Article 15A.

Counting Ballots, Canvassing Votes, and Certifying Results in Precinct and County.

§ 163-182. Definitions.

In addition to the definitions stated below, the definitions set forth in Article 14A of this Chapter 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) "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.

(3) "Composite abstract" means a document signed by the members of the State Board 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.

(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. (2001-398, s. 3; 2010-96, ss. 19, 35; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 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.

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

(1) Provide for a sample hand-to-eye count of the paper ballots of a statewide ballot item in every county. The presidential ballot item shall be the subject of the sampling in a presidential election. If there is no statewide ballot item, the State Board shall provide a process for selecting district or local ballot items to adequately sample the electorate. The State Board shall approve in an open meeting the procedure for randomly selecting the sample precincts for each election. The random selection of precincts for any county shall be done publicly after the initial count of election returns for that county is publicly released or 24 hours after the polls close on election day, whichever is earlier. The sample chosen by the State Board shall be of one or more full precincts, full counts of mailed absentee ballots, full counts of one or more early voting sites, or a combination. The size of the sample of each category shall be chosen to produce a statistically significant result and shall be chosen after consultation with a statistician. The actual units shall be chosen at random. In the event of a material discrepancy between the electronic or mechanical count and a hand-to-eye count, the hand-to-eye count shall control, except where paper ballots have been lost or destroyed or where there is another reasonable basis to conclude that the hand-to-eye count is not the true count. If the discrepancy between the hand-to-eye count and the mechanical or electronic count is significant, a complete hand-to-eye count shall be conducted.

(2) Provide that if the voter selects votes for more than the number of candidates to be elected or proposals to be approved in a ballot item, the voting system shall do all the following:
a. Notify the voter that the voter has selected more than the correct number of candidates or proposals in the ballot item.

b. Notify the voter before the vote is accepted and counted of the effect of casting overvotes in the ballot item.
c. Provide the voter with the opportunity to correct the official ballot before it is accepted and counted. (2001-398, s. 3; 2003-226, s. 13; 2005-323, s. 5(a); 2006-192, s. 7(a); 2006-264, s. 76(b); 2013-381, ss. 30.5, 32.2; 2015-103, s. 6(b); 2017-6, s. 3; 2018-13, s. 3.11(b); 2018-146, s. 3.1(a), (b); 2023-140, s. 28.)

§ 163-182.1A: Repealed by Session Laws 2018-144, s. 3.1(h), effective December 19, 2018

§ 163-182.1B: Repealed by Session Laws 2018-144, s. 3.1(i), effective December 19, 2018

§ 163-182.2. Initial counting of official ballots.

(a) The initial counting of official ballots cast on election day and under Part 5 of Article 14A of this Chapter shall be conducted according to the following principles:

(1) Vote counting of ballots cast at the precinct on election day shall occur immediately after the polls close and shall be continuous until completed. If ballots cast under Part 5 of Article 14A of this Chapter are counted electronically, that count shall commence at the time the polls close. If ballots cast under Part 5 of Article 14A of this Chapter are paper ballots counted manually, that count shall commence at the same time as mail-in absentee ballots cast under Article 20 or Article 21A of this Chapter are counted.

(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) If the county board finds that an individual voting a provisional official ballot (i) was registered in the county as provided in 163-82.1, (ii) voted in the proper precinct under G.S. 163-55 and G.S. 163-57, and (iii) was otherwise eligible to vote, the provisional official ballots shall be counted by the county board no later than 5:00 P.M. on the third business day after the election. Except as provided in G.S. 163-82.15(e), if the county board finds that an individual voting a provisional official ballot (i) did not vote in the proper precinct under G.S. 163-55 and G.S. 163-57, (ii) is not registered in the county as provided in G.S. 163-82.1, or (iii) is otherwise not eligible to vote, the ballot shall not be counted. If a voter was properly registered to vote in the election by the county board, no mistake of an election official in giving the voter a ballot or in failing to comply with G.S. 163-82.15 or G.S. 163-166.11 shall serve to prevent the counting of the vote on any ballot item the voter was eligible by registration and qualified by residency to vote.

