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CH. 11 CANVASS, VOTE TABULATION &
DECLARATION OF RESULTS**

**CHAPTER 11
CANVASS, VOTE TABULATION & DECLARATION OF RESULTS**

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NOTE: Chapter 11 as found in the 1970 Edition of the Government Code of Guam has been repealed and re-enacted by P.L. 11-209. Subsequent amendments have been made.

§ 11101. Application of Chapter.

Unless otherwise indicated, the provisions of this Chapter shall apply to all elections held in the territory of Guam.

SOURCE: GC § 2500, as reenacted by P.L. 11-209.

§ 11102. Officers Present at Close of Polls.

All the members of the precinct boards shall be present at the closing of the polls.

SOURCE: GC § 2501, as reenacted by P.L. 11-209.

§ 11103. Opening Boxes and Counting Ballots.

[Repealed.]

SOURCE: GC § 2502, as reenacted by P.L. 11-209 and amended by P.L. 12-149. Repealed by P.L. 25-148:9.

§ 11104. Two Ballots in One Envelope.

If a precinct board finds two (2) or more separate ballots contained in one (1) envelope, it shall lay them aside until the count of the ballot is complete. If upon comparison of the count with the number of voters on the roster, it appears that two (2) ballots were cast by one (1) voter, the precinct board shall reject them.

SOURCE: GC § 2503, as reenacted by P.L. 11-209.

§ 11105. Ballots Exceeding Number on Roster.

If the ballots in the box exceed in number the names on the roster, one (1) of the members of the precinct board shall, while being observed by the other precinct board members and without looking into the box, draw out singly and destroy a number of the ballots equal to such excess. The

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precinct board shall make a record upon the roster of the number of ballots so drawn and destroyed.

SOURCE: GC § 2504, as reenacted by P.L. 11-209. Amended by P.L. 25-148:11.

§ 11106. Signing Roster.

The number of ballots agreeing or made thus to agree with the number of names on the roster, the persons counting the ballots shall sign the roster. The clerks shall attest the roster. The precinct board shall set down in words and figures at the foot of the roster, and over the signature of the ballot counters and attestation of the clerks the number of names on the roster.

SOURCE: GC § 2505, as reenacted by P.L. 11-209.

§ 11107. Rejected Illegal Ballots.

A majority of the precinct board shall endorse upon all ballots rejected for illegality the cause of rejection and sign the endorsement.

SOURCE: GC § 2506, as reenacted by P.L. 11-209.

§ 11108. Delivery of Ballots to Election Center.

The locked ballot box, accompanied by the roster and all endorsements and rejected ballots shall be brought to the election center for tabulation. Representatives of the political parties are authorized to accompany the locked ballot box and other materials from the precinct to the election center.

SOURCE: GC § 2507, as reenacted by P.L. 11-209 and amended by P.L. 12-149. Amended by P.L. 25-148:12.

§ 11109. Election Return Center.

The Commission shall maintain within the territory of Guam an election return center for the tabulation of votes and publication of returns.

SOURCE: GC § 2508, as reenacted by P.L. 11-209 and amended by P.L. 12-149.

§ 11110. Vote Tabulating Device: Mode of Tallying.

The Commission may appoint such persons as may be necessary for the manual tabulation of ballots and/or for the operation of the vote tabulating device and to keep watch on such tabulation for any possible illegal vote or any error or omission on the part of the persons tabulating the ballots or operating the vote tabulating device.

SOURCE: GC § 2509, as amended by P.L. 15-115:2.

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NOTE: § 2510 was repealed by P.L. 15-115:3.

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§ 11110.1. Tabulating at Precincts.

Notwithstanding any other provision of law, the Guam Election Commission may authorize ballots to be tabulated at the precincts. Tabulating of ballots by the precinct board shall be a cross-check of the tabulating of ballots by the Election Commission at the election return center.

SOURCE: Added by P.L. 18-040:35

§ 11111. Imperfectly Marked Ballots Void.

