

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 14
Judiciary I Committee Substitute Adopted 4/16/01

Short Title: Election Rewrite – 2.

(Public)

Sponsors:

Referred to:

January 29, 2001

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

4 The General Assembly of North Carolina enacts:

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6 repealed.

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 G.S. 163-22.1 is repealed.

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

10 "Article 15A.

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

12 "§ 163-182. Definitions.

13 As used in this Article, the following definitions apply:

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

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

26 (3) 'Certificate of election' means a document prepared by the official or
27 body with the legal authority to do so, conferring upon a candidate the
28 right to assume an elective office as a result of being elected to it.

- 1 (4) 'Protest' means a complaint concerning the conduct of an election
2 which, if supported by sufficient evidence, may require remedy by one
3 or more of the following:
4 a. A correction in the returns.
5 b. A discretionary recount as provided in G.S. 163-182.
6 c. A new election as provided in G.S. 163-182.8.

7 In addition to the definitions in this section, the definitions in Article 13A of this
8 Chapter shall also apply to this Article.

9 **"§ 163-182.1. Principles and rules for counting official ballots.**

10 (a) General Principles That Shall Apply. – The following general principles shall
11 apply in the counting of official ballots, whether the initial count or any recount:

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

1 individually marked candidate. In partisan ballot items where
2 no mark is made for an individual candidate, the official ballot
3 shall be counted for the candidates of the party whose straight
4 ticket the voter voted.

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

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

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

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

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

30 **"§ 163-182.2. Initial counting of official ballots.**

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

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

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

40 (3) Any member of the public wishing to witness the vote count at any
41 level shall be allowed to do so. No witness shall interfere with the
42 orderly counting of the official ballots. Witnesses shall not participate
43 in the official counting of official ballots.

1 (4) Provisional official ballots shall be counted by the county board of
2 elections before the canvass. If the county board finds that an
3 individual voting a provisional official ballot is not eligible to vote in
4 one or more ballot items on the official ballot, the board shall not
5 count the official ballot in those ballot items, but shall count the
6 official ballot in any ballot items for which the individual is eligible to
7 vote.

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

11 (1) For each voting system used, the rules shall specify the role of precinct
12 officials and of the county board of elections in the initial counting of
13 official ballots.

14 (2) The rules shall provide for accurate unofficial reporting of the results
15 from the precinct to the county board of elections with reasonable
16 speed on the night of the election.

17 (3) The rules shall provide for the prompt and secure transmission of
18 official ballots from the voting place to the county board of elections.

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

21 **"§ 163-182.3. Responsibility of chief judge.**

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

25 **"§ 163-182.4. Jurisdiction for certain ballot items.**

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

28 (1) Offices of that county, including clerk of superior court and register of
29 deeds.

30 (2) Membership in either house of the General Assembly from a district
31 lying entirely within that county.

32 (3) Offices of municipalities located in two or more counties.

33 (4) Referenda in which only residents of that county are eligible to vote.

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

36 (1) National offices.

37 (2) State offices.

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

40 (4) Superior court judge, district court judge, and district attorney,
41 regardless of whether the district lies entirely in one county or in more
42 than one county.

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

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

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

6 (2) Prepare abstracts or composite abstracts for the entire electorate for the
7 ballot item.

8 (3) Issue certificates of nomination and election.

9 **"§ 163-182.5. Canvassing votes.**

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

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

26 (c) Canvassing by State Board of Elections. – After each general election, the
27 State Board of Elections shall meet at 11:00 A.M. on the Tuesday three weeks after
28 election day to complete the canvass of votes cast in all ballot items within the
29 jurisdiction of the State Board of Elections and to authenticate the count in every ballot
30 item in the county by determining that the votes have been counted and tabulated
31 correctly. After each primary, the State Board shall fix the date of its canvass meeting.
32 If, by the time of its scheduled canvass meeting, the State Board has not received the
33 county canvasses, the State Board may adjourn for not more than 10 days to secure the
34 missing abstracts.

35 **"§ 163-182.6. Abstracts.**

36 (a) Abstracts to Be Prepared by County Board of Elections. – As soon as the
37 county canvass has been completed, the county board of elections shall prepare
38 abstracts of all the ballot items in a form prescribed by the State Board of Elections. The
39 county board shall prepare those abstracts in triplicate originals. The county board shall
40 retain one of the triplicate originals, and shall distribute one each to the clerk of superior
41 court for the county and the State Board of Elections. The State Board of Elections shall
42 forward the original abstract it receives to the Secretary of State.

