

Burgos, Alexander N

Subject: FW: Board of Elections temporary rules on protest and recount deadlines

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Wednesday, July 24, 2024 2:41 PM
To: Cox, Paul <paul.cox@ncsbe.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: Board of Elections temporary rules on protest and recount deadlines

Understood. Thanks.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
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From: Cox, Paul <paul.cox@ncsbe.gov>
Sent: Wednesday, July 24, 2024 2:38 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Subject: RE: Board of Elections temporary rules on protest and recount deadlines

Also, Bill, I would like to be able to speak in favor of these temporary rules at the July 31 meeting. I will need to connect remotely via Webex, as I will be out of state. I do not actually plan to speak unless the commissioners have questions for the agency, or if a member of the public speaks and I need to address their comments. So this notification is merely to reserve that opportunity, if needed.

Thanks,

Paul Cox
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430 N. SALISBURY ST.
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919.814.0700
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Fax: (919) 715-0135

Burgos, Alexander N

Subject: FW: Board of Elections temporary rules on protest and recount deadlines
Attachments: 08 NCAC 02 .0110 Actions of County Boards as to Election Protests - temp amend post RRC staff recs.docx

From: Cox, Paul <paul.cox@ncsbe.gov>
Sent: Wednesday, July 24, 2024 2:29 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: Board of Elections temporary rules on protest and recount deadlines

Thank you for this notification, Bill, and for your suggestions for rule .0110.

The agency proposes the revision from “may” to “shall” in response to the first suggestion, with the addition of some criteria for the county boards to satisfy. If this moves to a requirement, we want to be sure that we avoid unreasonable or burdensome subpoenas being issued for protests. Our hope is that adding these criteria will avoid that sort of consequence in practice.

Regarding the second suggestion, we think the deadlines in paragraph (c) should be sufficient for the purposes of these temporary rule modifications. We can always revisit after we go through the general election and start the permanent rulemaking process, if we notice a gap in practice.

Thanks for your quick review.

Best,

Paul Cox
General Counsel
NORTH CAROLINA STATE BOARD OF ELECTIONS
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08 NCAC 02 .0110 is amended under temporary procedures as follows:

08 NCAC 02 .0110 ACTIONS OF COUNTY BOARD AS TO ELECTION PROTESTS

(a) The county board shall ~~deliver~~ transmit by email a copy of any filed election protest, including any attachments, to the State Board as follows:

- (1) if hand delivered or mailed, within 24 hours after the election protest is filed;
- (2) if faxed, the same day the election protest is filed; or
- (3) if emailed, the same day the election protest is filed.

(b) The county board shall not consider election protests not timely filed, but shall ~~refer~~ refer, in the same manner and within the time period provided in Paragraph (a) of this Rule, all such untimely protests, along with copies of the protest and attachments, to the State Board office for consideration under G.S. 163-182.12. For the purposes of this Rule, timely means within the time specified in G.S. 163-182.9.

(c) Upon receipt of a timely filed election protest, the county board of elections shall hold a preliminary consideration ~~meeting hearing~~ in accordance with ~~G.S. 163-182.10~~. G.S. 163-182.10 within two business days of when the protest is filed. If the county board dismisses the protest upon preliminary consideration, the county board shall file its written decision at the board office within two business days of the preliminary consideration meeting and shall serve the written decision in the manner provided under Subparagraph (c)(2) of this Rule. If the county board determines that a hearing is necessary, the board shall set the hearing no later than ~~ten~~ five business days from the date of the preliminary ~~consideration, consideration meeting~~ and shall start no earlier than 8:00 a.m. and no later than 8:00 p.m. at any location set by the county board of elections. The county board may continue hearings for good cause as determined by the county board. Only for good cause and upon informing the State Board office, may a hearing be set on or continued to a weekend day or holiday. Examples of good cause include, but are not limited to, procuring documentary evidence or securing witness testimony necessary to conclude the hearing.

(d) Notice of hearing as required by ~~G.S. 163-182.10(b)~~ G.S. 163-182.10(b)(2) shall be given at least three business days prior to the day of the hearing, and the notice shall be provided by any of the following means: required shall be ~~notice by in-person oral notice, written notice to an email address supplied by any person required to receive notice, or, only if the county board lacks an email address, by U.S. mail to an address supplied by any person required to receive notice followed immediately by a phone call, if the person has supplied a phone number to the board. any means chosen by the county board.~~ Any oral notice of the hearing shall be followed with a written notice sent prior to the hearing date. The oral notice shall constitute valid notice meeting the three-day notice requirement.

