

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001**

**SESSION LAW 2001-398  
SENATE BILL 14**

AN ACT TO REWRITE ARTICLE 15 AND ARTICLE 16 OF CHAPTER 163 OF THE GENERAL STATUTES, AS RECOMMENDED BY THE ELECTION LAWS REVISION COMMISSION; AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

**SECTION 1.** Articles 15 and 16 of Chapter 163 of the General Statutes are repealed.

**SECTION 2.** G.S. 163-22.1 is repealed.

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

"Article 15A.

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

"§ 163-182. Definitions.

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

- (1) 'Abstract' means a document signed by the members of the board of elections showing the votes for each candidate and ballot proposal on the official ballot in the election. The abstract shall show a total number of votes for each candidate in each precinct and a total for each candidate in the county. It shall also show the number of votes for each candidate among the absentee official ballots, among the provisional official ballots, and in any other category of official ballots that is not otherwise reported.
- (2) 'Composite abstract' means a document signed by the members of the State Board of Elections showing the total number of votes for each candidate and ballot proposal and the number of votes in each county. A composite abstract does not include precinct returns.
- (3) 'Certificate of election' means a document prepared by the official or body with the legal authority to do so, conferring upon a candidate the right to assume an elective office as a result of being elected to it.
- (4) 'Protest' means a complaint concerning the conduct of an election which, if supported by sufficient evidence, may require remedy by one or more of the following:
  - a. A correction in the returns.
  - b. A discretionary recount as provided in G.S. 163-182.7.
  - c. A new election as provided in G.S. 163-182.13.

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

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

- (1) Only official ballots shall be counted.
- (2) No official ballot shall be rejected because of technical errors in marking it, unless it is impossible to clearly determine the voter's choice.

- (3) If it is impossible to clearly determine a voter's choice in a ballot item, the official ballot shall not be counted for that ballot item, but shall be counted in all other ballot items in which the voter's choice can be clearly determined.
- (4) If an official ballot is marked in a ballot item with more choices than there are offices to be filled or propositions that may prevail, the official ballot shall not be counted for that ballot item, but shall be counted in all other ballot items in which there is no overvote and the voter's choice can be clearly determined.
- (5) If an official ballot is rejected by a scanner or other counting machine, but human counters can clearly determine the voter's choice, the official ballot shall be counted by hand and eye.
- (6) Write-in votes shall not be counted in party primaries or in referenda, but shall be counted in general elections if all of the following are true:
  - a. The write-in vote is written by the voter or by a person authorized to assist the voter pursuant to G.S. 163-166.8.
  - b. The write-in vote is not cast for a candidate who has failed to qualify under G.S. 163-123 as a write-in candidate.
  - c. The voter's choice can be clearly determined.
- (7) Straight-party ticket and split-ticket votes shall be counted in general elections according to the following guidelines:
  - a. If a voter casts a vote for a straight-party ticket, that vote shall be counted for all the candidates of that party, other than those for President and Vice President, in the partisan ballot items on that official ballot except as otherwise provided in this subdivision.
  - b. If a voter casts a vote for a straight-party ticket and also votes in a partisan ballot item for a candidate not of that party, the official ballot shall be counted in that ballot item only for the individually marked candidate. In partisan ballot items where no mark is made for an individual candidate, the official ballot shall be counted for the candidates of the party whose straight ticket the voter voted.
  - c. If a voter casts a vote for a straight-party ticket and also casts a write-in vote in any partisan ballot item, the straight-party ticket vote shall not control the way the official ballot is counted in that ballot item, except to the extent it would control in the case of crossover voting under this subdivision. The following principles shall apply:
    - 1. If the write-in vote is proper under subdivision (6) of this subsection, that write-in candidate shall receive a vote.
    - 2. If the write-in vote is not proper under subdivision (6) of this subsection and no other candidate is individually marked in that ballot item, then no vote shall be counted in that ballot item.
    - 3. If the straight-ticket voter casts both write-in votes and individually marked votes for ballot candidates in a ballot item, then the write-in and individually marked votes shall be counted unless the write-in is not proper under subdivision (6) of this subsection or an overvote results.

(b) Rules and Directions by State Board of Elections. – The State Board of Elections shall promulgate rules where necessary to apply the principles in subsection (a) of this section to each voting system in use in the State. The rules shall prescribe procedures and standards for each type of voting system. Those procedures and

standards shall be followed uniformly throughout the State in all places where that type of voting system is used. The State Board shall direct the county boards of elections in the application of the principles and rules in individual circumstances.

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

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

- (1) Vote counting at the precinct shall occur immediately after the polls close and shall be continuous until completed.
- (2) Vote counting at the precinct shall be conducted with the participation of precinct officials of all political parties then present. Vote counting at the county board of elections shall be conducted in the presence or under the supervision of board members of all political parties then present.
- (3) Any member of the public wishing to witness the vote count at any level shall be allowed to do so. No witness shall interfere with the orderly counting of the official ballots. Witnesses shall not participate in the official counting of official ballots.
- (4) Provisional official ballots shall be counted by the county board of elections before the canvass. If the county board finds that an individual voting a provisional official ballot is not eligible to vote in one or more ballot items on the official ballot, the board shall not count the official ballot in those ballot items, but shall count the official ballot in any ballot items for which the individual is eligible to vote.
- (5) Precinct officials shall provide a preliminary report of the vote counting to the county board of elections as quickly as possible. The preliminary report shall be unofficial and has no binding effect upon the official county canvass to follow.