At any election, any ballot which is not marked as provided by law shall be void; but the ballot shall be preserved. Two (2) or more markings in one (1) voting square or a mark made partly within and partly without a voting square or space does not make a ballot void.

SOURCE: GC § 2511, as reenacted by P.L. 11-209.

§ 11112. Defective Ballots.

If a ballot is torn, bent, mutilated or otherwise defective so that it cannot be so tabulated by vote tabulating machine, the Commission may cause a duplicate to be punched, slotted or otherwise marked in the presence of witnesses. Both the new ballot and the defective ballot shall be marked with a serial number and the new ballot shall bear the words "duplicate - serial number _____".

SOURCE: GC § 2512, as reenacted by P.L. 11-209.

§ 11113. Ballot Not Rejected for Technical Error.

At any election a ballot shall not be rejected for any technical error which does not render it impossible to determine the voter's choice, even though the ballot is somewhat soiled or defaced.

SOURCE: GC § 2513, as reenacted by P.L. 11-209.

§ 11114. Ballot, Invalid Portions Rejected; Blank Ballots and Improperly Marked Ballots are Not 'Votes Cast' for Calculating a Majority.

If a voter indicates either:

(a) by placing the voter's marks in the voting ovals or other spaces adjacent to the names of any candidates or nominees;

(b) by writing the names of persons for an office in the blank spaces, or

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(c) by a combination of both, the choice of more than there are candidates or nominees to be elected or certified for any office, or if for any reason it is impossible to determine the voter's choice for any office, the voter's ballot shall not be counted for that office, but the rest of the voter's ballot, if properly marked, shall be counted. A ballot that is blank, or that is marked with more candidates or nominees than are to be nominated or elected, is not to be included as a part of the base for determining what constitutes a majority in each election requiring a candidate or nominee to garner a majority of votes in order to be nominated or elected.

SOURCE: GC § 2514, as reenacted by P.L. 11-209; amended by P.L. 12-149. Amended by P.L. 25-146:46.

COURT DECISIONS: The wording of this Section was amended to reflect the holding in *Gutierrez v. Ada*, U.S. Supreme Court, reversing District Court of Guam and 9th Circuit Court of Appeals by a unanimous decision. 000 U.S. 99-51 (2000).

§ 11115. Write-in Votes.

If the write-in voting square is marked, a write-in vote shall be counted for the office under which it is marked. If the total number of write-in votes counted for an office could change the results as to the person having the largest number of votes for that office, the names appearing next to the marked write-in voting squares for that office shall be tabulated and published. Otherwise, only the total number of write-in voting squares marked shall be tabulated and published.

SOURCE: GC § 2515, as reenacted by P.L. 11-209; amended by P.L. 12-149. R/R by P.L. 22-109:8 (04/01/94).

§ 11116. Unauthorized Marks on Ballot.

No mark upon a ballot which is unauthorized by this Title invalidates a ballot, unless it appears that the mark was placed there by the voter for the purpose of identifying the ballot.

SOURCE: GC § 2516, as reenacted by P.L. 11-209.

§ 11117. Adding to Ballots in Box.

Every person who changes any ballot after it has been deposited in the ballot box, or adds, or attempts to add, any ballot to those legally polled at any election, by fraudulent introduction of a ballot into the ballot box either before or after the ballots have been counted is guilty of a felony.

SOURCE: GC § 2517, as reenacted by P.L. 11-209.

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§ 11118. Adding Ballots During Count.

Every person who adds to, or mixes with or attempts to add to or mix with, the ballots lawfully polled, any other ballots with intent to change the result of an election is guilty of a felony.

SOURCE: GC § 2518, as reenacted by P.L. 11-209.

§ 11119. Taking or Destroying Ballots.

Every person who carries away or destroys, or attempts to carry away or destroy, any poll list or ballot, or ballot box for the purpose of preventing, affecting the result of or invalidating any election, or wilfully detains, mutilates or destroys any election return, is guilty of a felony.

