



NORTH CAROLINA

STATE BOARD OF ELECTIONS

Mailing Address:
P.O. Box 27255,
Raleigh, NC 27611
(919) 814-0700 or
(866) 522-4723
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May 14, 2019

VIA E-MAIL

c/o Amber Cronk May
Commission Counsel
Rules Review Commission

Dear Ms. May,

On behalf of the State Board of Elections, I request withdrawal of consideration of the following rules:

Rule	Reason for Withdrawal Request
08 NCAC 03 .0301	Ambiguous
08 NCAC 03 .0302	Unnecessary
08 NCAC 04 .0301	Not subject to RRC review
08 NCAC 04 .0302	Not subject to RRC review
08 NCAC 08 .0104	Lack of statutory authority
08 NCAC 09 .0109	Lack of statutory authority

Please let me know if you require additional information.

Sincerely,

Katelyn Love
Deputy General Counsel

08 NCAC 02 .0112 is readopted as published in 31:23 NCR 2318 as follows:

08 NCAC 02 .0112 APPEAL TO THE STATE BOARD OF ELECTIONS

All appeals of a county board of election protest decision must use the following ~~form~~: form available on the State Board of Elections' website:

APPEAL OF ELECTION PROTEST TO STATE BOARD OF ELECTIONS

(Use of this form is required by G. S. 163-182.11 (a))

A copy of this appeal must be given to the county board of elections within 24 hours (weekends and holidays excluded) after the county board files its written decision at its office. This same appeal must be filed with or mailed to the State Board of Elections by the end of the second day following the county board decision if the protest involves a first primary. As to a protest of any other election, this appeal must be filed or deposited in the mail by the end of the fifth day following the county board decision. See G.S. 163-182.11 (a). A copy of the original election protest form with attachments must be filed with this appeal. A copy of the county board decision must be filed with this appeal. The county board will provide the record on appeal. As many additional sheets as are necessary to answer the questions below may be attached, but they must be numbered. Please print or type your answers.

1. Full name, mailing address, home and business phone, fax number, and e-mail address of undersigned.

2. Are you the person who filed the original protest, a candidate or office holder adversely affected by the county decision, or someone else whose interest has been adversely affected by the county decision?

3. State the date, place, kind of election, and results of the election protested (if different from the information on the election and its results as set out in the attached original protest form).

4. State the name, mailing address, home phone, and business phone of all candidates involved in the protested election.

5. State the date of the county board hearing _____

6. State the legal and factual basis for your appeal.

7. Is there any material submitted with this appeal that was not presented to and considered by the county board? Is so, please identify and state why it was not presented to the county board. Why do you think the State Board of Elections should consider it?

8. Normally the State Board will make its decision in an appeal based upon the record from the county board. If you desire the record in this matter to be supplemented, additional evidence to be considered, or a completely new hearing, please state such desire and why it should be allowed in this appeal. See G.S. 163-182.11 (b).

9. What relief do you seek? Why?

10. Have you read and reviewed G.S. 163-182.11 through G.S. 163-182.14 and the current North Carolina State Board of Elections regulations on appeals of election protests?

11. Besides a copy of the original protest and the county board decisions, this appeal includes ___ pages of additional answers and ___ pages of exhibits and documents not included in the original protest and decision.

Signature of Person Appealing

Date Appeal Signed

Date appeal received by State Board of Elections

(To be entered by the State Board of Elections staff)

Send your appeal to, or if you have questions contact: North Carolina State Board of Elections, P.O. Box 27255, Raleigh, NC 27611-7255, (919) 733-7173.

History Note: Authority G.S.163-22; 163-182.11;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004.
Readopted Eff. June 1, 2019.

08 NCAC 02 .0113 is readopted as published in 31:23 NCR 2318 as follows:

08 NCAC 02 .0113 NEW ELECTIONS ORDERED BY STATE BOARD OF ELECTIONS

(a) Eligibility to vote in a new election ~~ordered in accordance with G.S. 163-182.13 shall be determined by the voter's eligibility and circumstances at the time of the new election.~~

~~(b) Eligibility to register to vote and to vote in a new election~~ shall be governed by G.S. 163-82.6.

~~(e) (b)~~ The date of any new non-municipal ~~election~~ election, in which absentee ballots are to be required or allowed, shall be set by the State Board no earlier than 75 days after the date of the order for a new election. In the case of a municipal election where absentee ballots are allowed, a new election shall not be set earlier than 55 days after the date of the order for a new election. ~~This is required in order to provide sufficient time for absentee ballots to be prepared, printed and made available and for "one stop" voting to be provided within the mandates set out in G.S. 163, Article 20.~~

~~(d) The date of any new election ordered in a county covered by the preclearance requirements of Section 5 of the Voting Rights Act of 1965 shall be set no earlier than 75 days from the date of the new election order in order to prepare, submit, and obtain preclearance approval.~~

~~(e) (c)~~ If a new primary is ordered by the State Board, no person who voted in the initial primary of one party shall be allowed to vote in the new primary of another party. County board documentation of the voter's participation in the initial primary shall be prima facie evidence sufficient to disallow the voter from participating in the primary of another party in the new election.

*History Note: Authority G.S. 163-22; 163- 182.13(c);
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004.
Readopted Eff. June 1, 2019.*

08 NCAC 03 .0101 is readopted as published in 31:23 NCR 2319 as follows:

08 NCAC 03 .0101 VOTER COMPLAINTS AGAINST A MEMBER OF A COUNTY BOARD OF ELECTIONS

(a) Any ~~elector~~ voter desiring to prefer charges of a violation of these Rules or of Chapter 163 of the North Carolina General Statutes with the State Board of Elections against a member of any county board of elections may do so by filing with the ~~board~~ Board a statement, in writing, ~~verified by the~~ signed and sworn under oath or affirmation of the ~~elector~~ voter, which statement ~~shall~~ must contain:

- (1) the ~~name~~ name, residence address, and ~~post office address~~ county of the ~~official~~ member against whom the charges are preferred;
- (2) a ~~brief, intelligent~~ statement of the facts constituting the ~~official misconduct~~ violation alleged, with a reference to the date and place of such misconduct; and
- (3) the names and addresses, so far as may be known to the persons filing the charges, of persons who have knowledge or information of the matters referred to in the charges as filed.

(b) The statement shall be filed on the form available on the Board's website.

History Note: Authority G.S. ~~163-22;~~ 163-22(c);

Eff. March 12, 1976.

Readopted Eff. June 1, 2019.

08 NCAC 03 .0102 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 03 .0102 CHARGES

(a) Upon receipt of a charge filed against a county board member in accordance with Rule .0101 of this Section, the State Board of Elections shall set a hearing if the charges preferred includes prima facie evidence of any of the following: ~~If the charges thus filed show prima facie~~

(1) a violation of ~~the election law,~~ these Rules or of any election law under Chapter 163 of the North Carolina General Statutes;

(2) a breach of ~~official a duty,~~ duty imposed by Chapter 163; or

(3) a participation in ~~intentional~~ irregularities, incapacity or incompetency to discharge the duties of the ~~office,~~ office.

~~the~~ The State Board of Elections ~~will cause~~ shall give notice by mail thereof to be given to the ~~official~~ county board member against whom the charges are preferred, by mail ~~or by such other methods as the board may adopt,~~ of such charges and name a day and place for the hearing thereof.

History Note: Authority G.S. ~~163-22,~~ 163-22(c);

Eff. March 12, 1976.

Readopted Eff. June 1, 2019.

08 NCAC 03 .0103 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 03 .0103 HEARING

Before acting on any charges filed in accordance with Rule .0101, the State Board shall hold a hearing. At such hearing the persons voter preferring such charges shall appear, and by affidavits, unless otherwise ordered or permitted by the board, present the evidence, including any affidavits, tending to support the charges in accordance with any order of proceedings issued by the Board. ~~Such~~ All affidavits must be served on the official member against whom such charges have been filed in accordance with G.S. 1A-1, Rule 5, by the person filing the charges, at least three days before the time set for the hearing thereof.

History Note: Authority G.S. ~~163-22;~~ 163-22(c);

Eff. March 12, 1976.

Readopted Eff. June 1, 2019.

08 NCAC 03 .0104 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 03 .0104 RIGHTS

The ~~official member~~ against whom charges are preferred shall have the right to respond to the charges preferred
against him be heard by ~~submitting an affidavit affidavit, or otherwise as the board may direct,~~ in denial, rebuttal,
explanation, or extenuation of the ~~charges.~~ charges, and additional evidence may be presented in accordance with any
order of proceedings issued by the Board.

History Note: Authority G.S. 163-22;

Eff. March 12, 1976.

Readopted Eff. June 1, 2019.

08 NCAC 03 .0105 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 03 .0105 SCOPE

The ~~Board's inquiry~~ investigation into the charges filed in accordance with Rule .0101 of this section shall be confined to the charges as filed, but the ~~Board~~ board, as a matter of course, may ~~of on~~ its own motion investigate any matter listed in subsections (1) through (4) of Rule .0102 of this section ~~coming to its attention or notice upon receiving any additional evidence~~ as the result of ~~investigating or~~ hearing said charges.

History Note: Authority G.S. ~~163-22~~, 163-22(c);

Eff. March 12, 1976.

Readopted Eff. June 1, 2019.

08 NCAC 03 .0106 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 03 .0106 WITNESSES

(a) Either party the voter or the member may make application request in writing to the chairman chair of the board Board for subpoenas for witnesses to be heard orally at such the hearing held according to Rule .0103 of this section; but such The application shall include the following information:

(1) in addition to listing witnesses, shall contain the name or names of the witnesses;

(2) a brief statement of one page or less of what is expected to be proved by each witness witness; and

(3) the reason for not obtaining the affidavit the testimony cannot be presented to the Board in the form of an affidavit of such witness or witnesses.

(b) If, upon such application for subpoenas, the chair a majority of the Board board is of the opinion that the oral evidence of such witnesses will be helpful to the board, a subpoena will shall be issued for the personal appearance of the witnesses, and if required by the subpoena, the witness witnesses shall produce such books, papers, or records as may be called for in said subpoena.

History Note: Authority G.S. 163-22; 163-22(c); 163-23

Eff. March 12, 1976.

Readopted Eff. June 1, 2019.

08 NCAC 03 .0201 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 03 .0201 FILING CHARGES: ADOPTION OF PROCEDURES COMPLAINTS AGAINST A PRECINCT OFFICIAL

(a) Any ~~elector voter~~ may file with the ~~chairman chair~~ of ~~any the~~ county board of elections ~~charges a complaint~~ against any precinct election ~~official, official~~ appointed pursuant to G.S. ~~163-41. 163-41, and.~~ The complaint shall be made in writing, signed and sworn under oath or affirmation, and shall include the information required by Rule .0101 of this Chapter. The complaint may be made on the form available on the State Board's website.

(b) Following the receipt of a complaint against a precinct official, the county board of elections shall conduct a hearing in the same manner as set forth, ~~in the hearing of such charges, adopt the same procedure as is prescribed in~~ Section .0100 of this Chapter. ~~Chapter for hearing of charges filed with the State Board of Elections against a member of the county board of elections.~~

History Note: Authority G.S. 163-22;

Eff. March 12, 1976.

Readopted Eff. June 1, 2019.

08 NCAC 03 .0202 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 03 .0202 HEARING DATE AND DISPOSITION

(a) Upon the filing of ~~such charges~~ a complaint against a precinct official in accordance with Rule .0201 of this Section, ~~with the county board of elections, the chairman chair of such board~~ the county board of elections shall ~~forthwith~~ set the date for the hearing ~~of such charges~~ and ~~provide the following information immediately transmit~~ to the State Board of Elections within one business day:

(1) a copy of ~~such charges, the complaint;~~

(2) ~~advising this board of the date set for the hearing, the date and time of the hearing, if known;~~

(3) ~~following the hearing, the county board of elections shall provide the Board the final disposition made by the county board of elections. and at once, after the hearing, advise the state board of disposition made by the county board of the charges thus heard.~~

(b) ~~From the decision of the county board the petitioning elector, or responding official, The voter or precinct official may appeal the decision of the county board of elections to the State Board of Elections. Elections, where the matter may be heard "de novo," or, in the judgment of the board may be dismissed, remanded to the county or heard on petition and affidavit by the State Board of Elections. The appeal must be received by the State Board of Elections within five days of the entry of the county board of elections of its written decision. The appeal shall be in writing and state the reason for the appeal. Copies of the original complaint form and the county board of elections' decision shall be filed with the appeal. The county board shall provide the record on appeal.~~

History Note: Authority G.S. 163-22;

Eff. March 12, 1976.

Readopted Eff. June 1, 2019.

08 NCAC 03 .0301 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 03 .0301 SUMMARY INVESTIGATION

The State Board of Elections may, ~~when deemed necessary by the Board, whenever the circumstances of any matter pending before it may indicate the necessity therefor,~~ suspend these rules and proceed pursuant to the State Board's authority under G.S. 163-22 to ensure ~~in a summary manner or make any inquiry or investigation which in its judgment may be necessary or desirable for the prompt and efficient~~ enforcement of the laws pertaining to elections, and the ~~proper~~ performance of their duties by election officials.

History Note: Authority G.S. 163-22;

Eff. March 12, 1976.

Readopted Eff. September 1, 2018.

08 NCAC 03 .0302 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 03 .0302 REPORTS OF EVIDENCE OF CRIMINAL VIOLATION

(a) The State Board of Elections and every county board of elections, upon the completion of any hearing with respect to the violation of the election laws, shall report in writing to the ~~appropriate prosecuting officer~~ Attorney General or district attorney for the county a ~~resume or~~ summary of all evidence heard by such board which tends to show that any person or persons probably have been guilty of one or more violations of G.S. 163-274 or G.S. 163-275. ~~the election laws, the violation of which is made a crime by law.~~

(b) A record shall be kept by such board of all such reports to the Attorney General or district attorney. ~~such prosecuting officers.~~ Upon request by any prosecuting officer, the written evidence heard by either board shall be made available for his or her examination and official use.

History Note: Authority G.S. 163-22;

Eff. March 12, 1976.

Readopted Eff. September 1, 2018.

08 NCAC 04 .0304 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 04 .0304 OPERATION AND MATTER OF VOTING ON VOTING SYSTEMS

(a) Prior to the opening of the polls, the precinct officials shall open the voting system and examine the ballot for accuracy and examine the counters or other method to determine there is a zero balance. Any persons interested in viewing this procedure may observe but shall not interfere or impede the process. If the system prints a zero tape or other paper document, the document shall be maintained and secured in the manner prescribed by the manufacturer and the county board of elections.

(b) The voter shall follow the instructions contained on the voting system. Only properly voted official ballots shall be introduced into the voting system. Spoiled or damaged ballots shall not be introduced into the voting system. If a voter improperly marks or damages a ballot, it shall be returned to the precinct official, marked as spoiled and maintained as specified by the county board of elections. The voter may not receive a replacement ballot until the spoiled or damaged ballot is returned to the precinct official. The voter shall not be given more than three replacement ballots.

(c) Except as provided for curbside voting in G.S. 163-166.9, official ballots shall not leave the voting enclosure during the time that voting is being conducted there.

History Note: Authority G.S. 163-22; 163-165.7;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004.
Readopted Eff. June 1, 2019.

08 NCAC 04 .0305 is readopted as published in 31:23 NCR 2311 as follows:

**08 NCAC 04 .0305 INSTRUCTION OF PRECINCT OFFICIALS AND VOTERS IN THE USE OF
VOTING SYSTEMS**

(a) The ~~chairman~~ chair of the county board of elections in a county where a voting system is used shall conduct an instructional meeting before any primary or election to instruct the precinct officials in the use of the voting system. The ~~chairman~~ chair may use any persons deemed knowledgeable or useful to the instruction of the precinct officials. The instructions on the use and operation of the voting system shall be according to manufacturer's instructions furnished with the voting system, whether the system is purchased or leased by the county board of elections. The training shall be sufficient such that the precinct officials shall be qualified to instruct the voters on the use of the voting system.

(b) The ~~chairman~~ chair of the county board of elections shall not permit a voting system to be used in any precinct in any election ~~unless the chairman shall be satisfied unless the chair is satisfied~~ that the precinct officials of the precinct have learned ~~the proper to use and operation of operate~~ the system in accordance with the manufacturer's instructions. ~~Such additional instruction as determined by the county board of elections to be needed shall be provided.~~ The county board of elections may require that precinct officials receive additional instruction on the use and operation of voting systems.

(c) A voter may request instruction for the proper use of the voting system from a precinct official. The precinct official shall provide such technical instruction to the voter but shall not seek to influence or intimidate the voter in any manner.

*History Note: Authority G.S. 163-22; 163-165.7;
 Temporary Adoption Eff. April 15, 2002;
 Eff. August 1, 2004.
 Readopted Eff. June 1, 2019.*

08 NCAC 04 .0306 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 04 .0306 DUTIES OF CUSTODIANS OF VOTING SYSTEMS

(a) The ~~chairman~~ chair of the county board of elections shall be responsible for the safekeeping, storage, maintenance and care of the voting system. The voting system shall be ~~properly~~ stored in a ~~safe, appropriate and secure~~ location ~~such that access is restricted to county board of elections staff and~~ the system cannot be tampered with when not in use on election day. The county board of elections may appoint as many persons as determined necessary for the maintenance, storage and care of the voting system and for the ~~proper~~ preparation and testing of the voting system and delivery to the voting precincts preceding a primary or an election. Persons employed for this purpose shall be compensated for their services as authorized by the county board of elections.

(b) On election day when the system is used for voting purposes and until the chair of the county board ~~chairman~~ collects the system, the voting system shall be under the ~~direct~~ supervision and control of the chief judge unless ~~the county board of elections authorizes another elections official to have supervision and control.~~ ~~provision for its custody is otherwise authorized.~~

History Note: Authority G.S. 163-23; 163-165.7;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004.
Readopted Eff. June 1, 2019.

08 NCAC 04 .0307 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 04 .0307 TESTING OF VOTING SYSTEM BEFORE USE IN AN ELECTION

(a) The county board of elections shall ~~test, test, or supervise the testing, of or cause to be tested~~ each voting system or unit that will be used in the election to ensure that the system is operational ~~operating properly~~ and has been programmed to count votes accurately. For the purpose of this Rule, “accurately” means in accordance with the procedures for Logic and Accuracy Testing as outlined in the North Carolina State Topical Elections Processes and Procedures (STEPPS) manual. There shall be a record maintained along with the voted and unvoted ballots at the county board of elections office that shall include, at a minimum, the following information: at a minimum,

(1) the dates, times and method of testing ~~used; used,~~

(2) the results of the ~~test; test,~~ and

(3) the ~~names of the~~ persons conducting the test.

(b) Any interested person may observe the testing of the voting system but shall not interfere with or impede the process. For the purpose of testing a voting system prior to the purchase or lease of the system, testing at a one-stop absentee voting site shall fulfill the requirement to test the voting system in a precinct within the county.

*History Note: Authority G.S. 163-22; 163-165.7;
 Temporary Adoption Eff. April 15, 2002;
 Eff. August 1, 2004.
 Readopted Eff. June 1, 2019.*

08 NCAC 06B .0103 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 06B .0103 ARRANGEMENT OF OFFICIAL BALLOTS

(a) ~~As soon as practicable after~~ After the close of the filing period, the State Board of Elections shall certify to the county boards of elections the order of the offices and candidate names to be voted on the official ballot. The State Board of Elections shall provide the text and arrangement of referenda to be voted on the official ballot.

(b) ~~Generally, the~~ The order of precedence for candidate ballot items shall be as follows:

- (1) Federal Offices;
- (2) State Offices in the order certified by the State Board of Elections;
- (3) District and local offices;
- (4) Non-partisan offices; and
- (5) Referenda, unless the voting system design requires referenda to be before candidate ballot items.

Ballot items for full terms of an office shall be listed before ballot items for partial terms of the same office. The term of the unexpired office only shall be listed as part of the title of the office.

(c) Names of candidates shall be printed in the exact form either certified by the State Board of Elections for those candidates who are required to file the Notice of Candidacy with the State Board of Elections, by convention or by petition. Candidates for all offices shall provide their name ~~exactly~~ as it is to appear on the ballot. Candidates may request in writing a change in the manner that their name is to appear on the ballot during the time the filing period is open.

History Note: Authority G.S. 163-22; 163-165.6;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004.
Readopted Eff. June 1, 2019.

08 NCAC 06B .0104 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 06B .0104 LATE CHANGES IN BALLOTS

After the official ballots for a general or special election have been printed and the absentee voting period has begun, the death, resignation, or disqualification of a candidate whose name appears on the official ballots shall not require that the ballots be reprinted. If the vacancy occurs before the absentee voting period begins, the responsible county board of elections elections, or State Board of Elections if the contests spans more than one county, may determine whether it is practical to have the ballots reprinted with the name of the replacement nominee as authorized by G.S. 163-114. If the ballots are not reprinted, a vote cast for the candidate whose name is printed on the ballot shall be counted as a vote for the replacement nominee.

History Note: Authority G.S. 163-22; 163-165.3;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004.
Readopted Eff. June 1, 2019.

08 NCAC 06B .0105 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 06B .0105 COUNTING OF OFFICIAL BALLOTS

(a) Following the close of the polls the official ballots shall be ~~counted.~~ counted in accordance with G.S. 163-182.1(a). Precinct officials shall follow the procedures specified by the voting system manufacturer and in compliance with G.S. 163-182.1 and 163-182.2. The counting of the ballots shall be completed in the presence of the precinct election officials, observers, and any persons desiring to observe the count. All official ballots shall be counted at the precinct unless authorized by ~~legislative local act and approved by~~ the State Board of Elections.

(b) The counting of the ballots at the precinct shall be continuous until completed. From the time the counting of the ballots is begun until the votes are counted and the requisite ~~documentation~~ documentation, including results tapes, is signed, certified as required, and delivered to the chief judge or judge chosen to deliver the documentation to the county board of elections, the precinct chief judge and judges shall not separate, nor shall any of them leave the voting place except for unavoidable ~~necessity.~~ necessity, in which case the chief judge or judge who left the polling place shall not be permitted to return to the polling place. Unavoidable necessity means an emergency as determined by the departing precinct official.

~~(c) In the cases where the precinct officials must interpret the voter's choice, the following shall apply:~~

~~(1) — When it is impossible to determine a voter's choice for an office, the ballot shall not be counted for that office but shall be counted for all other offices;~~

~~(2) — If a ballot is marked for more names than there are positions to be filled, it shall not be counted for that office but shall be counted for all other offices;~~

~~(3) — If a ballot has been defaced or torn by a voter so that it is impossible to determine that voter's choice for one or more offices, it shall not be counted for such offices but shall be counted for all offices for which the voter's choice can be determined; and~~

~~(4) — If a voter has done anything to a ballot other than mark it properly, it shall be counted unless such action by the voter makes it impossible to determine the voter's choice.~~

(d) When the counting is completed the chief judge or his or her designee shall verbally announce the results at the precinct. The announcement of the results shall clearly state the results are unofficial. The unofficial results shall be transmitted to the county board of elections in the manner determined by the county board of elections and the voting system. This report shall be unofficial and shall have no binding effect upon the official county canvass to follow. As soon as the precinct reports are received, the ~~chairman,~~ chair, secretary or designee shall publish the unofficial reports to the news media.