1 **(b) Composite Abstracts to Be Prepared by the State Board of Elections.** – As
2 soon as the State canvass has been completed, the State Board shall prepare composite
3 abstracts of all those ballot items. It shall prepare those composite abstracts in duplicate
4 originals. It shall retain one of the originals and shall send the other original to the
5 Secretary of State.

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

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

14 **"§ 163-182.7. Ordering recounts.**

15 **(a) Discretionary Recounts.** – The county board of elections or the State Board of
16 Elections may order a recount when necessary to complete the canvass in an election.
17 The county board may not order a recount where the State Board of Elections has
18 already denied a recount to the petitioner.

19 **(b) Mandatory Recounts for Ballot Items Within the Jurisdiction of the County**
20 Board of Elections. – In a ballot item within the jurisdiction of the county board of
21 elections, a candidate shall have the right to demand a recount of the votes if the
22 difference between the votes for that candidate and the votes for a prevailing candidate
23 is not more than one percent (1%) of the total votes cast in the ballot item, or in the case
24 of a multiseat ballot item not more than one percent (1%) of the votes cast for those two
25 candidates. The demand for a recount must be made in writing and must be received by
26 the county board of elections by noon on the fourth day after the canvass. The recount
27 shall be conducted under the supervision of the county board of elections.

28 **(c) Mandatory Recounts for Ballot Items Within the Jurisdiction of the State**
29 Board of Elections. – In a ballot item within the jurisdiction of the State Board of
30 Elections, a candidate shall have the right to demand a recount of the votes if the
31 difference between the votes for that candidate and the votes for a prevailing candidate
32 are not more than the following:

33 **(1)** For a nonstatewide ballot item, one percent (1%) of the total votes cast
34 in the ballot item, or in the case of a multiseat ballot item one percent
35 (1%) of the votes cast for those two candidates.

36 **(2)** For a statewide ballot item, one half of one percent (0.5%) of the votes
37 cast in the ballot item, or in the case of a multiseat ballot item one half
38 of one percent (0.5%) of the votes cast for those two candidates, or
39 10,000 votes, whichever is less.

40 The demand for a recount must be in writing and must be received by the State Board of
41 Elections by noon on the second Wednesday after the election. If on that Wednesday the
42 available returns show a candidate not entitled to a mandatory recount, but the
43 Executive Secretary-Director determines subsequently that the margin is within the

1 threshold set out in this subsection, the Executive Secretary-Director shall notify the
2 eligible candidate immediately and that candidate shall be entitled to a recount if that
3 candidate so demands within 48 hours of notice. The recount shall be conducted under
4 the supervision of the State Board of Elections.

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

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

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

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

14 **"§ 163-182.8. Determining result in case of a tie.**

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

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

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

28 **"§ 163-182.9. Filing an election protest.**

29 (a) Who May File a Protest With County Board. – A protest concerning the
30 conduct of an election may be filed with the county board of elections by any registered
31 voter who was eligible to vote in the election or by any person who was a candidate for
32 nomination or election in the election.

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

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

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

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

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

- 1 a. If the protest concerns the manner in which votes were counted
2 or results tabulated, the protest shall be filed before the
3 beginning of the county board of election's canvass meeting.
- 4 b. If the protest concerns the manner in which votes were counted
5 or results tabulated and the protest states good cause for delay
6 in filing, the protest may be filed until 6:00 P.M. on the second
7 day after the county board of elections has completed its
8 canvass and declared the results.
- 9 c. If the protest concerns an irregularity other than vote counting
10 or result tabulation, the protest shall be filed no later than 6:00
11 P.M. on the second day after the county board has completed its
12 canvass and declared the results.
- 13 d. If the protest concerns an irregularity on a matter other than
14 vote counting or result tabulation and the protest is filed before
15 election day, the protest proceedings shall be stayed, unless a
16 party defending against the protest moves otherwise, until after
17 election day if any one of the following conditions exists:
- 18 1. The ballot has been printed.
- 19 2. The voter registration deadline for that election has
20 passed.
- 21 3. Any of the proceedings will occur within 30 days before
22 election day.

