

CHAPTER 09 - CONDUCT OF VOTE RECOUNTS BY COUNTY BOARDS OF ELECTIONS

08 NCAC 09 .0101	RECOUNTS TO FOLLOW CUSTOMARY PROCEDURES
08 NCAC 09 .0102	LOCATIONS OF RECOUNTS
08 NCAC 09 .0103	NOTICE OF RECOUNT
08 NCAC 09 .0104	OFFICIALS CONDUCTING RECOUNT
08 NCAC 09 .0105	CHALLENGE OF RECOUNT PROCEDURES

*History Note: Authority G.S. 163-179.1; 163-192.1;
ARRC Objection May 19, 1988;
Temporary Rule Eff. April 18, 1988 for a period of 136 days to expire on August 31, 1988;
Expired Eff. August 31, 1988;
Eff. October 1, 1988;
Temporary Repeal Eff. April 15, 2002;
Repealed Eff. August 1, 2004.*

08 NCAC 09 .0106 GENERAL GUIDELINES

- (a) Prior to each recount, the board of elections shall confer with affected parties and candidates and describe to them the process of conducting recounts.
- (b) In the case of tie votes, the winner shall be determined by lot only in the case set out in G.S. 163-182.8(2). Where there are 5,000 or fewer votes cast, there shall be only one determination by lot for each tied election. There shall be no determination by lot until the time has expired for the affected candidate(s) to request a recount, unless all of the affected candidate(s) waive their right in writing to request a recount.
- (c) During the conduct of recounts, in the cases where the board of elections must interpret the voter's choice, the following shall apply:
- (1) When it is impossible to determine a voter's choice for an office, the ballot shall not be counted for that office but shall be counted for all other offices;
 - (2) If a ballot is marked for more names than there are positions to be filled, it shall not be counted for that office but shall be counted for all other offices;
 - (3) If a ballot has been defaced or torn by a voter so that it is impossible to determine that voter's choice for one or more offices, it shall not be counted for such offices but shall be counted for all offices for which the voter's choice can be determined; and
 - (4) If a voter has done anything to a ballot other than mark it properly with pen or pencil, it shall be counted unless such action by the voter makes it impossible to determine the voter's choice.
- (d) The following shall apply in counting punch card ballots:
- (1) All of the candidates for whom the voter has indicated a preference shall be counted if the corresponding chad is completely punched out or hanging by one corner (showing that three of the four corners have been punched out); and
 - (2) If the chad has not been punched out or is not hanging by one corner, then the determination must be made if the voter has shown consistency in marking the ballot. If the voter has shown consistency in marking choices on the ballot - all of the candidates for whom the voter has indicated a preference shall be counted.
- (e) In conducting recounts of lever, direct record electronic, and any other types of voting machines that require a county board member or designated official to reprint tapes and to read the totals and another board member to record the totals for each candidate such recount shall be conducted by a bi-partisan team of four: two officials (one from each of the two parties having the largest number of registered voters in the state) reading and confirming the totals per machine and two officials (one from each of the two parties having the largest number of registered voters in the state) recording the results simultaneously.
- (f) In conducting hand to eye recounts or recounts of paper ballots, a bi-partisan team of four shall be used: two officials (one from each of the two parties in the State with the largest number of registered voters) to relay the results of each ballot with one person reading the ballot and the other official observing the ballot and the person reading the results of the ballot, and two officials (one from each of the two parties in the State with the largest number of registered voters) recording the tally of votes for each candidate on paper while stating aloud after each choice is read on the fifth tally for a particular candidate, the word "tally."
- (g) The county board of elections shall conduct recounts in two circumstances. In the first circumstance, the recount is mandatory under G.S. 163-182.7(b). In the second circumstance, the recount is not mandatory but the county board of

elections or the State Board of Elections determines, using its authority in G.S. 163-182.7(a), that in order to complete the canvass a recount is necessary.

(h) A candidate shall have the right to call for a hand-eye recount, as to elections conducted by optical scan marksense or punchcard systems, within 24 hours after a mandatory or discretionary recount or by noon on the next business day of the county board office, whichever is later, if the apparent winner is the apparent loser after the first recount, unless human error resulted in the vote count change.

(i) Any candidate shall have the right to file an election protest within 24 hours after a recount or by noon of the next business day of the county board office, whichever is later.

*History Note: Authority G.S. 163-22; 163-182.7;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004.*

08 NCAC 09 .0107 RECOUNT OF OPTICAL SCAN/MARKSENSE/PUNCHCARD BALLOTS

(a) How to conduct the first recount. In the first recount, all ballots that were originally counted by the optical scan equipment are to be counted again by the optical scan equipment producing another machine count. A "machine count" total is a ballot count produced by a voting system that uses machines. All ballots that were rejected for tabulation purposes by the machines - commonly called "outstacked" or center bin ballots - are to be recounted by hand and eye using the team of four guidelines outlined in 08 NCAC 09 .0106.