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

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

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

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

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

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

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

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

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

- (1) National offices.
- (2) State offices.
- (3) District offices (including General Assembly seats) in which the district lies in more than one county.
- (4) Superior court judge, district court judge, and district attorney, regardless of whether the district lies entirely in one county or in more than one county.
- (5) Referenda in which residents of more than one county are eligible to vote.

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

- (1) Canvass for the entire electorate for the ballot item.
- (2) Prepare abstracts or composite abstracts for the entire electorate for the ballot item.
- (3) Issue certificates of nomination and election.

**"§ 163-182.5. Canvassing votes.**

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

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

(c) Canvassing by State Board of Elections. – After each general election, the State Board of Elections shall meet at 11:00 A.M. on the Tuesday three weeks after election day to complete the canvass of votes cast in all ballot items within the jurisdiction of the State Board of Elections and to authenticate the count in every ballot item in the county by determining that the votes have been counted and tabulated correctly. After each primary, the State Board shall fix the date of its canvass meeting. If, by the time of its scheduled canvass meeting, the State Board has not received the county canvasses, the State Board may adjourn for not more than 10 days to secure the missing abstracts. In obtaining them, the State Board is authorized to secure the originals or copies from the appropriate clerks of superior court or county boards of elections, at the expense of the counties.

**"§ 163-182.6. Abstracts.**

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

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

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

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

**"§ 163-182.7. Ordering recounts.**

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

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

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

- (1) For a nonstatewide ballot item, one percent (1%) of the total votes cast in the ballot item, or in the case of a multiseat ballot item, one percent (1%) of the votes cast for those two candidates.
- (2) For a statewide ballot item, one-half of one percent (0.5%) of the votes cast in the ballot item, or in the case of a multiseat ballot item, one-half of one percent (0.5%) of the votes cast for those two candidates, or 10,000 votes, whichever is less.

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

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

- (1) The rules shall specify, with respect to each type of voting system, when and to what extent the recount shall consist of machine recounts and hand-to-eye recounts.
- (2) The rules shall provide guidance in interpretation of the voter's choice.

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

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

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

- (1) If more than 5,000 voters cast official ballots in the ballot item, the State Board of Elections shall order a new election in which only the candidates or positions tied will be on the official ballot. The State Board of Elections shall set the schedule for publication of the notice, preparation of absentee official ballots, and the other actions necessary to conduct the election. Eligibility to vote in the new election shall be determined by the voter's eligibility at the time of the new election.
- (2) If 5,000 or fewer voters cast official ballots in the ballot item, the board of elections with jurisdiction to certify the election shall break the tie by a method of random selection to be determined by the State Board of Elections.

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

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

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

- (1) The protest shall be in writing and shall be signed by the protester. It shall include the protester's name, address, and telephone number and a statement that the person is a registered voter in the jurisdiction or a candidate.
- (2) The protest shall state whether the protest concerns the manner in which votes were counted and results tabulated or concerns some other irregularity.
- (3) The protest shall state what remedy the protester is seeking.
- (4) The timing for filing a protest shall be as follows:
  - a. If the protest concerns the manner in which votes were counted or results tabulated, the protest shall be filed before the beginning of the county board of election's canvass meeting.
  - b. If the protest concerns the manner in which votes were counted or results tabulated and the protest states good cause for delay in filing, the protest may be filed until 6:00 P.M. on the second day after the county board of elections has completed its canvass and declared the results.
  - c. If the protest concerns an irregularity other than vote counting or result tabulation, the protest shall be filed no later than 6:00 P.M. on the second day after the county board has completed its canvass and declared the results.
  - d. If the protest concerns an irregularity on a matter other than vote counting or result tabulation and the protest is filed before election day, the protest proceedings shall be stayed, unless a party defending against the protest moves otherwise, until after election day if any one of the following conditions exists:
    1. The ballot has been printed.
    2. The voter registration deadline for that election has passed.
    3. Any of the proceedings will occur within 30 days before election day.

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

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

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

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

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

- (1) If the protest concerns the manner in which the votes were counted or the results tabulated, the protester shall be told at the time of filing that the protest will be heard at the time of the canvass. Others shall be notified as far in advance of the canvass as time permits.
- (2) If the protest concerns a matter other than the manner in which votes were counted or results tabulated, the county board shall comply with rules to be promulgated by the State Board of Elections concerning reasonable notice of the hearing.