(e) Provisional official ballots shall be counted by the county board of elections before the canvass. If the county board finds that an individual voting a provisional official ballot is not eligible to vote in one or more ballot items on the official ballot, the board shall not count the official ballot in those ballot items, but shall count the official ballot in any ballot items for which the individual is eligible to vote.

History Note: Authority G.S. 163-22; 163-47(a); 163-182.1; 163-182.2;

1 *Temporary Adoption Eff. April 15, 2002;*
2 *Eff. August 1, 2004.*
3 *Readopted Eff. June 1, 2019.*

08 NCAC 09 .0106 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 09 .0106 GENERAL GUIDELINES

(a) Prior to each recount under G.S. 163-182.7, the county board of elections or State Board shall ~~confer with~~ inform ~~the political affected~~ parties and candidates of the recount and describe to them the process of conducting recounts.

(b) In the case of tie votes, the winner shall be determined by lot only in the case set out in G.S. 163-182.8(2). Where there are 5,000 or fewer votes cast, there shall be only one determination by lot for each tied election. There shall be no determination by lot until the time has expired for the affected candidate(s) to request a recount, unless all of the affected candidate(s) waive their right in writing to request a recount.

(c) During the conduct of recounts, ballots shall be counted in accordance with the principles in G.S. 163-182.1(a). ~~in the cases where the board of elections must interpret the voter's choice, the following shall apply:~~

~~(1) — When it is impossible to determine a voter's choice for an office, the ballot shall not be counted for that office but shall be counted for all other offices;~~

~~(2) — If a ballot is marked for more names than there are positions to be filled, it shall not be counted for that office but shall be counted for all other offices;~~

~~(3) — If a ballot has been defaced or torn by a voter so that it is impossible to determine that voter's choice for one or more offices, it shall not be counted for such offices but shall be counted for all offices for which the voter's choice can be determined; and~~

~~(4) — If a voter has done anything to a ballot other than mark it properly with pen or pencil, it shall be counted unless such action by the voter makes it impossible to determine the voter's choice.~~

~~(d) The following shall apply in counting punch card ballots:~~

~~(1) — All of the candidates for whom the voter has indicated a preference shall be counted if the corresponding chad is completely punched out or hanging by one corner (showing that three of the four corners have been punched out); and~~

~~(2) — If the chad has not been punched out or is not hanging by one corner, then the determination must be made if the voter has shown consistency in marking the ballot. If the voter has shown consistency in marking choices on the ballot — all of the candidates for whom the voter has indicated a preference shall be counted.~~

~~(e)(d)~~ In conducting recounts of ~~lever~~, direct record electronic, machines and any other types of voting machines that require a county board member or designated official to reprint tapes and to read the totals and another board member to record the totals for each candidate such recount shall be conducted by a bi-partisan team of four: two officials (one from each of the two parties having the largest number of registered voters in the state) reading and confirming the totals per machine and two officials (one from each of the two parties having the largest number of registered voters in the state) recording the results simultaneously.

~~(f)(e)~~ In conducting hand to eye recounts or recounts of paper ballots, a bi-partisan team of four shall be used: two officials (one from each of the two parties in the State with the largest number of registered voters) to relay the results of each ballot with one person reading the ballot and the other official observing the ballot and the person reading the

1 results of the ballot, and two officials (one from each of the two parties in the State with the largest number of
2 registered voters) recording the tally of votes for each candidate on paper while stating aloud after each choice is read
3 on the fifth tally for a particular candidate, the word "tally."

4 ~~(g)(f)~~ The county board of elections shall conduct recounts ~~in two circumstances, only as follows:~~

5 ~~(1) In the first circumstance,~~ the recount is mandatory under G.S. ~~163-182.7(b) or (c); or 163-182.7(b).~~

6 ~~(2) In the second circumstance,~~ the recount is not mandatory but the county board of elections or the State
7 Board of Elections determines, using its authority in G.S. 163-182.7(a), that in order to complete
8 the canvass a recount is necessary.

9 ~~(h)(g)~~ A candidate shall have the right to call for a hand-eye recount, as to elections conducted by optical scan
10 ~~marksense systems or punchcard systems,~~ within 24 hours after a mandatory or discretionary recount or by noon on
11 the next business day of the county board office, whichever is later, if the apparent winner is the apparent loser after
12 the first recount, unless human error resulted in the vote count change.

13 ~~(i)(h)~~ Any candidate shall have the right to file an election protest within 24 hours after a recount or by noon of the
14 next business day of the county board office, whichever is later.

15
16 *History Note: Authority G.S. 163-22; 163-182.7;*
17 *Temporary Adoption Eff. April 15, 2002;*
18 *Eff. August 1, 2004.*
19 *Readopted Eff. June 1, 2019.*

08 NCAC 09 .0107 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 09 .0107 RECOUNT OF OPTICAL SCAN/MARKSENSE/PUNCHCARD ~~BALLOTS~~
BALLOTS

(a) ~~How to conduct the first recount.~~ In the first recount conducted by the county board of elections in accordance with G.S. 163-182.7, all ballots that were originally counted by the optical scan equipment ~~are to shall~~ be counted again by the optical scan equipment producing another machine count. A "machine count" total is a ballot count produced by a voting system that uses machines. All ballots that were rejected for tabulation purposes by the machines - commonly called "outstacked" or center bin ballots - ~~are to shall~~ be recounted by ~~hand and eye using the team of four guidelines outlined in 08 NCAC 09 .0106,~~ a bi-partisan team of four in accordance with 08 NCAC 09. 0106(f).

(b) ~~The steps after the first recount.~~ When the first recount, including absentee and provisional ballot recount totals, has been completed, the board of elections shall ~~follow these steps:~~ determine if a second recount is necessary as follows:

(1) ~~The county board must determine~~ Determine whether the first recount produces a change in the winner; winner in accordance with the following:

~~(2)(A)~~ If the apparent winner after the initial balloting is the apparent loser after the first recount, that candidate shall be entitled to demand a second recount, by hand and eye, of all ballots; and

~~(3)(B)~~ If the apparent winner after the initial balloting remains the apparent winner after the first recount, ~~Subparagraph (4) of this Rule must be considered;~~ the county board shall proceed according to Subparagraph (2) of this Rule;

~~(4)(2)~~ ~~The county board must determine~~ Determine whether there is a discrepancy in the machine totals between the initial balloting and the first ~~recount;~~ recount in accordance with the following:

~~(5)(A)~~ If the machine totals from the initial balloting and the first recount are the same, no second recount is necessary; and

~~(6)(B)~~ If the machine totals from the initial balloting and the first recount are not the same, ~~Subparagraph (b)(7) of this Rule must be considered;~~ the county board shall proceed according to Subparagraph (3) of this Rule;

~~(7)(3)~~ ~~The county board must determine~~ Determine whether the discrepancy in the machine total can be reconciled;

~~(8)(3)~~ ~~The county board must determine~~ Determine if the discrepancy in the machine total between the initial balloting and the first recount can be reconciled, explained. The county board shall examine ~~the outstack/center bin all outstacked or center bin~~ all outstacked or center bin ballots from the first recount, ~~determine how they should be counted;~~ determine how each ballot shall be counted according to Rule .0106(c) of this Section, and reconcile the count with the machine count on the initial ~~balloting.~~ balloting in accordance with the following:

1 (A) If this reconciliation produces the same machine total for the first recount as the machine
2 total in the initial balloting, no second recount is necessary; and
3 ~~(9)~~(B) If the reconciliation produces a different machine total for the first recount than the machine
4 total in the initial balloting, the losing candidate is entitled to demand a second recount, by
5 hand-to-eye, ~~hand and eye~~, of all ballots.

6
7 *History Note:* *Authority G.S. 163-22; 163-182.7;*
8 *Temporary Adoption Eff. April 15, 2002;*
9 *Eff. August 1, 2004.*
10 *Readopted Eff. June 1, 2019.*

08 NCAC 09 .0108 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 09 .0108 RECOUNT OF DIRECT RECORD ELECTRONIC AND LEVER (DIRECT RECORD MECHANICAL) VOTING MACHINES

(a) In the first recount conducted by the county board of elections in accordance with G.S. 163-182.7, all votes cast on ~~each unit~~ each direct record electronic voting machine shall be retabulated and results provided. The results provided shall be re-read using the team of four rules outlined in Rule .0106(e) of this Section. ~~Section I of these Rules.~~

(b) When the first recount has been completed, the board of elections shall ~~follow these steps:~~ proceed in accordance with the following in order to determine if a second recount is necessary:

(1) ~~The county board must determine~~ Determine whether the first recount produces a change in the winner;

~~(2)(A)~~ If the apparent winner after the initial balloting is the apparent loser after the first recount, that candidate shall be entitled to demand a second recount; and

~~(3)(B)~~ If the apparent winner after the initial balloting remains the apparent winner after the first recount, ~~Subparagraph (b)(4) of this Rule must be considered;~~ the county board shall proceed in accordance with Subparagraph (2) of this Rule;

~~(4)(2)~~ ~~The county board must determine~~ Determine whether there is a discrepancy in the machine totals between the initial balloting and the first ~~recount;~~ recount in accordance with the following:

~~(5)(A)~~ If the unit totals from the initial balloting and the first recount are the same, no second recount is necessary; and

~~(6)(B)~~ If the unit totals from the initial balloting and the first recount are not the same, ~~Subparagraph (b)(7) of this Rule must be considered;~~ the county board shall proceed to the step in Subparagraph (3) of this Rule;

~~(7)~~ ~~The county board must determine~~ Determine whether the discrepancy in the machine total can be reconciled;

~~(8)(3)~~ ~~The county board must determine~~ Determine if the discrepancy in the unit totals between the initial balloting and the first recount can be explained. ~~(Possible~~ Possible acceptable explanations may include problems with the setup of the ballot, problems with the software or other unit ~~malfunction);~~ and malfunction.

~~(4)~~ Determine if the discrepancy in the machine total between the initial balloting and the first recount can be reconciled in accordance with the following:

~~(9)(A)~~ If the reconciliation produces the same unit total for the first recount as the unit total in the initial balloting, no second recount is necessary; and

(B) If the reconciliation produces a different unit total for the first recount than the unit total in the initial balloting, the losing candidate is entitled to demand a second recount ~~provided~~ by the county board of elections.

1 (c) The second recount shall be a manual recount, by hand-to-eye, unless, due to a voting machine error, no second
2 recount is possible. A manual recount, by hand and eye, of ballots is not possible whenever a lever machine or direct
3 record electronic voting machine error occurs.

4 ~~(d) The State Board of Elections shall hear any appeals of recount protests.~~

5
6 *History Note: Authority G.S. 163-22; 163-182.7;*
7 *Temporary Adoption Eff. April 15, 2002;*
8 *Eff. August 1, 2004.*
9 *Readopted Eff. June 1, 2019.*

08 NCAC 09 .0109 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 09 .0109 MANUAL HAND TO EYE RECOUNTS

Mandatory recounts, as set out in G.S. 163-182.7, by ~~hand-eye optical scan/marksense/punchcard voting hand-to-eye optical scan equipment~~, shall be conducted as follows: If a sample of the precincts of the voting units in question were recounted by hand-eye and produced results with that of the mandatory recount in those precincts such that one could reliably assume that any problems with scanning equipment was confined to those precincts in which there was a difference that could not be reconciled in the totals between the original count and the mandatory recount, then:

- (1) The mandatory recount by hand-eye initially shall occur in only 10 percent of the voting jurisdiction's precincts.
- (2) Those precincts shall include all those precincts in which a different total was produced by the machine-read count of ballots for the first count, including the outstacked/center bin, and the mandatory recount, as well as a sufficient number of additional precincts to constitute a total of at least 10 percent of the precincts of the voting jurisdiction.
- (3) However, in any event, at least five percent of the voting jurisdiction's precincts included in the sample shall have experienced the same count for machine-read ballots, including the outstacked/center bin, in the original count, and in the mandatory recount.
- (4) The precincts included in the sample which had the same machine-read count in the original and mandatory recount shall be chosen by random draw by lot from a container held by the Chair of the county board of elections, with all precincts which did not experience a difference in count by number being placed into the container, with the candidate whom appears to have been the loser after the mandatory recount drawing said lots.
- (5) If the hand-eye recount of those precincts which did not experience a difference in count from the original count and the mandatory recount results in a different total from that produced on the previous counts, in any precinct, then upon request of the apparent losing candidate, all precincts for that race shall be recounted by hand-eye.
- (6) After two machine count of votes (including the initial election or primary night count), any recount conducted in cases involving optical scan ~~marksense and punchcard voting~~ equipment shall be a manual hand-eye recount.

History Note: Authority G.S. 163-22; 163-182.7;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004.
Readopted Eff. June 1, 2019.



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6700

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

August 21, 2018

Katelyn Love, Rulemaking Coordinator
Board of Elections and Ethics Enforcement
Sent via email only: katelyn.love@ncsbe.gov

Re: Extension of the Period of Review for Rules 08 NCAC 01 .0106, 08 NCAC 02 .0114, 08 NCAC 05 .0111, 08 NCAC 10B .0109, 08 NCAC 16 .0101-.0104, 08 NCAC 18 .0101-.0102, and 08 NCAC 20 .0101; and Objection to Rules 08 NCAC 01 .0104, 08 NCAC 02 .0110-.0113, 08 NCAC 03 .0101-.0106, .0201-.0202, .0301-.0302, 08 NCAC 04 .0302-.0307, 08 NCAC 06B .0103-.0105, 08 NCAC 08 .0104, 08 NCAC 09 .0106-.0109, and 08 NCAC 10B .0101-.0108

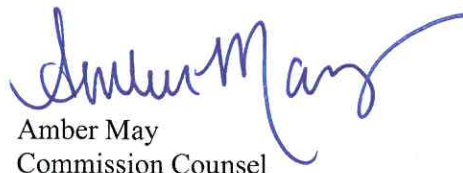
Dear Ms. Love:

At its meeting on August 16, 2018, the Rules Review Commission extended the period of review for 08 NCAC 01 .0106, 08 NCAC 02 .0114, 08 NCAC 05 .0111, 08 NCAC 10B .0109, 08 NCAC 16 .0101-.0104, 08 NCAC 18 .0101-.0102, and 08 NCAC 20 .0101 in accordance with G.S. 150B-21.10 at the request of the agency. Pursuant to 150B-21.13, when the Commission extends the period of review, it is required to approve or object to rules or call a public hearing on the same within 70 days.

In addition, the Commission objected to 08 NCAC 01 .0104, 08 NCAC 02 .0110-.0113, 08 NCAC 03 .0101-.0106, .0201-.0202, .0301-.0302, 08 NCAC 04 .0302-.0307, 08 NCAC 06B .0103-.0105, 08 NCAC 08 .0104, 08 NCAC 09 .0106-.0109, and 08 NCAC 10B .0101-.0108 for the reasons set forth in the attached document.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's actions, please feel free to contact me.

Sincerely,



Amber May
Commission Counsel

Enclosure

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

Judges and
Assistants
919/431-3000
fax: 919/431-3100

Clerk's Office
919/431-3000
fax: 919/431-3100

Rules Review
Commission
919/431-3000
fax: 919/431-3104

Civil Rights
Division
919/431-3036
fax: 919/431-3103

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Elections and Ethics Enforcement

RULE CITATION: All Rules

DEADLINE FOR RECEIPT: Friday, August 10, 2018

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 call our office to inquire concerning the staff recommendation.

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

Please capitalize "Board" when referring to the State Board.

Please ensure that all references to G.S. 163 have been updated to reflect the recodification to G.S. 163A. I have tried to make note of this issue in individual rules; however, I make no guarantee that I caught them all.

Please be sure that any references to "State Board of Elections" have been updated to reflect the current name of the Board. I have tried to make note of this issue in individual rules; however, I make no guarantee that I caught them all.

In some rules you have capitalized "executive director" of the State Board, in others you have not. Please be consistent. This has also occurred with "county board of elections"

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

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

RRC STAFF OPINION

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 02 .0110

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff believes this Rule is unclear or ambiguous. Staff believes this Rule is ambiguous as it contains several ambiguous terms including "should", "good cause", actual notice", "as soon as possible", "reasonable and relevant", and "timely" without providing any additional clarifying information.

Further, in (b), the Board has indicated that they "may not consider election protests not filed in time", but provides no additional information as to how this will be decided.

Staff notes that additional information relating to the clarity of this Rule is noted in this Rule's corresponding technical change requests.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 02 .0110

DEADLINE FOR RECEIPT: Friday, August 10, 2018

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 call our office to inquire concerning the staff recommendation.

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

For purposes of simplification and clarity in (a), please consider rewording to say something like the following:

(a) The county board shall deliver any filed election protests to the State Board as follows:

(1) if hand-delivering or mailing, within 24 hours after the election protest is filed;

(2) if faxing, the same day the election protest is filed; and

(3) if emailing, the same day the election protest is filed.

~~or place in the mail, a copy of an election protest form and any attachments to it, to the State Board of Elections within 24 hours after it is filed. Faxing the protest, with attachments, on that same day it was filed to the State Board shall constitute the required delivery. Sending the protest and attachments, by e-mail, on the same day it was filed shall also constitute the required delivery.~~

Otherwise, in (a), on lines 6 and 7, what is the "required delivery"? Is the intent that it be given to you all within 24 hours if the county board is mailing or delivering in person, but the same day if they are faxing or emailing? What if it is delivered to the county board at 4:59? Are they still required to give it to you that same day? Please review for clarity and accuracy.

In (b), line 8, by "may not consider", do you mean "shall not consider"?

In (b), line 8 what is meant by "in time"? Is there a cross-reference available? Do you mean in accordance with 163A-1177(b)(4)?

In (b), line 9, would it be appropriate to delete "of a possible hearing"? It appears to me that 163A-1180 gives the State Board broad discretion in these matters. Do you instead mean something like "... to the State Board for consideration in accordance with 163A-1180"?

Please consider beginning (c) with something like "Upon receive of a timely filed election protest form, the county board of elections shall a preliminary consideration in accordance with 163A-1178. If the county board determines that a hearing is necessary, the board shall set the hearing..."

Amber May
Commission Counsel

Date submitted to agency: August 2, 2018

In (c), please change “should be held” to “is necessary”

In (c), line 14, what is meant by “good cause”? Please provide some factors as to how this determination will be made.

Lines 14-16, please consider rewording to say “ hearing may be set on or continued to a weekend day or a holiday upon a showing of good cause and upon informing the State Board. For purposes of this Paragraph, ‘good cause’ is....(whatever good cause is)

In (d), line 18, please delete or define “actual” in “actual notice”

On line 19, please delete or define “as soon as possible.” As written, it appears as though it would be appropriate that written notice would go out after the hearing has occurred.

Please provide some lead in language to Subparagraph (d)(1) through (4). Is this how the hearing will be conducted? If so, should this be a new Paragraph?

In (d)(1), line 21, please delete or define “reasonable and relevant”

In (d)(2), line 29, please delete or define “actual” in “actual delivery”

In (d)(3), lines 36 through line 1 of page 2, what is the intent of “a county board may cause hearings, that on their face do not present merit to be recorded by mechanical means and not by a court reporter only with prior permission of the executive director?” What is meant by “mechanical means”? How will it be determined whether the executive director will grant this request? What is the process to get this approval?

In (d)(4), who is “it” in “it shall decide”? The State Board?

In (e), please delete or define “timely”

In (e), lines 7-8, please break out (1) and (2) into a list so that it reads:

A county board of elections shall timely hear and decide all protests, unless

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

(2) the county board of elections receives alternative instructions from the State Board issued under G.S. ~~163-182-121~~163A-1180.

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

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

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

08 NCAC 02 .0110 is readopted with changes as published in 31:23 NCR 2313 as follows:

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

(a) The county board shall deliver or place in the mail, a copy of an election protest form and any attachments to it, to the State Board of Elections within 24 hours after it is filed. Faxing the protest, with attachments, on that same day it was filed to the State Board shall constitute the required delivery. Sending the protest and attachments, by e-mail, on the same day it was filed shall also constitute the required delivery.

(b) The county board may not consider election protests not filed in time, but shall refer all such untimely protests, along with copies of the protest and attachments, to the State Board of Elections office for consideration of a possible hearing by the State Board of Elections under G.S. ~~163-182.12~~ 163A-1180.

(c) If after preliminary consideration of a protest, the county board determines that a hearing should be held as authorized by G.S. ~~163-182.10~~ 163A-1178, the board shall set the hearing no later than ten business days from the date of the preliminary consideration, 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. Only for good cause and upon informing the State Board of Elections office, may a hearing be set on or continued to a weekend day or holiday.

(d) Notice of hearing as required by G.S. ~~163-182.10 (b)(2)~~ 163A-1178(b)(2) shall be given at least three business days prior to the day of the hearing, and the notice required shall be actual notice by any means chosen by the county board. Any oral notice of the hearing shall be followed as soon as possible with a written notice. The oral notice shall constitute valid notice meeting the three-day notice requirement.

(1) Upon a reasonable and relevant request by a protester or interested person, the chair or any two members of the county board may issue subpoenas for persons or documents. Such subpoenas shall be served in the same matter as allowed in the North Carolina Rules of Civil Procedure.

(2) The county board shall notify the person protesting, any affected candidate, and any affected officeholder of its decision in a protest hearing no later than 5:00 p.m. the next day after the conclusion of the hearing itself. The board shall file at the board office a written decision within the mandates of G.S. ~~163-182.10 (d)~~ 163A-1178(d) by 5:00 p.m. five business days after the oral decision is given to the person filing the protest. Such written decision shall be served by any means of actual delivery upon the protestor and any affected candidate or officeholder within 24 hours after being filed at the board office. Nothing herein shall discourage more prompt decisions and written orders.

(3) All election protest hearings before county boards shall be recorded by a court reporter. The hearing need not be transcribed unless the board's decision is appealed. Upon notice of appeal to the State Board of an election protest, the county board shall cause the record of the hearing to be transcribed and delivered to the State Board, at the county board's expense, within seven business days of the notice of appeal. A county board may cause hearings, that on their face do not present merit to be recorded by mechanical means and not by court reporter only with prior permission of the Executive

Director of the State Board of Elections. Any non-transcripted record of the county hearings may be destroyed 60 days after the date of hearing if not appealed, or 60 days after the entry of any final order or decision in an appealed hearing. Transcripts of hearings shall be kept for two years after their creation.

