February 28, 2005

S 223. PUBLIC CONFIDENCE IN ELECTIONS (=H 238). *TO RESTORE PUBLIC CONFIDENCE IN THE ELECTION PROCESS BY REQUIRING THAT ALL VOTING SYSTEMS PERMIT ALL VOTERS TO VERIFY THEIR VOTES ON PAPER; BY PROVIDING STATUTORY GUIDANCE AS TO COUNTING; BY PROVIDING CHECKS ON ELECTRONIC VOTING SYSTEM VENDORS, INCLUDING MULTIPARTY REVIEW OF SOURCE CODE, BY AUTHORIZING THE STATE BOARD OF ELECTIONS TO PROMOTE UNIFORMITY IN VOTING SYSTEMS BY STANDARDIZING PURCHASING OF VOTING SYSTEMS IN NORTH CAROLINA, BY EMPOWERING THE STATE BOARD OF ELECTIONS TO CONTROL THE TESTING AND SUPPORT OF VOTING SYSTEMS; BY REQUIRING POSTELECTION TESTING OF VOTING SYSTEMS, INCLUDING A PAPER SAMPLE-COUNT; BY EXPANDING THE RIGHT TO A HAND-TO-EYE RECOUNT OF PAPER BALLOTS; BY APPROPRIATING STATE FUNDS FOR VOTING SYSTEM ACQUISITION TO PREVENT IMPOSING UNFUNDED MANDATES UPON COUNTIES; AND BY APPROPRIATING FUNDS TO THE STATE BOARD OF ELECTIONS TO IMPLEMENT ITS EXPANDED DUTIES WITH REGARD TO VOTING SYSTEMS.* Identical to H 238, introduced 2/16/05.

Intro. by Kinnaird.

Ref. to Judiciary I   GS 163, APPROP

July 26, 2005

S 223. PUBLIC CONFIDENCE IN ELECTIONS. Intro. 2/28/05. Senate committee substitute makes the following changes to 1st edition.

Requirements for voting systems/request for proposal. Deletes proposed GS 163-165.9B. Amends GS 163-165.7 as follows. Requires that each voting system certified by State Board of Elections comply with request for proposal (RFP) requirements, generate a paper record or ballot of each individual vote cast so that voters may verify their votes, and provide a back-up means of counting the vote. Specifically authorizes the State Board to certify voting systems that include optical scan and direct record electronic (DRE) voting systems.

Revises RFP requirements to: (1) replace requirement that State Board require uniform features for each type of voting system with requirement that RFP include minimum specifications for voting systems and mandatory contract terms; (2) require that vendor post a bond or letter of credit for damages in addition to those resulting from the costs of a new election; (3) require that the paper record general by DRE voting systems be viewable by the voter and allow the voter to correct any discrepancies before the vote is cast; (4) require that all electronic voting systems generate a paper record and that the paper record be secured; and (5) require that vendor provide access to all information escrowed pursuant to GS 163-165.9A (was, source code information only), and that vendor agree to turn over its source code when vendor fails to repair or update software as required by agreement or if vendor files for bankruptcy. Requires that counties using systems acquired or updated before August 1, 2005, in the 2006 election and thereafter first verify that system complies with RFP requirements.

Clarifies that a county has 30 days from the time it receives notice of the State Board's decision (was, from date of decision) to decertify a system to appeal that decision. Completely rewrites proposed GS 163-165.7(c) to require that Board certify only those voting systems compliant with state and federal law and that State Board apply specific criteria listed in reviewing the vendor's source code, and to provide that any portion of the Board report containing information related to trade secrets is confidential and may be accessed only as provided in act. Amends GS 163-165.7(d) to add the following additional requirements for State Board voting system procedures: (1) enacts new (d)(9) to limit the review of vendor information placed in escrow to the governmental entities listed and to prohibit review of that information by the vendor's business competitor; and (2) enacts new (d)(10) to require that Board adopt rules to maintain the integrity of electronic vote counts and the paper record. Modifies proposed GS 163-165.7(e) to require that Board facilitate training and support of county voting systems (was, required that Board provide training and support). Specifies that changes apply to all voting systems used during any election in 2006 and thereafter.

Additional vendor obligations. Modifies proposed GS 163-165.9A to require that in addition to the source code, vendor must place in escrow all software relevant to the system's operation, a list of programmers that created the software, an affidavit confirming that the source code includes all relevant program statements, and any other items required by the State Board of Elections. Also adds requirement that vendors notify the State Board of Elections of any defect found in similar voting systems. Increases penalty for willful (was, willful and fraudulent) violation of section from a Class I to a Class G felony and establishes a civil penalty of up to $100,000 per violation.

Ballot sampling. Modifies proposed GS 163-182.1(b)(1) (ballot sampling for electronic voting systems) to require that in those elections where there is no statewide ballot item, the State Board of Elections establish a process for selecting district or local ballot items to adequately sample the electorate. Further revises GS 163-182.1(b)(1) and enacts new 163-182.2(6) (ballot counting) to provides that the hand-to-eye count will control if there is a material discrepancy between the electronic or mechanical count and the hand-to-eye count (was, if there is any discrepancy between counts), except where paper ballots have been lost or there is another reasonable basis to conclude that the hand-to-eye count is not the true count.