SOURCE: GC § 2519, as reenacted by P.L. 11-209.

§ 11120. Same: Interference With Board, Commission or Voters.

Every person who in any manner so interferes with the Commission or the precinct board or any members thereof, holding an election or conducting a canvass, or with the voters lawfully exercising their right of voting at an election, as to prevent or attempt to prevent the election or canvass from being fairly held and lawfully conducted, is guilty of a felony.

SOURCE: GC § 2520, as reenacted by P.L. 11-209.

§ 11121. Removing or Defacing Results Posted.

Every person who removes or defaces any posted copy of the result of votes cast is guilty of a misdemeanor.

SOURCE: GC § 2521, as reenacted by P.L. 11-209.

§ 11122. Sealing and Reviewing Counted Ballots.

As soon as the valid votes marked on the ballots are tabulated and the Commission is satisfied as to the accuracy of the tabulation, such ballots shall not thereafter be examined by any person, except upon a recount as provided in this Chapter; and as further provided by this Section, but shall be carefully sealed in a strong envelope with the name of the precinct thereon, and a majority of the members of the Commission shall write their names across the seal.

The Commission may not earlier than thirty (30) days from the date that the elections results are certified and provided that no election contest is pending resolution, unseal the ballot envelope to extract statistical data of which data will be made available to the general public. Upon the

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completion of the extraction, the ballot envelope shall be resealed and the Commission seal and date shall be affixed across the seal portion

SOURCE: GC § 2522, as reenacted by P.L. 11-209. Amended by P.L. 25-146:47.

§ 11123. Certification of Election.

As soon as all the votes for such precinct are counted and the ballots sealed, the Election Commission shall certify the results of the election in that precinct. The final certification shall be signed by a majority of the Commission.

SOURCE: GC § 2523, as reenacted by P.L. 11-209.

§ 11124. Delivery of Certification of Election to Precincts.

As soon as the Election Commission certifies the results of the election in a precinct, it shall cause to be posted on the outside of the polling place in such precinct a certificate showing the results of the votes cast in that precinct. The precinct certificates shall be signed by a majority of the members of the Election Commission.

SOURCE: GC § 2524, as reenacted by P.L. 11-209.

§ 11125. Disregard of Technical Error.

No list, tally, paper or certificate return from any election shall be set aside or rejected for want of form, nor because it is not strictly in accordance with the directions of this Title, if it can be satisfactorily understood.

SOURCE: GC § 2525, as reenacted by P.L. 11-209.

§ 11126. Tabulation and Publication of Election Results.

Upon tabulation of each of the precinct votes, the Commission shall tabulate or cause to be tabulated the cumulative results and make these results known to the public.

SOURCE: GC § 2526 GC reenacted by P.L. 11-209.

§ 11127. Returns Open to Public Inspection.

Immediately upon completion of the tabulation by the Commission of all of the ballots from all of the precincts, the election results shall be declared opened for public inspection.

SOURCE: GC § 2527, as reenacted by P.L. 11-209.

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§ 11128. Election Center Open Until Tabulation Complete.

The Commission shall, on the day of the closing of the polls, keep the election return center open for the tabulation of election results, until each and every ballot has been received and tabulated and the results thereof made public.

SOURCE: GC § 2528, as reenacted by P.L. 11-209.

§ 11129. Clerical Assistance and Expenses.

The Commission may provide for all the necessary clerical assistance and other expenses, including the transportation of precinct boards between their respective precincts and the election return center.

SOURCE: GC § 2529, as reenacted by P.L. 11-209.

§ 11130. Incomplete or Ambiguous Precinct Forms.

If the rosters, certificates or other forms from any precinct are incomplete or ambiguous, or not properly authenticated, or are otherwise defective, the Commission, by a majority vote, may order issued and served subpoenas requiring the attendance of such persons and records before the Commission.