(5) Precinct officials shall provide a preliminary report of the vote counting on election day to the county board of elections as quickly as possible. The

preliminary report shall be unofficial, has no binding effect upon the official county canvass to follow, and shall include the number of provisional ballots cast in that precinct.

(6) In counties that use any certified mechanical or electronic voting system, subject to the sample counts under G.S. 163-182.1 and subdivision (2) of subsection (b) of this section, and of a hand-to-eye recount under G.S. 163-182.7 and G.S. 163-182.7A, a board of elections shall rely in its canvass on the mechanical or electronic count of the vote rather than the full hand-to-eye count of the paper ballots or records. In the event of a material discrepancy between the electronic or mechanical count and a hand-to-eye count or recount, the hand-to-eye count or recount shall control, except where paper ballots or records have been lost or destroyed or where there is another reasonable basis to conclude that the hand-to-eye count is not the true count.

(b) The State Board shall promulgate rules for the initial counting of all 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) For optical scan and direct record electronic voting systems, and for any other voting systems in which ballots are counted other than on paper by hand and eye, those rules shall provide for a sample hand-to-eye count of the paper ballots of a sampling of a statewide ballot item in every county. The presidential ballot item shall be the subject of the sampling in a presidential election. If there is no statewide ballot item, the State Board shall provide a process for selecting district or local ballot items to adequately sample the electorate. The State Board shall approve in an open meeting the procedure for random sampling for each election. The random sampling for any county shall be done publicly after the initial count of election returns for that county is publicly released or 24 hours after the polls close on election day, whichever is earlier. The sample chosen by the State Board shall be of one or more full precincts, full counts of mailed absentee ballots, and full counts of one or more early voting sites. The size of the sample of each category shall be chosen to produce a statistically significant result and shall be chosen after consultation with a statistician. The actual units shall be chosen at random. In the event of a material discrepancy between the electronic or mechanical count and a hand-to-eye count, the hand-to-eye count shall control, except where paper ballots have been lost or destroyed or where there is another reasonable basis to conclude that the hand-to-eye count is not the true count. If the discrepancy between the hand-to-eye count and the mechanical or electronic count is significant, a complete hand-to-eye count shall be conducted. The sample count need not be done on election night.

(3) 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.

(4) 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. (2001-398, s. 3; 2005-2, s. 5; 2005-323, s. 5(b); 2006-192, s. 7(b); 2006-264, s. 76(c); 2013-381, ss. 30.6, 49.4; 2014-111, s. 12(c); 2015-103, s. 6(b); 2017-6, s. 3; 2018-13, s. 3.11(b); 2018-146, s. 3.1(a), (b); 2020-17, s. 4.5(a); 2023-140, s. 29; 2024-57, s. 3A.4(e).)

§ 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. (2001-398, s. 3; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-182.4. Jurisdiction for certain ballot items.

(a) Jurisdiction of County Board of Elections. – As used in this Part, 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. Where voters in more than one county cast ballots for a municipal office, the State Board shall prepare a composite abstract upon the completion of the canvass by the county boards and deliver that abstract to all county boards responsible for canvassing votes for the contest, and each of those county boards shall issue a certificate of nomination or 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. (2001-398, s. 3; 2017-6, s. 3; 2018-146, s. 3.1(a), (b); 2023-140, s. 30.)

§ 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 tenth day 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, from the sample hand-to-eye paper ballot counts, 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. (2001-398, s. 3; 2003-278, s. 10(a); 2005-323, s. 5(c); 2005-428, s. 11(a); 2016-109, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 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. The county board of elections shall have a separate count on the abstract for ballots cast under Part 5 of Article 14A of this Chapter. 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. The State Highway Patrol may, upon request of the State Board, be responsible for the delivery of the abstracts from each county to the State Board. The State Board 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. (2001-398, s. 3; 2017-6, s. 3; 2018-146, s. 3.1(a), (b); 2023-139, s. 5.1; 2023-140, s. 31; 2024-57, s. 3A.3(a).)

§ 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 5:00 P.M. on the first business 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 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 business day after the county canvass. If at that time 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. Hand-to-eye recounts shall also be ordered as provided by G.S. 163-182.7A.