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

(e) A county board of elections shall timely hear and decide all protests, unless (1) the protest is administratively dismissed pursuant to 08 NCAC 02 .0114 or (2) the county board of elections receives alternative instructions from the State Board issued under G.S. ~~163-182-12~~163A-1180. If a protest does not concern the manner in which votes were counted or results tabulated, a county board of elections shall not delay canvass in order to hear the protest. A protest that alleges the occurrence of an election law violation regarding an insufficient number of votes to change the outcome of a contest within the jurisdiction of a county board of elections shall not delay canvass by a county board of elections.

History Note: Authority G.S. ~~163-22~~163A-741; ~~163-182-10~~163-182-10163A-1178;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004.
Readopted Eff. September 1, 2018.

RRC STAFF OPINION

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 02 .0111

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff believes this Rule is ambiguous as it requires a “timely” filing, without providing any additional information regarding timing requirements.

Further it notes that “this form should not be used to challenge the registration...” It is unclear to staff whether this is intended to be a requirement or an aspirational statement that does not meet the definition of a Rule.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 02 .0111

DEADLINE FOR RECEIPT: Friday, August 10, 2018

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 call our office to inquire concerning the staff recommendation.

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

On line 4, please delete or define "timely"

Where can this form be found? Is it available on your website?

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

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

08 NCAC 02 .0111 is readopted with changes as published in 31:23 NCR 2313-18 as follows:

08 NCAC 02 .0111 ELECTION PROTEST FORM

All persons bringing an election protest under Part 4 of Article 15A-20 shall complete and timely file the following form. Please note this form should not be used to challenge the registration of an individual voter or to report an incident other than an irregularity affecting the outcome of an election.

ELECTION PROTEST

(Use of this form is required by G.S. ~~163-182.9(e)~~ 163A-1177(c))

This form must be filed with the county board of elections within the timeframes set out in G.S. ~~163-182.9(b)(4)~~ 163A-1177(b)(4). Please print or type your answers. Use additional sheets if needed to answer the below questions fully. Number the pages of all additional sheets. Please note that filings will be a public record. Please redact all confidential information, such as date of birth, Social Security number, and driver's license number.

Respond to all prompts. Failure to complete this form as required may result in the dismissal of your protest. Attach additional sheets as necessary, including all exhibits and supplemental documents. All attachments are deemed incorporated and covered under the Protest Certification.

PROTESTOR

1. Provide your preferred contact information:

Name: _____	County of Residence: _____
Email: _____	Phone: _____
Mailing _____	Address: _____

NOTE: You will be deemed to consent to service at all of the above addresses (including email), unless you attach an addendum indicate otherwise.

2. Are you represented by counsel? ☐ Yes ☐ No

NOTE: If you answered *Yes*, above, your counsel must complete and you must attach the Counsel Certification Addendum.

3. Mark all that describe you:

- ☐ Candidate for the office of _____
- ☐ Registered voter eligible to participate in the protested election contest
- ☐ Neither of the above*

**If you select this option, you are not eligible to file a protest.*

PROTEST SCOPE

4. List all election contests subject to your protest and calculate the margin of votes separating the apparent winner from the runner-up as of the date of filing. Your response does not waive your right to contest the validity of the current vote count. If your protest concerns all contests on the ballot, you must include the vote margin for each contest.

Protested Contest(s)	Current Vote Margin
(subtract runner-up totals from apparent winner's totals)	
<i>Example: Mayor of Townsville</i>	75

5. This protest alleges (*select at least one*):

- ☐ A defect in the manner by which votes were counted or results tabulated sufficient to cast doubt on the apparent results of the election.
- ☐ A violation of election law, irregularity, or misconduct sufficient to cast doubt on the apparent results of the election.

FACTUAL BASIS & LEGAL ARGUMENT

6. Provide all factual allegations in support of your protest. If any fact you allege is outside the scope of your personal knowledge, you may attach affidavits from those who have personal knowledge of that fact. All facts you allege in connection with this protest must be true and accurate to the best of your knowledge, and brought in the sincere belief that the facts alleged form a good faith basis to protest the conduct and results of the election.

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15
16
17 7. List all individuals, if any, you may call as witnesses to substantiate facts listed in Prompt 6. If there are multiple
18 individuals, summarize the facts of which the individual has personal knowledge.

19 _____
20 _____
21 _____

22
23
24 8. Cite any statute or case, administrative rule or decisions, and election policy or procedure that supports your claim
25 set out under Prompt 5.

26 _____
27 _____

28
29 RELIEF

30
31 9. What effect do you believe the facts alleged in response to Prompt 6, if proven, will have on the electoral outcome
32 in the protested contest(s)? Your response should account for the current vote margin calculated in response to
33 Prompt 4.

- 34 ☐ The electoral outcome of the protested contest(s) will change.
35 ☐ The electoral outcome of the protested contest(s) will not change.
36 ☐ I am uncertain whether the outcome of the contest(s) will change.
37 ☐ Other _____

10. What relief do you seek?

☐ Correct the vote count

☐ A new election

☐ Other: _____

ASSISTANCE

11. List all persons who assisted you in preparing the contents of this protest and indicate the nature of the assistance provided:

Note: For protestors represented by an attorney, this protest is the initial filing in a *proceeding* as defined by N.C. State Bar Rules. *See* 27 N.C.A.C. 02 Rule 1.00(n).

12. Has any candidate, political party, organization, or person acting on behalf of the same requested that you bring this protest?

☐ Yes.

☐ No.

13. Have you received any financial or other benefit or promise of future financial or other benefit in exchange for filing this protest?

☐ Yes.

☐ No.

AFFECTED PARTIES & SERVICE

You must serve copies of all filings on every person with a direct stake in the outcome of this protest ("Affected Parties"). Affected Parties include every candidate seeking nomination or election in the protested contest(s) listed under Prompt 4, not only the apparent winner and runner-up. If a protest concerns the eligibility or ineligibility of

particular voters, all such voters are Affected Parties and must be served. Address information for registered voters is available from the county board of elections or using the Voter Lookup at www.ncsbe.gov.

Materials may be served by personal delivery, transmittal through U.S. Mail or commercial carrier service to the Affected Party's mailing address of record on file with the county board of elections or the State Board of Elections, or by any other means affirmatively authorized by the Affected Party. If you know the Affected Party is represented by an attorney, service must be made on his or her counsel. Service must occur within one (1) business day of filing materials with the county board of elections. If service is by transmittal through the U.S. Mail or commercial carrier service, service will be complete when the properly addressed, postage-paid parcel is deposited into the care and custody of the U.S. Mail or commercial carrier service. It is your responsibility to ensure service is made on all Affected Parties.

14. List all Affected Parties, including their service address:

<i>Affected Party</i>	<i>Service Address</i>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

PROTESTOR CERTIFICATION

15. By signing this protest application, you affirm the following:

I, _____ (*full name*), swear, under penalty of perjury, that the information provided in this protest filing is true and accurate to the best of my knowledge, and that I have read and understand the following:

(*initial*)

_____ I have reviewed the statutes and administrative rules governing election protests, including all deadlines.

_____ My protest must originate with a filing at the county board of elections.

_____ I must timely serve all Affected Parties.

_____ I must prove by *substantial evidence* either the existence of a defect in the manner by which votes were counted or results tabulated or the occurrence of a violation of election law, irregularity, or misconduct, either of which were sufficient to cast doubt on the apparent results of the election.

_____ It is a crime to interfere unlawfully with the conduct and certification of an election.

_____ It is a crime to interfere unlawfully with the ability of a qualified individual to vote and to have that vote counted in the election.

_____ The facts I allege in connection with this protest are true and accurate to the best of my knowledge, and I have a good faith basis to protest the conduct and results of the election.

Submitting fraudulently or falsely completed declarations is a Class I felony under Chapter 163A of the General Statutes. This notice is provided pursuant to S.L. 2013-381, s. 5.4.

Signature of Protestor: _____ Date: _____

(This signature must be signed in the presence of a notary)

State of North Carolina, County of _____

Sworn to (or affirmed) and subscribed before me this the _____ day of _____, 20____.

(Official Seal)

Official Signature of Notary

_____, Notary Public
Printed Name

My commission expires:

Date/Time Filed with County Board

(completed by the county board)

NOTE: The county board must provide the State Board with a complete copy of a filed protest within one business day after it is filed. In addition, the county board shall provide a copy of the election audit with this copy of the protest.

Please direct any questions to your county board of elections or the North Carolina State Board of Elections & Ethics Enforcement, PO Box 27255, Raleigh, NC 27611-7255.

COUNSEL OF RECORD ADDENDUM

If you answered Yes to Prompt 2 on the above, your attorney must complete this form and you must file it with your Election Protest Application.

Attorney Must complete all of the following:

Protestor Name: _____ Protestor County: _____

Attorney Name: _____

Attorney Email: _____ Attorney Phone: _____

☐ I am a member in good standing with the North Carolina State Bar

☐ I am not licensed to practice law in North Carolina but am a member in good standing in _____
(State or District of Columbia), and do hereby apply to appear *pro hac vice* and certify that I have or will file all appropriate documents required under G.S. §84-4.1.

Law Firm: _____

Bar Number: _____

I (choose one) ☐ am ☐ am not:

Subject to any order of any court or administrative agency disbaring, suspending, enjoining, restraining, or otherwise restricting me in the practice of law. If you are subject to any orders, explain in the space below.

I represent the Protestor whose name is provided above. I have read and understand the laws governing election protests in North Carolina General Statutes Chapter 163A and Title 8 of the N.C. Administrative Code. I swear/attest that the information I have provided in this Addendum is true and accurate to the best of my knowledge.

Attorney Signature

Date

*History Note: Authority G.S. ~~163-22~~163A-741; ~~163-182.9~~163A-1177;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004.*

RRC STAFF OPINION

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 02 .0112

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff believes this Rule is unclear as written as it contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 02 .0112

DEADLINE FOR RECEIPT: Friday, August 10, 2018

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 call our office to inquire concerning the staff recommendation.

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

Where can this form be found? Is it available on your website?

Please update the statutory reference on line 7 (assuming this has been updated on your form)

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

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

08 NCAC 02 .0112 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 02 .0112 APPEAL TO THE STATE BOARD OF ELECTIONS

All appeals of a county board of election protest decision must use the following form:

APPEAL OF ELECTION PROTEST TO STATE BOARD OF ELECTIONS

(Use of this form is required by G. S. 163-182.11 (a))

A copy of this appeal must be given to the county board of elections within 24 hours (weekends and holidays excluded) after the county board files its written decision at its office. This same appeal must be filed with or mailed to the State Board of Elections by the end of the second day following the county board decision if the protest involves a first primary. As to a protest of any other election, this appeal must be filed or deposited in the mail by the end of the fifth day following the county board decision. See G.S. 163-182.11 (a). A copy of the original election protest form with attachments must be filed with this appeal. A copy of the county board decision must be filed with this appeal. The county board will provide the record on appeal. As many additional sheets as are necessary to answer the questions below may be attached, but they must be numbered. Please print or type your answers.

1. Full name, mailing address, home and business phone, fax number, and e-mail address of undersigned.

2. Are you the person who filed the original protest, a candidate or office holder adversely affected by the county decision, or someone else whose interest has been adversely affected by the county decision?

3. State the date, place, kind of election, and results of the election protested (if different from the information on the election and its results as set out in the attached original protest form).

4. State the name, mailing address, home phone, and business phone of all candidates involved in the protested election.

5. State the date of the county board hearing

6. State the legal and factual basis for your appeal.

7. Is there any material submitted with this appeal that was not presented to and considered by the county board? Is so, please identify and state why it was not presented to the county board. Why do you think the State Board of Elections should consider it?

8. Normally the State Board will make its decision in an appeal based upon the record from the county board. If you desire the record in this matter to be supplemented, additional evidence to be considered, or a completely new hearing, please state such desire and why it should be allowed in this appeal. See G.S. 163-182.11 (b).

9. What relief do you seek? Why?

10. Have you read and reviewed G.S. 163-182.11 through G.S. 163-182.14 and the current North Carolina State Board of Elections regulations on appeals of election protests?

11. Besides a copy of the original protest and the county board decisions, this appeal includes _____ pages of additional answers and _____ pages of exhibits and documents not included in the original protest and decision.

Signature of Person Appealing _____ Date Appeal Signed

Date appeal received by State Board of Elections

(To be entered by the State Board of Elections staff)

Send your appeal to, or if you have questions contact: North Carolina State Board of Elections, P.O. Box 27255, Raleigh, NC 27611-7255, (919) 733-7173.

*History Note: Authority G.S.163-22; 163-182.11;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004.
Readopted Eff. September 1, 2018.*

RRC STAFF OPINION

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 02 .0113

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff believes this Rule is unclear as written as it contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 02 .0113

DEADLINE FOR RECEIPT: Friday, August 10, 2018

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 call our office to inquire concerning the staff recommendation.

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

In (a), please clarify what is meant by a "new election." Perhaps something like "a new election in accordance with G.S. 163A-1181.

In (a), by whom and how will the determination of a voter's eligibility be determined? What is meant by the voter's circumstances? Please consider combining (a) and (b) and say something like "Eligibility to vote in a new election conducted in accordance with G.S. 163A-1181 shall be determined in accordance with G.S. 163A-865(f) and (g)" (or whatever is meant). Please note that this gets to the filing requirements (i.e. who and what) in 163A-862 and the eligibility requirements in 163A-865.

In Please update all references to 163 in (b) and (c).

In (c), when will absentee ballots be required or allowed? Please provide a cross-reference.

In (c), are lines 10-11 (This is required... set out in G.S. 163, Article 20) necessary? This language does not appear to provide any directives.

In (d), please provide some information as to how the preclearance requirements of Section 5 can be found and provide the federal citation to this legislation.

Please update the History Note to reflect the current law and add any additional pertinent statutory authority.

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

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

08 NCAC 02 .0113 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 02 .0113 NEW ELECTIONS ORDERED BY STATE BOARD OF ELECTIONS

(a) Eligibility to vote in a new election shall be determined by the voter's eligibility and circumstances at the time of the new election.

(b) Eligibility to register to vote and to vote in a new election shall be governed by G.S. 163-82.6.

(c) The date of any new non-municipal election, in which absentee ballots are to be required or allowed, shall be set by the State Board no earlier than 75 days after the date of the order for a new election. In the case of a municipal election where absentee ballots are allowed, a new election shall not be set earlier than 55 days after the date of the order for a new election. This is required in order to provide sufficient time for absentee ballots to be prepared, printed and made available and for "one-stop" voting to be provided within the mandates set out in G.S. 163, Article 20.

(d) The date of any new election ordered in a county covered by the preclearance requirements of Section 5 of the Voting Rights Act of 1965 shall be set no earlier than 75 days from the date of the new election order in order to prepare, submit, and obtain preclearance approval.

(e) If a new primary is ordered by the State Board, no person who voted in the initial primary of one party shall be allowed to vote in the new primary of another party. County board documentation of the voter's participation in the initial primary shall be prima facie evidence sufficient to disallow the voter from participating in the primary of another party in the new election.

*History Note: Authority G.S. 163-22; 163- 182.13(c);
 Temporary Adoption Eff. April 15, 2002;
 Eff. August 1, 2004.
 Readopted Eff. September 1, 2018.*

RRC STAFF OPINION

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 03 .0101

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff believes this Rule is ambiguous as written as it contains terms such as “brief”, “intelligent”, and “official” without providing any additional information.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

Staff notes that additional information relating to the clarity of this Rule is noted in this Rule's corresponding technical change requests.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 03 .0101

DEADLINE FOR RECEIPT: Friday, August 10, 2018

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 call our office to inquire concerning the staff recommendation.

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

Please consider revising the title of this Rule to make differentiate this Rule from .0201. A suggestion would be as follows:

08 NCAC 03 .0101 VOTER COMPLAINTS AGAINST A MEMBER OF A COUNTY BOARD OF ELECTIONS

What is the overall intent of this Rule? Please ensure that this Rule is still accurate as to the current process for preferring charges against members of county board of elections. For example, is there a complaint form or do you all simply want the information provided in Items (1) through (3) in writing? Either way, please consider updating this Rule. A suggestion would be something like "Any voter wishing to prefer charges against any member of a county board of elections may file a written statement with the Board that includes the following information:..."

On line 4, who is an "elector"? Is this a voter? I note that elsewhere in this Section of Rules, you have referred to a person preferring charges and in the title, you have referred to a "voter." Please be consistent.

On live 4, what is meant by "prefer charges"? Charges of what? Is there a cross-reference available? I'm thinking that this would include "charges of a violation of these Rules or of Part 3 of Article 15 of Chapter 163A?" I fully recognize that there may be more than just these two. Please provide some additional information for purposes of clarity.

Please correct the name of the agency on line 4.

On line 5, please capitalize "board"

On line 5, what is meant by "verified by the oath of the elector"? What is the actual requirement? Must they just sign the form attesting to its accuracy? If so, please say that.

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

In Item (1), how is an elector to know the “post office address” of the member? Is this the member’s address at the county board or is this their home address? Please provide some additional information.

In Item (2), please delete or define “brief” and “intelligent”

In Item (2), what is meant by “official misconduct”? Again, I’m not sure what kind of conduct this Rule is intending to capture.

Please add an “and” at the end of Item (2).

Are you relying on 163A-741(c) as your Authority?

Please update the History Note to reflect the current law and add any additional pertinent statutory authority.

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

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

08 NCAC 03 .0101 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 03 .0101 VOTER COMPLAINTS

Any elector desiring to prefer charges with the State Board of Elections against a member of any county board of elections may do so by filing with the board a statement, in writing, verified by the oath of the elector, which statement must contain:

(1) the name and post office address of the official against whom the charges are preferred;

(2) a brief, intelligent statement of the facts constituting the official misconduct alleged, with a reference to the date and place of such misconduct;

(3) the names and addresses, so far as may be known to the persons filing the charges, of persons who have knowledge or information of the matters referred to in the charges as filed.

History Note: Authority G.S. 163-22;

Eff. March 12, 1976.

Readopted Eff. September 1, 2018.

RRC STAFF OPINION

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 03 .0102

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff believes this Rule is unclear as includes language such as “if the charges thus filed show” and “by such other methods as the board may adopt” without providing any additional information as to how these determinations will be made. Also, this Rule contains terms such as “official” and “intentional” without providing any additional clarifying information.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

Staff notes that additional information relating to the clarity of this Rule is noted in this Rule's corresponding technical change requests.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 03 .0102

DEADLINE FOR RECEIPT: Friday, August 10, 2018

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 call our office to inquire concerning the staff recommendation.

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

What is the overall intent of this Rule? Please ensure that this Rule is still accurate as to the current process for preferring charges against members of county board of elections. For example, I assume, that after an elector prefers charges against a member, that you all will conduct an investigation of sorts, then after that investigation, if you all find evidence to support the claim, you all will proceed. Your Rule says that after getting the complaint, that you will immediately go to a hearing if it shows "prima facie a violation" has occurred. Is that accurate? Do you immediately go to a hearing and notify the member of the county board of elections of the hearing ((with no notifications to the member before the hearing notification) or do you give the member an opportunity to respond to the charges?

On line 4, what is meant by "if the charges thus filed"? Do you mean "the charges filed in accordance with Rule .0101 of this Section"?

By whom and how will it be determined whether the charges show "prima facie a violation of the election law..." has occurred? Please provide some factors.

What is meant by "the election law"? Please provide some specific cross-reference (for example, these Rules and Part 3 of Article 15 of Chapter 163A of the North Carolina General Statutes)

What is meant by "official duty"?

On line 5, what is meant by "intentional irregularities"?

Please correct the name of the agency on line 5.

Please add an "or" in between "irregularities" and "incapacity"

Line 6, what are the "duties of the office"? Are these contained somewhere? Is there a cross-reference available?

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

On lines 6-7, please delete “or by such other methods as the board may adopt” and say how the notification will occur.

Are you relying on 163A-741(c) as your Authority?

Please update the History Note to reflect the current law and add any additional pertinent statutory authority.

Please consider combining some of the Rules in this Section for purposes of clarity.

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

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

08 NCAC 03 .0102 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 03 .0102 CHARGES

If the charges thus filed show prima facie a violation of the election law, a breach of official duty, a participation in intentional irregularities, incapacity or incompetency to discharge the duties of the office, the State Board of Elections will cause notice thereof to be given to the official against whom the charges are preferred, by mail or by such other methods as the board may adopt, of such charges and name a day and place for the hearing thereof.

*History Note: Authority G.S. 163-22;
Eff. March 12, 1976.
Readopted Eff. September 1, 2018.*

RRC STAFF OPINION

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 03 .0103

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff believes this Rule is unclear as it includes language such as “unless otherwise ordered or permitted by the Board” without providing any additional information as to how this determination will be made.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

Staff notes that additional information relating to the clarity of this Rule is noted in this Rule's corresponding technical change requests.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 03 .0103

DEADLINE FOR RECEIPT: Friday, August 10, 2018

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 call our office to inquire concerning the staff recommendation.

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

What is the overall intent of this Rule? Please ensure that this Rule is still accurate as to the current process for preferring charges against members of county board of elections. For example, is a member of the public (a person preferring the charges) only allowed to present affidavits (and no live testimony is allowed unless the Board says so)? Is this person expected to serve affidavits on the member (as opposed to the Board)?

On line 4, what hearing is meant by "such hearing"? I assume that this is referring to the hearing in .0102? If so, would it make sense to combine .0102 and .0103 (and maybe .0104, .0105, and .0106)?

Lines 4-5, please delete "unless otherwise directed or permitted by the Board" and say when it will be allowed and/or how the Board will determine whether to grant the request.

Lines 5-6, how are the affidavits to be served on the member? In accordance with the Rules of Civil Procedure?

Are you relying on 163A-741(c) as your Authority?

Please update the History Note to reflect the current law and add any additional pertinent statutory authority.

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

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

08 NCAC 03 .0103 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 03 .0103 HEARING

At such hearing the persons preferring such charges shall appear, and by affidavits, unless otherwise ordered or permitted by the board, present the evidence tending to support the charges. Such affidavits must be served on the official against whom such charges have been filed, by the person filing the charges, at least three days before the time set for the hearing thereof.

*History Note: Authority G.S. 163-22;
 Eff. March 12, 1976.
 Readopted Eff. September 1, 2018.*

RRC STAFF OPINION

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 03 .0104

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff believes this Rule is unclear as it includes language such as “unless otherwise ordered by the Board” without providing any additional information as to how this determination will be made. Also, this Rule requires that affidavits “be served” with no additional information as to how service is required to be effectuated.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

Staff notes that additional information relating to the clarity of this Rule is noted in this Rule's corresponding technical change requests.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 03 .0104

DEADLINE FOR RECEIPT: Friday, August 10, 2018

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 call our office to inquire concerning the staff recommendation.

