



STATE BOARD OF ELECTIONS
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Executive Director

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November 28, 2012

MEMORANDUM 2012-30

TO: County Boards of Elections
FROM: Gary O. Bartlett
SUBJECT: Second Recount, Hand-to-Eye in Sample Precincts

A timely, formal request for a hand-to-eye recount in State Senate District One has been received. Pursuant to GS 163-182.7A (a) "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...demand a second recount on a hand-to-eye basis 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...[E]ach one-stop (early) voting site shall be considered to be a precinct. The precincts to be recounted...shall be chosen at random within each county."

The dates for the second recount, hand-to-eye will be Monday, December 3 and Tuesday, December 4, 2012. If requested for cause, approval will be considered for the date to be Friday, November 30, 2012. The official results should be immediately transmitted to this office in accordance with procedures for reporting results. After receipt of official hand-to-eye recount totals, the State Board will meet to determine whether a complete hand-to-eye recount should be ordered or to certify the election.

The directors of the county boards of elections in State Senate District One shall provide notice of the date, time and location for the random selection of precinct(s) to be manually recounted and the conduct of the recount. Contact information for those to whom notice must be given in addition to your normal meeting notices is as follows:

Counsel for Candidate Cook: Michael.McKnight@ogletreedeakins.com or
fax (919) 783-9412, telephone (919) 789-3159

Counsel for Candidate White: JRWallace@WallaceNordan.com or
fax (919) 782-8113, telephone (919) 782-9322

State Board of Elections: sherwood.brantley@ncsbe.gov

Both the selection of the precincts at random and the hand-to-eye recount should occur on the same date. At the beginning of the meeting, provide evidence of the inclusion of slips for each precinct and one-stop

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absentee voting site in the county in an appropriate container (box, hat, jar, etc.), mix the contents of the container, and have someone in attendance (other than the director of elections or someone affiliated with either candidate) randomly select the required number of precincts to be manually recounted.

Each county listed below must submit to this office the number of precinct(s), including one-stop voting sites, to be recounted:

Beaufort
Camden
Currituck
Dare

Gates
Hyde
Pasquotank
Perquimans

Directors of elections should not be part of the recounting process, but should manage the process. See 8 NCAC Chapter 9.0106 (e) and (f) for guidelines for manual recounts using teams of four, with two representatives from each party. If the counting teams are unable to agree on the counting of a particular ballot due to irregular markings, the ballot shall be examined by the county board of elections for determination of voter intent. *What Constitutes a Vote* will control and a copy is attached for your convenience.

State of North Carolina

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**Gary O. Bartlett
Executive Director**

**Standards for Determining What Constitutes a Vote
And What Will Be Counted As a Vote
Pursuant to 42 U.S.C. § 15481(a)(6) & N.C.G.S. § 163-182.1(b)**

Introduction

Pursuant to Section 301 (a)(6) of the Help America Vote Act of 2002, codified as 42 U.S.C. § 15481(a)(6), and N.C.G.S. § 163-182.1(b), the State Board of Elections has developed these standards and procedures to define what is a vote and when that vote should be counted in circumstances in which voting systems are unable to determine the voter's intent with respect to a marked ballot. This could occur if a voter uses an improper marking instrument, marks in an inappropriate manner, places marks in the wrong location on the ballot, or otherwise acts in a manner that causes the voter's ballot to be unreadable by the voting system for which the ballot was designed.

North Carolina has certified the following voting systems for use in all elections conducted in the State:

Optical Scan	Direct Record Electronic	Other Devices
M100	iVotronic	AutoMark
M650	ADA iVotronic	

Ballot marking instructions are provided for each ballot (GS 163-165.5(6)). Optical scan ballots should be marked according to the instructions provided for the ballot using a black ball point pen or marking device provided at the polling place to fill in the oval (●) next to the candidate for whom the voter wishes to vote. Direct record electronic (DRE) voting systems do not allow irregularly marked ballots. The voter should follow instructions on the voting equipment to ensure the vote is cast and receive the confirmation "Your ballot has been cast. Thank you for voting." However, when a voter's choice cannot be tabulated by the voting equipment, the principles and rules for counting official ballots as contained in GS 163-182.1, -182.2 and 8 NCAC 6B.0105 shall apply.

These standards for determining what constitutes a vote are not intended to replace or supercede federal or state statutes or the North Carolina Administrative Code but are to clarify and refine the process to be used by county boards of elections in exercising their quasi-judicial authority to determine a voter's intent in casting a vote. These standards are to be construed and applied consistently with State and Federal law.

Definitions

The following are definitions intended to be construed consistently with state and federal law.

Absentee Ballot A ballot issued to a voter qualified to vote in the election at a time other than Election Day.