(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. (2001-398, s. 3; 2003-278, ss. 10(b), 10(c); 2005-323, s. 6(a); 2005-428, s. 11(b); 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

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

(a) The rules promulgated by the State Board for recounts shall provide that if the initial recount is not hand-to-eye, and if the recount does not reverse the results, the candidate who had originally been entitled to a recount may, within 24 hours of the completion of the first recount, demand a second recount on a hand-to-eye basis in a sample of precincts. If the initial recount was

not hand-to-eye and it reversed the results, the candidate who had initially been the winner shall have the same right to ask for a hand-to-eye recount in a sample of precincts.

That sample shall be all the ballots in three percent (3%) of the precincts casting ballots in each county in the jurisdiction of the office, rounded up to the next whole number of precincts. For the purpose of that calculation, each early voting site under Part 5 of Article 14A of this Chapter shall be considered to be a precinct. The precincts to be recounted by a hand-to-eye count shall be chosen at random within each county. If the results of the hand-to-eye recount differ from the previous results within those precincts to the extent that extrapolating the amount of the change to the entire jurisdiction (based on the proportion of ballots recounted to the total votes cast for that office) would result in the reversing of the results, then the State Board shall order a hand-to-eye recount of the entire jurisdiction in which the election is held. There shall be no cost to the candidate for that recount in the entire jurisdiction.

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

(c) No complete hand-to-eye recount shall be conducted under this section if one has already been done under another provision of law. (2005-323, s. 6(b); 2017-6, s. 3; 2018-146, s. 3.1(a), (b); 2023-140, s. 32.)

§ 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. (2001-398, s. 3; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 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 5:00 P.M. on the second business 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 5:00 P.M. on the second business 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. (2001-398, s. 3; 2005-428, s. 4; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 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. (2001-398, s. 3; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 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. (2001-398, s. 3; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 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 and without irregularities that may have changed the result of an election. Where a known group of voters cast votes that were lost beyond retrieval or where a known group of voters was given an incorrect ballot style, the State Board of Elections may authorize a county board of elections to allow those voters to recast their votes during a period of two weeks after the canvass by the State Board of Elections required in G.S. 163-182.5(c). If there is no State Board canvass after the election, the State Board may authorize the county board to allow the recasting of votes during the two weeks after the county canvass set in G.S. 163-182.5(a). If the State Board approves a recasting of votes under this section, any procedures the county board uses to contact those voters and allow them to recast their votes shall be subject to approval by the State Board. Those recast votes shall be added to the returns and included in the canvass. The recasting of those votes shall not be deemed a new election for purposes of G.S. 163-182.13. (2001-398, s. 3; 2005-428, s. 17; 2007-391, s. 12; 2008-187, s. 33(a); 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-182.12A. Post-election audits.

(a) After conducting a post-election audit for each election as required by this Chapter, except for a general election, the State Board shall produce a report which summarizes the audit, including the rationale for and the findings of the audit. After conducting a post-election audit for a general election, the State Board shall produce a report which shall include all of the following:

(1) A summary of the types of post-election audits required by law and the requirements for conducting each of the audits.
(2) A summary of the results of each of the post-election audits described in subdivision (1) of this subsection.
(3) A detailed description of each of the post-election audits described in subdivision (1) of this subsection, including any issues that could have affected the outcome of the election and the manner in which those issues were resolved.
(4) A description of any systemic issues that were identified during the post-election audits and any recommendations on the manner in which those issues should be addressed to ensure election security and integrity.
(5) The ways in which the public were allowed to observe and comment on the conduct of the post-election audits, as authorized by law.
(6) Any other matters deemed appropriate by the State Board.

(b) Each report required by subsection (a) of this section shall be submitted to the Joint Legislative Elections Oversight Committee and the Joint Legislative Oversight Committee on General Government within 10 business days of the date the audit is completed. (2019-239, s. 6(a); 2023-134, s. 26.2.)

§ 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 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 candidates, the new election, upon agreement of at least four members of the State Board, may be held among only those 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.