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

What is the overall intent of this Rule? Please ensure that this Rule is still accurate as to the current process for preferring charges against members of county board of elections. For example, is the intent of this Rule to simply say that a member will have the opportunity to respond to the charges being preferred against him? If so, why not just say that?

Lines 4-5, please delete "or otherwise as the board may direct" and say when it will be allowed and/or how the Board will determine whether to grant the request.

Are you relying on 163A-741(c) as your Authority?

Please update the History Note to reflect the current law and add any additional pertinent statutory authority.

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

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

1 08 NCAC 03 .0104 is readopted as published in 31:23 NCR 2311 as follows:

2

3 **08 NCAC 03 .0104 RIGHTS**

4 The official against whom charges are preferred shall have the right to be heard by affidavit, or otherwise as the board
5 may direct, in denial, rebuttal, explanation, or extenuation of the charges.

6

7 *History Note: Authority G.S. 163-22;*

8 *Eff. March 12, 1976.*

9 *Readopted Eff. September 1, 2018.*

RRC STAFF OPINION

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 03 .0105

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff believes this Rule is unclear as written as it contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

Staff notes that additional information relating to the clarity of this Rule is noted in this Rule's corresponding technical change requests.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 03 .0105

DEADLINE FOR RECEIPT: Friday, August 10, 2018

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 call our office to inquire concerning the staff recommendation.

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

What is the overall intent of this Rule? Please ensure that this Rule is still accurate as to the current process for preferring charges against members of county board of elections.

Line 4, what is meant by "the inquiry"?

Line 4, under what circumstances "may" the Board investigate? What factors will they use in making this determination? Please delete "as a matter of course" and say when they will do this.

Are you relying on 163A-741(c) as your Authority?

Please update the History Note to reflect the current law and add any additional pertinent statutory authority.

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

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

1 08 NCAC 03 .0105 is readopted as published in 31:23 NCR 2311 as follows:

2

3 **08 NCAC 03 .0105 SCOPE**

4 The inquiry shall be confined to the charges as filed, but the board, as a matter of course, may of its own motion
5 investigate any matter coming to its attention or notice as the result of hearing said charges.

6

7 *History Note: Authority G.S. 163-22;*

8 *Eff. March 12, 1976.*

9 *Readopted Eff. September 1, 2018.*

RRC STAFF OPINION

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 03 .0106

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff believes this Rule is ambiguous as it includes language such as "brief" without providing any additional clarifying information.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

Staff notes that additional information relating to the clarity of this Rule is noted in this Rule's corresponding technical change requests.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 03 .0106

DEADLINE FOR RECEIPT: Friday, August 10, 2018

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 call our office to inquire concerning the staff recommendation.

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

What is the overall intent of this Rule? Please ensure that this Rule is still accurate as to the current process for preferring charges against members of county board of elections.

Line 4, how is a party to "make application"? Are they to simply make the request in writing? Do you all only need the names of the witness and a statement concerning what is to be proven by their testimony?

Lines 4-5, what is meant by "such hearing"?

Line 5, please delete or define "brief" in "brief statement."

On line 6, where is the underlying requirement that a person preferring charges get affidavits? .0103 alludes to the requirement, but I don't see any requirement that says "a person preferring charges against a member of a county of elections shall obtain affidavits from any witnesses regarding the charges brought against the member"

Line 8, please change "will be issued" to "shall be issued"

What is your specific authority to issue subpoenas for these purposes? I see that it is spelled out elsewhere in statute other than your cited authority, are any of those subpoena references applicable here?

Please consider reorganizing this Rule for purposes of clarity. I would suggest breaking it out into 2 paragraphs with lines 4-6 as (a) and 7-10 as (b). I would also suggest making lines 4-6 into a list. For illustrative purposes, it would look as follows:

(a) Either ~~party~~ may make application to the ~~chairman of the board~~ Board for subpoenas for witnesses to be heard orally at the ~~such hearing~~, but such application, in addition to listing the names of the witnesses, ~~shall contain a brief~~ hearing. The application shall include the following information:

- (1) the names of the witness or witnesses;*
- (2) a statement of what is expected to be proved by each ~~witness~~ witness; and*
- (3) the reason for not obtaining the affidavit of such witness or witnesses.*

Amber May

Commission Counsel

Date submitted to agency: August 2, 2018

(b) If, upon such application for subpoenas, a majority of the board is of the opinion that the oral evidence of such witnesses will be helpful to the board, subpoena will be issued for the personal appearance of the witnesses, and if required by the subpoena, the witness shall produce such books, papers, or records as may be called for in said subpoena.

Are you relying on 163A-741(c) as your Authority?

Please update the History Note to reflect the current law and add any additional pertinent statutory authority.

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

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

08 NCAC 03 .0106 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 03 .0106 WITNESSES

Either party may make application to the chairman of the board for subpoenas for witnesses to be heard orally at such hearing; but such application, in addition to listing the names of the witnesses, shall contain a brief statement of what is expected to be proved by each witness and the reason for not obtaining the affidavit of such witness or witnesses. If, upon such application for subpoenas, a majority of the board is of the opinion that the oral evidence of such witnesses will be helpful to the board, subpoena will be issued for the personal appearance of the witnesses, and if required by the subpoena, the witness shall produce such books, papers, or records as may be called for in said subpoena.

*History Note: Authority G.S. 163-22;
 Eff. March 12, 1976.
 Readopted Eff. September 1, 2018.*

RRC STAFF OPINION

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 03 .0201

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff believes this Rule is unclear as written as it contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

Staff notes that additional information relating to the clarity of this Rule is noted in this Rule's corresponding technical change requests.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 03 .0201

DEADLINE FOR RECEIPT: Friday, August 10, 2018

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 call our office to inquire concerning the staff recommendation.

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

Please consider providing some additional detail in the Title of the Rule to differentiate this Rule from .0101. Please also consider breaking this Rule up into multiple paragraphs and consider simplifying. A suggestion would be as follows:

08 NCAC 03 .0201 FILING CHARGES: ~~ADOPTION OF PROCEDURES~~ CHARGES AGAINST A PRECINCT ELECTION OFFICIAL

- (a) Any elector may file with the chairman of any county board of elections charges against any precinct election official, official appointed pursuant to G.S. 163-41 in the same manner as set forth in Rule .0101 of this Section. ~~163-41, and the~~
- (b) Following the receipt of charges against a precinct election official, the county board of elections shall conduct a hearing in the same manner as set forth in ~~shall, in the hearing of such charges, adopt the same procedure as is prescribed in Section .0100 of this Chapter. Chapter for hearing of charges filed with the State Board of Elections against a member of the county board of elections.~~

Line 4, how will the elector file charges against a precinct official? In the same manner as set forth in Rule .0101? I note that you have provided this directive for the hearing, but I don't read this Rule to say how someone is to file charges.

Is it intentional to say "file charges against" for a precinct election official and say "prefer charges against a member of a county board of elections"? Was this intentional? Please be consistent where you can.

Line 5, please change 163-41 to 163A-815 (or whatever is correct.)

Are you relying on 163A-741(c) as your Authority?

Please update the History Note to reflect the current law and add any additional pertinent statutory authority.

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

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

08 NCAC 03 .0201 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 03 .0201 FILING CHARGES: ADOPTION OF PROCEDURES

Any elector may file with the chairman of any county board of elections charges against any precinct election official, appointed pursuant to G.S. 163-41, and the county board of elections shall, in the hearing of such charges, adopt the same procedure as is prescribed in Section .0100 of this Chapter for hearing of charges filed with the State Board of Elections against a member of the county board of elections.

History Note: Authority G.S. 163-22;

Eff. March 12, 1976.

Readopted Eff. September 1, 2018.

RRC STAFF OPINION

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 03 .0202

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff believes this Rule is ambiguous as it includes language such as “forthwith”, “immediately”, and “at once” without providing any additional information as to the meaning of these terms. Also, this Rule indicates that the Board “may” hear a matter “de novo,” or, in the judgement of the Board may be dismissed, remanded to the county or heard on petition and affidavit...” without providing information as to how this determination will be made.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

Staff notes that additional information relating to the clarity of this Rule is noted in this Rule’s corresponding technical change requests.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 03 .0202

DEADLINE FOR RECEIPT: Friday, August 10, 2018

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 call our office to inquire concerning the staff recommendation.

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

Please ensure that this Rule is still accurate as to the current process for preferring charges against precinct election officials.

On line 4, what is meant by "such charges"? Do you mean those filed against a precinct election official in accordance with Rule .0201 of this Section? If so, please say that.

On line 4, please delete or define "forthwith" in "shall forthwith set the date." I assume that you mean something like "upon receipt of the charges, the Chairman of the county board of elections shall set the date of hearing."

Please delete or define "immediately?"

How is the Chairman to set the hearing? In accordance with Section .0100 of this Chapter? If so, is this Rule necessary given that .0201 says that the hearing will be set in accordance with Section .0100? Is the intent to add the extra requirement that they "transmit" the information to you all?

On line 5, what is meant by "transmit"? I assume that when this Rule was originally promulgated in 1976 that meant by fax, but how are they to get this information to you now?

On line 5, please consider changing "such charges" to "the charges"

On line 6, please delete or define "at once"

Please consider breaking out what is required to be sent to the Board into a list so that it reads something like:

(a) ... set the date for the hearing of such the charges and provide the following information to immediately transmit to the State Board of Elections State Board the following information:

(1) a copy of the charges; and

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

(2) information regarding the hearing, including the date.

(3) following the hearing, the county board of elections shall provide the Board with the decision in the matter.

~~such charges, advising this board of the date set for the hearing, and at once, after the hearing, advise the state board of disposition made by the county board of the charges thus heard.~~

Was the intent to make lines 8-10 a new paragraph (I think that it makes sense to do so)? If so, please add (a) at the beginning of line 4 and (b) at the beginning of line 8.

Please consider rewording lines 8-10 to say something like the following:

(b) Either From the decision of the county board the petitioning elector elector, or responding official, official may appeal the decision of the county board of elections to the State Board. The State Board may take any of the following actions:

(1) hear the matter "de novo";

(2) hear the matter based upon the petition and affidavit;

(3) dismiss the appeal; or

(4) remand the matter to the county board of elections; or

affidavit Board of Elections, where the matter may be heard "de novo,"
~~or, in the judgment of the board may be dismissed, remanded to the county or heard on petition and affidavit by the State Board of Elections.~~

Line 8-9, please correct the name of your agency.

How is either the elector or the official to appeal? What is the process? Is there a time limit?

How will the decision be made as to how the State Board will proceed. Please provide some factors.

What is meant by "heard on petition and affidavit by the State Board of Elections"? What petition and affidavit?

Are you relying on 163A-741(c) as your Authority?

Please update the History Note to reflect the current law and add any additional pertinent statutory authority.

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

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

08 NCAC 03 .0202 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 03 .0202 HEARING DATE AND DISPOSITION

Upon the filing of such charges with the county board of elections, the chairman of such board shall forthwith set the date for the hearing of such charges and immediately transmit to the State Board of Elections a copy of such charges, advising this board of the date set for the hearing, and at once, after the hearing, advise the state board of disposition made by the county board of the charges thus heard.

From the decision of the county board the petitioning elector, or responding official, may appeal to the State Board of Elections, where the matter may be heard "de novo," or, in the judgment of the board may be dismissed, remanded to the county or heard on petition and affidavit by the State Board of Elections.

History Note: Authority G.S. 163-22;

Eff. March 12, 1976.

Readopted Eff. September 1, 2018.

RRC STAFF OPINION

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 03 .0301

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff believes this Rule is ambiguous as it includes language such as “prompt”, “efficient”, and “proper” without providing any additional information as to the meaning of these terms. Also, this Rule appears to create a waiver that will enable the Board to “suspend these rules” without providing any factors that the Board will use in making that determination.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

Staff notes that additional information relating to the clarity of this Rule is noted in this Rule's corresponding technical change requests.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 03 .0301

DEADLINE FOR RECEIPT: Friday, August 10, 2018

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 call our office to inquire concerning the staff recommendation.

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

On line 4, please correct the name of your Board.

On line 4, how is it determined whether “the circumstances of any matter pending before [the Board] may indicate the need to “suspend these Rules”? I assume that this is intended to be a waiver Rule of sorts, but please provide some factors as to how it will be determined whether to invoke this Rule.

On line 5, what is meant by “or make any inquiry or investigation which in its judgement may be necessary or desirable”? How is this determined? Do you need this language? Do your statutes not already give you this authority (perhaps 163A-741(d)?

On line 6, please delete or define “prompt” and “efficient”

On line 7, please delete or define “proper” in “proper performance”

Please update the History Note to reflect the current law and add any additional pertinent statutory authority.

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

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

08 NCAC 03 .0301 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 03 .0301 SUMMARY INVESTIGATION

The State Board of Elections may, whenever the circumstances of any matter pending before it may indicate the necessity therefor, suspend these rules and proceed in a summary manner or make any inquiry or investigation which in its judgment may be necessary or desirable for the prompt and efficient enforcement of the laws pertaining to elections, and the proper performance of their duties by election officials.

History Note: Authority G.S. 163-22;

Eff. March 12, 1976.

Readopted Eff. September 1, 2018.

RRC STAFF OPINION

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 03 .0302

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☒ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff believes that this Rule is unnecessary as it does not provide any additional requirements or information beyond those contained in G.S. 163A-741(d).

§ 163A-741. Powers and duties of State Board.

(d) The State Board shall investigate when necessary or advisable, the administration of election laws, frauds and irregularities in elections in any county and municipality and special district, and shall report violations of the election laws to the Attorney General or district attorney or prosecutor of the district for further investigation and prosecution.

If the RRC determines that this Rule is necessary, Staff believes that it is unclear as the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

Staff notes that additional information relating to the clarity of this Rule is noted in this Rule's corresponding technical change requests.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 03 .0302

DEADLINE FOR RECEIPT: Friday, August 10, 2018

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 call our office to inquire concerning the staff recommendation.

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

Please ensure that this Rule is still accurate as to the current process for reporting violations of elections laws.

Given 163A-741(d), is this Rule necessary?

If this Rule is necessary, please ensure that it does not conflict with 163A-741(d). For example, this Rule requires a hearing before providing information to a DA, 163A-741 does not.

On line 5, what is meant by the "appropriate prosecuting officer"

Please consider making the language on lines 7-9 (A record... official use) its own Paragraph.

What is meant by a "resume" in "resume or summary"? Also, is it accurate to say a "summary of all evidence heard by such board"? 163A-741 does not appear to require a hearing prior to referring this information to an AG or DA.

On line 6, what is meant by "probably have been guilty"? Are you trying to invoke a probable cause standard for your county boards?

On line 7, what law is being referred to in "the violation of which is made a crime by law"? Please provide a specific cross-reference.

On line 9, please change "his" to "his or her"

On line 9, please delete or define "official" in "official use"

Please update the History Note to reflect the current law and add any additional pertinent statutory authority.

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

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

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

08 NCAC 03 .0302 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 03 .0302 REPORTS OF EVIDENCE OF CRIMINAL VIOLATION

The State Board of Elections and every county board of elections, upon the completion of any hearing with respect to the violation of the election laws, shall report in writing to the appropriate prosecuting officer a resume or summary of all evidence heard by such board which tends to show that any person or persons probably have been guilty of one or more violations of the election laws, the violation of which is made a crime by law. A record shall be kept by such board of all such reports to such prosecuting officers. Upon request by any prosecuting officer, the written evidence heard by either board shall be made available for his examination and official use.

*History Note: Authority G.S. 163-22;
 Eff. March 12, 1976.
 Readopted Eff. September 1, 2018.*

RRC STAFF OPINION

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 04 .0302

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff believes this Rule is ambiguous as written as it contains an approval standard for modification of voting systems, without providing any additional information as how the approval determination will be made. In addition, this Rule contains ambiguous terms such as “substantially” and “satisfactory.”

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

Staff notes that additional information relating to the clarity of this Rule is noted in this Rule's corresponding technical change requests.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 04 .0302

DEADLINE FOR RECEIPT: Friday, August 10, 2018

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 call our office to inquire concerning the staff recommendation.

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

“State Board of Elections” is used in multiple places throughout this Rule. Please correct the name of your Board.

What is the overall intent of (a)? Is it to give directive to the state Board as to what it must do to approve, or is the intent to tell the voting machine manufacturer’s what is required to get their system approved? Please review and clarify if needed.

In (a)(2), what is meant by “cause staff to review and appraise the voting system”? How will they go about doing this?

In (a)(4), please add “the” before “National Association”

In (a)(5), what is meant by “ensure that a copy of the system’s source code is held in escrow...” Again, is this the responsibility of the State Board?

In (a)(5), lines 14-15, what is your authority to say “Proprietary information is not subject to North Carolina Records laws”? Is this not governed by statute?

In (a)(6), what is your authority to say what is and is not subject to open meeting requirements? Would this not be governed by North Carolina open meetings statute? This appears to be a legal conclusion for which you do not have authority.

In (a)(7), what are the “law and rules related to voting systems”? Is there a more specific cross-reference available?

I think that the process set forth in (b) could be more clear. Please consider rewording for purposes of clarification.

In (b), how are modifications to be submitted? Is there a form required? What information is to be included?

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

In (b), by “modification”, do you mean whether it alters the voting system (as is worded on line 28). How will the executive director make the determination as to whether it is a modification? What factors will be used in making this determination?

In (b), line 27, if the executive director determines that it is a modification and sends it to the State Board for approval, how will it determine whether to approve the modification, what factors will it use?

On line 27, please change “If the Executive Director shall determine” to “if the Executive Director determines”

On line 28, please delete or define “substantially” in “substantially alter”

On line 29, how will the Executive Director determine whether to approve the modification if he or she determines that it does not alter the voting system? By may, do you mean shall, in this instance?

In (c), line 33, please delete or define “satisfactory”

In (c), line 35, please change “and/or” to either and or or; whichever you mean.

Please update the History Note to reflect the current law and add any additional pertinent statutory authority.

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

08 NCAC 04 .0302 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 04 .0302 APPROVAL OF VOTING SYSTEMS

(a) Before approving a voting system for use in North Carolina, the State Board of Elections shall do all of the following:

- (1) Obtain a current financial statement from the proposed vendor and manufacturer's contact information (mail address, telephone and fax numbers, email address);
- (2) Cause staff to review and appraise the voting system;
- (3) Witness a demonstration of the voting system by the proposed vendor;
- (4) Obtain a copy of Independent Testing Authority certification as authorized by National Association of State Elections Directors or Federal Agency;
- (5) Ensure that a copy of the system's source code is held in escrow by a third party approved by the State Board of Elections for the purpose of taking custody of all source codes, including all revisions or modifications of source codes. Proprietary information is not subject to North Carolina Public Records laws;
- (6) Any discussion of proprietary information by the State Board of Elections shall take place in Closed Session as authorized by the Open Meetings requirements of North Carolina law;
- (7) Ensure performance of system complies with North Carolina laws and rules related to voting systems;
- (8) Obtain a copy of the manufacturer's instructions and maintenance manual;
- (9) Obtain a list of all jurisdictions currently using the voting system; and
- (10) Review any other information made available to the Board.

(b) Modifications or Enhancement of Voting Systems. A change to any voting system or unit, including software and hardware modification, shall be submitted in writing for the review of the Executive Director of the State Board of Elections. Following the review, the Executive Director shall determine whether the change is a modification of the voting system as certified by the State Board of Elections. If it is determined to be a modification, the voting system as modified shall be submitted to the State Board of Elections for approval. If the Executive Director shall determine the change is an enhancement that does not substantially alter the voting system as certified by the State Board of Elections, the Executive Director may approve the enhancement and the review of the State Board of Elections shall not be required.

(c) Disapproval of Voting System. The State Board of Elections shall have the right to hear and act on complaints arising by petition or otherwise, on the failure or neglect of a voting system or vendor marketing a system to comply with any part of the election laws of the State of North Carolina or for any other satisfactory cause, including but not limited to, performance of the system in an election setting. Before exercising this power, the State Board of Elections shall notify the voting system vendor and/or county boards of elections affected and give opportunity to be heard at a hearing to be set by the State Board of Elections.

- 1 *History Note:* *Authority G.S. 163-22; 163-165.7;*
- 2 *Temporary Adoption Eff. April 15, 2002;*
- 3 *Eff. August 1, 2004.*
- 4 *Readopted Eff. September 1, 2018.*

RRC STAFF OPINION

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 04 .0304

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff believes this Rule is ambiguous as it includes language such as "properly" without providing any additional information as to the meaning of this term.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 04 .0304

DEADLINE FOR RECEIPT: Friday, August 10, 2018

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 call our office to inquire concerning the staff recommendation.

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

In (b), please define "properly"

In (c), please provide a cross-reference for curbside voting.

Please update the History Note to reflect the current law and add any additional pertinent statutory authority.

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

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

08 NCAC 04 .0304 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 04 .0304 OPERATION AND MATTER OF VOTING ON VOTING SYSTEMS

(a) Prior to the opening of the polls, the precinct officials shall open the voting system and examine the ballot for accuracy and examine the counters or other method to determine there is a zero balance. Any persons interested in viewing this procedure may observe but shall not interfere or impede the process. If the system prints a zero tape or other paper document, the document shall be maintained and secured in the manner prescribed by the manufacturer and the county board of elections.

(b) The voter shall follow the instructions contained on the voting system. Only properly voted official ballots shall be introduced into the voting system. If a voter improperly marks or damages a ballot, it shall be returned to the precinct official, marked as spoiled and maintained as specified by the county board of elections. The voter may not receive a replacement ballot until the spoiled or damaged ballot is returned to the precinct official. The voter shall not be given more than three replacement ballots.

(c) Except as provided for curbside voting, official ballots shall not leave the voting enclosure during the time that voting is being conducted there.

*History Note: Authority G.S. 163-22; 163-165.7;
 Temporary Adoption Eff. April 15, 2002;
 Eff. August 1, 2004.
 Readopted Eff. September 1, 2018.*

RRC STAFF OPINION

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 04 .0305

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff believes this Rule is ambiguous as written as it includes language such as "proper" without providing any additional information as to the meaning of this term.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

Staff notes that additional information relating to the clarity of this Rule is noted in this Rule's corresponding technical change requests.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 04 .0305

DEADLINE FOR RECEIPT: Friday, August 10, 2018

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 call our office to inquire concerning the staff recommendation.

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

In (a), line 7, what is meant by "deemed knowledgeable or useful"? Who makes this determination? The precinct official?

In (a), what is meant by "the precinct official shall be qualified"? How and by whom is this determined? Are they required to take a class?