County obligations. Amends GS 163-132.5G to require that precinct returns also include votes cast by provisional ballot, to delete proposed amendment that would have required that data be reported by precinct no later than the 2008 election, and to delete provision providing for exemptions from deadline for data reporting by precinct for financial hardship and if county's election system cannot be programmed to provide that information. Requires that voting data be reported by precinct by March 1, 2007, for the 2006 general elections and by May 1, 2007, for the 2006 primary elections. Provides that voting system testing requirements under GS 163-165.9(a)(3) do not apply to a system acquired before January 1, 2008, as long as system is demonstrated in a public forum in county. Enacts new GS 163-165.9(b) to specifically require that the county board of elections comply with State Board requirements regarding training and support of voting systems.

Miscellaneous. Amends GS 163-166.7(c) to require that State Board adopt rules to prohibit the removal from the voting enclosure of paper records or copies of an individually voted ballot or other items that could compromise the integrity of the machine count or the paper record. Modifies proposed GS 163-182.7A to delete requirement that mail-in absentee ballots be considered a precinct. Effective July 1, 2005, appropriates from the General Fund to the State Board of Elections the recurring sum of $600,000 for 2005-06 and 2006-07 and the nonrecurring sum of $20 million for 2005-06 to implement act and deletes provisions indicating that funds will be appropriated for reimbursement of counties for post-election verification or any other hand-eye counting or recounting. Makes technical and conforming changes.

July 27, 2005

S 223. PUBLIC CONFIDENCE IN ELECTIONS. Intro. 2/28/05. Senate committee substitute makes the following changes to 2nd edition. Modifies proposed GS 163-165.9A(b) to clarify that the amount of a fine is in the discretion of the State Board of Elections and to provide that a fine is subject to the notice and collection provisions of GS 163-278.34(e). Deletes appropriations to State Board of Elections.

August 10, 2005

S 223. PUBLIC CONFIDENCE IN ELECTIONS. Intro. 2/28/05. House committee substitute makes the following changes to 3rd edition. Amends GS 163-165.7(a) to require that the State Board of Elections certify optical scan voting systems, optical scan with ballot markers voting systems, and direct record electronic voting systems if any of those systems meet all applicable requirements of federal and State law. Further amends section to clarify that a voting system vendor must post a bond or letter of credit to cover damages resulting from defects in the voting system (was, voting). Adds new Section 7.1 to provide that each county may receive the following grants from the Election Fund: (1) a grant of up to $12,000 per polling place and one-stop site, which may also include two backup units per county; and (2) a grant equal to $1 per voter in the

2004 presidential election but not less than $10,000 or more than $100,000, to be used for central administrative software tabulation.

August 11, 2005

S 223. PUBLIC CONFIDENCE IN ELECTIONS. Intro. 2/28/05. House amendment makes the following changes to 4th edition. Provides that counties shall (was, may) receive listed grants from the Election Fund.

August 29, 2005

SL 2005-323 (S 223). PUBLIC CONFIDENCE IN ELECTIONS. *AN ACT TO RESTORE PUBLIC CONFIDENCE IN THE ELECTION PROCESS BY REQUIRING THAT THE STATE BOARD OF ELECTIONS, THROUGH THE DEVELOPMENT OF A REQUEST FOR PROPOSAL, ENSURE THAT ALL VOTING SYSTEMS GENERATE EITHER A PAPER BALLOT OR A PAPER RECORD BY WHICH VOTERS MAY VERIFY THEIR VOTES BEFORE CASTING THEM AND WHICH PROVIDES A BACKUP MEANS OF COUNTING THE VOTE THAT THE VOTER CASTS; BY PROVIDING STATUTORY GUIDANCE AS TO COUNTING; BY STANDARDIZING PURCHASING OF VOTING SYSTEMS IN NORTH CAROLINA, INCLUDING A REVIEW OF SOURCE CODE FOR SOFTWARE RELATED TO THOSE VOTING SYSTEMS AND AUTHORIZATION TO ESTABLISH THE ROLE OF THE STATE BOARD OF ELECTIONS AND COUNTY BOARD OF ELECTIONS RELATED TO TRAINING AND SUPPORT OF VOTING SYSTEMS; BY REQUIRING POSTELECTION TESTING OF VOTING SYSTEMS, INCLUDING A PAPER SAMPLE-COUNT; BY EXPANDING THE RIGHT TO A HAND-TO-EYE RECOUNT OF PAPER BALLOTS; AND BY PERMITTING A PILOT PROGRAM TO EXPERIMENT WITH NONPAPER MEANS OF VOTER VERIFICATION AND BALLOT BACKUP.* Summarized in *Daily Bulletin* 2/28/05, 7/26/05, 7/27/05, 8/10/05, and 8/11/05. Enacted August 26, 2005. Requirement for testing a voting system in an election, as enacted in Section 4, does not apply to any voting system acquired before January 1, 2008, as long as the voting system is demonstrated in a public forum. Voting data by precinct shall be reported for the 2006 general elections by March 1, 2007, and for the 2006 primary elections by May 1, 2007. Remainder of act is effective August 26, 2005, except as otherwise provided.