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

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

- (1) The county board may allow evidence to be presented at the hearing in the form of affidavits or it may examine witnesses. The chair or any two members of the board may subpoena witnesses or documents. Each witness must be placed under oath before testifying.
- (2) The county board may receive evidence at the hearing from any person with information concerning the subject of the protest. The person who made the protest shall be permitted to present allegations and introduce evidence at the hearing. Any other person to whom notice of hearing was given, if present, shall be permitted to present evidence. The board may allow evidence by affidavit. The board may permit evidence to be presented by a person to whom notice was not given, if the person apparently has a significant interest in the resolution of the protest that is not adequately represented by other participants.

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

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

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

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

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

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

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

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

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

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

2. That votes be recounted.

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

**"§ 163-182.13. New elections.**

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

- (1) Ineligible voters sufficient in number to change the outcome of the election were allowed to vote in the election, and it is not possible from examination of the official ballots to determine how those ineligible voters voted and to correct the totals.
- (2) Eligible voters sufficient in number to change the outcome of the election were improperly prevented from voting.
- (3) Other irregularities affected a sufficient number of votes to change the outcome of the election.

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

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

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

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

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

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

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

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

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

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

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

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

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

is an election protest, the certificate of nomination or election or the certificate of the result of the referendum shall be issued in one of the following ways, as appropriate:

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

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

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

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

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

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

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

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

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

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

- (1) Count votes when votes are required to be counted at the voting place. G.S. 163-182.2.
- (2) Make an unofficial report of returns to the county board of elections. G.S. 163-182.2.
- (3) Certify the integrity of the vote and the security of the official ballots at the voting place. G.S. 163-182.2.

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

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

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

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

(3) Order a recount in any ballot item on the official ballot in the county, where necessary to complete the canvass, and where not prohibited from doing so. G.S. 163-182.7.

(4) Conduct any recount that has been ordered by the county board of elections or the State Board of Elections or that has been properly demanded in accordance with G.S. 163-182.7(b).

(5) Conduct hearings in election protests as provided in G.S. 163-182.10.

(6) Prepare abstracts of returns in all the ballot items in the county. G.S. 163-182.6.

(7) Retain one original abstract and distribute the other two originals as follows:

a. One to the clerk of superior court in the county.

b. One to the State Board of Elections. G.S. 163-182.6.

(8) Issue a certificate of nomination or election or a certificate of the results of a referendum in each ballot item within the jurisdiction of the county board of elections. Provide a copy of the certificate to the clerk of court. G.S. 163-182.15.

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

(1) Promulgate rules as directed in this Article. G.S. 163-182.1, 163-182.2, 163-182.7, 163-182.10, and 163-182.13.

(2) Provide supervisory direction to the county boards of elections as provided in this Article. G.S. 163-182.1 and G.S. 163-182.2.

(3) Canvass the results in ballot items within the jurisdiction of the State Board of Elections. G.S. 163-182.5.

(4) Order and supervise a recount in any ballot item within the jurisdiction of the State Board of Elections, where necessary to complete the canvass. G.S. 163-182.7.

(5) Hear and decide appeals from decisions of county boards of elections in election protests. G.S. 163-182.11.

(6) Order new elections in accordance with G.S. 163-182.15.

(7) Prepare, in duplicate originals, composite abstracts of ballot items within the jurisdiction of the State Board of Elections. G.S. 163-182.6.

(8) Retain one original of the composite abstract and deliver to the Secretary of State the other original composite abstract of the results of ballot items within the jurisdiction of the State Board of Elections. G.S. 163-182.6.

(9) Certify the results of any election within the jurisdiction of the State Board of Elections and provide a copy to the Secretary of State. G.S. 163-182.15.

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

(f) Duty of the Governor. – The Governor shall issue a commission to any person elected to an office listed in G.S. 163-182.16 upon notification from the

Secretary of State that a certificate of election has been issued to the person. G.S. 163-182.16."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Upon receipt of the ~~abstracts~~ certifications prepared by the State Board of Elections and delivered to ~~him~~ in accordance with G.S. ~~163-192, 163-182.15~~, the Secretary of State, under ~~his hand and the seal of his~~ the office, shall ~~certify to notify~~ the Governor of the names of the persons elected to the office of elector for President and Vice-President of the United States as stated in the abstracts of the State Board of Elections. Thereupon, the Governor shall immediately issue a proclamation setting forth the names of the electors and instructing them to be present in the old Hall of the House of Representatives in the State Capitol in the City of Raleigh at noon on the first Monday after the second Wednesday in December next after their election, at which time the electors shall meet and vote on behalf of the State for President and Vice-President of the United States. The Governor shall cause this proclamation to be published in the daily newspapers published in the City of Raleigh. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. The Secretary of State is responsible for making the actual arrangements for the meeting, preparing the agenda, and inviting guests.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In the General Assembly read three times and ratified this the 22<sup>nd</sup> day of August, 2001.

s/ Beverly E. Perdue  
President of the Senate

s/ James B. Black  
Speaker of the House of Representatives

s/ Michael F. Easley  
Governor

Approved 7:42 p.m. this 30<sup>th</sup> day of August, 2001