G.S. ~~163-171~~ 163-182.2(b) shall apply to all  
43 municipal elections."

1           **SECTION 12.** G.S. 163-299(g) reads as rewritten:

2           "(g) The county or municipal board of elections shall, in addition to the  
3 requirements contained in G.S. ~~163-175-163-182.5~~ canvass the results in a nonpartisan  
4 municipal primary, election or runoff election, and in a special district election, the  
5 number of legal votes cast in each precinct for each candidate, the name of each person  
6 voted for, and the total number of votes cast in the municipality or special district for  
7 each person for each different office."

8           **SECTION 13.** G.S. 163-300 reads as rewritten:

9       "**§ 163-300. Disposition of duplicate abstracts in municipal elections.**

10       Within five days after a primary or election is held in any municipality, the chairman  
11 of the county or municipal board of elections shall mail to the chairman of the State  
12 Board of Elections, the duplicate abstract prepared in accordance with G.S. ~~163-176-~~  
13 ~~163-182.6~~. One copy shall be retained by the county or municipal board of elections as  
14 a permanent record and one copy shall be filed with the city clerk."

15           **SECTION 14.** G.S. 163-301 reads as rewritten:

16       "**§ 163-301. Chairman of election board to furnish certificate of elections.**

17       Not earlier than five days nor later than 10 days after the results of any municipal  
18 election have been officially determined and published in accordance with G.S. ~~163-175~~  
19 ~~and G.S. 163-179, 163-182.5,~~ the chairman of the county or municipal board of  
20 elections shall issue certificates of election, under ~~his~~the hand and seal of the chairman,  
21 to all municipal and special district officers. In issuing such certificates of election the  
22 chairman shall be restricted by the provisions of G.S. ~~163-181, 163-182.14.~~"

23           **SECTION 15.** G.S. 163-333 is repealed.

24           **SECTION 16.** The State Board of Elections shall adopt temporary rules  
25 pursuant to G.S. 150B-21.1(a5) prior to the first election following the effective date of  
26 this act.

27           **SECTION 17.** This act becomes effective January 1, 2002.