Ballot	As defined in N.C.G.S. § 163-165(1), “ ‘[b]allot’ means an instrument on which a voter indicates a choice so that it may be recorded as a vote for a certain candidate or for or against a referendum proposal. The term ‘ballot’ may include a paper ballot to be counted by hand, a paper ballot to be counted on an electronic scanner, . . . the image on a direct record electronic unit, or a ballot used on any other system.”
Blank Ballot	A ballot containing no marks in any voting position target area readable by the ballot scanner, or one that has been marked with an unreadable marker, or one that has been consistently marked so that it is unreadable by the ballot scanner.
Candidate	A person seeking nomination or election to a specified office that has met the legal requirements for the person’s name to be printed on the ballot or counted as a write-in candidate.
Hand Count	To visually examine the ballot to determine the choices by the voter and to manually tally the choices by contest or referendum.
Overvote	A voter marks more choices than the number of positions allowed in the contest. Note: Direct Record Electronic (DRE) voting systems do not allow an overvote.
Paper Trail	The paper record generated by the voting system of each individual vote cast.
Rejected ballot	A ballot that has been damaged in a way that prohibits the scanner from reading the choices marked by the voter.
Traditional Paper ballot	A paper ballot to be counted by hand that is not readable by a voting system tabulator.
Undervote	A voter marks fewer choices than the number of positions allowed in the contest.
Vote	A choice for a candidate or a referendum proposal.
Voter Intent	A scanner or other counting machine is unable to determine the voter’s choice on an official ballot, but human counters can clearly determine the voter’s choice and hand count the official ballot.

General Standards

Only official ballots shall be counted according to the principles and rules contained in GS163-182.1. These principles include, but are not limited to, determining the voter's intent, counting all ballot items in which the voter's intent can be determined, and not rejecting an official ballot because of technical errors in the marking unless it is impossible to clearly determine the voter's intent. If a voter's intent can be determined, it shall be considered to be a valid vote.

If a voter has done anything other than to mark the ballot properly according to ballot marking instructions provided, the ballot shall be counted unless it is impossible to determine the voter's intent. If the voter has shown consistency in marking choices on the ballot, then those choices of the voter shall be counted, but shall not be counted if it results in an overvote. (GS 163-182.1 and 8 NCAC 6B.0105)

Write-In Votes

Write-in votes shall be counted pursuant to the provisions of GS 163-182.1(6) and GS 163-123 (f). A reasonable spelling of a qualified write-in candidate's name shall be counted.

Provisional Ballots

Provisional ballots shall be counted pursuant to the provisions of GS 163-166 and 8 NCAC 6B.0105(e).

Absentee Ballots

Absentee ballots shall be counted pursuant to the principles and rules contained in GS 163-182.1. Before counting an absentee ballot it shall be determined that the absentee ballot application and container return envelope were timely received, properly executed and contain requisite signatures. County boards of elections will determine the validity of an absentee ballot received in an unsealed container-return envelope.

If it is determined there are insufficient signatures on the absentee application or container return envelope, the county board of elections shall make a good faith attempt to contact the absentee voter applicant to notify the absentee voter of the insufficiency and provide opportunity for remedy the absentee voter before the absentee voting period closes and shall post a list of the defective absentee applications or container return envelopes which the political parties, candidates and public may view. If the absentee voter fails to remedy the imperfection by 5:00 p.m. on the day before election day the voter may appear at the polling place on election day and, if otherwise qualified, shall be allowed to vote using the voting equipment.

Abandoned Ballot

If a voter leaves the voting enclosure without finalizing the act of voting as required by the voting system, the precinct officials shall follow the procedure contained in 8 NCAC 10B.0104 (f).

Standards for Determining a Vote that Shall be Counted

The following standards should be applied for manual hand to eye counts or recounts:

Only official ballots shall be counted following the principles and rules contained in GS163-182.1.

If a voter has done anything other than mark the ballot properly according to ballot marking instructions provided, the ballot shall be counted according to the voter's indicated intent unless it is impossible to determine the voter's intent. If the voter has shown consistency in marking choices on the ballot, then those choices of the voter shall be counted, but it shall not be counted if it results in an overvote. (GS 163-182.1 and 8 NCAC 6B.0105). Marks indicating voter intent shall include, but not be limited to, circling the candidate's name or voting target area, strike-outs or corrections of choices, or writing in the candidate's name but failing to mark the voting target area.

Standards for Determining an Invalid Vote

If a voter uses random markings without a distinctive or consistent voting pattern so that the voter's choice cannot be determined, the vote will be considered invalid.

If the voter writes in a name that is unrecognizable, illegible, or not a real person, the vote will be considered invalid.

Note: Direct Record Electronic (DRE) voting systems do not allow an invalid vote except in write-in races.