

GENERAL ASSEMBLY OF NORTH CAROLINA
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SENATE BILL 223
Judiciary I Committee Substitute Adopted 7/26/05
Appropriations/Base Budget Committee Substitute Adopted 7/27/05

Short Title: Public Confidence in Elections.

(Public)

Sponsors:

Referred to:

February 28, 2005

A BILL TO BE ENTITLED

AN ACT TO RESTORE PUBLIC CONFIDENCE IN THE ELECTION PROCESS BY
REQUIRING THAT THE STATE BOARD OF ELECTIONS, THROUGH THE
DEVELOPMENT OF A REQUEST FOR PROPOSAL, ENSURE THAT ALL
VOTING SYSTEMS GENERATE EITHER A PAPER BALLOT OR A PAPER
RECORD BY WHICH VOTERS MAY VERIFY THEIR VOTES BEFORE
CASTING THEM AND WHICH PROVIDES A BACKUP MEANS OF
COUNTING THE VOTE THAT THE VOTER CASTS; BY PROVIDING
STATUTORY GUIDANCE AS TO COUNTING; BY STANDARDIZING
PURCHASING OF VOTING SYSTEMS IN NORTH CAROLINA, INCLUDING
A REVIEW OF SOURCE CODE FOR SOFTWARE RELATED TO THOSE
VOTING SYSTEMS AND AUTHORIZATION TO ESTABLISH THE ROLE OF
THE STATE BOARD OF ELECTIONS AND COUNTY BOARD OF
ELECTIONS RELATED TO TRAINING AND SUPPORT OF VOTING
SYSTEMS; BY REQUIRING POSTELECTION TESTING OF VOTING
SYSTEMS, INCLUDING A PAPER SAMPLE-COUNT; BY EXPANDING THE
RIGHT TO A HAND-TO-EYE RECOUNT OF PAPER BALLOTS; AND BY
PERMITTING A PILOT PROGRAM TO EXPERIMENT WITH NONPAPER
MEANS OF VOTER VERIFICATION AND BALLOT BACKUP.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Effective August 1, 2005, and applicable to any voting systems upgraded or acquired on or after that date and to all voting systems used in the State during any election during or after 2006, G.S. 163-165.7 reads as rewritten:

"§ 163-165.7. Voting systems: powers and duties of State Board of Elections.

~~(a) The State Board of Elections shall have authority to approve types, makes, and models of voting systems for use in elections and referenda held in this State. Only voting systems that have been approved by the State Board shall be used to conduct elections under this Chapter, and the approved systems shall be valid in any election or~~

1 ~~referendum held in any county or municipality. The State Board may, upon request of a~~
2 ~~local board of elections, authorize the use of a voting system not approved for general~~
3 ~~use. Only voting systems that have been certified by the State Board of Elections in~~
4 ~~accordance with the procedures and subject to the standards set forth in this section and~~
5 ~~that have not been subsequently decertified shall be permitted for use in elections in this~~
6 ~~State. Those certified voting systems shall be valid in any election held in the State or in~~
7 ~~any county, municipality, or other electoral district in the State. Subject to all other~~
8 ~~applicable rules adopted by the State Board of Elections and, with respect to federal~~
9 ~~elections, subject to all applicable federal regulations governing voting systems, paper~~
10 ~~ballots marked by the voter and counted by hand shall be deemed a certified voting~~
11 ~~system. The State Board may certify additional voting systems only if they meet the~~
12 ~~requirements of the request for proposal process set forth in this section and only if they~~
13 ~~generate either a paper ballot or a paper record by which voters may verify their votes~~
14 ~~before casting them and which provides a backup means of counting the vote that the~~
15 ~~voter casts. Those voting systems may include optical scan and direct record electronic~~
16 ~~(DRE) voting systems. In consultation with the Office of Information Technology~~
17 ~~Services, the State Board shall develop the requests for proposal subject to the~~
18 ~~provisions of this Chapter and other applicable State laws. Among other requirements,~~
19 ~~the request for proposal shall require at least all of the following elements:~~

