



**TEMPORARY RULE-MAKING
FINDINGS OF NEED**
[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: North Carolina State Board of Elections
2. Rule citation & name: 08 NCAC 17 .0107 Voter Photo Identification Card
3. Action: <input checked="" type="checkbox"/> Adoption <input 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: February 8, 2019 b. Proposed Temporary Rule published on the OAH website: February 13, 2019 c. Public Hearing date: March 13, 2019. d. Comment Period: February 8 to March 15, 2019 e. Notice pursuant to G.S. 150B-21.1(a3)(2): February 8, 2019 f. Adoption by agency on: April 4, 2019 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]: h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:
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 checked="" type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: NC Session Laws 2018-144, sec. 1.1.(a) and 1.1.(b). Effective date: December 19, 2018 <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 type="checkbox"/> Other:
Explain: In November 2018 voters in North Carolina approved a constitutional amendment that voters presenting to vote in person provide a photo ID before voting. The constitutional amendment also requires that the General Assembly enact enabling legislation. The General Assembly passed Session Law 2018-144 in December 2018. Pursuant to Session Law 2018-144, sec. 1.1.(b), county boards of elections are required to begin issuing free voter photo identification cards upon request to registered voters no later than May 1, 2019. The State Board of Elections also was directed to adopt temporary rules to implement the issuance of voter photo identification cards by the county boards in accordance with G.S. 163A-869.1 no later than April 15, 2019. While recently enacted Session Law 2019-4 delays the requirement that voter presenting to vote in person provide a photo ID until 2020, in anticipation of the 2020 election, county boards of elections are still required to begin issuing voter photo identification cards by May 1, 2019. The State Board of Election's obligation to adopt temporary rules was also unchanged.

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

The State Board of Elections was directed by issue temporary rules by Session Law 2018-144, sec. 1.1.(b).

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:

Katelyn Love

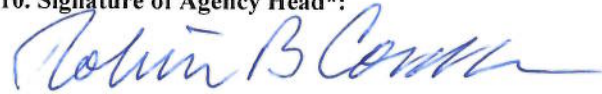
Phone:

919-814-0756

E-Mail:

Katelyn.Love@ncsbe.gov

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: Robert B. Cordle

Title: Chair

E-Mail: bob.cordle.board@ncsbe.gov

Agency contact, if any:

Phone:

E-Mail:

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

Date returned to agency:

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**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017**

**SESSION LAW 2018-144
SENATE BILL 824**

AN ACT TO IMPLEMENT THE CONSTITUTIONAL AMENDMENT REQUIRING
PHOTOGRAPHIC IDENTIFICATION TO VOTE.

The General Assembly of North Carolina enacts:

**PART I: IMPLEMENTATION OF THE CONSTITUTIONAL REQUIREMENT
REQUIRING PHOTOGRAPHIC IDENTIFICATION TO VOTE**

SECTION 1.1.(a) Article 17 of Chapter 163A of the General Statutes is amended by adding a new section to read:

"§ 163A-869.1. Voter photo identification cards.

(a) The county board of elections shall, in accordance with this section, issue without charge voter photo identification cards upon request to registered voters. The voter photo identification cards shall contain a photograph of the registered voter, the name of the registered voter, and the voter registration number for that registered voter. The voter photo identification card shall be used for voting purposes only and shall expire 10 years from the date of issuance. The expiration of a voter photo identification card shall not create a presumption that the voter's voter registration has expired or become inactive, and a voter's voter registration shall not be rendered inactive solely due to the expiration of the voter photo identification card.

(b) The State Board shall make available to county boards of elections the equipment necessary to print voter photo identification cards. County boards of elections shall operate and maintain the equipment necessary to print voter photo identification cards.

(c) County boards of elections shall maintain a secure database containing the photographs of registered voters taken for the purpose of issuing voter photo identification cards.