SOURCE: GC § 2530, as reenacted by P.L. 11-209. Amended by P.L. 25-146:48.

§ 11131. Same: Correction or Completion.

The Commission may require a precinct board to correct or complete its rosters, certificates or other forms or its authentications thereof, so that they show correctly any information required thereon.

SOURCE: GC § 2531, as reenacted by P.L. 11-209.

§ 11132. Declaration of Results.

Immediately after completion of the tabulation of all election results, the Commission shall declare elected to each office the person having the largest number of votes for that office.

SOURCE: GC § 2532, as reenacted by P.L. 11-209.

§ 11133. Certificate of Election.

Immediately after declaring the results of any election, the Commission shall make, or cause to be made, 'certificates of election' for every person elected to office. The form of such certificates shall be prescribed in the Election Manual. The Commission shall cause to be placed

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in the hands of the elected person the original certificate which shall constitute evidence of the person's right to office. The Election Commission shall preserve a copy of such certificate for a period of ten (10) years.

SOURCE: GC § 2533, as reenacted by P.L. 11-209. Amended by P.L. 25-146:69.

§ 11133.1. Death of Candidate After Certification.

Except in the case of the office of the Governor or Lieutenant Governor, in the event that a candidate dies after he or she has been certified as elected and prior to the commencement of his or her term, the Commission shall certify as elected the person who received the next highest number of votes in that election. If no other person had fewer votes than the candidate whose election was certified, the vacancy shall be filled as otherwise provided by law. In the case of a person who has been certified as being elected Governor or Lieutenant Governor and who dies prior to the commencement of his or her term, the vacancy shall be filled as provided by law.

SOURCE: Added by P.L. 22-109:13 (04/01/94).

§ 11134. Special Provision for Presidential Election.

In those years when the ballot contains the names of candidates for President and Vice-President of the United States, the Commission shall declare the results of said election and shall, by written direction, order the chairman of the Election Commission to act as the elector for the territory of Guam as such term is used in Article II, Section 1 of the United States Constitution, to cast his ballot for the candidates for President and Vice-President receiving the highest number of votes and to transmit said results to the President of the Senate of the United States.

SOURCE: GC § 2533.1, added by P.L. 15-49:2 (07/04/79).

§ 11135. Recount.

If the tabulation of the Commission indicates, in its opinion, a close vote, the Commission shall conduct a recount of the votes. At the end of the recount all ballots shall be returned to the precinct envelopes resealed with the majority of the Commission writing their name across the seal. The result of the recount shall immediately be made public as a recount.

SOURCE: GC § 2534, as reenacted by P.L. 11-209.

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§ 11136. Review of Ballots.

The Commission shall not review any ballots except as permitted on a recount.

SOURCE: GC § 2535, reenacted by P.L. 11-209.

§ 11137. Entry of Results on Record.

Immediately upon the completion of the tabulation of all ballots, the Commission shall enter on its record a statement of the result, which will show:

(a) The total number of votes cast in the territory;

(b) The names of the persons voted for; except as provided for Write-in Votes in § 11115;

(c) For what office each person was voted for, except as provided for Write-in Votes in § 11115.”

SOURCE: GC § 2536, as reenacted by P.L. 11-209. Amended by P.L. 22-109:9 (04/01/94).

§ 11138. Same: Disregard of Technical Errors.

No declaration of the result may be withheld on account of any defect or informality if it can with reasonable certainty be ascertained what office is intended and who is elected to the office.

SOURCE: GC § 2537, as reenacted by P.L. 11-209.

§ 11139. Preservation of Ballots.

The Commission shall be responsible for the preservation of all the ballots cast and all rosters and certificates delivered to it by the precinct boards for a period of five (5) years after the date of the election. The Commission shall be required to produce such ballots upon the order of a court of competent jurisdiction, and shall obtain a receipt for any release from its custody.

SOURCE: GC § 2538, as reenacted by P.L. 11-209.