- 20 (1) That the vendor post a bond or letter of credit to cover damages
21 resulting from defects in the voting. Damages shall include, among
22 other items, any costs of conducting a new election attributable to
23 those defects.
- 24 (2) That the voting system comply with all federal requirements for voting
25 systems.
- 26 (3) That the voting system must have the capacity to include in precinct
27 returns the votes cast by voters outside of the voter's precinct as
28 required by G.S. 163-132.5G.
- 29 (4) With respect to electronic voting systems, that the voting system
30 generate a paper record of each individual vote cast, which paper
31 record shall be maintained in a secure fashion and shall serve as a
32 backup record for purposes of any hand-to-eye count, hand-to-eye
33 recount, or other audit. Electronic systems that employ optical scan
34 technology to count paper ballots shall be deemed to satisfy this
35 requirement.
- 36 (5) With respect to DRE voting systems, that the paper record generated
37 by the system be viewable by the voter before the vote is cast
38 electronically, and that the system permit the voter to correct any
39 discrepancy between the electronic vote and the paper record before
40 the vote is cast.
- 41 (6) With respect to all voting systems using electronic means, that the
42 vendor provide access to all of any information required to be placed
43 in escrow by a vendor pursuant to G.S. 163-165.9A for review and
44 examination by the State Board of Elections; the Office of Information

1 Technology Services; the State chairs of each political party
2 recognized under G.S. 163-96; the purchasing county; and designees
3 as provided in subdivision (9) of subsection (d) of this section.

4 (7) That the vendor must quote a statewide uniform price for each unit of
5 the equipment.

6 (8) That the vendor must separately agree with the purchasing county that
7 if it is granted a contract to provide software for an electronic voting
8 system but fails to debug, modify, repair, or update the software as
9 agreed or in the event of the vendor having bankruptcy filed for or
10 against it, the source code described in G.S. 163-165.9A(a) shall be
11 turned over to the purchasing county by the escrow agent chosen under
12 G.S. 163-165.9A(a)(1) for the purposes of continuing use of the
13 software for the period of the contract and for permitting access to the
14 persons described in subdivision (6) of this subsection for the purpose
15 of reviewing the source code.

16 In its request for proposal, the State Board of Elections shall address the mandatory
17 terms of the contract for the purchase of the voting system and the maintenance and
18 training related to that voting system.

19 No voting system acquired or upgraded by a county before August 1, 2005, shall be
20 used in an election during or after 2006 unless the county can demonstrate to the State
21 Board of Elections compliance with the requirements in subdivisions (1) through (8) of
22 this subsection, where those requirements are applicable to the type of voting system
23 involved.

24 (b) The State Board may also, upon notice and hearing, disapprove decertify
25 types, makes, and models of voting systems. Upon disapproving decertifying a type,
26 make, or model of voting system, the State Board shall determine the process by which
27 the disapproved decertified system is discontinued in any county. If a county makes a
28 showing that discontinuance would impose a financial hardship upon it, the county shall
29 be given up to four years from the time of State Board disapproval to replace the
30 system. A county may appeal a decision by the State Board concerning discontinuance
31 of a voting system the process by which the decertified system is discontinued in that
32 county to the superior court in that county or to the Superior Court of Wake County.
33 The county has 30 days from the time it receives notice of the State Board's decision on
34 discontinuance the process by which the decertified system is discontinued in that
35 county to make that appeal.

36 (c) Prior to certifying a voting system, the State Board of Elections shall review,
37 or designate an independent expert to review, all source code made available by the
38 vendor pursuant to this section and certify only those voting systems compliant with
39 State and federal law. At a minimum, the State Board's review shall include a review of
40 security, application vulnerability, application code, wireless security, security policy
41 and processes, security/privacy program management, technology infrastructure and
42 security controls, security organization and governance, and operational effectiveness,
43 as applicable to that voting system. Any portion of the report containing specific
44 information related to any trade secret as designated pursuant to G.S. 132-1.2 shall be

1 confidential and shall be accessed only under the rules adopted pursuant to subdivision
2 (9) of subsection (d) of this section. The State Board may hear and discuss the report of
3 any such review under G.S. 143-318.11(a)(1).

4 (d) Subject to the provisions of this Chapter, the State Board of Elections shall
5 prescribe rules for the adoption, handling, operation, and honest use of certified voting
6 systems, including, but not limited to, including all of the following:

7 (1) Procedures for county boards of elections to utilize when
8 recommending the purchase of a Types, makes, and models of
9 certified voting systems approved system for use in this Statethat
10 county.