(g) Primary Required for a New Election. – For any new congressional general election ordered under subsection (a) of this section, a primary for that election shall be conducted. The State Board shall determine when the primary 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 primary. (2001-398, s. 3; 2003-278, s. 8(a); 2008-150, s. 2(a); 2016-125, 4th Ex. Sess., s. 5(j); 2017-6, ss. 2, 3, 7(j); 2018-146, ss. 1, 3.1(a), (b); 2023-139, s. 5.2; 2024-57, s. 3A.3(a).)

§ 163-182.13A. Contested elections for Council of State offices.

(a) Application of Procedures. – A contested election for any elective office established by Article III of the Constitution shall be determined by joint ballot of both houses of the General Assembly under Article VI, Section 5 of the Constitution in accordance with the provisions of this section. Except as provided by this section, the provisions of Article 3 of Chapter 120 shall apply to contested elections under this section and shall govern standing, notice of intent to contest, answers, service of process, evidence, the petition, procedures, grounds, and relief except as provided in this section. All filings shall be with the Principal Clerk of the House of Representatives.

(b) Notice of Intent. – Notice of the intent to contest the election under this section shall be filed with the Principal Clerk of the House of Representatives as if it were a contested election for the House of Representatives as prescribed in Article 3 of Chapter 120.

(c) Jurisdiction. – When a contest arises out of the general election, the General Assembly elected at the same time shall hear and decide it. Any other contest shall be heard by the General Assembly sitting at the time of the election.

(d) Committee. – A contest filed under this section shall initially be heard before a select committee consisting of five Senators appointed by the President Pro Tempore and five Representatives appointed by the Speaker of the House of Representatives. Not more than three members of the Senate appointed by the President Pro Tempore shall be members of the same political party. Not more than three members of the House of Representatives appointed by the Speaker shall be members of the same political party. That committee shall have the same power as a committee under Article 3 of Chapter 120 and may adopt supplemental rules as necessary to govern its proceedings. The committee shall report its findings as to the law and the facts and make recommendations to the General Assembly for its action.

(e) Final Determination. – The final determination on the recommendations of the committee shall be made by the General Assembly, both houses sitting in joint session in the Hall of the House of Representatives, with the Speaker of the House of Representatives presiding. The vote shall be taken as provided by Article VI, Section 5 of the Constitution. In order to find for the

contestant or contestee and order the contestant or contestee elected, the vote on the joint ballot must include the affirmative vote of a majority of the members of the General Assembly voting on the issue. The ballots shall be in writing and are subject to the provisions of G.S. 143-318.13(b).

(f) Basis for Decision. –

(1) If the contest is as to the eligibility or qualifications of the contestee, the General Assembly shall determine if the contestee is eligible and qualified. If it determines that the contestee is not eligible or not qualified, it shall order a new election.

(2) If the contest is as to the conduct or results of the election, the General Assembly shall determine which candidate received the highest number of votes. If it can determine which candidate received the highest number of votes, it shall declare that candidate to be elected. If it cannot determine which candidate received the highest number of votes, it may order a new election, or may order such other relief as may be necessary and proper. If it determines that two or more candidates shall be equal and highest in votes, the provisions of G.S. 147-4 shall apply.

(g) Final Determination. – A copy of the final determination of the General Assembly under this section shall be filed with the Secretary of State and with the State Board of Elections.

(h) Copies. – The Principal Clerk of the House of Representatives shall make copies of any filings and transmit them to the Principal Clerk for the Senate.

(i) Applicability. – This section applies only to a general or special election and does not apply to the primary or any other part of the nominating process.

(j) Judicial Proceedings Abated. – Notwithstanding any other provision of law, upon the initiation of a contest under this Article, any judicial proceedings involving either the contestant or the contestee encompassing the issues set forth in the notice of intent or an answer thereto concerning the election that is the subject of the contest shall abate. The clerk shall file a copy of the notice of intent and final determination with the court in any judicial proceeding pending prior to the filing of the notice of intent.

(k) General Assembly Determination Not Reviewable. – The decision of the General Assembly in determining the contest of the election pursuant to this section may not be reviewed by the General Court of Justice.