In (b), line 12, please change "unless the chairman shall be satisfied" to "unless the chairman is satisfied"

In (b), line 12, please delete or define "proper" Do you mean "proper in accordance with the manufacturer's instructions"?

In (b), line 13-14, please delete "to be needed" Also, by whom is this instruction to be provided? The precinct official? IS the intent of "Such additional instruction as determined by the county board of elections to be needed shall be provided" that "the precinct official shall provide additional instruction if the county board of elections determines that additional instruction is required" (ie the precinct officials have not learned the proper use)?

In (c), line 15, please delete or define "proper" in "proper use" There's no need to do it in both places here, but it needs to be clear what is meant by "proper"

Please update the History Note to reflect the current law and add any additional pertinent statutory authority.

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

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

08 NCAC 04 .0305 is readopted as published in 31:23 NCR 2311 as follows:

**08 NCAC 04 .0305 INSTRUCTION OF PRECINCT OFFICIALS AND VOTERS IN THE USE OF
VOTING SYSTEMS**

(a) The chairman of the county board of elections in a county where a voting system is used shall conduct an instructional meeting before any primary or election to instruct the precinct officials in the use of the voting system. The chairman may use any persons deemed knowledgeable or useful to the instruction of the precinct officials. The instructions on the use and operation of the voting system shall be according to manufacturer's instructions furnished with the voting system, whether the system is purchased or leased by the county board of elections. The precinct officials shall be qualified to instruct the voters on the use of the voting system.

(b) The chairman of the county board of elections shall not permit a voting system to be used in any precinct in any election unless the chairman shall be satisfied that the precinct officials of the precinct have learned the proper use and operation of the system. Such additional instruction as determined by the county board of elections to be needed shall be provided.

(c) A voter may request instruction for the proper use of the voting system from a precinct official. The precinct official shall provide such technical instruction to the voter but shall not seek to influence or intimidate the voter in any manner.

*History Note: Authority G.S. 163-22; 163-165.7;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004.
Readopted Eff. September 1, 2018.*

RRC STAFF OPINION

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 04 .0306

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff believes this Rule is ambiguous as it includes language such as “properly”, “safe”, “appropriate”, “secure”, “proper”, and “direct” without providing any additional information as to the meaning of these terms.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

Staff notes that additional information relating to the clarity of this Rule is noted in this Rule's corresponding technical change requests.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 04 .0306

DEADLINE FOR RECEIPT: Friday, August 10, 2018

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 call our office to inquire concerning the staff recommendation.

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

In (a), line 5, please delete or define "properly", "safe", "appropriate", and "secure"

On line 7, please delete or define "proper"

In (b), line 12, please delete or define "direct"

*On lines 12-13, what is meant by "unless provision for its custody is otherwise authorized"?
By whom and how?*

Please update the History Note to reflect the current law and add any additional pertinent statutory authority.

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

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

08 NCAC 04 .0306 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 04 .0306 DUTIES OF CUSTODIANS OF VOTING SYSTEMS

(a) The chairman of the county board of elections shall be responsible for the safekeeping, storage, maintenance and care of the voting system. The voting system shall be properly stored in a safe, appropriate and secure location so that the system cannot be tampered with when not in use on election day. The county board of elections may appoint as many persons as determined necessary for the maintenance, storage and care of the voting system and for the proper preparation and testing of the voting system and delivery to the voting precincts preceding a primary or an election. Persons employed for this purpose shall be compensated for their services as authorized by the county board of elections.

(b) On election day when the system is used for voting purposes and until the county board chairman collects the system, the voting system shall be under the direct supervision and control of the chief judge unless provision for its custody is otherwise authorized.

*History Note: Authority G.S. 163-23; 163-165.7;
 Temporary Adoption Eff. April 15, 2002;
 Eff. August 1, 2004.
 Readopted Eff. September 1, 2018.*

RRC STAFF OPINION

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AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 04 .0307

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff believes this Rule is ambiguous as written as it includes language such as “properly” and “accurately” without providing any additional information as to the meaning of these terms.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

Staff notes that additional information relating to the clarity of this Rule is noted in this Rule's corresponding technical change requests.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 04 .0307

DEADLINE FOR RECEIPT: Friday, August 10, 2018

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 call our office to inquire concerning the staff recommendation.

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

On line 4, what is meant by "cause to be tested"?

On line 5, please delete or define "properly" and "accurately"

On line 7, please include a comma both before and after "at a minimum"

On line 7, by "persons conducting the test", I assume you mean the names of the persons conducting the test?

Please consider putting the requirements in line 7 into list form so that it reads as follows:

that shall include, at a minimum, the following information:

- (1) the dates, times, and method of testing;*
- (2) the results of the test; and*
- (3) the names of the persons conducting the test.*

Please also consider making lines 8-10 (Any interested person... within the county) a Paragraph (b).

Please update the History Note to reflect the current law and add any additional pertinent statutory authority.

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

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

08 NCAC 04 .0307 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 04 .0307 TESTING OF VOTING SYSTEM BEFORE USE IN AN ELECTION

The county board of elections shall test or cause to be tested each voting system or unit that will be used in the election to ensure that the system is operating properly and has been programmed to count votes accurately. There shall be a record maintained along with the voted and unvoted ballots at the county board of elections office that shall include at a minimum the dates, times and method of testing used, the results of the test, and the persons conducting the test. Any interested person may observe the testing of the voting system but shall not interfere or impede the process. For the purpose of testing a voting system prior to the purchase or lease of the system, testing at a one-stop absentee voting site shall fulfill the requirement to test the voting system in a precinct within the county.

*History Note: Authority G.S. 163-22; 163-165.7;
 Temporary Adoption Eff. April 15, 2002;
 Eff. August 1, 2004.
 Readopted Eff. September 1, 2018.*

RRC STAFF OPINION

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AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 06B .0103

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff believes this Rule is ambiguous as written as it includes language such as "as soon as practicable" without providing any additional information as to the meaning of this term.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

Staff notes that additional information relating to the clarity of this Rule is noted in this Rule's corresponding technical change requests.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 06B .0103

DEADLINE FOR RECEIPT: Friday, August 10, 2018

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 call our office to inquire concerning the staff recommendation.

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

In (a), what is meant by "as soon as practicable"? Please delete or define.

In (a) and (c), please correct the "State Board of Elections" to the current name of the Board.

In (b), delete "generally"

In (c), when will a candidate be required to file a "Notice of Candidacy"? Is a cross-reference available?

In (c), line 17, please delete "exactly"

Please update the History Note to reflect the current law and add any additional pertinent statutory authority.

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

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

08 NCAC 06B .0103 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 06B .0103 ARRANGEMENT OF OFFICIAL BALLOTS

(a) As soon as practicable after the close of the filing period, the State Board of Elections shall certify to the county boards of elections the order of the offices and candidate names to be voted on the official ballot. The State Board of Elections shall provide the text and arrangement of referenda to be voted on the official ballot.

(b) Generally, the order of precedence for candidate ballot items shall be as follows:

(1) Federal Offices;

(2) State Offices in the order certified by the State Board of Elections;

(3) District and local offices;

(4) Non-partisan offices; and

(5) Referenda, unless the voting system design requires referenda to be before candidate ballot items.

Ballot items for full terms of an office shall be listed before ballot items for partial terms of the same office. The term of the unexpired office only shall be listed as part of the title of the office.

(c) Names of candidates shall be printed in the exact form either certified by the State Board of Elections for those candidates who are required to file the Notice of Candidacy with the State Board of Elections, by convention or by petition. Candidates for all offices shall provide their name exactly as it is to appear on the ballot. Candidates may request in writing a change in the manner that their name is to appear on the ballot during the time the filing period is open.

History Note: Authority G.S. 163-22; 163-165.6;

Temporary Adoption Eff. April 15, 2002;

Eff. August 1, 2004.

Readopted Eff. September 1, 2018.

RRC STAFF OPINION

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AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 06B .0104

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff believes this Rule is unclear as written as it contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 06B .0104

DEADLINE FOR RECEIPT: Friday, August 10, 2018

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 call our office to inquire concerning the staff recommendation.

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

On line 6, by "responsible board of election" do you mean "responsible county board of elections"?

On line 8, please update the statutory reference.

Please update the History Note to reflect the current law and add any additional pertinent statutory authority.

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

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

08 NCAC 06B .0104 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 06B .0104 LATE CHANGES IN BALLOTS

After the official ballots for a general or special election have been printed and the absentee voting period has begun, the death, resignation, or disqualification of a candidate whose name appears on the official ballots shall not require that the ballots be reprinted. If the vacancy occurs before the absentee voting period begins, the responsible board of elections may determine whether it is practical to have the ballots reprinted with the name of the replacement nominee as authorized by G.S. 163-114. If the ballots are not reprinted, a vote cast for the candidate whose name is printed on the ballot shall be counted as a vote for the replacement nominee.

*History Note: Authority G.S. 163-22; 163-165.3;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004.
Readopted Eff. September 1, 2018.*

RRC STAFF OPINION

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 06B .0105

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff believes this Rule is ambiguous as written as it includes language such as "requisite documentation", "clearly", and "unavoidable necessity" without providing any additional information as to the meaning of these terms.

Further, this Rule contains references to statutes that no longer exist as the statutory references have been recodified.

Staff notes that additional information relating to the clarity of this Rule is noted in this Rule's corresponding technical change requests.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 06B .0105

DEADLINE FOR RECEIPT: Friday, August 10, 2018

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 call our office to inquire concerning the staff recommendation.

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

Please ensure that all references to G.S. 163 have been updated to reflect the recodification to G.S. 163A. Please double check G.S. 163-182.2, which has been recodified to 163A-1167.

Please ensure that all references to the "State Board of Elections" is updated to reflect the current name of the Board.

In (a), how shall the "official ballots be counted"? In accordance with the manufacturer's instructions and 163A-1166? Please consider rewording to say:

Following the close of the polls the official ballots shall be counted in accordance with G.S. 163A-1166 and counted. Precinct officials shall follow the procedures specified by the voting system manufacturer. manufacturer and in compliance with G.S. 163-182.1 and 163-182.2.

In (a), line 7, what is meant by a "legislative local act"? Would the county boards be aware of this? Also, what is the approval process referenced on line 8. How will the State Board determine whether to approve this request? What factors will they use?

In (b), what is the "requisite documentation"? Please say what is required.

In (b), what is an "unavoidable necessity"? How and by whom will this be determined? Please provide some examples.

Given 163A-1166, why is (c) necessary? This information appears to be covered by 163A-1166(a).

In (d), how is this announcement to be made? Must is be announced orally or shall it be in writing?

On line 24, please delete or define "clearly"

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

Please update the History Note to reflect the current law and add any additional pertinent statutory authority. Please double check the citation to 163-182.2, which has been recodified as 163A-1167.

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

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

08 NCAC 06B .0105 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 06B .0105 COUNTING OF OFFICIAL BALLOTS

(a) Following the close of the polls the official ballots shall be counted. Precinct officials shall follow the procedures specified by the voting system manufacturer and in compliance with G.S. 163-182.1 and 163-182.2. The counting of the ballots shall be completed in the presence of the precinct election officials, observers, and any persons desiring to observe the count. All official ballots shall be counted at the precinct unless authorized by legislative local act and approved by the State Board of Elections.

(b) The counting of the ballots at the precinct shall be continuous until completed. From the time the counting of the ballots is begun until the votes are counted and the requisite documentation is signed, certified as required, and delivered to the chief judge or judge chosen to deliver the documentation to the county board of elections, the precinct chief judge and judges shall not separate, nor shall any of them leave the voting place except for unavoidable necessity.

(c) In the cases where the precinct officials must interpret the voter's choice, the following shall apply:

(1) When it is impossible to determine a voter's choice for an office, the ballot shall not be counted for that office but shall be counted for all other offices;

(2) If a ballot is marked for more names than there are positions to be filled, it shall not be counted for that office but shall be counted for all other offices;

(3) If a ballot has been defaced or torn by a voter so that it is impossible to determine that voter's choice for one or more offices, it shall not be counted for such offices but shall be counted for all offices for which the voter's choice can be determined; and

(4) If a voter has done anything to a ballot other than mark it properly, it shall be counted unless such action by the voter makes it impossible to determine the voter's choice.

(d) When the counting is completed the chief judge or his or her designee shall announce the results at the precinct. The announcement of the results shall clearly state the results are unofficial. The unofficial results shall be transmitted to the county board of elections in the manner determined by the county board of elections and the voting system. This report shall be unofficial and shall have no binding effect upon the official county canvass to follow. As soon as the precinct reports are received, the chairman, secretary or designee shall publish the unofficial reports to the news media.

(e) Provisional official ballots shall be counted by the county board of elections before the canvass. If the county board finds that an individual voting a provisional official ballot is not eligible to vote in one or more ballot items on the official ballot, the board shall not count the official ballot in those ballot items, but shall count the official ballot in any ballot items for which the individual is eligible to vote.

*History Note: Authority G.S. 163-22; 163-182.1; 163-182.2;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004.
Readopted Eff. September 1, 2018.*

RRC STAFF OPINION

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AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 08 .0104

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☐ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff is recommending objection to 08 NCAC 08 .0104 for lack of statutory authority as the only cited authority was repealed in 1993.

08 NCAC 08 .0104 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 08 .0104 HANDICAPPED TRANSFER PRIOR TO ELECTION DAY

At any time during the period of absentee voting in any primary, general or special election, a handicapped or elderly voter registered in a precinct wherein there exists no polling place accessible to the elderly and handicapped may request in advance to be transferred from that precinct to the office of the county board of elections for the purpose of voting at the county board of elections on election day under the following procedure:

- (1) An application to be transferred in advance to the county board of elections for the purpose of voting on election day shall be made and signed only by the voter or the voter's near relative, as defined in G.S. 163-227(c)(4), or legal guardian and shall be valid only when transmitted to the chairman or supervisor of elections of the county board of elections by mail or delivered in person by the voter or his near relative or legal guardian.
- (2) Upon receipt of a written request for transfer, the county board of elections, after determining the validity of such request, shall enter the voter's name and precinct into the book referred to in Rule .0001(a)(6) of this Chapter and shall place the designation "HT" beside the voter's name as it appears on registration records sent to that voter's precinct for use on election day.
- (3) No voter who has requested advance transfer shall be allowed to vote on election day at that voter's precinct if the designation "HT" appears on the records of that precinct, but instead shall be directed to the offices of the county board of elections.
- (4) On election day, the precinct transfer assistant at the county board of elections, when the elderly or handicapped voter appears and indicates that advance request for transfer was made, shall verify such fact by reference to the book referred to in Rule .0001(a)(6) and, having determined that such request was made, shall provide the voter with the proper ballots and follow the procedures set forth in Rule .0001 (a)(5)-(9).

*History Note: Filed as a Temporary Rule Eff. April 18, 1988 for a period of 136 days to expire on August 31, 1988;
Statutory Authority G.S. 163-69.2;
ARRC Objection May 19, 1988;
Eff. October 1, 1988.
Readopted Eff. September 1, 2018.*

RRC STAFF OPINION

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 09 .0106

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff is recommending objection to 08 NCAC 09 .0106 for lack of statutory authority as G.S. 163A-1109 prohibits the use of punch-card ballots and lever machine voting systems. Paragraphs (d) and (h) of this Rule appear to provide provisions for counting punch card ballots. Paragraph (e) appears to provide provisions for lever voting.

In addition, Staff is recommending objection to this Rule as being unnecessary as (b) of this Rule appears to recite G.S. 163A-1176 without providing any additional information.

Staff is also recommending objection as Staff believes that this Rule is unclear or ambiguous as written. Staff believes this Rule is ambiguous as written as it includes language such as "properly" without providing any additional information as to the meaning of this term.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

Staff notes that additional information relating to the clarity of this Rule is noted in this Rule's corresponding technical change requests.

§ 163A-1109. Punch-card ballots and lever machines.

(a) No ballot may be used in any referendum, primary, or other election as an official ballot if it requires the voter to punch out a hole with a stylus or other tool.

(b) No lever machine voting system may be used in any referendum, primary, or other election as a means of voting the official ballot. A "lever machine voting system" is a voting system on which the voter casts a vote by pressing a lever and the vote is mechanically recorded by the machine.

(c) In any counties that used punch-card ballots as official ballots or lever machines in the election of November 2000, and in any municipalities located in those counties, this section becomes effective January 1, 2006. It is the intent of the General Assembly that any county that uses county funds to replace voting equipment to satisfy this section shall be given priority in appropriations to counties for voting equipment. (2001-310, ss. 1, 3; 2003-226, s. 12; 2017-6, s. 3.)

§ 163A-1176. Determining result in case of a tie.

If the count, upon completion of canvass by the proper board of elections, shows a tie vote other than in a primary, the tie shall be resolved as follows:

- (1) If more than 5,000 voters cast official ballots in the ballot item, the State Board shall order a new election in which only the candidates or positions tied will be on the official ballot. The State Board shall set the schedule for publication of the notice, preparation of absentee official ballots, and the other actions necessary to conduct the election. Eligibility to vote in the new election shall be determined by the voter's eligibility at the time of the new election.
- (2) If 5,000 or fewer voters cast official ballots in the ballot item, the board of elections with jurisdiction to certify the election shall break the tie by a method of random selection to be determined by the State Board. (2001-398, s. 3; 2017-6, s. 3.)

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 09 .0106

DEADLINE FOR RECEIPT: Friday, August 10, 2018

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 call our office to inquire concerning the staff recommendation.

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

Please ensure that all references to G.S. 163 have been updated to reflect the recodification to G.S. 163A.

In (a), please provide a cross-reference after "prior to each recount"

To whom does this Rule apply? County board, the State Board, or both?

In (a), line 4, what is meant by "affected parties"? Perhaps a cross-reference to 163A-1174 would help to clarify this term.

Please review (b) in light of 163A-1176. Is this necessary?

In (c), when will the board have to determine the voter's choice?

In (c)(1), how will it be determined whether it is impossible to determine a voter's choice? Does (c)(3) impact this determination such that they go together and should be combined?

In (c)(1), please add a comma in between "office" and "but"

In (c)(4), please delete or define "properly"

In (d), what is your authority to allow a recount of punchcard ballots? It appears to me as though G.S. 163-1109 prohibits their use. If there is authority, how do (d) and .0107 go together? (h) also contains a reference to punchcard ballots.

In (e), what is your authority to allow a recount of lever voting machines? It appears to me as though G.S. 163-1109 prohibits their use. If there is authority, how do (e) and .0108 go together?

In (g), rather than "only in two circumstances", please consider saying "only as follows:", then provide the first and second circumstances in list form as (1) and (2).

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

In (g), how will the State Board determine whether to grant a recount. I see that 163A-1174 gives you the authority to do it, but what factors will the State Board use in making this determination?

In (h), what is meant by “unless human error resulted in the vote change count”? With this language, the overall intent of this Paragraph is unclear.

In (i), please provide a cross-reference to the process for filing an election protest.

Please update the History Note to reflect the current law and add any additional pertinent statutory authority.

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

08 NCAC 09 .0106 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 09 .0106 GENERAL GUIDELINES

(a) Prior to each recount, the board of elections shall confer with affected parties and candidates and describe to them the process of conducting recounts.

(b) In the case of tie votes, the winner shall be determined by lot only in the case set out in G.S. 163-182.8(2). Where there are 5,000 or fewer votes cast, there shall be only one determination by lot for each tied election. There shall be no determination by lot until the time has expired for the affected candidate(s) to request a recount, unless all of the affected candidate(s) waive their right in writing to request a recount.

(c) During the conduct of recounts, in the cases where the board of elections must interpret the voter's choice, the following shall apply:

(1) When it is impossible to determine a voter's choice for an office, the ballot shall not be counted for that office but shall be counted for all other offices;

(2) If a ballot is marked for more names than there are positions to be filled, it shall not be counted for that office but shall be counted for all other offices;

(3) If a ballot has been defaced or torn by a voter so that it is impossible to determine that voter's choice for one or more offices, it shall not be counted for such offices but shall be counted for all offices for which the voter's choice can be determined; and

(4) If a voter has done anything to a ballot other than mark it properly with pen or pencil, it shall be counted unless such action by the voter makes it impossible to determine the voter's choice.

(d) The following shall apply in counting punch card ballots:

(1) All of the candidates for whom the voter has indicated a preference shall be counted if the corresponding chad is completely punched out or hanging by one corner (showing that three of the four corners have been punched out); and

(2) If the chad has not been punched out or is not hanging by one corner, then the determination must be made if the voter has shown consistency in marking the ballot. If the voter has shown consistency in marking choices on the ballot - all of the candidates for whom the voter has indicated a preference shall be counted.

(e) In conducting recounts of lever, direct record electronic, and any other types of voting machines that require a county board member or designated official to reprint tapes and to read the totals and another board member to record the totals for each candidate such recount shall be conducted by a bi-partisan team of four: two officials (one from each of the two parties having the largest number of registered voters in the state) reading and confirming the totals per machine and two officials (one from each of the two parties having the largest number of registered voters in the state) recording the results simultaneously.

(f) In conducting hand to eye recounts or recounts of paper ballots, a bi-partisan team of four shall be used: two officials (one from each of the two parties in the State with the largest number of registered voters) to relay the results of each ballot with one person reading the ballot and the other official observing the ballot and the person reading the

1 results of the ballot, and two officials (one from each of the two parties in the State with the largest number of
2 registered voters) recording the tally of votes for each candidate on paper while stating aloud after each choice is read
3 on the fifth tally for a particular candidate, the word "tally."

4 (g) The county board of elections shall conduct recounts in two circumstances. In the first circumstance, the recount
5 is mandatory under G.S. 163-182.7(b). In the second circumstance, the recount is not mandatory but the county board
6 of elections or the State Board of Elections determines, using its authority in G.S. 163-182.7(a), that in order to
7 complete the canvass a recount is necessary.

8 (h) A candidate shall have the right to call for a hand-eye recount, as to elections conducted by optical scan marksense
9 or punchcard systems, within 24 hours after a mandatory or discretionary recount or by noon on the next business day
10 of the county board office, whichever is later, if the apparent winner is the apparent loser after the first recount, unless
11 human error resulted in the vote count change.

12 (i) Any candidate shall have the right to file an election protest within 24 hours after a recount or by noon of the next
13 business day of the county board office, whichever is later.

14
15 *History Note: Authority G.S. 163-22; 163-182.7;*
16 *Temporary Adoption Eff. April 15, 2002;*
17 *Eff. August 1, 2004.*
18 *Readopted Eff. September 1, 2018.*

RRC STAFF OPINION

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 09 .0107

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff is recommending objection to 08 NCAC 09 .0107 for lack of statutory authority as G.S. 163A-1109 prohibits the use of punch-card ballots and lever machine voting systems. This Rule appears to provide provisions for the recounting of punch card ballots. Staff notes that the text of G.S. 163A-1109 is available in the Staff Opinion for 08 NCAC 09 .0106.

