



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

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| 1. Rule-Making Agency: State Board of Elections |
| 2. Rule citation & name: 08 NCAC 10B. 0101, TASKS AND DUTIES OF PRECINCT OFFICIALS AT VOTING PLACES |
| 3. Action: <input type="checkbox"/> Adoption <input checked="" type="checkbox"/> Amendment <input type="checkbox"/> Repeal |
| 4. Was this an Emergency Rule: <input type="checkbox"/> Yes Effective date: <input checked="" type="checkbox"/> No |
| 5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: 7/15/2022 b. Proposed Temporary Rule published on the OAH website: 7/21/2022 c. Public Hearing date: 7/28/2022 and 8/11/2022 d. Comment Period: 7/22/2022 through 8/12/2022 e. Notice pursuant to G.S. 150B-21.1(a3)(2): 7/22/2022 (partial - distribution error) and 8/2/2022 (full) f. Adoption by agency on: 8/16/2022 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: As soon as possible h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]: n/a |
| 6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <input type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: Effective date: <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> State Medical Facilities Plan. <input checked="" type="checkbox"/> Other: To preserve the integrity of upcoming elections and the elections process. GS 150B-21.1(a)(11)c. |
| Explain: The State Board of Elections, in a public meeting, found unanimously that (1) adherence to the notice and hearing requirements of the permanent rulemaking process would be contrary to the public interest in this instance, and (2) the temporary rulemaking procedures and the notice and comment period provided for in the process for this rule amendment was necessary, because the rule amendment needs to become effective before the next general election in order to preserve the integrity of upcoming elections and the elections process. The rule amendment is based on input from county directors of elections who experienced new issues at the voting place with county-appointed precinct officials in the May 2022 primary. Many of these directors want to ensure that there are clearly defined rules governing poll worker conduct, and those rules are needed before the upcoming general election in which thousands of poll workers will be serving the public. It would not have been possible to have this rule amendment in place before the start of in-person voting on October 20, 2022, if the permanent rulemaking procedures were used. According to the OAH rulemaking calendar, a permanent rule would have to have been drafted, voted on, and noticed to the public by May 24, 2022, at the latest, for a permanent rule to possibly go into effect before in-person voting in the general election. County boards were canvassing the primary at that time, immediately followed by State Board canvass. It would not have been possible to gather sufficient county input on these issues in the immediate days after the primary, to propose well-considered rule amendments. |

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

As noted above and as found unanimously by the State Board, the rule amendment needs to become effective before the next general election in order to preserve the integrity of upcoming elections and the elections process.

The need for this rule amendment became apparent based on feedback from county directors following the May primary, mostly through conversations with directors and inquiries to State Board staff. Precinct officials are county poll workers, directly under county board of elections supervision, who take an oath to conduct elections impartially. The amendment proposes adding a list of prohibited conduct by precinct officials. Examples include tampering with voting equipment, making statements about personal political views while on duty, failing to abide by elections laws, rules, and policies applicable to precinct officials, and illegally discriminating against voters. Other changes to the rule would require poll workers to inform the county board if they become disqualified to serve based on being a candidate, holding an elective office, or holding office in a political party. These additions would apply to one-stop early voting workers and Election Day workers.

The issues raised by county directors suggest that poll workers, many of whom are new and inexperienced, need to be clearly informed of prohibited conduct before each election, starting now, to ensure that elections are conducted professionally and impartially.

The State Board of Elections has multiple responsibilities when it comes to managing the conduct of in-person voting. Specifically, General Statute 163-166.7 empowers the Board to draft rules that "shall emphasize the appearance as well as the reality of dignity, good order, impartiality, and the convenience and privacy of the voter." That statute also requires the Board to ensure the security of voting equipment and voting materials. The Board determined that fulfilling these duties with this proposed amendment should not await the passage of another general election.

Further elaboration of the reasons for immediate adoption, as stated in response to Question 6, are hereby incorporated by reference.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

Yes

Agency submitted request for consultation on:
Consultation not required. Cite authority:

No

9. Rule-making Coordinator:

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Agency contact, if any:

Phone:

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10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name:

Karen Brinson Bell

Title:

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RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

Date returned to agency:

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1 **INTRODUCTORY STATEMENT**

2 The following temporary rule amendment to 08 NCAC 10B .0101 was adopted by the State Board of Elections on
3 August 16, 2022 with changes. Notice of the proposed temporary amendment was published on the Office of
4 Administrative Hearings website on July 21, 2022, in accordance with G.S. 150B-21.1(a3).

