

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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SENATE BILL 223  
Judiciary I Committee Substitute Adopted 7/26/05

Short Title: Public Confidence in Elections.

(Public)

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Sponsors:

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Referred to:

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February 28, 2005

A BILL TO BE ENTITLED

1 AN ACT TO RESTORE PUBLIC CONFIDENCE IN THE ELECTION PROCESS BY  
2 REQUIRING THAT THE STATE BOARD OF ELECTIONS, THROUGH THE  
3 DEVELOPMENT OF A REQUEST FOR PROPOSAL, ENSURE THAT ALL  
4 VOTING SYSTEMS GENERATE EITHER A PAPER BALLOT OR A PAPER  
5 RECORD BY WHICH VOTERS MAY VERIFY THEIR VOTES BEFORE  
6 CASTING THEM AND WHICH PROVIDES A BACKUP MEANS OF  
7 COUNTING THE VOTE THAT THE VOTER CASTS; BY PROVIDING  
8 STATUTORY GUIDANCE AS TO COUNTING; BY STANDARDIZING  
9 PURCHASING OF VOTING SYSTEMS IN NORTH CAROLINA, INCLUDING  
10 A REVIEW OF SOURCE CODE FOR SOFTWARE RELATED TO THOSE  
11 VOTING SYSTEMS AND AUTHORIZATION TO ESTABLISH THE ROLE OF  
12 THE STATE BOARD OF ELECTIONS AND COUNTY BOARD OF  
13 ELECTIONS RELATED TO TRAINING AND SUPPORT OF VOTING  
14 SYSTEMS; BY REQUIRING POSTELECTION TESTING OF VOTING  
15 SYSTEMS, INCLUDING A PAPER SAMPLE-COUNT; BY EXPANDING THE  
16 RIGHT TO A HAND-TO-EYE RECOUNT OF PAPER BALLOTS; BY  
17 PERMITTING A PILOT PROGRAM TO EXPERIMENT WITH NONPAPER  
18 MEANS OF VOTER VERIFICATION AND BALLOT BACKUP; AND BY  
19 APPROPRIATING FUNDS TO THE STATE BOARD OF ELECTIONS TO  
20 IMPLEMENT THIS ACT.  
21

22 The General Assembly of North Carolina enacts:

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

26 "**§ 163-165.7. Voting systems: powers and duties of State Board of Elections.**

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

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

- 21 (1) That the vendor post a bond or letter of credit to cover damages  
22 resulting from defects in the voting. Damages shall include, among  
23 other items, any costs of conducting a new election attributable to  
24 those defects.
- 25 (2) That the voting system comply with all federal requirements for voting  
26 systems.
- 27 (3) That the voting system must have the capacity to include in precinct  
28 returns the votes cast by voters outside of the voter's precinct.
- 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)(3) 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 of up to one hundred thousand dollars (\$100,000) per violation."

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

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

35 "**§ 163-165.8. Voting systems: powers and duties of board of county**  
36 **commissioners.**

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

41 The board of county commissioners may decline to adopt and ~~purchase or lease~~  
42 acquire any voting system recommended by the county board of elections but may not  
43 adopt and ~~purchase or lease~~ acquire any voting system that has not been approved by

1 the county board of elections. Article 8 of Chapter 143 of the General Statutes does not  
2 apply to the purchase of a voting system certified by the State Board of Elections."

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

4 "**§ 163-165.9. Voting systems: powers and duties of county board of elections.**

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

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

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

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

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

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

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

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



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

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

19 (1)a. Notify the voter that the voter has selected more than the correct  
20 number of candidates or proposals in the ballot item.

21 (2)b. Notify the voter before the vote is accepted and counted of the  
22 effect of casting overvotes in the ballot item.

23 (3)c. Provide the voter with the opportunity to correct the official  
24 ballot before it is accepted and counted."

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

26 **"§ 163-182.2. Initial counting of official ballots.**

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

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

31 (2) Vote counting at the precinct shall be conducted with the participation  
32 of precinct officials of all political parties then present. Vote counting  
33 at the county board of elections shall be conducted in the presence or  
34 under the supervision of board members of all political parties then  
35 present.

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

40 (4) Provisional official ballots shall be counted by the county board of  
41 elections before the canvass. If the county board finds that an  
42 individual voting a provisional official ballot is not eligible to vote in  
43 one or more ballot items on the official ballot, the board shall not  
44 count the official ballot in those ballot items, but shall count the

1 official ballot in any ballot items for which the individual is eligible to  
2 vote.