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

25 "**§ 163-182.10. Consideration of protest by county board of elections.**

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

- 28 (1) The county board shall, as soon as possible after the protest is filed,
29 meet to determine whether the protest substantially complies with G.S.
30 163-182.9 and whether it establishes probable cause to believe that a
31 violation of election law or irregularity or misconduct has occurred. If
32 the board determines that one or both requirements are not met, the
33 board shall dismiss the protest. The board shall notify both the
34 protester and the State Board of Elections. The protester may file an
35 amended protest or may appeal to the State Board. If the board
36 determines that both requirements are met, it shall schedule a hearing.
- 37 (2) If a protest was filed before the canvass and concerns the counting and
38 tabulating of votes, the county board shall resolve the protest before
39 the canvass is completed. If necessary to provide time to resolve the
40 protest, the county board may recess the canvass meeting, but shall not
41 delay the completion of the canvass for more than three days unless
42 approved by the State Board of Elections. Resolution of the protest

1 shall not delay the canvass of ballot items unaffected by the protest.
2 The appeal of a dismissal shall not delay the canvass.

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

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

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

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

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

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

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

27 (2) The county board may receive evidence at the hearing from any person
28 with information concerning the subject of the protest. The person who
29 made the protest shall be permitted to present allegations and introduce
30 evidence at the hearing. Any other person to whom notice of hearing
31 was given, if present, shall be permitted to present evidence. The board
32 may allow evidence by affidavit. The board may permit evidence to be
33 presented by a person to whom notice was not given, if the person
34 apparently has a significant interest in the resolution of the protest that
35 is not adequately represented by other participants.

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

39 (d) Findings of fact and Conclusions of Law by County Board. – The county
40 board shall make a written decision on each protest which shall state separately each of
41 the following:

42 (1) Findings of fact. – The findings of fact shall be based exclusively on
43 the evidence and on matters officially noticed. Findings of fact, if set

- 1 forth in statutory language, shall be accompanied by a concise and
2 explicit statement of the underlying facts supporting them.
- 3 (2) Conclusions of law. – The conclusions the county board may state, and
4 their consequences for the board's order, are as follows:
- 5 a. 'The protest should be dismissed because it does not
6 substantially comply with G.S. 163-182.9.' If the board makes
7 this conclusion, it shall order the protest dismissed.
- 8 b. 'The protest should be dismissed because there is not substantial
9 evidence of a violation of the election law or other irregularity
10 or misconduct.' If the county board makes this conclusion, it
11 shall order the protest dismissed.
- 12 c. 'The protest should be dismissed because there is not substantial
13 evidence of any violation, irregularity, or misconduct sufficient
14 to cast doubt on the results of the election.' If the county board
15 makes this conclusion, it shall order the protest dismissed.
- 16 d. 'There is substantial evidence to believe that a violation of the
17 election law or other irregularity or misconduct did occur, and
18 might have affected the outcome of the election, but the board
19 is unable to finally determine the effect because the election
20 was a multicounty election.' If the county board makes this
21 conclusion, it shall order that the protest and the county board's
22 decision be sent to the State Board for action by it.
- 23 e. 'There is substantial evidence to believe that a violation of the
24 election law or other irregularity or misconduct did occur and
25 that it was sufficiently serious to cast doubt on the apparent
26 results of the election.' If the county board makes this
27 conclusion, it may order any of the following as appropriate:
- 28 1. That the vote total as stated in the precinct return or
29 result of the canvass be corrected and new results
30 declared.
- 31 2. That votes be recounted.
- 32 3. That the protest and the county board's decision be sent
33 to the State Board for action by it.
- 34 4. Any other action within the authority of the county
35 board.
- 36 (3) An order. – Depending on the conclusion reached by the county board,
37 its order shall be as directed in subdivision (c)(2). If the county board
38 is not able to determine what law is applicable to the Findings of Fact,
39 it may send its findings of fact to the State Board for it to determine
40 the applicable law.
- 41 (e) Rules by State Board of Elections. – The State Board of Elections shall
42 promulgate rules providing for adequate notice to parties, scheduling of hearings, and
43 the timing of deliberations and issuance of decision.