(*l*) Definition. – As used in this section, "contest" means a challenge to the apparent election for any elective office established by Article III of the Constitution or to request the decision of an undecided election to any elective office established by Article III of the Constitution, where the challenge or the request is filed in accordance with the timing and procedures of this section. (2005-3, s. 3(a); 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-182.14. Appeal of a final decision to superior court; appeal to the General Assembly or a house thereof.

(a) Final Decision. – A copy of the final decision of the State Board of Elections on an election protest shall be served on the parties personally or through delivery by U.S. mail or a designated delivery service authorized under 26 U.S.C. § 7502(f)(2) if that delivery provides a record of the date and time of delivery to the address provided by the party. A decision to order a new election is considered a final decision for purposes of seeking review of the decision.

(b) Timing of Right of Appeal. – Except in the case of a general or special election to either house of the General Assembly or to an office established by Article III of the Constitution, 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, and that the petitioner is likely to prevail in the appeal.

If service is by mail or a designated delivery service, the additional time after service provided in Rule 6(e) of the North Carolina Rules of Civil Procedure shall apply to both the time for appeal and the time to obtain a stay under this subsection.

(c) Contests for General Assembly and Executive Branch Offices. – In the case of a general or special election to either house of the General Assembly or to an office established by Article III of the Constitution, an unsuccessful candidate has the right to appeal the final decision to the General Assembly in accordance with Article 3 of Chapter 120 and G.S. 163-182.13A, as appropriate.

After the decision by the State Board of Elections has been served on the parties, the certification of nomination or election shall issue pursuant to G.S. 163-182.15 unless a contest of the election is initiated pursuant to Article 3 of Chapter 120 or G.S. 163-182.13A, as appropriate.

(d) Attorney's fees shall not be awarded against the State Board of Elections in any election protest brought under this Article. (2001-398, s. 3; 2003-278, s. 8(b); 2005-3, s. 4; 2008-150, s. 4(a); 2009-541, s. 27; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 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 six 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 on the tenth day 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.

(4) No certificate of election need be issued for any member of the General Assembly following a contest of the election pursuant to Article 3 of Chapter 120.

(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 six 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. 163-182.14.

(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.

(3) The certificate shall be issued immediately upon the filing of a copy of the determination of the General Assembly with the State Board of Elections in contested elections involving any elective office established by Article III of the Constitution.

(4) No certificate of election need be issued for any member of the General Assembly following a contest of the election pursuant to Article 3 of Chapter 120.

(b1) Report on Revisions to Elections Records After Certification – The State Board shall submit an annual report on any revisions made to any voter's voter history records other than routine updates following each election, including the rationale for and timing of the revisions, to the Joint Legislative Elections Oversight Committee and the Joint Legislative Oversight Committee on General Government no later than October 1 of each year.

(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.

(d) Determining Results. – In a primary for party nomination, the results shall be determined in accordance with G.S. 163-111. In a general election, the individuals having the highest number of votes for each office shall be declared elected to the office, and the certificate shall be issued accordingly. In a referendum, the ballot proposal receiving the highest number of votes shall be declared to have prevailed, and the certificate shall be issued accordingly. (2001-398, s. 3; 2003-278, s. 10(k); 2005-3, s. 5; 2005-428, s. 13; 2007-391, s. 11; 2007-484, s. 22; 2008-187, s. 33(a); 2017-6, s. 3; 2018-146, s. 3.1(a), (b); 2023-139, s. 5.3; 2023-140, s. 33; 2024-57, s. 3A.3(a).)

§ 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 or retention:

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

(2) Justices, judges, and district attorneys of the General Court of Justice. (2001-398, s. 3; 2015-66, s. 5; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 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. (2001-398, s. 3; 2017-6, s. 3; 2018-146, s. 3.1(a), (b); 2023-139, s. 5.4; 2024-57, s. 3A.3(a).)

§ 163-183. Reserved for future codification purposes.

§ 163-184. Reserved for future codification purposes.

§ 163-185. Reserved for future codification purposes.

§ 163-186. Reserved for future codification purposes.