

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: State Board of Elections

RULE CITATION: 08 NCAC 21 .0201

DEADLINE FOR RECEIPT: January 10, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Page 1, Lines 10: What does the Board mean by "maintained"? Must the bank depository be a repository licensed in North Carolina? Must the treasurer's books remain in North Carolina?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: December 21, 2022

1 08 NCAC 21 .0201 is amended as published in 37:04 NCR 313-314 as follows:

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3 **SECTION .0200 – ~~NONCOMPLIANCE~~ POLITICAL COMMITTEES AND REFERENDUM**
4 **COMMITTEES**

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6 **08 NCAC 21 .0201 ~~PROCEDURES FOR POLITICAL AND REFERENDUM COMMITTEES~~**
7 **COMMITTEE ACCOUNTS**

8 (a) All bank accounts, safety deposit boxes, and other depositories utilized by political committees and referendum
9 committees listed on the statement of organization as required by G.S. 163-278.7(b)(8) or G.S. 163-278.8(b) must be
10 maintained in North Carolina.

11 ~~(b) Whenever a political committee or referendum committee fails to file with the State Board any report required to~~
12 ~~be filed under the provisions of Article 22A of Chapter 163, the Board, by certified mail, shall issue a formal Notice~~
13 ~~of Noncompliance to the political treasurer of the committee and shall order that the report be filed within 30 days of~~
14 ~~issuance. In the event the committee does not file its report within 30 days of the issuance of the Notice of~~
15 ~~Noncompliance, the Board by certified mail shall issue a Notice of Termination of Active Status, which shall render~~
16 ~~the committee ineligible to receive or make contributions until such time as it has filed the delinquent report and has~~
17 ~~satisfied any statutory penalty incurred pursuant to G.S. 163-278.34.~~

18 *History Note: Authority G.S. 163-278.7; 163-278.8; 163-278.21. ~~163-278.21; 163-278.23; 163-278.27; 163-~~*
19 *~~278.34~~*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: State Board of Elections

RULE CITATION: 08 NCAC 21 .0206

DEADLINE FOR RECEIPT:

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Page 1, Lines 6-7: Is there any adopted criteria upon which the Board will determine “good cause”? Or is “good cause” completely subjective?

Page 1, Line 17 – 18: “An email is considered filed if received by 11:59 pm”? While this may not be worthy of an objection, it is incomplete.

Page 1, Lines 21-24: The last two sentences of the Rule appear incongruent. As written the Board can re-consider the denial of the initial waiver request; however, that reconsideration would not impact the “new penalty assessment”. Is that the intention?

Page 1, Line 23: Is there any adopted criteria upon which the Board will determine whether “mitigating factors” exist?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: December 21, 2022

1 08 NCAC 21 .0206 is adopted with changes as published in 37:04 NCR 313-314 as follows:

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3 **08 NCAC 21 .0206 REQUESTING A WAIVER OF A CIVIL LATE PENALTY**

4 (a) A political committee, referendum committee, individual, or entity requesting a waiver of a civil late penalty under
5 G.S. 163-278.34(a) shall complete and file the form available on the State Board's website within 60 days of service
6 of the notice of penalty assessment. The form shall be signed and notarized, and set forth any facts or circumstances
7 that support good cause for a waiver of the penalty.

8 (b) Waiver requests shall be filed with the State Board using one of the following methods:

9 (1) Hand-delivery during regular business hours to the State Board's offices.

10 (2) United States Postal Service to the mailing address listed on the State Board's website.

11 (3) Delivery service authorized by G.S. 1A-1, Rule 4 to the physical address published on the State
12 Board's website.

13 (3) Email to campaign.reporting@ncsbe.gov so long as the original signed copy is retained by the
14 political committee, referendum committee, individual or entity for at least two years counting from
15 the date of the election to which the late report affects.

16 (c) A waiver request is considered filed on the date it is postmarked by the United States Postal Service or marked
17 with an equivalent marking by a delivery service authorized by G.S. 1A-1, Rule 4. An email is considered filed if
18 received by 11:59 pm.

19 (d) If a waiver request is denied by the State Board, a new notice of penalty assessment shall be served by any means
20 authorized under G.S. 1A-1, Rule 4. The new notice of penalty assessment shall direct the political committee,
21 referendum committee, individual, or entity to pay the assessment within 30 days. The political committee, referendum
22 committee, individual or entity is not eligible to request of a waiver of the new penalty assessment. Reconsideration
23 of a waiver request may be granted by the State Board based on mitigating factors not previously known
24 to the State Board. ~~only be granted under extenuating circumstances as determined by the Campaign Finance~~
25 ~~Director of the State Board of Elections.~~

26 *History Note: Authority G.S. 163-278.34; G.S. 163-278.21*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: State Board of Elections

RULE CITATION: 08 NCAC 21 .0207

DEADLINE FOR RECEIPT:

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In reviewing this Rule, the staff recommends the following changes be made:

Page 1, Line 9: Here it appears that the State Board is making a referral to itself. I believe the Board is making a distinction between its staff and the Board. Is that appropriate for a rule?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: December 21, 2022

1 08 NCAC 21 .0207 is adopted with changes as published in 37:004 NCR 313-314 as follows:

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08 NCAC 21 .0207 PROCEDURES FOR COMMITTEES WITH MISSING REPORTS

(a) A political committee or referendum committee that fails to file a report required by Article 22A within 30 days after service of the Notice of Penalty Assessment under G.S. 163-278.34(e) shall be issued a Notice of Noncompliance directing the treasurer to file the missing report. A copy of the Notice of Noncompliance shall be posted to the State Board’s website.

(b) A political committee or referendum committee that fails to file a missing report within 30 days after service of the Notice of Noncompliance shall be referred to the State Board for consideration ~~issuance~~ of an order requiring the committee to file the missing report and to cease receiving contributions and making expenditures if the missing report is not filed within 30 days of the order. ~~order, except in extenuating circumstances as determined by the State Board.~~ The treasurer shall be provided notice of the referral and given the opportunity to submit a written affidavit stating any facts or circumstances for the State Board’s consideration.

(c) Any order issued by the State Board of Elections under Paragraph (b) shall be served by any means authorized under G.S. 1A-1, Rule 4. A copy of the order shall be posted to the State Board’s website.

(d) A political committee or referendum committee that fails to file the missing report within 30 days of the State Board’s order under Paragraph (b) shall have the committee’s status changed from active to suspended. While suspended, the committee shall not receive any contributions or make any expenditures except for the payment of any civil penalties or forfeitures under G.S. 163-278.14 or G.S. 163-278.34. To be removed from suspended status, the political committee or referendum committee shall file all missing reports identified in any order of the State Board and pay all civil late penalties incurred pursuant to G.S. 163-278.34.

History Note: Authority G.S. 163-278.34; G.S. 163-278.21.