(e) The county board shall follow these procedures when considering an election protest: Required procedures include:

- (1) Upon request by a protester or interested person, the chair or any two members of the county board ~~may shall~~ may shall issue subpoenas for ~~witnesses persons or documents. documents,~~ witnesses or documents. when the chair or two members of the county board conclude that the witnesses or documents are likely to provide information that is both relevant and material to the questions the county board must adjudicate in the protest. protest, the information sought is not unnecessarily duplicative of other available evidence, and the subpoena is not likely to subject the recipient to undue burden or expense. Such subpoenas shall be served in the same ~~manner matter~~ manner as allowed in the North Carolina Rules of Civil Procedure.
- (2) The county board shall notify the person protesting, any affected candidate, and any affected officeholder of its decision in a protest hearing no later than 5:00 p.m. the next day after the conclusion of the hearing itself. The board shall file at the board office a written decision within the mandates of G.S. 163-182.10(d) by 5:00 p.m. ~~three five~~ three business days after the conclusion of the protest hearing ~~oral decision is given to the person filing the protest.~~ Such written decision shall be served at the same time it is filed at the board office by email to an email address supplied by any person required to receive notice under G.S. 163-182.10(b). If the county board has no email address for any person required to receive notice under G.S. 163-182.10(b), the board shall serve that person by U.S. mail and immediately call that person, if the person has supplied a phone number to the board, to notify them that the decision has been filed. any means of delivery upon the protestor and any affected candidate or officeholder within 24 hours after being filed at the board office. Nothing herein shall discourage more prompt decisions and written orders.
- (3) All election protest hearings before county boards shall be recorded by a court ~~reporter. reporter or~~ by mechanical means. The hearing need not be transcribed unless the board's decision is appealed. Upon notice of appeal to the State Board of an election protest, the county board shall cause the record of the hearing to be transcribed and delivered to the State Board, at the county board's

1 expense, within seven business days of the notice of appeal. Transcripts of hearings shall be kept
2 for two years after their creation.

3 ~~(4) If the State Board sets an appeal for hearing, it shall designate who shall appear on behalf of the~~
4 ~~county board.~~

5 (f) A county board of elections shall ~~timely~~ hear and decide all timely filed protests, unless:

6 (1) the protest is administratively dismissed pursuant to 08 NCAC 02 .0114; or

7 (2) the county board of elections receives alternative instructions from the State Board issued under
8 G.S. 163-182.12.

9 If a protest does not concern the manner in which votes were counted or results tabulated, a county board of elections
10 shall not delay canvass in order to hear the protest. A protest that alleges the occurrence of an election law violation
11 regarding an insufficient number of votes to change the outcome of a contest within the jurisdiction of a county board
12 of elections shall not delay canvass by a county board of elections.

13
14 *History Note:* Authority G.S. 163-22; 163-182.10;
15 Temporary Adoption Eff. April 15, 2002;
16 Eff. August 1, 2004;
17 Readopted Eff. September 1, 2018;
18 Amended Eff. November 1, ~~2020~~ 2020;
19 Temporary Amendment Eff. August 1, 2024.
20

Burgos, Alexander N

From: Peaslee, William W
Sent: Monday, July 22, 2024 3:47 PM
To: Rules, Oah
Cc: Burgos, Alexander N; Cox, Paul
Subject: FW: Board of Elections temporary rules on protest and recount deadlines
Attachments: 08 NCAC 09 .0107 First Recount - temp amend to RRC.docx; 08 NCAC 09 .0110 Secondary Recounts - temp adopt to RRC.docx

Good afternoon,

It is my intention to recommend approval of the attached temporary rules as filed at the July 2024 RRC meeting.

William W. Peaslee
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Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
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From: Cox, Paul <paul.cox@ncsbe.gov>
Sent: Monday, July 22, 2024 9:44 AM
To: Rules, Oah <oah.rules@oah.nc.gov>; Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: SBOE_Grp - Legal <Legal@ncsbe.gov>
Subject: Board of Elections temporary rules on protest and recount deadlines

Good morning, Bill and colleagues.

Attached are two rules proposed for temporary amendment and one rule proposed for temporary adoption by the State Board of Elections. The agency's findings of need form is also attached.

Please let us know how we can assist the RRC's review.

Best regards,

Paul Cox
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