

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

AGENCY: State Board of Elections

RULE CITATION: 08 NCAC 02 .0110

DEADLINE FOR RECEIPT: July 18, 2025

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:

On line 5, I'm concerned that adding "affected candidates, and county party chairs", would constitute a substantial difference from the published rules, as the published version of the rules would only require a single transmission to the State Board. Specifically, under 150B-21.2(g)(3), "produces an effect that could not reasonably have been expected based on the proposed text of the rule." What is your position on this?

Line 32, you left a reference to a three-day notice requirement even though you changed line 26 to five-day.

*On lines 32 through 34, meant to apply to statewide or multi-county elections? If so, how does that work? If not, I suggest making that explicit: i.e. on line 33 "the outcome of a contest **solely** within the jurisdiction of a **single** county board".*

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

Seth Ascher
Commission Counsel
Date submitted to agency: July 3, 2025

08 NCAC 02 .0110 is amended with changes as published in 39:16 NCR 1094-1095 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~~ Board, affected candidates, and county party chairs 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 protest is filed before election day and is stayed pursuant to G.S. 163-182.9(b)(4)d., the preliminary consideration meeting shall be held within two business days of election day. 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 (e)(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 ~~seven~~ 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~~ five 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~~ shall issue subpoenas for ~~witnesses persons or documents~~, documents, when the chair or two members of the county board conclude that the witnesses or documents are likely to provide

1 information that is both relevant and material to the questions the county board must adjudicate in
2 the protest, the information sought is not unnecessarily duplicative of other available evidence, and
3 the subpoena is not likely to subject the recipient to undue burden or expense. Such subpoenas shall
4 be served in the same manner ~~matter~~ as allowed in the North Carolina Rules of Civil Procedure.

- 5 (2) The county board shall notify the person protesting, any affected candidate, and any affected
6 officeholder of its decision in a protest hearing no later than 5:00 p.m. the next day after the
7 conclusion of the ~~hearing itself, hearing, in the manner provided in Paragraph (d) of this Rule. No~~
8 separate notice is required if any person requiring notice was present at the hearing when the
9 decision was announced. The board shall file at the board office a written decision within the
10 mandates of G.S. 163-182.10(d) by 5:00 p.m. three ~~five~~ business days after the conclusion of the
11 protest hearing ~~oral decision is given to the person filing the protest.~~ Such written decision shall be
12 served at the same time it is filed at the board office by email to an email address supplied by any
13 person required to receive notice under G.S. 163-182.10(b). If the county board has no email address
14 for any person required to receive notice under G.S. 163-182.10(b), the board shall serve that person
15 by U.S. mail and immediately call that person, if the person has supplied a phone number to the
16 board, to notify them that the decision has been filed. ~~any means of delivery upon the protestor and~~
17 ~~any affected candidate or officeholder within 24 hours after being filed at the board office.~~ Nothing
18 herein shall discourage more prompt decisions and written orders.

- 19 (3) All election protest hearings before county boards shall be recorded by a court ~~reporter, reporter or~~
20 by mechanical means. The hearing need not be transcribed unless the board's decision is appealed.
21 Upon notice of appeal to the State Board of an election protest, the county board shall cause the
22 record of the hearing to be transcribed and delivered to the State Board, at the county board's
23 expense, within seven business days of the notice of appeal. Transcripts of hearings shall be kept
24 for two years after their creation.

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

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

- 28 (1) the protest is administratively dismissed pursuant to 08 NCAC 02 .0114; or
29 (2) the county board of elections receives alternative instructions from the State Board issued under
30 G.S. 163-182.12.

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

35
36 *History Note: Authority G.S. 163-22; 163-182.10;*
37 *Temporary Adoption Eff. April 15, 2002;*

1 *Eff. August 1, 2004;*
2 *Readopted Eff. September 1, 2018;*
3 *Amended Eff. November 1, ~~2020~~. 2020;*
4 *Temporary Amendment Eff. August 8, 2024;*
5 *Amended Eff. August 1, 2025.*
6

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

AGENCY: State Board of Elections

RULE CITATION: 08 NCAC 09 .0110

DEADLINE FOR RECEIPT: July 18, 2025

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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:

Is a "hand-to-eye" recount the same as counting ballots by hand and eye? I see where the statutes use both phrases (i.e. 163-182.1(b)). Is there a definition somewhere I am missing?

