

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Repealed Eff.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 under G.S. 163-182.7, the county board of elections or State Board shall inform the political parties and candidates of the recount 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, ballots shall be counted in accordance with the principles in G.S. 163-182.1(a).
- (d) In conducting recounts of direct record electronic machines 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.
- (e) 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."
- (f) The county board of elections shall conduct recounts only as follows:
- (1) the recount is mandatory under G.S. 163-182.7(b) or (c); or
 - (2) 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.
- (g) A candidate shall have the right to call for a hand-eye recount, as to elections conducted by optical scan 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.
- (h) 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;
Readopted Eff. June 1, 2019.

08 NCAC 09 .0107 RECOUNT OF OPTICAL SCAN BALLOTS

(a) In the first recount conducted by the county board of elections in accordance with G.S. 163-182.7, all ballots that were originally counted by the optical scan equipment shall 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 - shall be recounted by a bi-partisan team of four in accordance with 08 NCAC 09. 0106(f).

(b) When the first recount, including absentee and provisional ballot recount totals, has been completed, the board of elections shall determine if a second recount is necessary as follows:

- (1) Determine whether the first recount produces a change in the winner in accordance with the following:
 - (A) 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; and
 - (B) If the apparent winner after the initial balloting remains the apparent winner after the first recount, the county board shall proceed according to Subparagraph (2) of this Paragraph;
- (2) Determine whether there is a discrepancy in the machine totals between the initial balloting and the first recount in accordance with the following:
 - (A) If the machine totals from the initial balloting and the first recount are the same, no second recount is necessary; and
 - (B) If the machine totals from the initial balloting and the first recount are not the same, the county board shall proceed according to Subparagraph (3) of this Paragraph;
- (3) Determine if the discrepancy in the machine total between the initial balloting and the first recount can be reconciled. The county board shall examine all outstacked or center bin ballots from the first recount, determine how each ballot shall be counted according to Rule .0106(c) of this Section, and reconcile the count with the machine count on the initial balloting in accordance with the following:
 - (A) 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
 - (B) 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-to-eye, of all ballots.

History Note: Authority G.S. 163-22; 163-182.7;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004;
Readopted Eff. June 1, 2019.

08 NCAC 09 .0108 RECOUNT OF DIRECT RECORD ELECTRONIC VOTING MACHINES

(a) In the first recount conducted by the county board of elections in accordance with G.S. 163-182.7, all votes cast on each direct record electronic voting machine shall be retabulated and results provided. The results provided shall be re-read using the team of four rules outlined in Rule .0106(e) of this Section.

(b) When the first recount has been completed, the board of elections shall proceed in accordance with the following in order to determine if a second recount is necessary:

- (1) Determine whether the first recount produces a change in the winner;
 - (A) 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; and
 - (B) If the apparent winner after the initial balloting remains the apparent winner after the first recount, the county board shall proceed in accordance with Subparagraph (2) of this Paragraph;
- (2) Determine whether there is a discrepancy in the machine totals between the initial balloting and the first recount in accordance with the following:
 - (A) If the unit totals from the initial balloting and the first recount are the same, no second recount is necessary; and
 - (B) If the unit totals from the initial balloting and the first recount are not the same, the county board shall proceed to the step in Subparagraph (3) of this Paragraph;
- (3) 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.

- (4) Determine if the discrepancy in the machine total between the initial balloting and the first recount can be reconciled in accordance with the following:
 - (A) If the reconciliation produces the same unit total for the first recount as the unit total in the initial balloting, no second recount is necessary; and
 - (B) 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 by the county board of elections.
- (c) The second recount shall be a manual recount, by hand-to-eye, unless, due to a voting machine error, no second recount is possible.

History Note: Authority G.S. 163-22; 163-182.7;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004;
Readopted Eff. June 1, 2019.

08 NCAC 09 .0109 MANUAL HAND TO EYE RECOUNTS

History Note: Authority G.S. 163-22; 163-182.7;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004;
RRC Objection August 16, 2018 and rule returned to agency on June 1, 2019.