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

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

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

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

25 (1a) For optical scan and direct record electronic voting systems, and for  
26 any other voting systems in which ballots are counted other than on  
27 paper by hand and eye, those rules shall provide for a sample  
28 hand-to-eye count of the paper ballots or paper records of a sampling  
29 of a statewide ballot item in every county. The presidential ballot item  
30 shall be the subject of the sampling in a presidential election. If there is  
31 no statewide ballot item, the State Board shall provide a process for  
32 selecting district or local ballot items to adequately sample the  
33 electorate. The sample chosen by the State Board shall be of full  
34 precincts, full counts of absentee ballots, and full counts of one-stop  
35 early voting sites. The size of the sample of each category shall be  
36 chosen to produce a statistically significant result and shall be chosen  
37 after consultation with a statistician. The actual units shall be chosen at  
38 random. In the event of a material discrepancy between the electronic  
39 or mechanical count and a hand-to-eye count, the hand-to-eye count  
40 shall control, except where paper ballots or records have been lost or  
41 destroyed or where there is another reasonable basis to conclude that  
42 the hand-to-eye count is not the true count. If the discrepancy between  
43 the hand-to-eye count and the mechanical or electronic count is  
44 significant, a complete hand-to-eye count shall be conducted.

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

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

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

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

9 **"§ 163-182.5. Canvassing votes.**

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

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

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

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

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

39 **"§ 163-182.7. Ordering recounts.**

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

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

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

- 15 (1) For a nonstatewide ballot item, one percent (1%) of the total votes cast  
16 in the ballot item, or in the case of a multiseat ballot item, one percent  
17 (1%) of the votes cast for those two candidates.
- 18 (2) For a statewide ballot item, one-half of one percent (0.5%) of the votes  
19 cast in the ballot item, ~~or in the case of a multiseat ballot item, one half~~  
20 ~~of one percent (0.5%) of the votes cast for those two candidates, or~~  
21 10,000 votes, whichever is less.

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

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

- 33 (1) The rules shall specify, with respect to each type of voting system,  
34 when and to what extent the recount shall consist of machine recounts  
35 and hand-to-eye recounts. Hand-to-eye recounts shall also be ordered  
36 as provided by G.S. 163-182.7A.
- 37 (2) The rules shall provide guidance in interpretation of the voter's choice.
- 38 (3) The rules shall specify how the goals of multipartisan participation,  
39 opportunity for public observation, and good order shall be balanced."

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

42 **"§ 163-182.7A. Additional provisions for hand-to-eye recounts.**

43 (a) The rules promulgated by the State Board of Elections for recounts shall  
44 provide that if the initial recount is not hand-to-eye, and if the recount does not reverse

1 the results, the candidate who had originally been entitled to a recount may, within 24  
2 hours of the completion of the first recount, demand a second recount on a hand-to-eye  
3 basis in a sample of precincts. If the initial recount was not hand-to-eye and it reversed  
4 the results, the candidate who had initially been the winner shall have the same right to  
5 ask for a hand-to-eye recount in a sample of precincts.

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

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

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

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

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

23 **"§ 163-82.28. The HAVA Election Fund.**

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

29 **SECTION 8.** There is appropriated from the General Fund to the State  
30 Board of Elections the recurring sum of six hundred thousand dollars (\$600,000) for the  
31 2005-2006 and the 2006-2007 fiscal years and the nonrecurring sum of twenty million  
32 dollars (\$20,000,000) for the 2005-2006 fiscal year for the purpose of implementing this  
33 act.

34 **SECTION 9.** The State Board of Elections shall recommend a model code  
35 of ethics for members and employees of county boards of elections and of the State  
36 Board of Elections. The code shall address the appropriate relations between those  
37 members and staff and vendors who do business or seek to do business with boards of  
38 elections in North Carolina. It shall address how to avoid both the reality and the  
39 appearance of conflicts of interest and impropriety. The State Board shall report its  
40 recommended code to the Joint Select Committee on Electronic Voting Systems and to  
41 the Joint Legislative Commission on Governmental Operations no later than 60 days  
42 after this act becomes law.

43 **SECTION 10.** The State Board of Elections may conduct, for primaries and  
44 elections in 2006 only, experiments with voting systems that use a means in addition to

1 paper to fulfill the backup record and voter verification requirements of  
2 G.S. 163-165.7(a)(4) and G.S. 163-165.7(a)(5), as enacted by this act. The pilot  
3 program may be conducted in no more than nine counties. The county boards of  
4 elections shall cooperate in conducting the pilot program. The pilot program shall be  
5 conducted according to the following requirements:

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

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

36 **SECTION 11.** Section 8 of this act becomes effective July 1, 2005. The  
37 requirement for testing a voting system in an election provided in G.S. 163-165.9(a)(3),  
38 as enacted in Section 4 of this act, does not apply to any voting system acquired before  
39 January 1, 2008, as long as the voting system is demonstrated in a public forum in the  
40 county. Notwithstanding G.S. 163-132.5G, as amended by this act, voting data by  
41 precinct shall be reported for the general elections of 2006 by March 1, 2007, and for  
42 the primary elections of 2006 by May 1, 2007. Except as otherwise provided in this act,  
43 the remainder of this act is effective when it becomes law.