(b) The steps after the first recount. When the first recount, including absentee and provisional ballot recount totals, has been completed, the board of elections shall follow these steps:

- (1) The county board must determine whether the first recount produces a change in the winner;
- (2) If the apparent winner after the initial balloting is the apparent loser after the first recount, that candidate shall be entitled to demand a second recount, by hand and eye, of all ballots;
- (3) If the apparent winner after the initial balloting remains the apparent winner after the first recount, Subparagraph (4) of this Rule must be considered;
- (4) The county board must determine whether there is a discrepancy in the machine totals between the initial balloting and the first recount;
- (5) If the machine totals from the initial balloting and the first recount are the same, no second recount is necessary;
- (6) If the machine totals from the initial balloting and the first recount are not the same, Subparagraph (b)(7) of this Rule must be considered;
- (7) The county board must determine whether the discrepancy in the machine total can be reconciled;
- (8) The county board shall determine if the discrepancy in the machine total between the initial balloting and the first recount can be explained. The county board shall examine the outstack/center bin ballots from the first recount, determine how they should be counted, and reconcile the count with the machine count on the initial balloting. If this reconciliation produces the same machine total for the first recount as the machine total in the initial balloting, no second recount is necessary; and
- (9) If the reconciliation produces a different machine total for the first recount than the machine total in the initial balloting, the losing candidate is entitled to demand a second recount, by hand and eye, of all ballots.

*History Note: Authority G.S. 163-22; 163-182.7;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004.*

08 NCAC 09 .0108 DIRECT RECORD ELECTRONIC AND LEVER (DIRECT RECORD MECHANICAL) VOTING MACHINES

(a) In the first recount, all votes cast on each unit shall be retabulated and results provided. The results provided shall be re-read using the team of four rules outlined in Section I of these Rules.

(b) When the first recount has been completed, the board of elections shall follow these steps:

- (1) The county board must determine whether the first recount produces a change in the winner;
- (2) If the apparent winner after the initial balloting is the apparent loser after the first recount, that candidate shall be entitled to demand a second recount;

- (3) If the apparent winner after the initial balloting remains the apparent winner after the first recount, Subparagraph (b)(4) of this Rule must be considered;
- (4) The county board must determine whether there is a discrepancy in the machine totals between the initial balloting and the first recount;
- (5) If the unit totals from the initial balloting and the first recount are the same, no second recount is necessary;
- (6) If the unit totals from the initial balloting and the first recount are not the same, Subparagraph (b)(7) of this Rule must be considered;
- (7) The county board must determine whether the discrepancy in the machine total can be reconciled;
- (8) The county board shall determine if the discrepancy in the unit totals between the initial balloting and the first recount can be explained. (Possible acceptable explanations may include problems with the setup of the ballot, problems with the software or other unit malfunction); and
- (9) If the reconciliation produces a different unit total for the first recount than the unit total in the initial balloting, the losing candidate is entitled to demand a second recount provided by the county board of elections.

(c) A manual recount, by hand and eye, of ballots is not possible whenever a lever machine or direct record electronic voting machine error occurs.

(d) The State Board of Elections shall hear any appeals of recount protests.

*History Note: Authority G.S. 163-22; 163-182.7;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004.*

08 NCAC 09 .0109 MANUAL HAND TO EYE RECOUNTS

Mandatory recounts, as set out in G.S. 163-182.7, by hand-eye optical scan/marksense/punchcard voting shall be conducted as follows: If a sample of the precincts of the voting units in question were recounted by hand-eye and produced results with that of the mandatory recount in those precincts such that one could reliably assume that any problems with scanning equipment was confined to those precincts in which there was a difference that could not be reconciled in the totals between the original count and the mandatory recount, then:

- (1) The mandatory recount by hand-eye initially shall occur in only 10 percent of the voting jurisdiction's precincts.
- (2) Those precincts shall include all those precincts in which a different total was produced by the machine-read count of ballots for the first count, including the outstacked/center bin, and the mandatory recount, as well as a sufficient number of additional precincts to constitute a total of at least 10 percent of the precincts of the voting jurisdiction.
- (3) However, in any event, at least five percent of the voting jurisdiction's precincts included in the sample shall have experienced the same count for machine-read ballots, including the outstacked/center bin, in the original count, and in the mandatory recount.
- (4) The precincts included in the sample which had the same machine-read count in the original and mandatory recount shall be chosen by random draw by lot from a container held by the Chair of the county board of elections, with all precincts which did not experience a difference in count by number being placed into the container, with the candidate whom appears to have been the loser after the mandatory recount drawing said lots.
- (5) If the hand-eye recount of those precincts which did not experience a difference in count from the original count and the mandatory recount results in a different total from that produced on the previous counts, in any precinct, then upon request of the apparent losing candidate, all precincts for that race shall be recounted by hand-eye.
- (6) After two machine count of votes (including the initial election or primary night count), any recount conducted in cases involving optical scan marksense and punchcard voting equipment shall be a manual hand-eye recount.

*History Note: Authority G.S. 163-22; 163-182.7;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004.*