5
6 **08 NCAC 10B .0101 TASKS AND DUTIES OF PRECINCT OFFICIALS AT VOTING PLACES**

7 (a) For purposes of this Chapter, unless otherwise noted, the term "precinct officials" shall mean chief judge, precinct
8 judge, assistants, emergency election-day assistants, and ballot counters.

9 (b) Tasks of Precinct Chief Judge - Precinct Chief Judges, in accordance with election statutes, within the Rules of
10 the State Board of Elections, and under the supervision of the county board of elections, shall have the following tasks
11 to perform as to each primary or election:

- 12 (1) attend an instructional meeting presented by the county board of elections prior to each primary or
13 election as required by G.S. 163-46;
- 14 (2) upon learning that any parent, spouse, child, or sibling of the Precinct Chief Judge has filed for
15 elective office, inform the county board of elections so that the county board of elections may
16 disqualify the Precinct Chief Judge under G.S. 163-41.1(b) for the specific primary or election
17 involved;
- 18 (3) upon learning that any parent, parent in-law, spouse, child, child in-law, sibling, or sibling in-law of
19 the Precinct Chief Judge has been appointed to serve in the same precinct, inform the county board
20 of elections so that the county board of elections may appoint an emergency election-day assistant;
- 21 (4) receive and review the signed list of the appointed observers as provided in G.S. 163-45;
- 22 (5) receive and post a sample ballot in the voting place as provided in G.S. 163-165.2;
- 23 (6) notify the county board of elections of any sickness, emergency, or other circumstances that will or
24 might prevent the person from performing as precinct chief judge on a primary or election day;
- 25 (7) receive, prior to the day of the primary or election, from the county board of elections any security
26 keys or codes as to any voting systems or units that are to be operated at the precinct;
- 27 (8) prior to the opening of the polls, administer to any precinct official, not previously sworn, the oath
28 of office as set out in G.S. 163-41;
- 29 (9) prior to the opening of the polls, ensure the technology and connectivity requirements of 08 NCAC
30 10B .0109(b) are met;
- 31 (10) if at the time of opening the voting place, a judge has not appeared, appoint another person to act as
32 precinct judge until the chair of the county board of elections appoints a replacement as set out in
33 G.S. 163-41;
- 34 (11) be present at the voting place at 6:00 a.m., and ensure the opening of the polls at 6:30 a.m. as
35 mandated by G.S. ~~163-166~~ 163-166.01 and 08 NCAC 10B .0102;
- 36 (12) respond to any voter's request to have assistance to vote as set out in the provisions of G.S. 163-
37 166.8(b);

- 1 (13) ensure the continued arrangement of the voting enclosure as required in G.S. 163-166.2;
- 2 (14) supervise the closing of the voting place at 7:30 p.m. in compliance with procedures set out in G.S.
- 3 163-166.10 and 08 NCAC 10B .0105;
- 4 (15) handle challenges made on election or primary day in accordance with G.S. 163-87, and conduct
- 5 the hearing upon said challenge in accordance with G.S. 163-88;
- 6 (16) be responsible, as mandated by G.S. 163-182.3, for adherence to all rules pertaining to counting,
- 7 reporting, and transmitting official ballots under 08 NCAC 10B .0105 and .0106;
- 8 (17) ensure the maintenance of and appearance of efficient, impartial, and honest election administration
- 9 at the precinct as required by G.S. 163-166.5(3);
- 10 (18) monitor the grounds around the voting place to ensure compliance with the limitation on activity in
- 11 the buffer zone under G.S. 163-166.4(a);
- 12 (19) ensure peace and good order at the voting place as required by G.S. 163-48. Examples of peace and
- 13 good order include:
- 14 (A) keeping open and unobstructed the place at which voters or persons seeking to register or
- 15 vote have access to the place of registration and voting;
- 16 (B) preventing and stopping attempts to obstruct, intimidate, or interfere with any person in
- 17 registering or voting;
- 18 (C) protecting challengers and witnesses against molestation and violence in the performance
- 19 of their duties; and
- 20 (D) ejecting from the place of registration or voting any challenger or witness for violation of
- 21 any provisions of the election laws or rules.
- 22 (20) ensure that voters are able to cast their votes in dignity, good order, impartiality, convenience, and
- 23 privacy as required in G.S. 163-166.7(c) and 08 NCAC 10B .0101;
- 24 (21) if needed, check or assist in checking the registration of voters at the voting place;
- 25 (22) if ballot counters are authorized by the county board of elections under G.S. 163-43, receive the list
- 26 of counters from the county board, or appoint counters if authorized to do so by the county board.
- 27 Prior to a ballot counter performing duties and tasks, administer the oath required by G.S. 163-43.
- 28 Report to the county board of elections the names and addresses of any ballot counters to the county
- 29 board at the county canvass as set out in G.S. 163-43.
- 30 (23) perform the required legal duties of chief precinct judge/judge or face criminal consequences as set
- 31 out in G.S. 163-274 (1); ~~and~~
- 32 (24) not accept money from candidates, commit fraud, false statements, or false writings in performing
- 33 election duties, or face the criminal consequences set out in G.S. ~~163-275(3)(8)(9) and (12).~~ 163-
- 34 275(3), (8), (9), (12), (14), and (18); and
- 35 (25) prior to performing duties and tasks after being duly appointed, take the oath required by G.S. 163-
- 36 41.