(d) The State Board shall adopt rules to ensure at a minimum, but not limited to, the following:

- (1) A registered voter seeking to obtain a voter photo identification card shall provide the registered voter's name, the registered voter's date of birth, and the last four digits of the voter's social security number.
- (2) Voter photo identification cards shall be issued at any time, except during the time period between the end of one-stop voting for a primary or election as provided in G.S. 163A-1300 and election day for each primary and election.
- (3) If the registered voter loses or defaces the voter's photo identification card, the registered voter may obtain a duplicate card without charge from his or her county board of elections upon request in person, or by telephone or mail.
- (4) If a registered voter has a change of name and has updated his or her voter registration to reflect the new name, the registered voter may request and obtain a replacement card from the registered voter's county board of elections by providing the registered voter's date of birth and the last four digits of the registered voter's social security number in person, by telephone, or by mail.
- (5) Voter photo identification cards issued must contain the following disclaimer: "Expiration of this voter photo identification card does not automatically result in the voter's voter registration becoming inactive."



(e) Ninety days prior to expiration, the county board of elections shall notify any registered voter issued a voter photographic identification card under this section of the impending expiration of the voter photographic identification card."

SECTION 1.1.(b) Voter photo identification cards, as required by G.S 163A-869.1, as enacted by this act, shall be available on request no later than May 1, 2019. The State Board shall adopt temporary rules to implement G.S. 163A-869.1, as enacted by this act, no later than April 15, 2019.

SECTION 1.2.(a) Article 20 of Chapter 163A of the General Statutes is amended by adding a new section to read:

"§ 163A-1145.1. Requirement for photo identification to vote in person.

(a) Photo Identification Required to Vote. – When a registered voter presents to vote in person, the registered voter shall produce any of the following forms of identification that contain a photograph of the registered voter:

(1) Any of the following that is valid and unexpired, or has been expired for one year or less:

a. A North Carolina drivers license.

b. A special identification card for nonoperators issued under G.S. 20-37.7 or other form of nontemporary identification issued by the Division of Motor Vehicles of the Department of Transportation.

c. A United States passport.

d. A North Carolina voter photo identification card of the registered voter issued pursuant to G.S. 163A-869.1.

e. A tribal enrollment card issued by a State or federal recognized tribe.

g. A student identification card issued by a constituent institution of The University of North Carolina, a community college, as defined in G.S. 115D-2(2), or eligible private postsecondary institution as defined in G.S. 116-280(3), provided that card is issued in accordance with G.S. 163A-1145.2.

h. An employee identification card issued by a state or local government entity, including a charter school, provided that card is issued in accordance with G.S. 163A-1145.3.

i. A drivers license or special identification card for nonoperators issued by another state, the District of Columbia, or a territory or commonwealth of the United States, but only if the voter's voter registration was within 90 days of the election.

(2) Any of the following, regardless of whether the identification contains a printed expiration or issuance date:

a. A military identification card issued by the United States government.

b. A Veterans Identification Card issued by the United States Department of Veterans Affairs for use at Veterans Administration medical facilities.

(3) Any expired form of identification allowed in this subsection presented by a registered voter having attained the age of 65 years at the time of presentation at the voting place, provided that the identification was unexpired on the registered voter's sixty-fifth birthday.

(b) Verification of Photo Identification. – After presentation of the required identification described in subsection (a) of this section, the precinct officials assigned to check registration shall compare the photograph contained on the required identification with the person presenting to vote. The precinct official shall verify that the photograph is that of the person seeking to vote. If the precinct official disputes that the photograph contained on the required identification is the person presenting to vote, a challenge shall be conducted in accordance with the procedures of

PART V. EFFECTIVE DATE

SECTION 5. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of December, 2018.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

VETO Roy Cooper
Governor

Became law notwithstanding the objections of the Governor at 3:39 p.m. this 19th day of December, 2018.

s/ James White
House Principal Clerk

TEMPORARY RULES
REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Elections

RULE CITATION: 08 NCAC 17 .0107

DEADLINE FOR RECEIPT: Monday, April 15, 2019

NOTE WELL: *This request when viewed on computer extends 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 call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Remove the "Draft" watermark from the Rule.

In (a), line 6, and elsewhere the term is used, I take it "board" means the county board of elections?

On line 7, what are the contents of this form? Is it only what is listed on lines 8 through 9?

On line 7, if the form is only available from the State or at the county board of elections office, how can the form be filled out "at another location" listed on line 5?

On line 13, replace "and/or" with "or"

In (c), line 24, please properly insert a period after "office"

On lines 28-32, as this was added post-publication, please underline the language.