11 (2) Form of official ballot labels to be used on voting systems.

12 (3) Operation and manner of voting on voting systems.

13 (4) Instruction of precinct officials in the use of voting systems.

14 (5) Instruction of voters in the use of voting systems.

15 (6) Assistance to voters using voting systems.

16 (7) Duties of custodians of voting systems.

17 (8) Examination and testing of voting systems in a public forum in the
18 county before and after use in an election.

19 (9) Notwithstanding G.S. 132-1.2, procedures for the review and
20 examination of any information placed in escrow by a vendor pursuant
21 to G.S. 163-165.9A by only the following persons:

22 a. State Board of Elections.

23 b. Office of Information Technology Services.

24 c. The State chairs of each political party recognized under
25 G.S. 163-96.

26 d. The purchasing county.

27 Each person listed in sub-subdivisions a. through d. of this subdivision
28 may designate up to three persons as that person's agents to review and
29 examine the information. No person shall designate under this
30 subdivision a business competitor of the vendor whose proprietary
31 information is being reviewed and examined. For purposes of this
32 review and examination, any designees under this subdivision and the
33 State party chairs shall be treated as public officials under G.S. 132-2.

34 (10) With respect to electronic voting systems, procedures to maintain the
35 integrity of both the electronic vote count and the paper record. Those
36 procedures shall at a minimum include procedures to protect against
37 the alteration of the paper record after a machine vote has been
38 recorded and procedures to prevent removal by the voter from the
39 voting enclosure of any paper record or copy of an individually voted
40 ballot or of any other device or item whose removal from the voting
41 enclosure could permit compromise of the integrity of either the
42 machine count or the paper record.

43 Any rules adopted under this subsection shall be in conjunction with procedures and
44 standards adopted under G.S. 163-182.1, are exempt from Chapter 150B of the General

1 Statutes, and are subject to the same procedures for notice and publication set forth in
2 G.S. 163-182.1.

3 (e) The State Board of Elections shall facilitate training and support of the voting
4 systems utilized by the counties."

5 **SECTION 1.(a1)** G.S. 163-166.7(c) reads as rewritten:

6 "(c) The State Board of Elections shall promulgate rules for the process of voting.
7 Those rules shall emphasize the appearance as well as the reality of dignity, good order,
8 impartiality, and the convenience and privacy of the voter. Those rules, at a minimum,
9 shall include procedures to ensure that all the following occur:

- 10 (1) The voting system remains secure throughout the period voting is
11 being conducted.
- 12 (2) Only properly voted official ballots or paper records of individual
13 voted ballots are introduced into the voting system.
- 14 (3) Except as provided by G.S. 163-166.9, no official ballots leave the
15 voting enclosure during the time voting is being conducted there. The
16 rules shall also provide that during that time no one shall remove from
17 the voting enclosure any paper record or copy of an individually voted
18 ballot or of any other device or item whose removal from the voting
19 enclosure could permit compromise of the integrity of either the
20 machine count or the paper record.
- 21 (4) All improperly voted official ballots or paper records of individual
22 voted ballots are returned to the precinct officials and marked as
23 spoiled.
- 24 (5) Voters leave the voting place promptly after voting.
- 25 (6) Voters not clearly eligible to vote in the precinct but who seek to vote
26 there are given proper assistance in voting a provisional official ballot
27 or guidance to another voting place where they are eligible to vote.
- 28 (7) Information gleaned through the voting process that would be helpful
29 to the accurate maintenance of the voter registration records is
30 recorded and delivered to the county board of elections.
- 31 (8) The registration records are kept secure.
- 32 (9) Party observers are given access as provided by G.S. 163-45 to current
33 information about which voters have voted.
- 34 (10) The voter, before voting, shall sign that voter's name on the pollbook,
35 other voting record, or voter authorization document. If the voter is
36 unable to sign, a precinct official shall enter the person's name on the
37 same document before the voter votes."

38 **SECTION 1.(b)** Section 11 of S.L. 2003-226, which would have made
39 amendment to G.S. 163-165.7 effective January 1, 2006, is repealed.