1 Where the precinct chief judge does not have the exclusive statutory mandate to perform a task or duty, a precinct
2 judge may be designated to perform such task or duty.

3 (c) Tasks of Precinct Judge - Precinct Judges, in accordance with election statutes, within rules of the State Board of
4 Elections, and under the supervision of the county board of elections, shall have the following tasks to perform as to
5 each primary or election:

- 6 (1) attend an instructional meeting presented by the county board of elections prior to each primary or
7 election as required by G.S. 163-46;
- 8 (2) upon learning that any parent, spouse, child, or sibling of the Precinct Judge has filed for elective
9 office, inform the county board of elections so that the county board of elections may disqualify the
10 Precinct Judge under G.S. 163-41.1(b) for the specific primary or election involved;
- 11 (3) upon learning that any parent, parent in-law, spouse, child, child in-law, sibling, sibling in-law or
12 first cousin of the Precinct Judge has been appointed to serve in the same precinct, inform the county
13 board of elections so that the county board of elections may appoint an emergency election-day
14 assistant;
- 15 (4) if the chief judge fails to appear at the opening of poll, appoint, with the other precinct judge, a
16 person to act as chief judge until the chairman of the county board appoints a new chief judge as per
17 G.S. 163-41;
- 18 (5) notify the county board of elections of any sickness, emergency, or other circumstances that will or
19 might prevent the person from performing as precinct ~~chief~~ judge on a primary or election day;
- 20 (6) be present at the voting place at 6:00 a.m., and ensure the prompt opening of the polls at 6:30 a.m.
21 as mandated by G.S. 163- ~~166~~ 166.01 and any rules promulgated under 08 NCAC 10B .0102;
- 22 (7) perform the required legal duties of chief precinct judge/judge or face criminal consequences as set
23 out in G.S. 163-274(1);
- 24 (8) not accept money from candidates, commit fraud, false statements, or false writings in performing
25 election duties, or face the criminal consequences set out in G.S. ~~163-275(3)(8)(9) and (12).~~ 163-
26 275(3), (8), (9), (12), (14), and (18);
- 27 (9) aid and cooperate with the precinct chief judge, as requested or needed, as to those duties noted in
28 Subparagraphs (12) through (21) of Paragraph (b) of this ~~Rule.~~ Rule; and
- 29 (10) prior to performing duties and tasks after being duly appointed, take the oath required by G.S. 163-
30 41.

31 A precinct judge may be designated to perform tasks and duties of a chief precinct judge, where those duties are not
32 statutorily made exclusive to the chief precinct judge.

33 (d) Tasks of Election Assistants - Election Assistants, in accordance with election statutes, within the rules of the
34 State Board of Elections, and under the supervision of the county board of elections, shall have the following tasks to
35 perform as to each primary or election:

- 36 (1) check the registration of voters at the voting place as per G.S. 163-166.7(a);
- 37 (2) guide voters to voting units or provide voters ballots as per G.S. 163-166.7(b);

- 1 (3) prior to performing duties and tasks after being duly appointed, take the oath required by G.S. 163-
2 41;
- 3 (4) notify the county board of elections of any sickness, emergency, or other circumstances that will or
4 might prevent the person from performing as an election assistant on a primary or election day;
- 5 (5) upon learning that any parent, spouse, child, or sibling of the Election Assistant has filed for elective
6 office, inform the county board of elections so that the county board of elections may disqualify the
7 Election Assistant under G.S. 163-41.1(b) for the specific primary or election involved;
- 8 (6) upon learning that any parent, parent in-law, spouse, child, child in-law, sibling, sibling in-law or
9 first cousin of the Election Assistant has been appointed to serve in the same precinct, inform the
10 county board of elections so that the county board of elections may appoint an emergency election-
11 day assistant; and
- 12 (7) aid the chief judge and other precinct judges in the performances of their tasks and duties as needed
13 or directed.