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

08 NCAC 09 .0110 is adopted with changes as published in 39:16 NCR 1096 as follows:

08 NCAC 09 .0110 SECONDARY RECOUNTS

For any hand-to-eye recount conducted under G.S. 163-182.7A, each county board of elections involved in the recount shall provide notice at least 24 hours in advance of the recount by email to the county board's notice list under G.S. 143-318.12(b)(2), county party chairs, and the candidates in the contest subject to the recount. No separate notice of a hand-to-eye recount is required if the hand-to-eye recount occurs ~~immediately upon~~ on the same day as and following the conclusion of the first recount under 08 NCAC 09 .0107 and the notice of the first recount stated that a hand-to-eye recount, if required, could take place upon the conclusion of the first recount. The board of elections having jurisdiction over the ballot item under G.S. 163-182.7 shall schedule any hand-to-eye recount to begin within two business days of the demand for a hand-to-eye recount, whether that recount is a sample recount or a full recount.

*History Note: Authority G.S. 163-22; 163-182.7; 163-182.7A;
Temporary Adoption Eff. August 8, 2024;
Adoption Eff. August 1, 2025.*

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

AGENCY: State Board of Elections

RULE CITATION: 08 NCAC 20 .0101

DEADLINE FOR RECEIPT: July 18, 2025

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

On p. 2 line 24, it appears that the chief judge can only challenge observers who are eligible to observe. Wouldn't there be circumstances where a chief judge would challenge an observer because they were ineligible?

In the history note, it looks to me like 163-22.2 was only necessary authority for the temporary rule, not the permanent rule. Please remove.

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

Seth Ascher
Commission Counsel
Date submitted to agency: July 3, 2025

08 NCAC 20 .0101 is amended with changes as published in 39:16 NCR 1096-1097 as follows:

CHAPTER 20 – ELECTION OBSERVERS

08 NCAC 20 .0101 ELECTION OBSERVERS – CHALLENGE TO THE APPOINTMENT OF AN OBSERVER

~~(a) Observer Lists. The chair of each political party in a county may designate two precinct specific observers to attend each voting place on Election Day and each one stop site during a primary or general election in accordance with this Rule. The precinct specific observer list may include up to eight names and shall include the times that each observer shall serve. The county party chair may designate 10 additional at large observers who may attend any voting place in the county. The list of observers for one stop must designate the names of the observers who will be present on each day of early voting and, for precinct specific observers, at each one stop site. At large observers may serve at any one stop site. The chair of each State political party may designate up to 100 additional at large observers who are residents of the State who may attend any voting place in the State.~~

~~(b) Submission of Lists. The county party chair shall submit a written, signed list of county at large observers to the county director of elections, with two copies provided to the chair of the county board of elections, prior to 10:00 a.m. on the fifth day prior to Election Day. The county party chair shall submit a written, signed list of the observers appointed for each precinct to the chief judge of each precinct, with two copies provided to the chair of the county board of elections, prior to 10:00 a.m. on the fifth day prior to Election Day; the list may be delivered in care of the county director of elections. The county party chair shall submit the list of observers for one stop before 10:00 a.m. on the fifth day before the observer is to observe. The list of at large observers to serve on Election Day may be amended prior to Election Day to substitute one or all of the at large observers. The list of at large observers who serve during early voting may not be amended after 10:00 a.m. on the fifth day before the at large observer is to observe. The list of precinct specific observers to serve on Election Day may not be amended after 10:00 a.m. on the fifth day prior to Election Day. The State party chair shall submit the written, signed list of State at large observers by 10:00 a.m. on the fifth day prior to Election Day to the State Board, which shall disseminate the list to the county boards of elections. The list shall include the full name of each at large observer and the county in which the observer is registered. The State Board shall confirm that each State at large observer is a registered voter of the State. Party chairs may provide the lists by facsimile or email provided the letters are signed. Scanned signatures are permissible.~~

~~(c) Observers at Voting Place. No more than two precinct specific observers from each political party may be in the voting enclosure at any time. Only one at large observer from each political party may be in the voting enclosure at any time, even if no precinct specific observers are present. All observers, whether precinct specific or at large, may be relieved after serving no less than four hours; however, the total number of observers from each party cannot exceed three total observers in the voting enclosure at one time: two precinct specific observers and one county or State at large observer. An observer may leave the voting place without having served for four hours, but the observer cannot be replaced by a new observer until at least four hours have passed since the first observer began serving. An observer~~

1 who leaves the voting place for any reason may be prohibited by the chief judge from returning if the observer's return
2 would cause a disruption in the voting enclosure.