40 **SECTION 1.(c)** In order to carry forward the first of two amendments that
41 would have been made by Section 11 of S.L. 2003-226 to the old version of
42 G.S. 163-165.7, effective January 1, 2006, G.S. 163-165.7, as rewritten by subsection
43 (a) of this section, is amended by adding the following new subsection:

1 "(a1) Federal Assistance. – The State Board may use guidelines, information,
2 testing reports, certification, decertification, recertification, and any relevant data
3 produced by the Election Assistance Commission, its Standards Board, its Board of
4 Advisors, or the Technical Guidelines Development Committee as established in Title II
5 of the Help America Vote Act of 2002 with regard to any action or investigation the
6 State Board may take concerning a voting system. The State Board may use, for the
7 purposes of voting system certification, laboratories accredited by the Election
8 Assistance Commission under the provisions of section 231(2) of the Help America
9 Vote Act of 2002."

10 **SECTION 1.(d)** In order to carry forward the second of two amendments
11 that would have been made by Section 11 of S.L. 2003-226 to the old version of
12 G.S. 163-165.7, effective January 1, 2006, G.S. 163-165.7(d), as rewritten by subsection
13 (a) of this section, is amended by adding the following new subdivision:

14 "(11) Compliance with section 301 of the Help America Vote Act of 2002."

15 **SECTION 1.(e)** G.S. 163-132.5G reads as rewritten:

16 **"§ 163-132.5G. Voting data maintained by precinct.**

17 To the extent that it can do so without compromising the secrecy of an individual's
18 ballot, each county board of elections shall maintain voting data by precinct so that
19 precinct returns for each item on the ballot shall include the votes cast by residents of
20 the precinct who voted by provisional ballot and by absentee ballot, both mail and
21 one-stop. The county board shall not be required to report provisional and absentee
22 voting data by precinct until 60 days after the election. The State Board of Elections
23 shall adopt rules for the enforcement of this section with the goal that all voting data
24 shall be reported by precinct by the 2006 election. ~~Those rules shall provide for~~
25 ~~exemptions where the expense of compliance would place a financial hardship on a~~
26 ~~county. Those rules shall provide for compliance by 2004 for counties the State Board~~
27 ~~determines are capable of complying by that year."~~

28 **SECTION 1.(f)** G.S. 163-165.1(e) reads as rewritten:

29 "(e) Voted ballots and paper records of individual voted ballots shall be treated as
30 confidential, and no person other than elections officials performing their duties may
31 have access to voted ballots or paper records of individual voted ballots except by court
32 order or order of the appropriate board of elections as part of the resolution of an
33 election protest or investigation of an alleged election irregularity or violation. Voted
34 ballots and paper records of individual voted ballots shall not be disclosed to members
35 of the public in such a way as to disclose how a particular voter voted, unless a court
36 orders otherwise."

37 **SECTION 2.(a)** Part 2 of Article 14A of Chapter 163 of the General Statutes
38 is amended by adding a new section to read:

39 **"§ 163-165.9A. Voting systems: requirements for voting systems vendors; penalties.**

40 (a) Duties of Vendor. – Every vendor that has a contract to provide a voting
41 system in North Carolina shall do all of the following:

42 (1) The vendor shall place in escrow with an independent escrow agent
43 approved by the State Board of Elections all software that is relevant
44 to functionality, setup, configuration, and operation of the voting

1 system, including, but not limited to, a complete copy of the source
2 and executable code, build scripts, object libraries, application
3 program interfaces, and complete documentation of all aspects of the
4 system including, but not limited to, compiling instructions, design
5 documentation, technical documentation, user documentation,
6 hardware and software specifications, drawings, records, and data. The
7 State Board of Elections may require in its request for proposal that
8 additional items be escrowed, and if any vendor that agrees in a
9 contract to escrow additional items, those items shall be subject to the
10 provisions of this section. The documentation shall include a list of
11 programmers responsible for creating the software and a sworn
12 affidavit that the source code includes all relevant program statements
13 in low-level and high-level languages.

14 (2) The vendor shall notify the State Board of Elections of any change in
15 any item required to be escrowed by subdivision (1) of this subsection.