14 (e) Tasks of Emergency Election – Day Assistant - Emergency Election-Day Assistants, in accordance with election
15 statutes, within the rules of the State Board of Elections, and under the supervision of the county board of elections,
16 shall have the following tasks to perform as to each primary or election:

- 17 (1) be prepared prior to and on the day of a primary or election to serve, on notice given by the county
18 board of elections, to travel to and work at any voting place within the county;
- 19 (2) perform all the tasks and duties of an election assistant as set out in Paragraph (d) of this Rule;
- 20 (3) notify the county board of elections of any sickness, emergency, or other circumstances that will or
21 might prevent the person from performing as an election assistant on a primary or election day;
- 22 (4) upon learning that any parent, spouse, child, or sibling of the emergency election-day assistant has
23 filed for elective office, to inform the county board of elections so that the county board of elections
24 may disqualify the emergency election-day assistant under G.S. 163-41.1(b) for the specific primary
25 or election involved; and
- 26 (5) upon learning that any parent, parent in-law, spouse, child, child in-law, sibling, sibling in-law or
27 first cousin of the emergency election-day assistant has been appointed to serve in the same precinct,
28 inform the county board of elections.

29 (f) Tasks of Ballot Counters - All ballot counters, in accordance with election statutes, with the rules of the State
30 Board of Elections and under supervision of the county board of elections, shall perform all the following:

- 31 (1) after appointment, appear at the poll at close of the polls and to be prepared to count ballots under
32 the direction and control of the chief and other precinct judges;
- 33 (2) prior to a ballot counter performing duties and tasks, take the oath required by G.S. 163-43;
- 34 (3) upon learning that any parent, spouse, child, or sibling of the ballot counter has filed for elective
35 office, inform the county board of elections so that the county board of elections may disqualify the
36 ballot counter under G.S. 163-41.1(b) for the specific primary or election involved; and

- 1 (4) upon learning that any parent, parent in-law, spouse, child, child in-law, sibling, sibling in-law or
2 first cousin of the ballot counter has been appointed to serve in the same precinct, inform the county
3 board of elections.

4 There is no requirement to have ballot counters appointed or used by a county board of elections. The county board
5 of elections of any county may authorize the use of precinct ballot counters to aid the chief judges and judges of
6 election in the counting of ballots in any precinct or precincts within the county. The county board of elections shall
7 appoint the ballot counters it authorizes for each precinct or, in its discretion, the board may delegate authority to make
8 such appointments to the precinct chief judge, specifying the number of ballot counters to be appointed for each
9 precinct.

10 (g) General duties of all Precinct Officials - All precinct officials, in accordance with election statutes, with the rules
11 of the State Board of Elections and under the supervision of the county board of elections, shall perform all of the
12 following:

- 13 (1) count votes when votes are required to be counted at the voting place, G.S. 163-182.2;
14 (2) make an unofficial report of returns to the county board of elections, G.S. 163-182.2;
15 (3) certify the integrity of the vote and the security of the official ballots at the voting place, G.S. 163-
16 182.2;
17 (4) return official ballots and equipment to the county board of elections, G.S. 163-182.2;
18 (5) ensure that the voting system cannot be tampered with throughout the period voting is being
19 conducted;
20 (6) ensure that only properly voted official ballots are introduced into the voting system;
21 (7) ensure that, except as provided by G.S. 163-166.9, no official ballots leave the voting enclosure
22 during the time voting is being conducted there;
23 (8) ensure that all improperly voted official ballots are returned to the precinct officials and marked as
24 spoiled;
25 (9) ensure that voters leave the voting place after voting;
26 (10) ensure that voters not eligible to vote in the precinct but who seek to vote there are given assistance
27 in voting a provisional official ballot or guidance to another voting place where they are eligible to
28 vote;
29 (11) ensure that information gleaned through the voting process that would be helpful to the accurate
30 maintenance of the voter registration records, including any updates to a voter's voter registration,
31 is recorded and delivered to the county board of elections;
32 (12) ensure that registration records can only be accessed by precinct officials;
33 (13) ensure that party observers are given access as provided by G.S. 163-45 to current information about
34 which voters have voted;
35 (14) aid any voter, as needed, in curbside voting as provided for in G.S. 163-166.9;