1 **"§ 163-182.11. Appeal of a protest decision by the county board to the State Board**
2 **of Elections.**

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

- 6 (1) The person who filed the protest.
7 (2) A candidate or elected official adversely affected by the county board's
8 decision.
9 (3) Any other person who participated in the hearing and has a significant
10 interest adversely affected by the county board's decision.

11 Written notice of the appeal must be given to the county board within 24 hours after
12 the county board files the written decision at its office. The appeal to the State Board
13 must be in writing. The appeal must be delivered or deposited in the mail, addressed to
14 the State Board, by the appropriate one of the following: (i) the end of the second day
15 after the day the decision was filed by the county board in its office, if the decision
16 concerns a first primary; or (ii) the end of the fifth day after the day the decision was
17 filed in the county board office, if the decision concerns an election other than a first
18 primary.

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

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

- 23 (1) Decide the appeal on the basis of the record from the county board, as
24 long as the county board has made part of the record a transcript of the
25 evidentiary hearing.
26 (2) Request the county board or any interested person to supplement the
27 record from the county board, and then decide the appeal on the basis
28 of that supplemented record.
29 (3) Receive additional evidence and then decide the appeal on the basis of
30 the record and that additional evidence.
31 (4) Hold its own hearing on the protest and resolve the protest on the basis
32 of that hearing.
33 (5) Remand the matter to the county board for further proceedings in
34 compliance with an order of the State Board.

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

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

39 **"§ 163-182.12. Authority of State Board of Elections over protests.**

40 The State Board of Elections may consider protests that were not filed in compliance
41 with G.S. 163-182.9, may initiate and consider complaints on its own motion, may
42 intervene and take jurisdiction over protests pending before a county board, and may

1 take any other action necessary to assure that an election is determined without taint of
2 fraud or corruption.

3 **"§ 163-182.13. New elections.**

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

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

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

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

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

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

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

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

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

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

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

42 (f) Tie Votes. – If ineligible voters voted in an election and it is possible to
43 determine from the official ballots the way in which those votes were cast and to correct

1 the results, and consequently the election ends in a tie, the provisions of G.S. 163-182.8
2 concerning tie votes shall apply.

3 **"§ 163-182.14. Appeal of a final decision to superior court.**

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

9 After the decision by the State Board of Elections has been served on the parties, the
10 certification of nomination or election or the results of the referendum shall issue
11 pursuant to G.S. 163-182.15 unless an appealing party obtains a stay of the certification
12 from the Superior Court of Wake County within 10 days after the date of service. The
13 court shall not issue a stay of certification unless the petitioner shows the court that the
14 petitioner has appealed the decision of the State Board of Elections, that the petitioner is
15 an aggrieved party, that the petitioner is likely to prevail, and that the results of the
16 election would be changed in the petitioner's favor. Mere irregularities in the election
17 which would not change the results of the election shall not be sufficient for the court to
18 issue a stay of certification.

19 **"§ 163-182.15. Certificate of nomination or election, or certificate of the results of a**
20 **referendum.**

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

28 (1) The certificate shall be issued five days after the protest is dismissed or
29 denied by the county board of elections, unless that decision has been
30 appealed to the State Board of Elections.

31 (2) The certificate shall be issued 10 days after the final decision of the
32 State Board, unless the State Board has ordered a new election or the
33 issuance of the certificate is stayed by the Superior Court of Wake
34 County pursuant to G.S. 163-182.14.

35 (3) If the decision of the State Board has been appealed to the Superior
36 Court of Wake County and the court has stayed the certification, the
37 certificate shall be issued five days after the entry of a final order in
38 the case in the Superior Court of Wake County, unless that court or an
39 appellate court orders otherwise.

40 (b) Issued by State Board of Elections. – In ballot items within the jurisdiction of
41 the State Board of Elections, the State Board of Elections shall issue a certificate of
42 nomination or election, or a certificate of the results of the referendum, as appropriate.
43 The certificate shall be issued by the State Board five days after the completion of the

1 canvass pursuant to G.S. 163-182.5, unless there is an election protest pending. If there
2 is an election protest, the certificate of nomination or election or the certificate of the
3 result of the referendum shall be issued in one of the following ways, as appropriate:

4 (1) The certificate shall be issued 10 days after the final decision of the
5 State Board on the election protest, unless the State Board has ordered
6 a new election or the issuance of the certificate is stayed by the
7 Superior Court of Wake County pursuant to G.S. 163-14.