I suggest on line 30 that you end the sentence after "county." Then begin a new sentence, "The registration..."

In (d), line 36, why not say "If, due to the photo identification card being requested at a location other than the county board office or equipment, software, or other issues, the county board..."?

And how will this work for same day registration, if the identification can't be produced that day?

In (e), Page 2, lines 5-7, what will the form require? G.S. 150B-2(8a)(d) requires the contents of forms to be in law. Is this the language on lines 7-8?

Doesn't the language on lines 5-7 apply only to the written requests? Does it also apply to in person requests? What about the telephone requests?

Amanda J. Reeder
Commission Counsel

Date submitted to agency: April 9, 2019

On line 11, replace “subsection (a)” with “Paragraph (a) of this Rule”

On line 12, what is “substantial change”? Will this be entirely decided by the registered voter? Can any change be “substantial” such that the county board must issue a new photo?

In (f), I note you do not have the language you have in (e), lines 5-7 regarding not allowing email and the form. Is this difference intentional?

On line 19, replace “subsection (a)” with “Paragraph (a) of this Rule”

On line 20, please state “The voter may use the form ... record, and shall include the voter’s former and current name, date of birth...”

In (g), line 22, what authority are you relying upon for the Executive Director to “prescribe the design of the card” outside of rulemaking?

On line 29, I suggest you replace “must” with “shall”

In (h), lines 33-34, what authority are you relying upon to state that these are not part of the public record? G.S. 132-1.2 states:

§ 132-1.2. Confidential information.

Nothing in this Chapter shall be construed to require or authorize a public agency or its subdivision to disclose any information that:

- (4) Reveals the electronically captured image of an individual's signature, date of birth, drivers license number, or a portion of an individual's social security number if the agency has those items because they are on a voter registration document.

This statute does not exclude photographs. I do not see any authority conveyed in S.L. 2017-144 for this exemption. Where is your authority for this statement?

In (j) and (k), do not bold any text.

In (j), Page 3, line 1, delete “herein” and state “this Rule”

In (k), line 3, capitalize “Rule”

In (k), what is this system? What is “official record”?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 9, 2019

1 08 NCAC 17 .0107 is adopted under temporary procedures as follows:

2
3 **08 NCAC 17 .0107 VOTER PHOTO IDENTIFICATION CARD**

4 (a) Request. A voter may request a voter photo identification card free of charge in person at the county board of
5 elections office, or at another location in the county prior to the start of the one-stop early voting period if approved
6 by a majority of the board, in the county where the voter is registered to vote. The request shall be made on a form
7 prescribed by the State Board of Elections Office and available on the State Board website and in the county board of
8 elections office. The form shall include prompts for the voter's full name, voter's date of birth, the last four digits of
9 the voter's Social Security number, the voter's signature or mark, and the date of request. If the information provided
10 by the voter matches the information on the voter registration on file with the county board of elections, the county
11 board shall issue the card. The county board shall not refuse to issue a card because the voter registration does not
12 contain the last four digits of the voter's Social Security number or complete date of birth. If the voter registration
13 does not contain the last four digits of the voter's Social Security number and/or complete date of birth, the form shall
14 serve as an update to the voter's voter registration record. [The request may be made at the county board of elections
15 office or at any other location in the county, including a one stop early voting site, if the location is designated by an
16 affirmative vote of the county board.]

17 (b) Issuance. Once the county board of elections determines it shall issue the voter photo identification card, it shall
18 take a photograph of the voter. If the face of the voter is covered, the county board shall give the voter the opportunity
19 to remove the covering but shall not require removal. If the voter declines to remove the covering, the county board
20 shall inform the voter that a voter photo identification card cannot be produced while the voter's face is covered and
21 shall inform the voter of the ability to vote provisionally due to religious objection to being photographed pursuant to
22 G.S. 163A-1145.1(d)(1).