- 1 (15) provide Spanish ballot instructions when such instructions are required by Section 203 of the Voting
- 2 Rights Act of 1965, and direct all language needs that can not be handled at the precinct to the
- 3 county board office;
- 4 (16) register and help, at the voting place, those persons eligible to register and vote on election day as
- 5 allowed by G.S. 163-258.28 and G.S. 163-82.6(d);
- 6 (17) report to the county board of elections, any physical or mental ailment, impairment, or deterioration
- 7 that may adversely affect the performance of an election related task or duty. Report any such
- 8 conditions known in any other precinct officials to the county board;
- 9 (18) report any violation of election laws or regulations to the chief judge, or report such violation to the
- 10 county board of elections if the chief precinct judge is involved in the violation;
- 11 (19) provide any person who requests it any information on how to contact the county director of
- 12 elections, the county board of elections, or the office of the State Board of Elections; ~~and~~
- 13 (20) work and stay at the voting place, at all times during the voting day, until closure. By prior agreement
- 14 with the county board of elections and pursuant to G.S. 163-42, election assistants and emergency
- 15 election-day assistants may work less than the entire voting ~~day.~~ day; and
- 16 (21) Upon learning that any of the following statements are true, inform the county board of elections so
- 17 that the county board of elections may disqualify the precinct official under G.S. 163-41:
- 18 (A) The precinct official holds any elective office under the government of the United States,
- 19 or of the State of North Carolina or any political subdivision thereof;
- 20 (B) The precinct official is a candidate for nomination or election; or
- 21 (C) The precinct official holds any office in a state, congressional district, county, or precinct
- 22 political party or political organization, or is a manager or treasurer for any candidate or
- 23 political party, provided however that the position of delegate to a political party
- 24 convention shall not be considered an office for the purpose of this subsection.

25 (h) Prohibited acts by precinct officials. Prohibited acts by precinct officials include:

- 26 (1) Tampering with voting equipment;
- 27 (2) Permitting unauthorized access to voting facilities or equipment;
- 28 (3) Intentionally interfering with, delaying, or preventing a voter from lawfully casting their ballot;
- 29 (4) Making statements about personal political views while on duty;
- 30 (5) Failing to attend trainings required by the county board of elections;
- 31 (6) Failing to follow lawful instructions of the county board, county board staff, chief judge, judges, or
- 32 one-stop site manager;
- 33 (7) [Intentionally p] Providing inaccurate information about the administration of the election;
- 34 (8) Failing to abide by the election rules, laws, and policies applicable to precinct officials.
- 35 (9) [Intentionally]Knowingly failing to report incidents occurring at the voting place to the chief judge,
- 36 one-stop site manager, or county board of elections, as instructed;

- 1 (10) Providing confidential voter information, vote tallies before the close of the polls, or confidential
2 information on security features of voting equipment or voting facilities to non-elections officials;
3 (11) Discriminating against voters on the basis of race, color, ethnicity, religion, sex, national origin, age,
4 disability, or political affiliation (except for the purposes of lawfully determining eligibility to
5 participate in partisan primaries); and
6 (12) Engageing in any political activities as prohibited in G.S. 163-41(e) between the start of one-stop
7 early voting and 11:59 p.m. on Election Day during the election in which a precinct official is
8 serving.

9 For the purpose of this Paragraph, “precinct officials” includes one-stop workers.

10

11 *History Note: Authority G.S. 163-22; 163-41; 163-42; 163-47; 163-166.6; 163-166.7; 163-273; 163-274;*
12 *Temporary Adoption Eff. April 15, 2002;*
13 *Eff. August 1, 2004;*
14 *Readopted Eff. September 1, 2019; Temporary Amendment Eff.*



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency:

State Board of Elections

2. Rule citation & name:

08 NCAC 20. 0101, ELECTION OBSERVERS

3. Action:

Adoption

Amendment

Repeal

4. Was this an Emergency Rule: Yes

No

Effective date:

5. Provide dates for the following actions as applicable:

a. Proposed Temporary Rule submitted to OAH: 7/15/2022

b. Proposed Temporary Rule published on the OAH website: 7/21/2022

c. Public Hearing date: 7/28/2022 and 8/11/2022

d. Comment Period: 7/22/2022 through 8/12/2022

e. Notice pursuant to G.S. 150B-21.1(a3)(2): 7/22/2022 (partial - distribution error) and 8/2/2022 (full)

f. Adoption by agency on: 8/16/2022

g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: As soon as possible

h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]: n/a

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

A serious and unforeseen threat to the public health, safety or welfare.