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

5 (1) ~~Wearing or distributing campaign material or electioneering;~~

6 (2) ~~Impeding or disrupting the voting process or speaking with voters or election assistants;~~

7 (3) ~~Interfering with the privacy of the voter, including positioning themselves in such a way that they~~
8 ~~can view confidential voter information on poll books or laptops or standing in such a way that they~~
9 ~~can view the contents of ballots inserted into a tabulator;~~

10 (4) ~~Using an electronic device to film or take photographs inside the voting enclosure;~~

11 (5) ~~Taking photographs, videos, or recording a voter without the consent of the voter and the chief~~
12 ~~judge;~~

13 (6) ~~Entering the voting booth area or attempting to view voted ballots;~~

14 (7) ~~Boarding a vehicle containing curbside voters; and~~

15 (8) ~~Providing voter assistance.~~

16 (e) ~~Eligibility. No person who is a candidate on the ballot in a primary or general election may serve as an observer~~
17 ~~or runner in that primary or that general election. No person who serves as an observer or runner in a primary or~~
18 ~~general election may serve as a precinct official or one stop election official in that primary or that general election.~~

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

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

22 (a) Filing of Challenges. A county board of elections, by a majority vote and documented through a written statement
23 made by any board member, may challenge the appointment of any observer appointed to serve in that county, and a
24 chief judge of a voting place may challenge the appointment of any observer who is eligible to serve in that voting
25 place. The challenge shall be submitted electronically or in writing to the county board of elections office before the
26 observer is scheduled to serve. The challenge shall contain the following information:

27 (1) the name of the observer;

28 (2) the party or unaffiliated candidate that appointed the observer; and

29 (3) the basis for the challenge pursuant to G.S. 163-45.1(f).

30 The county board of elections office shall immediately provide a copy of the challenge to the chair of the political
31 party or candidate that appointed the observer. A notification sent within three business hours of receipt of the
32 challenge to an email address provided by the chair of the political party or by the candidate appointing the observer
33 is a method of providing immediate notice. For the purposes of this Rule, business hours are defined as the State
34 Board's regular business hours identified in 08 NCAC 01 .0101.

35 (b) Hearing of Challenges. Upon receiving a challenge pursuant to Paragraph (a) of this Rule, the county board of
36 elections shall hold a hearing and decide the challenge as expeditiously as possible but no later than two business days
37 after the challenge is filed. For the purposes of this Paragraph, a business day includes regular business days of the

1 county board of elections and any weekend days that the county board of elections has an early voting site open in the
2 county during the period provided in G.S. 163-166.40. The chair of the county board of elections shall set the time of
3 the hearing. The hearing may be held remotely, including by telephone. The county board shall provide notice of the
4 hearing by electronic mail or telephone to the chair of the political party or the unaffiliated candidate that appointed
5 the observer, in addition to providing the meeting notice required by G.S. 143-318.12. If notice is by telephone, the
6 county board shall also provide the notice by electronic mail or text message. The notice shall inform the chair of the
7 political party or the candidate that they may waive the hearing or decline to contest the challenge, in which case no
8 hearing shall be held, and the county board may decide the challenge, as submitted, at a meeting held at the same time
9 as the noticed hearing. At the hearing, the county board shall accept written or oral submissions from elections
10 officials, observers, witnesses, and other individuals with pertinent information. The decision on the challenge shall
11 be rendered at the meeting for which the challenge was noticed. The decision shall be reduced to writing and served
12 within 24 calendar hours of the meeting, either electronically or in person, to the chair of the political party or on the
13 candidate appointing the observer.

14 (c) Appeals on Challenges. The decision by a county board of elections on a challenge to the appointment of an
15 observer pursuant to Paragraph (b) of this Rule may be appealed only by the political party or candidate that appointed
16 the observer. The county board's decision shall not be stayed pending appeal. The appeal shall be filed with the State
17 Board of Elections via email to legal@ncsbe.gov no later than two business hours after the county board's decision is
18 served pursuant to Paragraph (b) of this Rule. The appeal shall contain an argument explaining why the county board's
19 decision should be reversed on account of one or more of the grounds listed in G.S. 150B-51(b) and shall be signed
20 by the person filing the appeal. A copy of the county board decision shall be filed with the appeal. Upon receiving an
21 appeal, the State Board shall decide the appeal on the basis of the record and may permit oral argument on the appeal
22 if the chair of the Board concludes that the written record alone is not legally sufficient to make a decision on the
23 appeal. The appeal shall be decided as expeditiously as possible. The decision of the State Board shall be reduced to
24 writing and served electronically on the chair of the political party or on the candidate appointing the observer within
25 24 calendar hours of the decision having been made.