8 (2) 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 (c) Copy to Secretary of State. – The State Board of Elections shall provide to
14 the Secretary of State a copy of each certificate of nomination or election, or certificate
15 of the results of a referendum, issued by it.

16 **"§ 163-182.16. Governor to issue commissions for certain offices.**

17 Upon receiving from the Secretary of State notice that a certificate of election has
18 been issued for any of the following offices, the Governor shall provide to each such
19 elected official a commission attesting to that person's election:

20 (1) Members of the United States House of Representatives.

21 (2) Justices, judges, and district attorneys of the General Court of Justice.

22 **"§ 163-182.17. Summary of officials' duties under this Article.**

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

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

29 (1) Count votes when votes are required to be counted at the voting place.
30 G.S. 163-182.2.

31 (2) Make an unofficial report of returns to the county board of elections.
32 G.S. 163-182.2.

33 (3) Certify the integrity of the vote and the security of the official ballots
34 at the voting place. G.S. 163-182.2.

35 (4) Return official ballots and equipment to the county board of elections.
36 G.S. 163-182.2.

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

39 (1) Count absentee and provisional official ballots and other official
40 ballots required to be initially counted by the county board of
41 elections. G.S. 163-182.2.

42 (2) Canvass results in all ballot items on the official ballot in the county.
43 G.S. 163-182.5.

- 1 (3) Order a recount in any ballot item on the official ballot in the county,
2 where necessary to complete the canvass, and where not prohibited
3 from doing so. G.S. 163-182.7.
- 4 (4) Conduct any recount that has been ordered by the county board of
5 elections or the State Board of Elections or that has been properly
6 demanding in accordance with G.S. 163-182.7(b).
- 7 (5) Conduct hearings in election protests as provided in G.S. 163-182.10.
- 8 (6) Prepare abstracts of returns in all the ballot items in the county. G.S.
9 163-182.6.
- 10 (7) Retain one original abstract and distribute the other two originals as
11 follows:
- 12 a. One to the clerk of superior court in the county.
- 13 b. One to the State Board of Elections. G.S. 163-182.6.
- 14 (8) Issue a certificate of nomination or election or a certificate of the
15 results of a referendum in each ballot item within the jurisdiction of
16 the county board of elections. Provide a copy of the certificate to the
17 clerk of court. G.S. 163-182.15.
- 18 (d) Duties of the State Board of Elections. – The State Board of Elections shall
19 perform all the following:
- 20 (1) Promulgate rules as directed in this Article. G.S. 163-182.1,
21 163-182.2, 163-182.7, 163-182.10, and 163-182.13.
- 22 (2) Provide supervisory direction to the county boards of elections as
23 provided in this Article. G.S. 163-182.1 and G.S. 163-182.2.
- 24 (3) Canvass the results in ballot items within the jurisdiction of the State
25 Board of Elections. G.S. 163-182.5.
- 26 (4) Order and supervise a recount in any ballot item within the jurisdiction
27 of the State Board of Elections, where necessary to complete the
28 canvass. G.S. 163-182.7.
- 29 (5) Hear and decide appeals from decisions of county boards of elections
30 in election protests. G.S. 163-182.11.
- 31 (6) Order new elections in accordance with G.S. 163-182.15.
- 32 (7) Prepare, in duplicate originals, composite abstracts of ballot items
33 within the jurisdiction of the State Board of Elections. G.S. 163-182.6.
- 34 (8) Retain one original of the composite abstract and deliver to the
35 Secretary of State the other original composite abstract of the results of
36 ballot items within the jurisdiction of the State Board of Elections.
37 G.S. 163-182.6.
- 38 (9) Certify the results of any election within the jurisdiction of the State
39 Board of Elections and provide a copy to the Secretary of State. G.S.
40 163-182.15.
- 41 (e) Duties of the Secretary of State. – The Secretary of State shall retain and
42 compile in a useful form all the abstracts and returns provided by the county boards of
43 elections and the State Board of Elections. G.S. 163-182.6.

1 (f) Duty of the Governor. – The Governor shall issue a commission to any
2 person elected to an office listed in G.S. 163-182.17 upon notification from the
3 Secretary of State that a certificate of election has been issued to the person. G.S. 163-
4 182.17.

5 **SECTION 4.** This act becomes effective January 1, 2002.