The effective date of a recent act of the General Assembly or of the U.S. Congress.

Cite:

Effective date:

A recent change in federal or state budgetary policy.

Effective date of change:

A recent federal regulation.

Cite:

Effective date:

A recent court order.

Cite order:

State Medical Facilities Plan.

Other: To preserve the integrity of upcoming elections and the elections process. GS 150B-21.1(a)(11)c.

Explain:

The State Board of Elections, in a public meeting, found unanimously that (1) adherence to the notice and hearing requirements of the permanent rulemaking process would be contrary to the public interest in this instance, and (2) the temporary rulemaking procedures and the notice and comment period provided for in the process for this rule amendment were necessary, because the rule amendment needs to become effective before the next general election to preserve the integrity of upcoming elections and the elections process. The rule amendment is based on input from county directors of elections who experienced new issues with party-appointed election observers in the May 2022 primary: both confusion over the appointment process and incidents of misconduct. Many of these directors want to ensure that there are clearly defined rules governing observers, and those rules are needed before the upcoming general election in which thousands of observers will be appearing on behalf of their political parties at the polls.

It would not have been possible to have this rule amendment in place before the start of in-person voting on October 20, 2022, if the permanent rulemaking procedures were used. According to the OAH rulemaking calendar, a permanent rule would have to have been drafted, voted on, and noticed to the public by May 24, 2022, at the latest, for a permanent rule to possibly go into effect before in-person voting in the general election. County boards were canvassing the primary at that time, immediately followed by State Board canvass. It would not have been possible to gather sufficient county input on these issues in the immediate days after the primary, to propose well-considered rule amendments.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

As noted above and as found unanimously by the State Board, the rule amendment needs to become effective before the next general election in order to preserve the integrity of upcoming elections and the elections process.

The need for this rule amendment became apparent based on feedback from county directors following the May primary. Dozens of county directors participated in a post-primary survey issued by the State Board regarding some of the issues they had been experiencing with observers, following a noticeable uptick in questions from counties to the State Board about observer appointment and conduct surrounding the May primary. The survey was designed to determine what was happening at polling places across the state, and to potentially revise administrative rules to address any issues that may compromise the orderly conduct of voting in our state.

The survey showed numerous concerns with the lack of clarity in the rules on the proper appointment of observers, sometimes resulting in unwitting local party leaders forfeiting their opportunity to have observers serve. The suggested revisions to the appointment provisions are designed to ensure that the parties are clear on how to appoint each type of observer, hopefully to avoid disqualification of observers based on technicalities. County staff also documented numerous instances in which partisan observers were disruptive to the orderly conduct of voting—posting materials at the voting place, repeatedly coming and going in and out of the voting enclosure, attempting to go into the ballot-marking area or behind voting equipment, interfering with voters submitting their voted ballots into the tabulator, etc. The suggested revisions are geared toward addressing this conduct to maintain order and a positive voting experience at the polls.

The State Board of Elections has multiple responsibilities when it comes to managing the conduct of in-person voting. Specifically, GS 163-166.7 empowers the Board to draft rules that “shall emphasize the appearance as well as the reality of dignity, good order, impartiality, and the convenience and privacy of the voter.” That statute also requires the Board to ensure the security of voting equipment and voting materials. Meanwhile, partisan observers are entitled to “make such observation and take such notes as the observer may desire,” but observers are specifically prohibited from “electioneering at the voting place” and may not “impede the voting process or interfere or communicate with or observe any voter in casting a ballot[.]” G.S. 163-45. And intimidating a voter or an election official is prohibited in our laws and is a criminal act. The State Board determined unanimously that fulfilling these duties with this proposed amendment should not await the passage of another general election.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

Yes

Agency submitted request for consultation on:
Consultation not required. Cite authority:

No

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10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

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RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

Date returned to agency:

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1 **INTRODUCTORY STATEMENT**

2 The following temporary rule amendment to 08 NCAC 20 .0101 was adopted by the State Board of Elections on
3 August 16, 2022 with changes. Notice of the proposed temporary amendment was published on the Office of
4 Administrative Hearings website on July 21, 2022, in accordance with G.S. 150B-21.1(a3).