Staff is also recommending objection to this Rule as Staff believes this Rule is unclear or ambiguous as Subparagraph (b)(9) uses the word "should." It is unclear to staff whether this is intended to be a mandate or an aspiration statement that does not meet the definition of a rule. Also, the history note contains references to statutes that no longer exist as the statutory references have been recodified.

Staff notes that additional information relating to the clarity of this Rule is noted in this Rule's corresponding technical change requests.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 09 .0107

DEADLINE FOR RECEIPT: Friday, August 10, 2018

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 call our office to inquire concerning the staff recommendation.

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

Please make it clear within the body of the text of the Rule (as opposed to just the Title) to what this Rule is pertaining.

What is your authority to allow a recount of punchcard ballots? It appears to me as though G.S. 163-1109 prohibits their use.

Overall, I'm having a very hard time following this Rule. Perhaps it would be helpful to add some additional information about the process, or at the very least a cross-reference to the appropriate statutory requirements of a recount.

On line 3, what is meant by "optical scan/marksense/punchcard voting"? I note that in other Rules, it says "optical scan marksense and punchcard voting."

To whom does this Rule apply? County boards or the State Board?

In (a), what is meant by the "first recount"? Will there be others? I assume that it will be based in accordance with 143A-1174(b) and (c)? Are .0107 and .0108 addressing first "recounts of scan/marksense/punchcards" in and direct record electronic and lever voting machines, and .0109 is addressing a second recount? Overall, this is not clear.

What is meant by lines 4-5? I'm having a difficult time understanding the intent here.

In (a), line 6, what is meant by "team of four rules outlined in 08 NCAC 09 .0106", do you mean Rule .0106(f)?

In (b)(1), please delete "the county board must" as you have already said "the board of elections shall follow these steps" on line 10.

Do (b)(2) and (3) go with (b)(1) such that they should be parts of subparagraph (b)(1)?

In (b)(3) and (b)(6) , what is meant by "Subparagraph (b)(4) [and (b)(7)] of this Rule must be considered"?

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

In (b)(4), how is the board to determine whether there is a discrepancy?

On line 24, is it an outstack or a center bin? Please use the correct terminology, rather than a slash mark.

In (d), is there an appeals process as provided for in .0108 (d)?

Please update the History Note to reflect the current law and add any additional pertinent statutory authority.

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

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

08 NCAC 09 .0107 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 09 .0107 RECOUNT OF OPTICAL SCAN/MARKSENSE/PUNCHCARD BALLOTS

(a) How to conduct the first recount. In the first recount, all ballots that were originally counted by the optical scan equipment are to be counted again by the optical scan equipment producing another machine count. A "machine count" total is a ballot count produced by a voting system that uses machines. All ballots that were rejected for tabulation purposes by the machines - commonly called "outstacked" or center bin ballots - are to be recounted by hand and eye using the team of four guidelines outlined in 08 NCAC 09 .0106.

(b) The steps after the first recount. When the first recount, including absentee and provisional ballot recount totals, has been completed, the board of elections shall follow these steps:

(1) The county board must determine whether the first recount produces a change in the winner;

(2) If the apparent winner after the initial balloting is the apparent loser after the first recount, that candidate shall be entitled to demand a second recount, by hand and eye, of all ballots;

(3) If the apparent winner after the initial balloting remains the apparent winner after the first recount, Subparagraph (4) of this Rule must be considered;

(4) The county board must determine whether there is a discrepancy in the machine totals between the initial balloting and the first recount;

(5) If the machine totals from the initial balloting and the first recount are the same, no second recount is necessary;

(6) If the machine totals from the initial balloting and the first recount are not the same, Subparagraph (b)(7) of this Rule must be considered;

(7) The county board must determine whether the discrepancy in the machine total can be reconciled;

(8) The county board shall determine if the discrepancy in the machine total between the initial balloting and the first recount can be explained. The county board shall examine the outstack/center bin ballots from the first recount, determine how they should be counted, and reconcile the count with the machine count on the initial balloting. If this reconciliation produces the same machine total for the first recount as the machine total in the initial balloting, no second recount is necessary; and

(9) If the reconciliation produces a different machine total for the first recount than the machine total in the initial balloting, the losing candidate is entitled to demand a second recount, by hand and eye, of all ballots.

*History Note: Authority G.S. 163-22; 163-182.7;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004.
Readopted Eff. September 1, 2018.*

RRC STAFF OPINION

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 09 .0108

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff is recommending objection to 08 NCAC 09 .0107 for lack of statutory authority as G.S. 163A-1109 prohibits the use of punch-card ballots and lever machine voting systems. This Rule appears to provide provisions for the recounting of lever voting. Staff notes that the text of G.S. 163A-1109 is available in the Staff Opinion for 08 NCAC 09 .0106.

Staff is also recommending objection to this Rule as Staff believes this rule is unclear or ambiguous as written. Staff believes this Rule is unclear as (d) provides for an appeals process of the recount vote without providing any further information.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

Staff notes that additional information relating to the clarity of this Rule is noted in this Rule's corresponding technical change requests.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 09 .0108

DEADLINE FOR RECEIPT: Friday, August 10, 2018

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 call our office to inquire concerning the staff recommendation.

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

Please make it clear within the body of the text of the Rule (as opposed to just the Title) to what this Rule is pertaining.

What is your authority to allow a recount of lever voting machines? It appears to me as though G.S. 163-1109 prohibits their use.

Overall, I'm having a very hard time following this Rule. Perhaps it would be helpful to add some additional information about the process, or at the very least a cross-reference to the appropriate statutory requirements of a recount.

In (a), what is meant by the "first recount"? Will there be others? I assume that it will be based in accordance with 143A-1174(b) and (c)? Are .0107 and .0108 addressing first "recounts of scan/marksense/punchcards" in and direct record electronic and lever voting machines, and .0109 is addressing a second recount? Overall, this is not clear.

In (a), line 6, what is meant by "team of four rules outlined in Section I of these Rules"? Section I does not exist. Do you mean Rule .0106(f)?

Based upon (b)(1) through (9), this appears to only be applicable to county boards. Is that correct? Please review and clarify.

For (b)(1) through (9), please refer to the technical change requests for .0107.

In (d), what is the appeals process? Please provide a cross-reference to the appeals process.

Please update the History Note to reflect the current law and add any additional pertinent statutory authority.

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

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

08 NCAC 09 .0108 is readopted as published in 31:23 NCR 2311 as follows:

**08 NCAC 09 .0108 DIRECT RECORD ELECTRONIC AND LEVER (DIRECT RECORD
MECHANICAL) VOTING MACHINES**

(a) In the first recount, all votes cast on each unit shall be retabulated and results provided. The results provided shall be re-read using the team of four rules outlined in Section I of these Rules.

(b) When the first recount has been completed, the board of elections shall follow these steps:

(1) The county board must determine whether the first recount produces a change in the winner;

(2) If the apparent winner after the initial balloting is the apparent loser after the first recount, that candidate shall be entitled to demand a second recount;

(3) If the apparent winner after the initial balloting remains the apparent winner after the first recount, Subparagraph (b)(4) of this Rule must be considered;

(4) The county board must determine whether there is a discrepancy in the machine totals between the initial balloting and the first recount;

(5) If the unit totals from the initial balloting and the first recount are the same, no second recount is necessary;

(6) If the unit totals from the initial balloting and the first recount are not the same, Subparagraph (b)(7) of this Rule must be considered;

(7) The county board must determine whether the discrepancy in the machine total can be reconciled;

(8) The county board shall determine if the discrepancy in the unit totals between the initial balloting and the first recount can be explained. (Possible acceptable explanations may include problems with the setup of the ballot, problems with the software or other unit malfunction); and

(9) If the reconciliation produces a different unit total for the first recount than the unit total in the initial balloting, the losing candidate is entitled to demand a second recount provided by the county board of elections.

(c) A manual recount, by hand and eye, of ballots is not possible whenever a lever machine or direct record electronic voting machine error occurs.

(d) The State Board of Elections shall hear any appeals of recount protests.

History Note: Authority G.S. 163-22; 163-182.7;

Temporary Adoption Eff. April 15, 2002;

Eff. August 1, 2004.

Readopted Eff. September 1, 2018.

RRC STAFF OPINION

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 09 .0109

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff is recommending objection to 08 NCAC 09 .0109 for lack of statutory authority as G.S. 163A-1109 prohibits the use of punch-card ballots and lever machine voting systems. This Rule appears to provide provisions for the recounting of punch card ballots. Staff notes that the text of G.S. 163A-1109 is available in the Staff Opinion for 08 NCAC 09 .0106.

Staff is also recommending objection to this Rule as Staff believes this Rule is unclear as written.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

Staff notes that additional information relating to the clarity of this Rule is noted in this Rule's corresponding technical change requests.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 09 .0109

DEADLINE FOR RECEIPT: Friday, August 10, 2018

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 call our office to inquire concerning the staff recommendation.

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

Please ensure that all references to G.S. 163 have been updated to reflect the recodification to G.S. 163A. Specifically, please change 163-182.7 to 163A-1174. Also, is this for recounts in the jurisdiction of the county, the State Board, or both? Please provide some additional information.

Please note the statutory term of "hand-to-eye." Please be consistent in this Rule and any other rule referencing hand-to-eye recounts.

Overall, I'm having a very hard time following this Rule. I'm thinking that the issues are, at least in part, formatting related. Should lines 5 through 8 be (1) and Items (1) through (4) be related to (1) and changed to (a), (b), (c), and (d). Then should (5) and (6) be (2) and (3)? If so, please also appropriately punctuate the paragraphs. Please review the entire rule and clarify the process.

Also, what is the intent of lines 5-8. Honestly, I'm at a loss as to what will actually be happening – is this a second recount?

On line 4, what is meant by "optical scan/marksense/punchcard voting"? I note that on line 28, it says "optical scan marksense and punchcard voting." In one place it looks like this is 3 different types of voting. In the other, it appears to be 2 different types of voting. Please be consistent and accurate. I also note that 163A-1109 prohibits punch-card ballots.

On line 6, what is meant by "one could reliably assume"? How will this determination be made and by whom?

In (1), what is the intent of this? What is meant by "initially shall occur"? Again, the overall process is unclear.

In (2), what is meant by "those precincts"? Does that mean those 10% of precincts in (1)?

In Items (4) and (5), please change "which" to "that" on lines 18, 20 and 23.

Amber May

Commission Counsel

Date submitted to agency: August 2, 2018

Please review this Rule in light of 163A-1175 (which appears to have been enacted after this Rule.)

Please update the History Note to reflect the current law and add any additional pertinent statutory authority.

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

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

08 NCAC 09 .0109 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 09 .0109 MANUAL HAND TO EYE RECOUNTS

Mandatory recounts, as set out in G.S. 163-182.7, by hand-eye optical scan/marksense/punchcard voting shall be conducted as follows: If a sample of the precincts of the voting units in question were recounted by hand-eye and produced results with that of the mandatory recount in those precincts such that one could reliably assume that any problems with scanning equipment was confined to those precincts in which there was a difference that could not be reconciled in the totals between the original count and the mandatory recount, then:

- (1) The mandatory recount by hand-eye initially shall occur in only 10 percent of the voting jurisdiction's precincts.
- (2) Those precincts shall include all those precincts in which a different total was produced by the machine-read count of ballots for the first count, including the outstacked/center bin, and the mandatory recount, as well as a sufficient number of additional precincts to constitute a total of at least 10 percent of the precincts of the voting jurisdiction.
- (3) However, in any event, at least five percent of the voting jurisdiction's precincts included in the sample shall have experienced the same count for machine-read ballots, including the outstacked/center bin, in the original count, and in the mandatory recount.
- (4) The precincts included in the sample which had the same machine-read count in the original and mandatory recount shall be chosen by random draw by lot from a container held by the Chair of the county board of elections, with all precincts which did not experience a difference in count by number being placed into the container, with the candidate whom appears to have been the loser after the mandatory recount drawing said lots.
- (5) If the hand-eye recount of those precincts which did not experience a difference in count from the original count and the mandatory recount results in a different total from that produced on the previous counts, in any precinct, then upon request of the apparent losing candidate, all precincts for that race shall be recounted by hand-eye.
- (6) After two machine count of votes (including the initial election or primary night count), any recount conducted in cases involving optical scan marksense and punchcard voting equipment shall be a manual hand-eye recount.

History Note: Authority G.S. 163-22; 163-182.7;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004.
Readopted Eff. September 1, 2018.

RRC STAFF OPINION

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 10B .0101

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff believes this Rule is ambiguous as written as it includes language such as “promptly”, “good cause”, “open means”, “prompt”, “orderly”, “short notice”, “immediately”, “secure”, “properly” and “improperly”, and “clearly” without providing any additional information as to the meaning of these terms.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

Staff notes that additional information relating to the clarity and necessity of this Rule are noted in this Rule's corresponding technical change requests.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 10B .0101

DEADLINE FOR RECEIPT: Friday, August 10, 2018

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 call our office to inquire concerning the staff recommendation.

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

Please ensure that all references to G.S. 163 have been updated to reflect the recodification to G.S. 163A.

In (a), are lines 4-5 necessary? Please consider beginning Paragraph (a) with "For purposes of this Chapter..." and delete the remainder of the Paragraph.

Given Rules specifically pertaining to observers, are lines 7-9 necessary?

In (b), please consider moving lines 12-13 after (b)(24) so that the introduction of the subparagraphs is immediately prior (b)(1). In doing, please add a colon after "to perform as to each primary or election"

On line 12, is there a cross-reference available as to when there would be an "exclusive statutory mandate" related to a chief judge? How is a chief judge to know when he or she can delegate duties?

Given the provided cross-references, are the sub-paragraphs contained in (b) necessary? Many of them appear to recite the statutory requirement.

In (b)(2), a relative of whom? The official? Please review and clarify.

Please reword (b)(2) and (3) for purposes of clarity.

In (b)(3), please specifically reword to eliminate the use of "you"

In (b)(4), please delete or define "promptly" and "good cause"

In (b)(6), please delete or define "promptly"

In (b)(9), what is meant by "open means of phone/radio communication"?

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

In (b)(10), is there an underlying requirement that the chairman must “ratify” to the selection of a chief judge? Also, if the Chief judge has not yet arrived, how is he or she to appointment a replacement. Please review and clarify.

In (b)(11), please delete “prompt”

In (b)(11), please change “any rules promulgated under that statute” to the specific rules or section of rules.

In (b)(14), please delete or define “orderly.” Please also change “any rules promulgated under that statute” to the specific rules or section of rules.

In (b)(16), what are the rules pertaining to counting, reporting, and transmitting official ballots? Please provide the specific rules or section of rules.

In (b)(17), are you using “efficient, impartial, and honest” to mimic 163A-1135?

In (b)(18), what is a buffer zone. How are chief judges “to ensure compliance”?

In (b)(19), please delete or define “peace and good order”? How are chief judges to do this?

In (b)(20), are you using “dignity, good order, impartiality, convenience, and privacy” to mimic 163A-1137? Also, please change “any rules promulgated under that statute” to the specific rules or section of rules.

In (b)(22), when would ballot counters be needed? Also, how are ballot counters to be sworn in? Are they to take an oath?

In (c), please consider moving the language on lines 35-36 after (c)(9) and end “primary of election” with a colon. Also, what is meant by “not statutorily made exclusive to the chief precinct judge”? What are the pertinent statutes?

Please end (c)(1) through (c)(8) with semi-colons and add an “and” at the end of (c)(8). Otherwise, please see my notes for (b) and make corresponding changes.

In (d), should lines 27-28 (“aid the chief judge and other precinct...”) be subparagraph (1)? It appears to be a task that would be appropriate to be included in the subparagraphs.

Given the provided cross-references, are the sub-paragraphs contained in (d) necessary? Many of them appear to recite the statutory requirement.

In (d)(4), please delete or define “promptly”

Please see notes in (b) regarding (d)(5) and (d)(6).

Please end (e)(1) through (e)(4) with semi-colons and add an “and” at the end of (e)(4).

In (e)(1), please delete or define “short notice”

In (e)(3), please delete or define “promptly”

Please see notes in (b) regarding (e)(4) and (e)(5).

Please move lines 27-28 (There is no requirement...) after (e)(4) and end “following” with a colon)

In (f)(1), please delete or define “immediately”

In (f)(2), how are they to be sworn into office? Are they just to take an oath?

Please see notes in (b) regarding (f)(3) and (4).

In (g)(5), please delete or define “secure”

In (g)(6), please delete or define “properly”

In (g)(8), please delete or define “improperly”

In (g)(9), please delete or define “promptly”

In (g)(10), please delete or define “clearly” and “proper”

In (g)(11), what is the intent of this language? Please review and clarify.

In (g)(12), please delete or define “secure”

In (g)(15), when are spanish ballots required? Is there a cross-reference available?

In (g)(15), please makes lines 29-30 into a complete sentence. Please also change “which” to “that” in “which can not be handled”

In (g)(17), delete or define “promptly” Also, how is a determination to be made that something “adversely affects” the performance of the election?

*In (g)(18), please delete or define “promptly”
Please also make lines 34-35 into a full sentence.*

Please update the History Note to reflect the current law and add any additional pertinent statutory authority.

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

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

08 NCAC 10B .0101 is readopted as published in 31:23 NCR 2311 as follows:

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

(a) This Rule a Summary - The provisions of this Section provide a nonexclusive summary of the tasks and duties given to officials under G.S. 163. The legal duty is contained, not in this Rule, but in G.S. 163. For purposes of this Chapter, unless otherwise noted, the term "precinct officials" shall mean chief judge, precinct judge, assistants, emergency election-day assistants, and ballot counters. Observers are not precinct officials and shall not act or presume to act on behalf of a county board of elections. Observers shall only be allowed in partisan or ABC elections and are not legally authorized in any non-partisan election involving either candidates or issues.

(b) Tasks of Precinct Chief Judge - Precinct Chief Judges, in accordance with election statutes, within the Rules of the State Board of Elections, and under the supervision of the county board of elections, shall have the following tasks to perform as to each primary or election. Where the precinct chief judge does not have the exclusive statutory mandate to perform a task or duty, a precinct judge may be designated to perform such task or duty.

(1) Attend an instructional meeting presented by the county board of elections prior to each primary or election as required by G.S. 163-46.

(2) Upon learning that any parent, spouse, child, or sibling has filed for elective office, to inform the county board of elections so that the provisions of the law prohibiting a precinct official from serving in an election with a close relative as a candidates can be followed.

(3) Inform the county board of elections if any blood relative of kinship of first cousin or nearer or a parent in-law, child in-law or sibling in-law is a precinct official/worker serving with you in the same precinct, and not to serve with that relative in the same precinct. Also inform the county board of elections of any relationship, as described in the previous sentence, that you may have with an emergency election-day assistant and not serve with that person in the same precinct.

(4) Prior to day of the primary or election, receive and review from the county board the precinct observer list and promptly make any objection for good cause to the county board as provided in G.S. 163-45.

(5) Receive, prior to the election or primary, sample ballots from the county board of elections, and to post a sample ballot at the voting place prior to opening on the primary or election day as set out in G.S. 163-165.2.

(6) Promptly notify the county board of elections of any sickness, emergency, or other circumstances that will or might prevent the person from performing as precinct chief judge on a primary or election day.

(7) Receive, prior to the day of the primary or election, from the county board of elections any security keys or codes as to any voting systems or units that are to be operated at the precinct.

(8) Prior to the opening of the polls, administer to any precinct official, not previously sworn, the oath of office as set out in G.S. 163-41.

- (9) Prior to the opening of the polls, to ensure there is open means of phone/radio communication between the voting place and the county board of elections office or director.
- (10) If at the time of opening the voting place, a judge has not appeared, to appoint another person to act as precinct judge, until the chairman of the county board of elections appoints a replacement as set out in G.S. 163-41, or ratifies the selection of the chief judge.
- (11) Be present at the voting place at 6:00 a.m., and ensure the prompt opening of the polls at 6:30 a.m. as mandated by G.S. 163-166 and any Rules promulgated under that statute.
- (12) Respond to any voter's request to have assistance to vote as set out in the provisions of G.S. 163-166.8(b).
- (13) Ensure the continued arrangement of the voting enclosure as required in G.S. 163-166.2.
- (14) Supervise the orderly closing of the voting place at 7:30 p.m. in compliance with procedures set out in G.S. 163-166.10 and any rules promulgated under that statute.
- (15) Handle challenges made on election or primary day in accordance with G.S. 163-87, and to conduct the hearing upon said challenge in accordance with G.S. 163-88.
- (16) Be responsible, as mandated by G.S. 163-182.3, for adherence to all rules pertaining to counting, reporting, and transmitting official ballots.
- (17) Be responsible for the maintenance of and appearance of efficient, impartial, and honest election administration at the precinct as required by G.S. 163-166.5(3).
- (18) Be responsible for the maintenance of the voting place buffer zone, and ensure compliance with the same.
- (19) Ensure peace and good order at the voting place as required by G.S. 163-48.
- (20) Ensure that voters are able to cast their votes in dignity, good order, impartiality, convenience, and privacy as required in G.S. 163-166.7(c) and any rules promulgated under that statute.
- (21) If needed, to check or assist in checking the registration of voters at the voting place.
- (22) If ballot counters are needed, receive the list of counters from the county board, or appoint counters if authorized to do so by the county board. Swear in any ballot counters prior to their county votes. Report to the county board of elections the names and addresses of any ballot counters to the county board at the county canvass as set out in G.S. 163-163-43.
- (23) Perform the required legal duties of chief precinct judge/judge or face criminal consequences as set out in G.S. 163-274 (1).
- (24) Not accept money from candidates, commit fraud, false statements, or false writings in performing election duties, or face the criminal consequences set out in G.S. 163-275(3)(8)(9) and (12).
- (c) Tasks of Precinct Judge- Precinct Judges, in accordance with election statutes, within rules of the State Board of Elections, and under the supervision of the county board of elections, shall have the following tasks to perform as to each primary or election. A precinct judge may be designated to perform tasks and duties of a chief precinct judge, where those duties are not statutorily made exclusive to the chief precinct judge.