16 (3) The chief executive officer of the vendor shall sign a sworn affidavit
17 that the source code and other material in escrow is the same being
18 used in its voting systems in this State. The chief executive officer
19 shall ensure that the statement is true on a continuing basis.

20 (4) The vendor shall promptly notify the State Board of Elections and the
21 county board of elections of any county using its voting system of any
22 decertification of the same system in any state, of any defect in the
23 same system known to have occurred anywhere, and of any relevant
24 defect known to have occurred in similar systems.

25 (5) The vendor shall maintain an office in North Carolina with staff to
26 service the contract.

27 (b) Penalties. – Willful violation of any of the duties in subsection (a) of this
28 section is a Class G felony. Substitution of source code into an operating voting system
29 without notification as provided by subdivision (a)(2) of this section is a Class I felony.
30 In addition to any other applicable penalties, violations of this section are subject to a
31 civil penalty to be assessed by the State Board of Elections in its discretion in an amount
32 of up to one hundred thousand dollars (\$100,000) per violation. A civil penalty assessed
33 under this section shall be subject to the provisions of G.S. 163-278.34(e)."

34 **SECTION 2.(b)** This section applies with respect to purchase or upgrade of
35 any voting system on or after August 1, 2005.

36 **SECTION 3.** Effective August 1, 2005, G.S. 163-165.8 reads as rewritten:

37 "**§ 163-165.8. Voting systems: powers and duties of board of county**
38 **commissioners.**

39 The board of county commissioners, with the approval of the county board of
40 elections, may adopt and ~~purchase or lease~~ acquire only a voting system of a type,
41 make, and model ~~approved~~ certified by the State Board of Elections for use in some or
42 all voting places in the county at some or all elections.

43 The board of county commissioners may decline to adopt and ~~purchase or lease~~
44 acquire any voting system recommended by the county board of elections but may not

1 adopt and ~~purchase or lease~~ acquire any voting system that has not been approved by
2 the county board of elections. Article 8 of Chapter 143 of the General Statutes does not
3 apply to the purchase of a voting system certified by the State Board of Elections."

4 **SECTION 4.** Effective August 1, 2005, G.S. 163-165.9 reads as rewritten:

5 "**§ 163-165.9. Voting systems: powers and duties of county board of elections.**

6 (a) Before approving the adoption and ~~purchase or lease~~ acquisition of any
7 voting system by the board of county commissioners, the county board of elections shall
8 do all of the following:

9 (1) ~~Obtain a current financial statement from the proposed vendor or~~
10 ~~lessor of the voting system and send copies of the statement to the~~
11 ~~county attorney and the chief county financial officer.~~ Recommend to
12 the board of county commissioners which type of voting system
13 should be acquired by the county.

14 (2) Witness a demonstration, in that county or at a site designated by the
15 State Board of Elections, of the type of voting system to be
16 recommended by the proposed vendor or lessor and also witness a
17 demonstration of at least one other type of voting system ~~approved~~
18 certified by the State Board of Elections.

19 (3) Test, during an election, the proposed voting system in at least one
20 precinct in the county where the voting system would be used if
21 adopted.

22 (b) After the acquisition of any voting system, the county board of elections shall
23 comply with any requirements of the State Board of Elections regarding training and
24 support of the voting system."

25 **SECTION 5.(a)** G.S. 163-182.1(b) reads as rewritten:

26 "(b) Procedures and Standards. – The State Board of Elections shall adopt uniform
27 and nondiscriminatory procedures and standards for voting systems. The standards shall
28 define what constitutes a vote and what will be counted as a vote for each category of
29 voting system used in the State. The State Board shall adopt those procedures and
30 standards at a meeting occurring not earlier than 15 days after the State Board gives
31 notice of the meeting. The procedures and standards adopted shall apply to all elections
32 occurring in the State and shall be subject to amendment or repeal by the State Board
33 acting at any meeting where notice that the action has been proposed has been given at
34 least 15 days before the meeting. These procedures and standards shall not be
35 considered to be rules subject to Article 2A of Chapter 150B of the General Statutes.
36 However, the State Board shall publish in the North Carolina Register the procedures
37 and standards and any changes to them after adoption, with that publication noted as
38 information helpful to the public under G.S. 150B-21.17(a)(6). Copies of those
39 procedures and standards shall be made available to the public upon request or
40 otherwise by the State Board. For optical scan and direct record electronic voting
41 systems, and for any other voting systems in which ballots are counted other than on
42 paper by hand and eye, those procedures and standards shall do both of the following:

43 (1) Provide for a sample hand-to-eye count of the paper ballots or paper
44 records of a statewide ballot item in every county. The presidential

1 ballot item shall be the subject of the sampling in a presidential
2 election. If there is no statewide ballot item, the State Board shall
3 provide a process for selecting district or local ballot items to
4 adequately sample the electorate. The sample chosen by the State
5 Board shall be of full precincts, full counts of absentee ballots, and full
6 counts of one-stop early voting sites. The size of the sample of each
7 category shall be chosen to produce a statistically significant result and
8 shall be chosen after consultation with a statistician. The actual units
9 shall be chosen at random. In the event of a material discrepancy
10 between the electronic or mechanical count and a hand-to-eye count,
11 the hand-to-eye count shall control, except where paper ballots or
12 records have been lost or destroyed or where there is another
13 reasonable basis to conclude that the hand-to-eye count is not the true
14 count. If the discrepancy between the hand-to-eye count and the
15 mechanical or electronic count is significant, a complete hand-to-eye
16 count shall be conducted.

17 (2) ~~provide~~ Provide that if the voter selects votes for more than the
18 number of candidates to be elected or proposals to be approved in a
19 ballot item, the voting system shall do all the following:

- 20 (1)a. Notify the voter that the voter has selected more than the correct
21 number of candidates or proposals in the ballot item.
22 (2)b. Notify the voter before the vote is accepted and counted of the
23 effect of casting overvotes in the ballot item.
24 (3)c. Provide the voter with the opportunity to correct the official
25 ballot before it is accepted and counted."

26 **SECTION 5.(b)** G.S. 163-182.2 reads as rewritten:

27 **"§ 163-182.2. Initial counting of official ballots.**

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

- 30 (1) Vote counting at the precinct shall occur immediately after the polls
31 close and shall be continuous until completed.
32 (2) Vote counting at the precinct shall be conducted with the participation
33 of precinct officials of all political parties then present. Vote counting
34 at the county board of elections shall be conducted in the presence or
35 under the supervision of board members of all political parties then
36 present.
37 (3) Any member of the public wishing to witness the vote count at any
38 level shall be allowed to do so. No witness shall interfere with the
39 orderly counting of the official ballots. Witnesses shall not participate
40 in the official counting of official ballots.
41 (4) Provisional official ballots shall be counted by the county board of
42 elections before the canvass. If the county board finds that an
43 individual voting a provisional official ballot is not eligible to vote in
44 one or more ballot items on the official ballot, the board shall not

1 count the official ballot in those ballot items, but shall count the
2 official ballot in any ballot items for which the individual is eligible to
3 vote.

4 (5) Precinct officials shall provide a preliminary report of the vote
5 counting to the county board of elections as quickly as possible. The
6 preliminary report shall be unofficial and has no binding effect upon
7 the official county canvass to follow.

8 (6) In counties that use any certified mechanical or electronic voting
9 system, subject to the sample counts under G.S. 163-182.1 and
10 subdivision (1a) of subsection (b) of this section, and of a hand-to-eye
11 recount under G.S. 163-182.7 and G.S. 163-182.7A, a board of
12 elections shall rely in its canvass on the mechanical or electronic count
13 of the vote rather than the full hand-to-eye count of the paper ballots or
14 records. In the event of a material discrepancy between the electronic
15 or mechanical count and a hand-to-eye count or recount, the
16 hand-to-eye count or recount shall control, except where paper ballots
17 or records have been lost or destroyed or where there is another
18 reasonable basis to conclude that the hand-to-eye count is not the true
19 count.