5
6 **08 NCAC 20 .0101 ELECTION OBSERVERS**

7 (a) Observer Lists. The chair of each political party in a county may designate two specific precinct-specific observers
8 to attend each voting place at any one time on Election Day and each one-stop site at any one time during a primary
9 or general election in accordance with this Rule. The ~~precinct-specific observer list~~ lists of observers assigned to
10 particular precincts or one-stop sites may include up to eight names per voting place and shall include the times and
11 days that each observer shall serve ~~at each voting place~~. The county party chair may designate 10 additional at-large
12 observers who may attend any voting place in the ~~county~~ county, including one-stop sites. ~~The list of observers for~~
13 ~~one-stop must designate the names of the observers who will be present on each day of early voting and, for precinct-~~
14 ~~specific observers, at each one-stop site. At large observers may serve at any one-stop site.~~ The chair of each State
15 political party may designate up to 100 additional at-large observers who are residents of the State who may attend
16 any voting place in the State.

17 (b) Submission of Lists.

18 (1) Precinct-specific observers. The county party chair shall submit a written, signed list of ~~county-at-~~
19 ~~large~~ observers for each precinct to the county director of elections ~~elections, with two copies~~
20 ~~provided to the chair of the county board of elections, prior to 10:00 a.m. on the fifth day prior to~~
21 ~~Election Day.~~ The county director of elections, on behalf of the county party chair, shall provide the
22 list to the chief judge of each precinct on or before Election Day. ~~[On Election Day, the county party~~
23 ~~chair shall provide the same signed list to the chief judge of each precinct, and the list may be~~
24 ~~delivered by a party-appointed observer.]~~ The county party chair shall submit a written, signed list
25 ~~of the observers appointed for each precinct to the chief judge of each precinct, with two copies~~
26 ~~provided to the chair of the county board of elections, prior to 10:00 a.m. on the fifth day prior to~~
27 ~~Election Day; the list may be delivered in care of the county director of elections.~~ The list of
28 precinct-specific observers to serve on Election Day may not be amended after 10:00 a.m. on the
29 fifth day prior to Election Day.

30 (2) One-stop observers. The county party chair shall submit ~~the~~ a written, signed list of observers for
31 each one-stop site to the county director of elections before 10:00 a.m. on the fifth day before the
32 observer is to observe. Any changes to the list of one-stop observers submitted after 10:00 a.m. on
33 the fifth day before the start of one-stop voting will not take effect until the fifth day after submission
34 if submitted before 10:00 a.m., or on the sixth day after submission if submitted after 10:00 a.m.

35 (3) County at-large observers. The county party chair shall submit a written, signed list of county at-
36 large observers to the county director of elections prior to 10:00 a.m. on the fifth day prior to Election
37 Day. The list of at-large observers to serve on Election Day may be amended prior to Election Day

1 to substitute one or all of the at-large observers, but no later than 5:00 p.m. on the day before Election
2 Day. For any at-large observers to serve during one-stop voting, the county party chair must submit
3 the at-large observer list by 10:00 a.m. on the fifth day before any at-large observer on the list is to
4 observe.

5 (4) State at-large observers. The list of at large observers to serve on Election Day may be amended
6 prior to Election Day to substitute one or all of the at large observers. The list of at large observers
7 who serve during early voting may not be amended after 10:00 a.m. on the fifth day before the at-
8 large observer is to observe. The list of precinct specific observers to serve on Election Day may
9 not be amended after 10:00 a.m. on the fifth day prior to Election Day. The State party chair shall
10 submit the written, signed list of State at-large observers to the State Board of Elections by 10:00
11 a.m. on the fifth day prior to Election Day. ~~to the State Board, which~~ The State Board shall
12 disseminate the list to the county boards of elections. The list shall include the full name of each at-
13 large observer and the county in which the observer is registered. The State Board shall confirm that
14 each State at-large observer is a registered voter of the State. The list of State at-large observers to
15 serve on Election Day may be amended prior to Election Day to substitute one or all of the at-large
16 observers, but no later than 5:00 p.m. on the day before Election Day. For any at-large observers to
17 serve during one-stop voting, the state party chair must submit the at-large observer list by 10:00
18 a.m. on the fifth day before any at-large observer on the list is to observe.