- (1) Attend an instructional meeting presented by the county board of elections prior to each primary or election as required by G.S. 163-46.
 - (2) Upon learning that any parent, spouse, child, or sibling has filed for elective office, to inform the county board of elections so that the provisions of the law prohibiting a precinct official from serving in an election with a close relative as a candidates can be followed.
 - (3) Inform the county board of elections if any blood relative of kinship of first cousin or nearer or a parent in-law, child in-law or sibling in-law is a precinct official/worker serving with you in the same precinct, and not to serve with that relative in the same precinct. Also inform the county board of elections of any relationship, as described in the previous sentence, that you may have with an emergency election-day assistant and not serve with that person in the same precinct.
 - (4) If the chief judge fails to appear at the opening of poll, to appoint, with the other precinct judge, a person to act as chief judge until the chairman of the county board appoints a new chief judge as per G.S. 163-41.
 - (5) Promptly notify the county board of elections of any sickness, emergency, or other circumstances that will or might prevent the person from performing as precinct chief judge on a primary or election day.
 - (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. as mandated by G.S. 163-166 and any rules promulgated under that statute.
 - (7) Perform the required legal duties of chief precinct judge/judge or face criminal consequences as set out in G.S. 163-274 (1).
 - (8) Not accept money from candidates, commit fraud, false statements, or false writings in performing election duties, or face the criminal consequences set out in G.S. 163-275(3)(8)(9) and (12).
 - (9) To aid and cooperate with the precinct chief judge, as requested or needed, as to those duties noted in Subparagraphs (12) through (21) of Paragraph (b) of this Rule.
- (d) Tasks of Election Assistants- Election Assistants, in accordance with election statutes, within the rules of the State Board of Elections, and under the supervision of the county board of elections, shall have the following tasks to perform as to each primary or election: Aid the chief judge and other precinct judges in the performances of their tasks and duties as needed or directed.
- (1) Check the registration of voters at the voting place as per G.S. 163-166.7(a).
 - (2) Guide voters to voting units or provide voters ballots as per G.S. 163-166.7(b).
 - (3) Prior to performing duties and tasks after being duly appointed, take the oath required by G.S. 163-41.
 - (4) Promptly notify the county board of elections of any sickness, emergency, or other circumstances that will or might prevent the person from performing as an election assistant on a primary or election day.

- (5) Upon learning that any parent, spouse, child, or sibling has filed for elective office, to inform the county board of elections so that the provisions of the law prohibiting a precinct official from serving in an election with a close relative as a candidates can be followed.
- (6) Inform the county board of elections if any blood relative of kinship of first cousin or nearer or a parent in-law, child in-law or sibling in-law is a precinct official/worker serving with you in the same precinct, and not to serve with that relative in the same precinct. Also inform the county board of elections of any relationship, as described in the previous sentence, that you may have with an emergency election-day assistant and not serve with that person in the same precinct.
- (e) Tasks of Emergency Election –Day Assistant-Emergency Election-Day Assistants, in accordance with election statutes, within the rules of the State Board of Elections, and under the supervision of the county board of elections, shall have the following tasks to perform as to each primary or election:
- (1) To be prepared prior to and on the day of a primary or election to serve, on short notice given by the county board of elections, to travel to and work at any voting place within the county.
- (2) Perform all the tasks and duties of an election assistant as set out in Paragraph (d) of this Rule.
- (3) Promptly notify the county board of elections of any sickness, emergency, or other circumstances that will or might prevent the person from performing as an election assistant on a primary or election day.
- (4) Upon learning that any parent, spouse, child, or sibling has filed for elective office, to inform the county board of elections so that the provisions of the law prohibiting a precinct official from serving in an election with a close relative as a candidates can be followed.
- (5) Inform the county board of elections if any blood relative of kinship of first cousin or nearer or a parent in-law, child in-law or sibling in-law is a precinct official/worker serving with you in the same precinct, and not to serve with that relative in the same precinct. Also inform the county board of elections of any relationship, as described in the previous sentence, that you may have with an emergency election-day assistant and not serve with that person in the same precinct.
- (f) Tasks of Ballot Counters - All ballot counters, in accordance with election statutes, with the rules of the State Board of Elections and under supervision of the county board of elections, shall perform all the following. There is no requirement to have ballot counters appointed or used by a county board of elections unless they are needed.
- (1) After appointment, to appear at the poll immediately at close of the polls and to be prepared to count ballots under the direction and control of the chief and other precinct judges.
- (2) To be sworn into office, by the precinct chief judge prior to starting counting.
- (3) Upon learning that any parent, spouse, child, or sibling has filed for elective office, to inform the county board of elections so that the provisions of the law prohibiting a precinct official from serving in an election with a close relative as a candidates can be followed.
- (4) Inform the county board of elections if any blood relative of kinship of first cousin or nearer or a parent in-law, child in-law or sibling in-law is a precinct official/worker serving with you in the same precinct, and not to serve with that relative in the same precinct. Also inform the county board

1 of elections of any relationship, as described in the previous sentence, that you may have with an
2 emergency election-day assistant and not serve with that person in the same precinct.

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

- 6 (1) Count votes when votes are required to be counted at the voting place, G.S. 163-182.2;
- 7 (2) Make an unofficial report of returns to the county board of elections, G.S. 163- 182.2;
- 8 (3) Certify the integrity of the vote and the security of the official ballots at the voting place, G.S. 163-
9 182.2;
- 10 (4) Return official ballots and equipment to the county board of elections, G.S. 163- 182.2;
- 11 (5) Ensure that the voting system remains secure throughout the period voting is being conducted;
- 12 (6) Ensure that only properly voted official ballots are introduced into the voting system;
- 13 (7) Ensure that, except as provided by G.S. 163-166.9, no official ballots leave the voting enclosure
14 during the time voting is being conducted there;
- 15 (8) Ensure that all improperly voted official ballots are returned to the precinct officials and marked as
16 spoiled;
- 17 (9) Ensure that voters leave the voting place promptly after voting;
- 18 (10) Ensure that voters not clearly eligible to vote in the precinct but who seek to vote there are given
19 proper assistance in voting a provisional official ballot or guidance to another voting place where
20 they are eligible to vote;
- 21 (11) Ensure that information gleaned through the voting process that would be helpful to the accurate
22 maintenance of the voter registration records is recorded and delivered to the county board of
23 elections;
- 24 (12) Ensure that registration records are kept secure;
- 25 (13) Ensure that party observers are given access as provided by G.S. 163-45 to current information about
26 which voters have voted;
- 27 (14) Aid any voter, as needed, in curbside voting as provided for in G.S. 163-166.9;
- 28 (15) Provide Spanish ballot instructions as needed to voters, when such instructions are required to be
29 available by law. Direct all language needs which can not be handled at the precinct to the county
30 board office;
- 31 (16) Register and help, at the voting place, those persons eligible to register and vote on election day as
32 allowed by G.S. 163-254 and G.S. 163-82.6(d);
- 33 (17) Promptly report to the county board of elections, any physical or mental ailment, impairment, or
34 deterioration that may adversely affect the performance of an election related task or duty. Report
35 any such conditions known in any other precinct officials to the county board;
- 36 (18) Promptly report any violation of election laws or regulations to the chief judge, or to the county
37 board of elections if the chief precinct judge is involved in the violation;

1 (19) Provide any person who requests it any information on how to contact the county director of
2 elections, the county board of elections, or the office of the State Board of Elections; and

3 (20) Work and stay at the voting place, at all times during the voting day, until closure. By prior
4 agreement with the county board of elections and pursuant to G.S. 163-42, election assistants and
5 emergency election-day assistants may work less than the entire voting day.

6
7 *History Note: Authority G.S. 163-22; 163-166.6;*
8 *Temporary Adoption Eff. April 15, 2002;*
9 *Eff. August 1, 2004.*
10 *Readopted Eff. September 1, 2018.*

RRC STAFF OPINION

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 10B .0102

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff believes this Rule is ambiguous as written as it includes language such as “other approved communications devices”, “other necessary identifiers”, “necessary mechanisms”, “correctly”, “good working order”, “continual adequate”, “proper”, and “official timepiece” without providing any additional information as to the meaning of these terms.

In addition (e) says that “units should be locked... and should remain that way...” It is unclear to staff whether this is a requirement related to the units or if this is an aspirational statement that does not meet the definition of a Rule. Paragraph (i) also contains the word “should.”

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

Staff notes that additional information relating to the clarity of this Rule is noted in this Rule’s corresponding technical change requests.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 10B .0102

DEADLINE FOR RECEIPT: Friday, August 10, 2018

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 call our office to inquire concerning the staff recommendation.

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

Please ensure that all references to G.S. 163 have been updated to reflect the recodification to G.S. 163A.

In (b), what oath is required? Is there a cross-reference available?

In (c), what are "orders promulgated"?

Please ensure that all references to the "State Board of Elections" have been updated to reflect the current name of the Board.

In (d), what is meant by "other approved communications device"? How will the Board go about determining whether to approve something other than a phone. Also, where is the underlying requirement that the precinct have a phone? Is this set forth elsewhere in rule or statute.

Please consider breaking (e) down into subparagraphs to say what will be required of the Chief Judge and a member or agent of the county board of elections.

In (e), line 15, what is meant by "other necessary identifiers"?

Line 15, what other security devices will be necessary? Are these in accordance with the manufacturer's instructions?

On line 16, please delete or define "sealed" in "sealed contained"?

Line 17, who is an "agent" of the County Board?

Line 18, what are "all necessary mechanisms." Again, is this determined by the manufacturer?

Line 20, please delete or define "correctly"

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

Line 21, please delete or define “good working order”

Line 22, please change “should” to “shall”

In (g), what are the “applicable instructions”?

Line 26, please change “and/or” to either “and” or “or”, whichever is accurate.

In (h), what delete or define “continual adequate”

On line 30, please define or provide examples for “irregular situations.”

Line 31, please delete “generally.” Also, the voting enclosures must be seen by whom? The Chief Judge and Judges?

In (i), please change “should be” to “shall be”

Please incorporate the ADAAG by reference in accordance with 150B-21.6.

Line 35, what is meant by “or shall be made to comply on election day”? Practically speaking, when would this occur?

Page 2, line 2, please change “should be in plain view” to “shall be in plain view” Also, what is meant by “plain view”?

Page 2, line 2, who is an “unauthorized person”?

In (j), please delete or define “proper”

In (k), what is “the official timepiece used by the Chief Judge”? Is this something provided by the county or state board?

On line 7, what is the hour that the polls will close? Is there a cross-reference available or is this at the discretion of the county boards?

Please update the History Note to reflect the current law and add any additional pertinent statutory authority.

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

08 NCAC 10B .0102 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 10B .0102 SETTING UP POLLING PLACE PRIOR TO VOTING

(a) The Chief Judge, Judges, and Assistants shall arrive at the voting place no later than 6:00 a.m. on the day of the election.

(b) The Chief Judge shall administer the oath to Judges and Assistants who have not taken the oath.

(c) The Chief Judge shall assign tasks regarding the set up of the polling place to ensure the participation of judges and assistants of each represented party. The tasks and duties assigned shall adhere to the rules and orders promulgated by the State Board of Elections. At least one official shall be directed by the Chief Judge to manage curbside voting and facilitate the process for voters with special needs.

(d) The Chief Judge or designated official shall ensure that the telephone or other approved communications device is working.

(e) The members of the County Board of Elections shall ensure that each voting system is delivered to the voting place and placed in the custody of the Chief Judge or designated official within three days before the election with the ballot labels or other necessary identifiers already in place on each unit. Keys and other security devices necessary for the operation of the voting system shall be delivered to the Chief Judge in a sealed container. Together, a board member or agent of the County Board of Elections and the Chief Judge or designated official shall inspect the contents of the sealed container to ensure that all necessary mechanisms are provided to the Chief Judge. All numbers stamped on the keys and security devices should correspond to the number of the voting units. Together they shall also ensure that the ballots are correctly in position and that no votes have been cast or recorded on any unit, and that the units are in good working order. Voting tabulating units should be locked and sealed (or otherwise secured in the manner recommended by the manufacturer) and should remain that way until the polls are closed.

(f) The Chief Judge, with the cooperation of at least one official of the other major political party shall verify the delivery of all election supplies, records and equipment necessary for the conduct of the election.

(g) The Chief Judge shall ensure that all applicable instructions, signs, and sample ballots are posted around the polling place, including signs designating the voting place, the buffer zone, temporary and/or permanent accessible parking, and the curbside voting area.

(h) The Chief Judge shall ensure that the polling place is arranged to provide private spaces so voters may cast votes unobserved. The Chief Judge shall also ensure that there is continual adequate space and furniture for separate areas for voter registration records, ballot distribution, and private discussions with voters concerning irregular situations. The voting enclosure must be set up so that all equipment and furniture can be generally seen. The exterior of the voting units and every part of the voting enclosure shall be in plain view of the Chief Judge and Judges.

(i) The door to the voting place/enclosure should be sufficiently wide to accommodate voters in wheelchairs. The door width, hardware, and thresholds shall comply with the Americans with Disabilities Act Accessibility Guidelines (ADAAG) or shall be made to comply on election day. The County Board of Elections must approve any plan that would cause a deviation in the set up and arrangement of the voting enclosure. For example, generally the door into the voting place/enclosure should be the same door used to exit the voting place/enclosure. However, if by doing so

1 the flow of voters is disturbed, a separate door may be used to exit the voting place/enclosure. If a separate door is
2 used, it should be in plain view of the Chief Judge, Judges, and Assistants so that no unauthorized persons may enter
3 the voting enclosure through the exit door.

4 (j) The Chief Judge shall assign a Judge or Assistant to provide demonstrations to voters, upon request, in the proper
5 use of the voting system.

6 (k) At the Chief Judge's request at 6:30 a.m. (according to the official timepiece used by the Chief Judge), one of the
7 Judges shall announce that the polls are open and shall state the hour at which they will be closed.

8
9 *History Note: Authority G.S. 163-22; 163-165.5;*

10 *Temporary Adoption Eff. April 15, 2002;*

11 *Eff. August 1, 2004;*

12 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 3,*
13 *2017.*

14 *Readopted Eff. September 1, 2018.*

RRC STAFF OPINION

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 10B .0103

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff believes this Rule is ambiguous as written as it includes language such as “clearly”, “fail-safe”, “adequate”, “proper”, “other approved record”, “secure”, and “properly” without providing any additional information as to the meaning of these terms.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

Staff notes that additional information relating to the clarity of this Rule is noted in this Rule's corresponding technical change requests.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 10B .0103

DEADLINE FOR RECEIPT: Friday, August 10, 2018

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 call our office to inquire concerning the staff recommendation.

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

Throughout this Rule, please change "ballot(s)" to ballot or ballots, whatever is accurate.

In (a), line 7, please change "slip(s)" to slip or slips, whatever is meant. Please do the same for record(s). Also, is this provisions still accurate?

On line 7, please provide the specific law for curbside voting.

Line 8, please delete or define "secure" in "secure removal"

Line 9, please change "would be permissible" to "shall be permissible"

Please rewrite lines 8-10 (Provisions... emergencies) to be more clear. What is the emergency management plan? I assume that this is required elsewhere in rule or statute?

How does the emergency management plan of a county board go with the Executive Director's emergency powers set forth in 01 .0106? Do they go together?

In (b), please delete or define "clearly" in "clearly communicate"

On line 12, what is meant by "in some cases, the precinct judge may prompt the voter...." When will this occur? Is this language necessary?

Is the process set forth in lines 16-20 an accurate depiction of the current process?

On line 21, please change "identity/name" to "name", or whatever is intended.

In (c), when and by whom would a voter be challenged? When would the challenge be overruled? Is there a cross-reference available?

Line 24, what is meant by "each official ballot the voter is entitled to vote"? Is this based on jurisdiction of the voter?

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

Line 29-30, what is meant by “Note that unaffiliated voter.. committees”? Is there a cross-reference available for this? Is this in accordance with 163A-989? IF so, why not say something like subject to the 163A-989, unaffiliated voters may...”

In (d), what is the “fail-safe” voting process?

Delete the “or” at the end of (d)(1) and (d)(2).

In (d)(3), what is meant and how is it determined whether someone “maintains continuous eligibility”?

In (e), please delete or define “adequate”

In (e), please delete or define “proper.” I assume that you mean the voting place in his or her precinct?

In (f) and (g), please change “it is the duty of the chief judge and judges” to a directive. A suggestion would be “the chief judge and judges shall...”

In (f), line 10, what is meant by “pursuant to law”? What law?

In (f), must the judge do this before giving the voter his or her ballot?

In (g), what is considered to be “technical information”? Are there examples?

Does (h) reflect the current process?

Line 18, what is meant by “other approved record”? Approved by whom?

In (i), please define “secure”

Line 23, please delete or define “properly”

Line 23, please change “are entitled” to “shall be entitled”

What is the intent of lines 23-24? May the observer request this information more often or may the precinct voluntarily provide this information? Please review and clarify.

Line 25, what are “authorization to vote” documents versus “traditional pollbooks”?

Please update the History Note to reflect the current law and add any additional pertinent statutory authority.

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

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

08 NCAC 10B .0103 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 10B .0103 VOTING PROCEDURES

(a) From the time the polls are opened until the precinct count has been completed, the returns signed, and the results declared, no person shall take or remove from the voting enclosure election supplies and materials, including official ballots, containers of official ballots, provisional official ballots, spoiled ballots, the pollbook or voter authorization slip(s), the registration record(s) or any voting units or devices that are part of the voting system, except as authorized by law to accommodate curbside voters. Provisions for secure removal of election supplies and materials at any time would be permissible under the emergency management plan of a county board of elections in the cases of natural or man-made emergencies.

(b) A person seeking to vote shall enter the voting enclosure at the voting place through the designated entrance and shall clearly communicate the person's name and place of residence to one of the judges of election. In some cases, the precinct judge may prompt the voter to provide this information. In a primary election, the voter shall also state the political party with which the voter affiliates and in whose primary the voter desires to vote, or if the voter is an unaffiliated voter permitted to vote in the primary of a particular party, the voter shall state the name of the authorizing political party in whose primary the voter wishes to vote. This information, including the political party's primary in which the voter elected to participate, provided by the voter shall be recorded in the precinct pollbook or on the voter authorization slip. The judge or assistant to whom the voter gives this information shall announce the name and residence of the voter so that the information may be heard by the necessary officials and observers. After examining the precinct registration records, the judge or assistant shall state whether the person seeking to vote is registered. The precinct judge or assistant shall not presume the identity/name, address, or party affiliation of any person seeking to vote.

(c) If the person is found to be registered and is not challenged, or if the challenge is overruled, the responsible judge of election shall provide the voter with each official ballot the voter is entitled to vote. In a primary election the voter shall be allowed to vote the political party ballot(s) the voter is entitled to vote and no others, except non-partisan ballots. Unaffiliated voters may choose to participate in only one party's primary and no others on the same day. In the case of a second primary, unaffiliated voters who participated in a party's primary in the first primary may only vote that party's ballot in the second primary. However, if an unaffiliated voter did not participate in the first primary, the voter may choose which party's primary to participate in during the second primary. Note that unaffiliated voter participation in party primaries is subject to authorization by the respective state party executive committees. Unaffiliated voters who are otherwise qualified may always participate in non-partisan primaries.

(d) If the person is found to not be registered to vote in the precinct, the responsible judge of election shall inform the person of the fail-safe voting process. First, based on information provided by the person the responsible judge shall determine whether or not the person may be eligible to vote an official provisional ballot. The person is eligible to vote an official provisional ballot if the person resides in the precinct and either:

- (1) is a registered voter in the county and has moved into the precinct 30 days or more prior to the election and has not reported the change to the board of elections; or

1 (2) claims to have applied for voter registration in the county but there is no record of the person's name
2 on the registration records; or
3 (3) was removed from the list, but the person maintains continuous eligibility within the county; or
4 (4) disputes the voting districts (and ballots) to which the person has been assigned.
5 (e) If the person is found to not be registered to vote in the precinct and the responsible judge of election learns from
6 the person that the person resides in a different precinct, the responsible judge shall provide the person with adequate
7 information in order to direct the person to the proper voting place.
8 (f) It is the duty of the chief judge and judges to gather any voter information regarding changes of name and address
9 in order to assist the county board of elections in updating voter records. If the county board of elections has identified
10 a voter's record pursuant to law to gather additional information, the responsible judge shall require the voter to update
11 the information.
12 (g) It is the duty of the chief judge and judges to give any voter any technical information the voter desires in regard
13 to ballot items. In response to questions asked by the voter, the chief judge and judges shall communicate to the voter
14 only technical information necessary to enable the voter to vote the ballot.
15 (h) The Chief Judge shall assign two precinct officials, one from each political party if possible, to keep the pollbook
16 or other voting record and to keep the registration list. The names of all persons voting shall be checked on the
17 registration record and entered on the pollbook or other voting record. In an election where observers may be
18 appointed each voter's party affiliation shall be entered in the proper column of the pollbook or other approved record
19 opposite the voter's name. The designated official shall make each entry at the time the ballots are handed to the voter.
20 The information about the voter's political party registration shall be obtained from the registration record and not
21 from the voter.
22 (i) The chief judge, judges, and assistants must ensure that registration records are kept secure and do not leave the
23 voting enclosure for any purpose. Properly designated observers are entitled to obtain a list of the persons who have
24 voted in the precinct so far in that election day at least at the following times: 10 a.m., 2 p.m. and 4 p.m. Counties
25 using authorization to vote documents as opposed to traditional pollbooks may comply with the requirement by
26 permitting each observer to inspect election records so that the observer may create a list of persons who have voted
27 in the precinct. A party may designate more than two observers for each precinct, but only two may serve in the voting
28 place at the same time. Observers may serve in shifts, as long as the shifts are at least four hours long and the persons
29 serving in the shifts have been properly appointed as observers.

30
31 History Note: Authority G.S. 163-22; 163-166.7; 163-119;
32 Temporary Adoption Eff. April 15, 2002;
33 Eff. August 1, 2004.
34 Readopted Eff. September 1, 2018.

RRC STAFF OPINION

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AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 10B .0104

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff is recommending objection to 08 NCAC 10B .0104 as this Rule for lack of statutory authority as G.S. 163A-1109 prohibits the use of punch-card ballots and lever machine voting systems. This Rule appears to provide provisions regarding both punch card ballots and lever voting. Staff notes that the text of G.S. 163A-1109 is available in the Staff Opinion for 08 NCAC 09 .0106.

Staff is also recommending objection to this Rule as Staff believes that this Rule is unclear or ambiguous as written. Staff believes this Rule is ambiguous as written as it includes language such as "immediately", "undue delay", "proper", and "appropriate" without providing any additional information as to the meaning of these terms.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

Staff notes that additional information relating to the clarity of this Rule is noted in this Rule's corresponding technical change requests.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 10B .0104

DEADLINE FOR RECEIPT: Friday, August 10, 2018

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 call our office to inquire concerning the staff recommendation.

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

Throughout this Rule, please change "ballot(s)" to ballot or ballots, whatever is accurate.

In (a), what is meant by "whatever action is necessary to cause the act of voting to be finalized"?

In (a), line 8, please delete or define "immediately"

On line 9, what is meant by "undue delay"?

In (b), what is meant by "spoiled or damaged"? Are spoiled ballots those that were "improperly voted" (this appears to be the meaning ascertained from 163A-1137.)