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

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

26 (1a) For optical scan and direct record electronic voting systems, and for
27 any other voting systems in which ballots are counted other than on
28 paper by hand and eye, those rules shall provide for a sample
29 hand-to-eye count of the paper ballots or paper records of a sampling
30 of a statewide ballot item in every county. The presidential ballot item
31 shall be the subject of the sampling in a presidential election. If there is
32 no statewide ballot item, the State Board shall provide a process for
33 selecting district or local ballot items to adequately sample the
34 electorate. The sample chosen by the State Board shall be of full
35 precincts, full counts of absentee ballots, and full counts of one-stop
36 early voting sites. The size of the sample of each category shall be
37 chosen to produce a statistically significant result and shall be chosen
38 after consultation with a statistician. The actual units shall be chosen at
39 random. In the event of a material discrepancy between the electronic
40 or mechanical count and a hand-to-eye count, the hand-to-eye count
41 shall control, except where paper ballots or records have been lost or
42 destroyed or where there is another reasonable basis to conclude that
43 the hand-to-eye count is not the true count. If the discrepancy between

1 the hand-to-eye count and the mechanical or electronic count is
2 significant, a complete hand-to-eye count shall be conducted.

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

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

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

10 **SECTION 5.(c)** G.S. 163-182.5 reads as rewritten:

11 **"§ 163-182.5. Canvassing votes.**

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

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

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

39 **SECTION 5.(d)** This section becomes effective January 1, 2006.

40 **SECTION 6.(a)** G.S. 163-182.7 reads as rewritten:

41 **"§ 163-182.7. Ordering recounts.**

42 (a) Discretionary Recounts. – The county board of elections or the State Board of
43 Elections may order a recount when necessary to complete the canvass in an election.

1 The county board may not order a recount where the State Board of Elections has
2 already denied a recount to the petitioner.

3 (b) Mandatory Recounts for Ballot Items Within the Jurisdiction of the County
4 Board of Elections. – In a ballot item within the jurisdiction of the county board of
5 elections, a candidate shall have the right to demand a recount of the votes if the
6 difference between the votes for that candidate and the votes for a prevailing candidate
7 is not more than one percent (1%) of the total votes cast in the ballot item, or in the case
8 of a multiseat ballot item not more than one percent (1%) of the votes cast for those two
9 candidates. The demand for a recount must be made in writing and must be received by
10 the county board of elections by 5:00 P.M. on the first day after the canvass. The
11 recount shall be conducted under the supervision of the county board of elections.

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

17 (1) For a nonstatewide ballot item, one percent (1%) of the total votes cast
18 in the ballot item, or in the case of a multiseat ballot item, one percent
19 (1%) of the votes cast for those two candidates.

20 (2) For a statewide ballot item, one-half of one percent (0.5%) of the votes
21 cast in the ballot item, ~~or in the case of a multiseat ballot item, one half~~
22 ~~of one percent (0.5%) of the votes cast for those two candidates, or~~
23 10,000 votes, whichever is less.

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

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

35 (1) The rules shall specify, with respect to each type of voting system,
36 when and to what extent the recount shall consist of machine recounts
37 and hand-to-eye recounts. Hand-to-eye recounts shall also be ordered
38 as provided by G.S. 163-182.7A.

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

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

42 **SECTION 6.(b)** Article 15A of Chapter 163 of the General Statutes is
43 amended by adding a new section to read:

44 **"§ 163-182.7A. Additional provisions for hand-to-eye recounts.**

1 (a) The rules promulgated by the State Board of Elections for recounts shall
2 provide that if the initial recount is not hand-to-eye, and if the recount does not reverse
3 the results, the candidate who had originally been entitled to a recount may, within 24
4 hours of the completion of the first recount, demand a second recount on a hand-to-eye
5 basis in a sample of precincts. If the initial recount was not hand-to-eye and it reversed
6 the results, the candidate who had initially been the winner shall have the same right to
7 ask for a hand-to-eye recount in a sample of precincts.

8 That sample shall be all the ballots in three percent (3%) of the precincts casting
9 ballots in each county in the jurisdiction of the office, rounded up to the next whole
10 number of precincts. For the purpose of that calculation, each one-stop (early) voting
11 site shall be considered to be a precinct. The precincts to be recounted by a hand-to-eye
12 count shall be chosen at random within each county. If the results of the hand-to-eye
13 recount differ from the previous results within those precincts to the extent that
14 extrapolating the amount of the change to the entire jurisdiction (based on the
15 proportion of ballots recounted to the total votes cast for that office) would result in the
16 reversing of the results, then the State Board of Elections shall order a hand-to-eye
17 recount of the entire jurisdiction in which the election is held. There shall be no cost to
18 the candidate for that recount in the entire jurisdiction.