23 (c) Simultaneous registration and request. A voter may register to vote and request a voter photo identification card
24 simultaneously in person at the county board of elections office [or other approved location in the county where the
25 voter seeks to register to vote.] The county board of elections shall [immediately] process the voter registration form
26 as soon as it is received and, if the voter appears eligible to vote based on the voter registration form, the county board
27 of elections shall process the voter registration, assign a voter registration number to the voter, and issue a voter photo
28 identification card to the voter. [For the purposes of this Rule, "immediately" means without any delay.] A voter who
29 is not registered to vote in the county may apply to register to vote and request a voter photo identification card at
30 another location in the county; the registration shall be processed at the county board of elections office, which shall
31 mail the voter photo identification card to the voter if it makes a tentative determination that the applicant is qualified
32 to vote pursuant to G.S. 163A-867.

33 (d) Timing of issuance. Voter photo identification cards shall be issued at any time, except during the time period
34 between the end of one-stop voting for a primary or election as provided in G.S. 163A-1300 and Election Day for
35 each primary and election. A county board of election shall process a request for voter photo identification at the time
36 it is received and [immediately] shall issue the card to the voter. If, due to equipment, software, the photo identification
37 card being requested at a location other than the county board office, or other issues, the county board of elections

1 cannot produce the photo identification card at the time the request is received, the county board of elections shall
2 mail the photo identification card to the voter as soon as the issue is resolved.

3 (e) Replacement card. If a registered voter loses or defaces the voter's photo identification card, the registered voter
4 may obtain a duplicate card without charge from his or her county board of elections upon request in person, by
5 telephone, or by mail. Cards may not be requested by any other method, including e-mail. The request shall be made
6 on a form prescribed by the State Board of Elections Office and available on the State Board website and in the county
7 board of elections office. In making the request, the voter shall provide the voter's name and the voter's date of birth
8 or last four digits of the voter's Social Security number. If the information provided by the voter matches the
9 information on file with the county board of elections, the county board shall issue the replacement card. If the request
10 is by telephone or mail, the county board shall mail the card to the mailing address in the voter's voter registration
11 file. A voter may request a new photo identification card in accordance with subsection (a) if the voter believes the
12 photo does not reflect a substantial change in the voter's appearance.

13 (f) Name change. If a registered voter has a change of name and has updated his or her voter registration to reflect the
14 new name, the registered voter may request and obtain a replacement card from the registered voter's county board of
15 elections by providing the registered voter's current name, date of birth and the last four digits of the registered voter's
16 Social Security number in person, by telephone, or by mail. If the information provided by the voter matches the
17 information on file with the county board of elections, the county board shall issue the replacement card. If the request
18 is by telephone or mail, the county board shall mail the card to the mailing address on the voter's voter registration
19 file. The voter may use the form required in subsection (a) to update the name on his or her voter registration record
20 if the form includes the voter's former name and current name, date of birth, the last four digits of the voter's Social
21 Security number, and the voter's signature or mark.

22 (g) Content and design of card. The Executive Director of the State Board shall prescribe the design of the card. A
23 voter photo identification card shall contain only the following information unique to the voter:

- 24 (1) A photograph of the voter;
- 25 (2) The voter's full name;
- 26 (3) The voter's voter registration number; and
- 27 (4) Expiration date.

28 The card may also contain a barcode including any of the information listed in this Paragraph. Voter photo
29 identification cards must contain the following disclaimer: "Expiration of this voter photo identification card does not
30 automatically result in the voter's voter registration becoming inactive."

31 (h) Photograph of voter not a public record. A photograph of a voter created pursuant to G.S. 163A-869.1 and this
32 Rule may be viewed by the public at the county board of elections office but may not be copied or reproduced except
33 by election officials for election administration purposes. Any such copy or reproduction is not a public record under
34 Chapter 132 of the General Statutes.

35 (i) Validity. A voter photo identification card shall be valid statewide for voting purposes. The photo identification
36 card shall serve as proof of the voter's identity, not proof that the person is a registered voter.

1 (j) Assistance. A voter may receive assistance in completing the form required herein but the voter shall sign or place
2 his or her mark on the request form.

3 (k) Form retention. The county board of elections shall upload the form required by this rule into the statewide
4 computerized voter registration system, and the uploaded document shall serve as the official record of the form.

5

6 *Authority G.S. 163A-741; 163A-869.1(d); S.L 2018-144 § 1.1.(b).*

7

Temporary Adoption Eff. April 29, 2019

DRAFT