19 The county director shall provide copies of each list they receive to the chair of the county board of elections. Party
20 chairs may provide the lists by facsimile or email provided the letters are signed. ~~Scanned~~ Typed signatures are
21 permissible. When a deadline to submit an observer list falls on a weekend, a holiday, or another day when the county
22 board office is closed, the list may be submitted on the next day the office is open, consistent with G.S. 103-5.

23 (c) Observers at Voting Place. No more than two precinct-specific observers from each political party may be in the
24 voting enclosure at any time. Only one at-large observer from each political party may be in the voting enclosure at
25 any time, even if no precinct-specific observers are present. All observers, whether precinct-specific or at-large, may
26 be relieved after serving no less than four hours; however, the total number of observers from each party cannot exceed
27 three total observers in the voting enclosure at one time: two precinct-specific observers and one county or State at-
28 large observer. An observer may leave the voting place without having served for four hours, but the observer cannot
29 be replaced by a new observer until at least four hours have passed since the first observer began serving. An observer
30 who ~~repeatedly exits and reenters~~ leaves the voting place ~~for any reason~~ may be ~~prohibited~~ removed from observing
31 at the voting location by the chief judge ~~from returning~~ if the observer's ~~return would cause~~ conduct is causing a
32 disruption in the voting enclosure.

33 (d) Observer Conduct. Observers who engage in prohibited conduct after receiving a warning may be required by the
34 chief judge to leave the voting enclosure. Prohibited activities by observers include:

- 35 (1) Wearing or distributing campaign material or electioneering;
36 (2) Impeding or disrupting the voting process or speaking with voters or election assistants;

- 1 (3) Interfering with the privacy of the voter, including positioning themselves ~~in such a way that they~~
2 ~~can~~ so close to a tabulator, laptop, pollbook[,] or other voting official document used in the voting
3 process that they are able to view confidential voter information on poll books or laptops or standing
4 in such a way that they can view or the contents of marked ballots inserted into a tabulator,
5 “Confidential voter information” includes a voter’s date of birth, the identity of the public agency
6 where they registered to vote, their email address, full or partial Social Security number, driver’s
7 license number, and retrievable ballot identification number assigned for official use by the county
8 board (e.g., CIV, OS, MIL, or OVR numbers);
- 9 (4) Using an electronic device to film or take photographs inside the voting enclosure;
- 10 (5) Taking photographs, videos, or recording a voter without the consent of the voter and the chief
11 judge;
- 12 (6) Entering the voting booth area or attempting to view voted ballots;
- 13 (7) Boarding a vehicle containing curbside voters; ~~and~~
- 14 (8) Providing voter ~~assistance.~~ assistance;
- 15 (9) Using doors designated for precinct officials or one-stop workers, unless authorized by the chief
16 judge at the voting place. Observers need not wait in the voting line to enter the voting enclosure;
- 17 (10) Leaving the area designated for observers by the county board of elections, provided the area
18 designated allows the observer to observe each part of the voting process except for the marking of
19 ballots; and
- 20 (11) Distributing or posting any written material in the voting enclosure.

21 (e) Eligibility. No person who is a candidate on the ballot in a primary or general election may serve as an observer
22 or runner in that primary or that general election. No person who serves ~~as an observer or runner in a primary or~~
23 ~~general election may serve~~ as a county board member, county board staff, precinct official official, or one-stop election
24 official in ~~that a primary or that general election.~~ election may serve as an observer or runner in that primary or general
25 election. [No person who is a parent, parent in law, spouse, child, child in law, sibling, or sibling in law of a precinct
26 official or one-stop election official may serve as an observer or runner in that primary or that general election.]

27 (f) Observers for unaffiliated candidates. An unaffiliated candidate or the candidate's campaign manager may appoint
28 two observers at each voting place as set forth in this Rule.

29 (g) The use of the term "chief judge" includes one-stop site managers.

30
31 *History Note:* Authority G.S. 163-22; 163-45; 163-47; 163-166.6; 163-166.7; 163-273; 163-274;

32 *Eff. October 1, 2018;*

33 *Amended Eff. September 1, 2021; Temporary Amendment Eff.*