§ 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.)