19 (b) Recounts under this section shall be governed by rules adopted under
20 G.S. 163-182.7(d).

21 (c) No complete hand-to-eye recount shall be conducted under this section if one
22 has already been done under another provision of law."

23 **SECTION 6.(c)** This section becomes effective January 1, 2006.

24 **SECTION 7.** G.S. 163-82.28 reads as rewritten:

25 "**§ 163-82.28. The HAVA Election Fund.**

26 There is established a special fund to be known as the Election Fund. All funds
27 received for implementation of the Help America Vote Act of 2002, Public Law
28 107-252, shall be deposited in that fund. The State Board of Elections shall use funds in
29 the Election Fund only to implement ~~HAVA~~. HAVA and for purposes permitted by
30 HAVA to comply with State law."

31 **SECTION 8.** The State Board of Elections shall recommend a model code
32 of ethics for members and employees of county boards of elections and of the State
33 Board of Elections. The code shall address the appropriate relations between those
34 members and staff and vendors who do business or seek to do business with boards of
35 elections in North Carolina. It shall address how to avoid both the reality and the
36 appearance of conflicts of interest and impropriety. The State Board shall report its
37 recommended code to the Joint Select Committee on Electronic Voting Systems and to
38 the Joint Legislative Commission on Governmental Operations no later than 60 days
39 after this act becomes law.

40 **SECTION 9.** The State Board of Elections may conduct, for primaries and
41 elections in 2006 only, experiments with voting systems that use a means in addition to
42 paper to fulfill the backup record and voter verification requirements of
43 G.S. 163-165.7(a)(4) and G.S. 163-165.7(a)(5), as enacted by this act. The pilot
44 program may be conducted in no more than nine counties. The county boards of

1 elections shall cooperate in conducting the pilot program. The pilot program shall be
2 conducted according to the following requirements:

- 3 (1) The experiment may be conducted in no more than two voting sites per
4 county. The voting sites may include election-day voting places or
5 one-stop sites.
- 6 (2) At each voting site in which the experiment is conducted, voters must
7 have a choice of voting on the experimental voting system or on a
8 voting system that is not part of the experiment.
- 9 (3) Each experimental voting system shall include an additional means for
10 the voter to verify the choices that the voter makes in the electronically
11 cast ballot, which means shall also provide for an additional count.
12 That additional means may utilize audio technology, digital scanners,
13 or some other material or technology that shall record the voters'
14 choices but shall not record any image of any part of the voter.
- 15 (4) On each voting machine or unit used in the experiment, the voting
16 system shall comply with all the applicable requirements of
17 G.S. 163-165.7, including the requirement in G.S. 163-165.7(a)(4) that
18 a DRE system must generate a paper backup record of each individual
19 vote cast electronically and the requirement in G.S. 163-165.7(a)(5)
20 that the paper record generated by the DRE system must be viewable
21 by the voter before the vote is cast electronically and that the system
22 allow the voter to correct any discrepancy between the electronic vote
23 and the paper record before the vote is cast. On every machine or unit,
24 the experimental means to fulfill those functions shall be used in
25 addition to, rather than instead of, the required paper means.
- 26 (5) For all votes cast on an experimental voting system under the pilot,
27 there shall be, in addition to an electronic count, a full hand-to-eye
28 paper count and a full comparison count of the experimental
29 verification technology.

30 The State Board of Elections shall report the results of the pilot program, together with
31 its recommendations, to the 2007 General Assembly and to the Joint Legislative
32 Commission on Governmental Operations by February 1, 2007.

33 **SECTION 10.** The requirement for testing a voting system in an election
34 provided in G.S. 163-165.9(a)(3), as enacted in Section 4 of this act, does not apply to
35 any voting system acquired before January 1, 2008, as long as the voting system is
36 demonstrated in a public forum in the county. Notwithstanding G.S. 163-132.5G, as
37 amended by this act, voting data by precinct shall be reported for the general elections
38 of 2006 by March 1, 2007, and for the primary elections of 2006 by May 1, 2007.
39 Except as otherwise provided in this act, the remainder of this act is effective when it
40 becomes law.