26 (d) An observer who is successfully challenged pursuant to this Rule shall not be permitted to serve as an observer in
27 the primary or election during which they were challenged.

28
29 *History Note: Authority G.S. 163-22; ~~163-45~~; ~~163-166.6~~; ~~163-166.7~~; 163-22.2; 163-45.1;*
30 *Eff. October 1, 2018;*
31 *Amended Eff. September 1, ~~2021~~; 2021;*
32 *Temporary Amendment Eff. February 8, 2024;*
33 *Amended Eff. August 1, 2025.*

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

AGENCY: Board of Elections

RULE CITATION: 08 NCAC 20 .0102

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

Seth Ascher
Commission Counsel
Date submitted to agency: July 3, 2025

08 NCAC 20 .0102 is adopted with changes as published in 39:16 NCR 1097-1098 as follows:

08 NCAC 20 .0102 APPEAL OF REMOVAL OF AN OBSERVER FROM A VOTING SITE

(a) Filing of Appeal. The decision by a chief judge to remove an observer pursuant to G.S. 163-45.1(j) may be appealed only by the chair of the political party or the candidate that appointed the observer. The appeal shall be filed with the county board of elections in the county where the observer was removed. To file the appeal, the appeal shall be emailed to the county director of elections or physically delivered to the county board office during business hours as follows:

(1) If the observer was removed from an early voting site, the appeal shall be filed within one business day of when the observer was removed. For the purposes of this Rule, a business day includes regular business days of the county board of elections and any weekend days that the county board of elections has an early voting site open in the county during the period provided in G.S. 163-166.40.

(2) If the observer was removed from an Election Day voting site, the appeal shall be filed within two calendar hours of when the observer was removed.

The appeal shall contain an argument explaining why the chief judge's decision should be reversed on account of one or more of the grounds listed in G.S. 150B-51(b). It shall state whether a hearing is requested and shall be signed by the person filing the appeal. The decision to remove an observer shall not be stayed pending appeal.

(b) Hearing of Appeal. The county board shall consider appeals filed pursuant to Paragraph (a) of this Rule as follows:

(1) If the observer was removed from an early voting site, the county board shall decide the appeal as expeditiously as possible but no later than two business days after the appeal was received.

(2) If the observer was removed from an Election Day voting site, the county board shall decide the appeal as expeditiously as possible but no later than four calendar hours after the appeal was received.

The county board shall provide notice of the meeting at which the appeal will be decided by electronic mail or telephone to the chair of the political party or the unaffiliated candidate that appointed the observer, in addition to providing the meeting notice required by G.S. 143-318.12. If notice is by telephone, the county board shall also provide the notice by email or text message. The county board's meeting may be held remotely, including by telephone. The county board shall accept written or oral submissions from elections officials, observers, witnesses, and other individuals with pertinent information. If no hearing is requested, the county board shall decide the appeal, based on written submissions only, at a meeting held at the same time as the noticed hearing. The decision shall be reduced to writing and served within 24 calendar hours after the meeting for early voting, and 2 calendar hours after the meeting on Election Day, either electronically or in person, to the chair of the political party or on the candidate appointing the observer.

(c) An observer who is removed from serving as an observer pursuant to G.S. 163-45.1(j) or this Rule shall not be permitted to serve as an observer in the primary or election during which they were removed.

- 1 *History Note:* *Authority G.S. 163-22; 163-22.2; 163-45.1;*
- 2 *Temporary Adoption Eff. February 8, 2024;*
- 3 *Adoption Eff. August 1, 2025.*

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

AGENCY: Board of Elections

RULE CITATION: 08 NCAC 20 .0103

DEADLINE FOR RECEIPT: July 18, 2025

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

Seth Ascher
Commission Counsel
Date submitted to agency: July 3, 2025

08 NCAC 20 .0103 is adopted with changes as published in 39:16 NCR 1098 as follows:

08 NCAC 20 .0103 IDENTIFICATION OF OBSERVERS

Every appointed observer serving at a voting site pursuant to G.S. 163-45.1 shall wear an identification tag to make voters and elections officials aware of the observer's role in the voting site. The tag shall read "Observer for [Name] Party" or "Observer for Candidate [Name]" with the "[Name]" being the name of the political party or the candidate, as applicable. The tag shall be provided by the county board of elections and shall be no greater in size than a square measuring four inches by four inches.

*History Note: Authority G.S. 163-22; 163-22.2; 163-45.1;
Temporary Adoption Eff. February 8, 2024;
Adoption Eff. August 1, 2025.*