On line 12, please change "the voter shall not be permitted to receive" to "the voter shall not receive"

In (c), what is meant by "the voter... shall ensure that the ballot(s) are cast"? What are the specific requirements of the voter?

In (c), under what circumstances would a voter be challenged? Is there a cross-reference available? Also, when would the challenge be overruled? Is this set forth elsewhere in rule or statute?

On lines 15-16, is it still accurate that a voter would write his or her name on his or her ballot? Please confirm.

On line 17, please delete or define "proper" in "proper manner" and "immediately" in "immediately leave."

On line 18, what is meant by "unless the voter is one of the persons authorized by law to remain in the enclosure for purposes other than voting"? Is this intended to get to those persons providing assistance? Please clarify.

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

In (d), please consider rewording for purposes of clarity.

In (d), please change “provided, however, husbands and wives” to “spouses.”

In (d), what is meant by “persons lawfully providing assistance”? Do you mean in accordance with 163A-1139?

In (f), how is a voter to be “found not to have finalized”? How and by whom is this to be determined?

On line 24 and 26, please delete or define “appropriate” in “appropriate button” and “appropriate space”; and “appropriate tabulator”

Lines 26-27 – your use of “optical scan/marksense” has been inconsistent. Please be consistent in the use of this terminology.

What is the intent of lines 28-31 (the chief judge... may find... voting enclosure)? It is unclear to me what is going on here and what the potential consequence (or benefit) is if they unanimously make this determination. Please review and clarify.

In (f), what is your authority to allow for punchcard and lever voting? 163A-1109 appears to prohibit this kind of voting.

Please update the History Note to reflect the current law and add any additional pertinent statutory authority.

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

08 NCAC 10B .0104 is readopted as published in 31:23 NCR 2311 as follows:

**08 NCAC 10B .0104 LEAVING THE VOTING ENCLOSURE, SPOILED OR INCOMPLETE
BALLOTS**

(a) When the voter has been presented with the official ballots by the judge, the voter shall be deemed to have begun the act of voting, and the voter shall not leave the voting enclosure until the voter has finalized the act of voting by performing whatever action is necessary to cause the act of voting to be finalized. On receiving the ballots, the voter shall immediately retire alone to one of the voting booths unless the voter is entitled to assistance and without any undue delay, the voter shall mark the ballots. The voter shall return any unvoted ballot(s) to the precinct officials.

(b) If a voter spoils or damages a ballot, the voter may obtain another upon returning the spoiled or damaged ballot to the chief judge or other designated official. A voter shall not be given a replacement ballot until the voter has returned the spoiled or damaged ballot. The voter shall not be permitted to receive more than three replacement ballots. The chief judge shall deposit each spoiled or damaged ballot in the container provided for that purpose.

(c) When the voter has marked the ballot the voter shall ensure the ballot(s) are cast. If the voter has been challenged and the challenge has been overruled, before casting the ballot(s), the voter shall write the voter's name on each of the ballot so they may be identified in the event the voter's right to vote is again questioned. After casting the ballots in the proper manner, the voter shall immediately leave the voting enclosure unless the voter is one of the persons authorized by law to remain within the enclosure for purposes other than voting.

(d) No voter shall be permitted to occupy a voting booth already occupied by another voter, provided, however, husbands and wives may occupy the same voting booth if both wish to do so. Excluded from this prohibition are persons lawfully providing assistance.

(e) When the voter leaves the voting enclosure, whether or not the voter has finalized voting, the voter shall not be permitted to enter the voting enclosure again for the purpose of voting.

(f) If a voter leaves the voting enclosure and is found not to have finalized the act of voting by pressing the appropriate button or touching the screen in the appropriate space in the case of Direct Record Electronic Voting Machines, by feeding their ballot into the appropriate tabulator in the case of Optical Scan/Marksense and Punchcard Voting Equipment, by pulling the appropriate lever in the case of Lever Voting Machines, or by depositing the paper ballot into the ballot box, the chief judge or judges of election may find, by unanimous vote, that the votes marked by the voter had not been disturbed by any other person and may execute the ballot for the voter who has vacated the voting enclosure. If the Chief Judge and Judges of election cannot unanimously confirm that the ballot marked by the voter has not been disturbed, the ballot must be marked as spoiled and placed with other spoiled ballots (or in the case of direct record electronic and lever machines, the ballot must be cleared according to the voting system specifications). The fact that a ballot is only partially and not fully marked shall have no bearing on the decision of the Chief Judge and Judges. In each instance where this type of incident occurs, the Chief Judge and Judges must document the circumstances and make the information known to the county board of elections.

History Note: Authority G.S. 163-22; 163-166.7;

- 1 *Temporary Adoption Eff. April 15, 2002;*
- 2 *Eff. August 1, 2004.*
- 3 *Readopted Eff. September 1, 2018.*

RRC STAFF OPINION

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AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 10B .0105

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff believes this Rule is ambiguous as written as it includes language such as “orderly” without providing any additional information as to the meaning of this term.

Further it notes that “the container should be sealed...” It is unclear to staff whether this is intended to be a requirement or an aspirational statement that does not meet the definition of a Rule.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

Staff notes that additional information relating to the clarity of this Rule is noted in this Rule's corresponding technical change requests.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 10B .0105

DEADLINE FOR RECEIPT: Friday, August 10, 2018

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 call our office to inquire concerning the staff recommendation.

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

In (a), are the "written instructions" provided by the State Board or are these instructions to be drafted by county boards? Please review and clarify.

In (a), what is meant by "differently marked ballots"? Different from what?

In (b), is there a cross-reference available as to when the polls may be open until 8:30?

In (e), please provide the cross-reference to the set of rules for ballot counting.

In (f), please delete or define "purposefully" on lines 20 and 21.

In (h), please delete or define "orderly" in "orderly counting"

Should lines 3-6 be a separate Paragraph? Also, please consider putting this information to list form. Where are these documents to be placed? I assume into a sealed container, but that is missing from this language.

On line 4, page 2, what is "payroll information"? of whom?

On line 5, please change "should be" to "shall be"

In(k), what is the approval process and how will the State Board make this determination?

In (k), please correct the name of the State Board of Elections to the current name.

In (m), what does "(or have delivered by secure means)" mean? Please provide some additional information.

Please update the History Note to reflect the current law and add any additional pertinent statutory authority.

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

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

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

08 NCAC 10B .0105 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 10B .0105 PROCEDURES AT THE CLOSE OF VOTING

(a) Before each primary and election, the chairman of the county board of elections shall furnish each chief judge written instructions on how ballots shall be marked and counted. Before starting the counting of ballots in the precinct, the chief judge shall instruct all of the judges, assistants, and ballot counters in how differently marked ballots shall be counted and tallied.

(b) The Chief Judge shall announce or have it announced that the polls are closed at 7:30 p.m. unless the time has been extended until 8:30 p.m. Time shall be determined by the same timepiece used to determine the opening of the polls.

(c) Any person who is in line at the close of polls shall be afforded an opportunity to vote. A list shall be made, starting at the end of the line and moving forward, of everyone standing in line at the close of polls and anyone whose name is on that list shall be permitted to vote. No person entering the voting enclosure after the close of polls has been announced, other than those whose names are on the list, shall be permitted to vote under any circumstance.

(d) The Chief Judge and Judges must subscribe their names to each pollbook.

(e) Only official ballots shall be voted and counted. No official ballot shall be rejected because of technical errors in marking it, unless it is impossible to determine the voter's choice under the rules for counting ballots. Such determination shall be made by the county board of elections if the chief judge and judges are unable to determine the voter's choice, or whether a particular ballot should be counted.

(f) No person shall purposely deface or tear an official ballot in any manner, and no person, other than the voter, shall purposely erase any name or mark written on a ballot by a voter.

(g) The Chief Judge, along with a Judge of another political party, shall "close the polls" on each voting unit. The results sheet from each unit shall be placed in an "Official Precinct Returns Envelope." As soon as the polls are closed the chief judge and judges shall, without adjournment or postponement, count the ballots. The counting of ballots at the precinct shall be continuous until completed. More than one voting unit may be counted at the same time by the precinct officials, assistants, and ballot counters, but the chief judge and judges shall supervise the counting of all units and shall be responsible for them. From the time the first unit is read or opened and the count of votes begun until the votes are counted and the statement of returns made out, signed, certified and provided to the chief judge or judge responsible for delivering them to the county board office, the precinct chief judge and judges shall not separate, nor shall any one of them leave the voting place except in case of unavoidable necessity as determined by the Chief Judge.

(h) The counting of the ballots shall be made in the presence of the precinct election officials and witnesses and observers who are present and desire to observe the count. Observers shall not interfere with the orderly counting of the ballots. As soon as the votes have been counted and the precinct returns certified, the chief judge, or one of the judges selected by the chief judge, shall report the total precinct vote for each ballot item to the witnesses and observers who are present and also by telephone or other electronic means to the county board of elections. This report shall be unofficial and shall have no binding effect upon the official county canvass to follow.

1 (i) The Chief Judge and Judges shall sign the consolidation and accounting sheets and statement of returns and shall
2 place them in the "official precinct returns" envelope or container.

3 The Chief Judge shall place or cause to be placed by an authorized person under the Chief Judges direction and control:
4 voter registration documents and information, provisional ballot envelope, payroll information, county board
5 communication devices, unit keys and security devices and the official returns envelope. The container should be
6 sealed with non-transparent tape of sufficient size to contain signatures. It shall be signed by the Chief Judge and two
7 Judges.

8 (k) Consolidation sheets, including the statement of returns for all voted official ballots, shall be completed by adding
9 curbside votes to the totals. In any precinct using direct record electronic voting equipment, the county board of
10 elections, with the approval of the State Board of Elections, may provide for any paper ballots to be transported upon
11 closing of the polls to the office of the county board of elections for counting. An accounting form shall be completed
12 that accounts for every used and unused ballot—providing the number of blank ballots received from the board of
13 elections, the number of regular voted ballots, provisional voted ballots, and spoiled ballots.

14 (l) Voted provisional ballots must be placed in a sealed envelope or container and the seal must be signed by the Chief
15 Judge and Judges.

16 (m) The Chief Judge shall bring (or have delivered by secure means) the results cartridge (or reading) from each unit
17 to the board of elections office.

18 (n) All supplies must be collected for return to the board of elections office. Any items brought into the polling place
19 facility shall be removed upon vacating the polling place. Precinct Judges shall ensure that the facility is left in the
20 same condition in which it was received for voting purposes.

21 (o) Under no circumstance shall voting items be left in the polling place facility out of the custody of the Chief Judge
22 or other designee.

23
24 *History Note: Authority G.S. 163-22; 163-166.10;*
25 *Temporary Adoption Eff. April 15, 2002;*
26 *Eff. August 1, 2004.*
27 *Readopted Eff. September 1, 2018.*

RRC STAFF OPINION

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 10B .0106

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff believes this Rule is ambiguous as written as it includes language such as “immediately” and “unsecured.”

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

Staff notes that additional information relating to the clarity of this Rule is noted in this Rule's corresponding technical change requests.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 10B .0106

DEADLINE FOR RECEIPT: Friday, August 10, 2018

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 call our office to inquire concerning the staff recommendation.

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

In (a), what are election supplies? Can some examples be provided?

In (a), line 4, please delete or define "immediately"

What is the overall intent of (b)? As written, it is unclear what the difference between a security plan as required to be approved by the Executive Director, an emergency plan, and an alternative security plan is. I believe that breaking this Rule into subparagraphs may assist with clarity

In (b), what is meant by "unsecured location"?

What is the intent of lines 7-9? Is it intended to say that the executive director of the county board of elections must submit a plan to the Executive Director 30 days prior to the election. Then if supplies are unable to be returned, the plan will be enacted? I don't read lines 7-9 to actually say that.

On line 10, what is to be included in the security plan? How will the executive director determine whether to approve the security plan?

On line 11, when would an emergency backup plan become necessary? Please provide some additional information.

On line 13, what is an alternative security plan? When will it become necessary? How will the executive director determine whether to use the plan?

In (c), is anything other than signatures and times be required in the Chain of Custody Form? If so, please provide this information here.

line 16, please change "will be" to "shall be"

Please update the History Note to reflect the current law and add any additional pertinent statutory authority.

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

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

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

08 NCAC 10B .0106 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 10B .0106 ELECTION SUPPLIES RETURN

(a) After an election or primary, all election supplies shall be immediately taken to the county board of elections office.

(b) Election materials and supplies, used or unused, shall not remain in the custody of the Chief Judge, Judges, or any other person in unsecured locations overnight. However, if it is not possible for a county board of elections to have all precincts return materials and supplies on the night of the election, the county board of elections must submit a security plan to the Executive Director of the State Board of Elections 30 days prior to the election. The Executive Director will provide either approval or required modifications to the plan in writing no later than 15 days prior to the election. The board of elections shall have an emergency backup plan that will enable board of elections employees or other authorized persons to retrieve the items from the custody of the Chief Judge and Judges and transport them to the board of elections office. A county board must have an alternative security plan approved by the Executive Director in order to use it.

(c) All materials shall be transported with a "chain of custody" form that includes the signatures and times in which the supplies are in the custody of each official. All supplies, once received at the board of elections, will be verified and signed for by a board of elections representative.

*History Note: Authority G.S. 163-22; 163-166.10;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004.
Readopted Eff. September 1, 2018.*

RRC STAFF OPINION

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: State Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 10B .0107

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☒ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff is recommending objection to 08 NCAC 10B .0107 as Staff believes that this Rule is unclear or ambiguous as written. Staff believes this Rule is ambiguous as written as it includes language such as “near relative”, “illegally excluded”, “properly”, “good cause” and “reasonable grounds” and “unlawful assistance” without providing any additional information as to the meaning of these terms.

Further, the history note contains references to statutes that no longer exist as the statutory references contained in this Rule have been recodified.

Staff notes that additional information relating to the clarity of this Rule is noted in this Rule's corresponding technical change requests.

In addition, Staff is recommending objection regarding the necessity of this Rule as Staff reads Sub-paragraphs (a)(1) and (2) and Paragraphs (b) and (c) to essentially recite G.S. 163A-1139 without providing any additional information.

§ 163A-1139. Assistance to voters.

- (a) Any registered voter qualified to vote in the election shall be entitled to assistance with entering and exiting the voting booth and in preparing ballots in accordance with the following rules:
 - (1) Any voter is entitled to assistance from the voter's spouse, brother, sister, parent, grandparent, child, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-law, stepparent, or stepchild, as chosen by the voter.

Amber May
Commission Counsel

(2) A voter in any of the following four categories is entitled to assistance from a person of the voter's choice, other than the voter's employer or agent of that employer or an officer or agent of the voter's union:

- a. A voter who, on account of physical disability, is unable to enter the voting booth without assistance.
- b. A voter who, on account of physical disability, is unable to mark a ballot without assistance.
- c. A voter who, on account of illiteracy, is unable to mark a ballot without assistance.
- d. A voter who, on account of blindness, is unable to enter the voting booth or mark a ballot without assistance.

(b) A qualified voter seeking assistance in an election shall, upon arriving at the voting place, request permission from the chief judge to have assistance, stating the reasons. If the chief judge determines that such assistance is appropriate, the chief judge shall ask the voter to point out and identify the person the voter desires to provide such assistance. If the identified person meets the criteria in subsection (a) of this section, the chief judge shall request the person indicated to render the assistance. The chief judge, one of the judges, or one of the assistants may provide aid to the voter if so requested, if the election official is not prohibited by subdivision (a) (2) of this section. Under no circumstances shall any precinct official be assigned to assist a voter qualified for assistance, who was not specified by the voter.

(c) A person rendering assistance to a voter in an election shall be admitted to the voting booth with the voter being assisted. The State Board shall promulgate rules governing voter assistance, and those rules shall adhere to the following guidelines:

- (1) The person rendering assistance shall not in any manner seek to persuade or induce any voter to cast any vote in any particular way.
- (2) The person rendering assistance shall not make or keep any memorandum of anything which occurs within the voting booth.
- (3) The person rendering assistance shall not, directly or indirectly, reveal to any person how the assisted voter marked ballots, unless the person rendering assistance is called upon to testify in a judicial proceeding for a violation of the election laws.
(2001-460, s. 3; 2017-6, s. 3.)

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Elections and Ethics Enforcement

RULE CITATION: 08 NCAC 10B .0107

DEADLINE FOR RECEIPT: Friday, August 10, 2018

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 call our office to inquire concerning the staff recommendation.

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

Please ensure that all references to G.S. 163 have been updated to reflect the recodification to G.S. 163A.

In (a), what does it mean that a voter is "qualified to vote"? Is there a cross-reference available?

What is the overall intent of (a)(1)? What happens if a "disabled voter with special needs" requires assistance by electronic, paper, or mechanical means of communication with a person outside the voting booth? Also, what is meant by "disabled voter with special needs"? Why is this set out as a separate directive from those persons in (b)? This is confusing and appears to be unnecessary.

Given 163A-1139, are (a)(1) and (2) necessary?

In (a)(2), line 12, "near relative" is not defined by 163A-1139. Please review and clarify.

In (a)(2), line 13, please change "his choice" to "his or her choice"

Given 163A-1139(b), is (b) necessary? It essentially appears to recite statute.

In (b), line 25-26, what is meant by "legally excluded"? Please provide some additional information.

On line 27, what is meant by "If the voter's choice of the assisting person cannot be met on the ground set out herein"? Do you mean if the voter's choice of assistance is legally excluded (again, what does that mean)? If so, please say that.

On line 29, please delete or define "properly"

Given 163A-1139(b), is (c) necessary? This appears to essentially recite statute.

In (d), what is meant by "good cause"?

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

At the end of (e)(4), do you mean “or” rather than “and”?

What is your authority to say “it shall be presumed” that there is “unlawful assistance”?

What is the intent of (f)? Please review and clarify.

On line 25, what is meant by “upon having reasonable grounds”?

If (f), what is a “communication device”? Is this defined elsewhere in rule or statute?

What is considered to be “unlawful assistance”? Do you mean assistance outside of this Rule and 163A-1139?

Please update the History Note to reflect the current law and add any additional pertinent statutory authority.

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

Amber May
Commission Counsel
Date submitted to agency: August 2, 2018

08 NCAC 10B .0107 is readopted as published in 31:23 NCR 2311 as follows:

08 NCAC 10B .0107 ASSISTANCE TO VOTERS IN PRIMARIES AND GENERAL ELECTIONS

(a) In any primary or election, including one-stop absentee voting, a registered voter qualified to vote in the primary or election shall be entitled to assistance in getting to and from the voting booth, entering and exiting the voting booth, and in preparing their ballots in accordance with the following:

(1) Any assistance rendered must be performed in person, and shall not be allowed by electronic, paper, or mechanical means of communication with a person outside the voting booth, except in circumstances of disabled voters with special needs. The use of electronic, paper, or mechanical devices by the voter, while alone in the voting booth and not in contact with another person outside the voting booth, shall not be considered voting assistance;

(2) Any voter shall be entitled to assistance from a near relative, as defined in G.S. 163-166.8(a)(1), of his choice. Under no circumstances shall any other relative, friend, guardian, person holding a power of attorney, or any other person be allowed to render assistance except as allowed under G.S. 163-166.8(a)(2) and in Paragraph (b) of this Rule; and

(3) The person rendering assistance shall not in any manner seek to persuade or induce any voter to cast any vote in any particular way.

(b) Any voter in any of the following four categories shall be entitled to assistance from any person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union:

(1) One who, on account of physical disability, is unable to enter the voting booth without assistance;

(2) One who, on account of physical disability, is unable to mark his or her ballot without assistance;

(3) One who, on account of illiteracy, is unable to mark his or her ballot without assistance;

(4) One who, on account of visual impairment, is unable to enter the voting booth or mark the ballot without assistance.

No precinct official may refuse the voter's choice of the person to assist him, unless the person so named is legally excluded, does not appear at the voting place to assist the voter prior to the close of the polls, or refuses to assist the voter. If the voter's choice of the assisting person cannot be met on the ground(s) set out herein, the voter shall be allowed to make an additional choice until a willing assisting person is available to assist the voter. There shall be no limitation on the number of voters a person can assist, as long as the assisting person is properly chosen by each voter to assist.

(c) A person seeking assistance in any election shall, upon arriving at the voting place, first request the chief judge to permit him to have assistance, communicating the reasons. If the chief judge determines that the voter is entitled to assistance, the chief judge shall ask the voter to identify the person the voter desires to provide assistance. If that person is not present, the voter is entitled to contact the person and to wait for the person at the voting place, but outside the voting enclosure. When that person is available to assist or is already present to assist, the voter, along with that person, shall present themselves to the chief judge. The chief judge shall thereupon request the person

1 indicated to render the requested aid. In the case of assistance requested at a one-stop voting site, the assistance may
2 be requested and received from any election official available at such site.

3 (d) Any chief judge, judge, or assistant shall provide assistance to a voter if so requested, except for good cause,
4 unless the election official is prohibited from doing so by his status as the voter's employer, official of the voter's
5 union, or agent of the voter's employer or union. Under no circumstances shall any precinct official or person be
6 assigned to assist a voter who was not specified by the voter.

7 (e) Conduct of Persons Rendering Assistance. - Anyone rendering assistance to a voter shall be admitted to the voting
8 booth with the person being assisted and shall be governed by G.S. 163-166.8(c). The assisting person shall not do the
9 following:

10 (1) Give, present, or display within the vision of the voter, any list of preferred candidates, a marked
11 sample ballot, or any other type of document, item, or display that conveys a choice of candidate(s).
12 unless it was brought to the voting booth by the voter. An assisting person may respond to an inquiry
13 of a hearing impaired voter in writing if needed, as long as a ballot choice is not communicated to
14 the voter;

15 (2) Speak or play within the hearing or vision of the voter, any conversation, communication, or
16 recording that conveys a choice of candidate(s);

17 (3) Operate a phone, radio, computer, or any other means of communication while in the voting booth
18 with the voter;

19 (4) Communicate to others how the voter voted, unless ordered by a court, or make a memorandum of
20 anything that occurred in the voting booth; and

21 (5) Violate any election law set out in G.S. 163 or violate any election rule set out in Title 8 of the NC
22 Administrative Code.

23 (f) It shall be presumed that the operation by a voter of any means of communication capable of being received by a
24 voter in the voting booth shall constitute an attempt to receive unlawful voting assistance, except in cases of a disabled
25 voter with special needs. Upon having reasonable grounds to suspect such communication or operation by the voter,
26 a precinct official may make inquiry and investigate the alleged operation of the communication equipment. The voter
27 shall be informed of this presumption of unlawful assistance, and the prohibitions contained within G.S. 163-166.8 as
28 to voter assistance. Regardless, any voter suspected of such conduct shall be allowed to vote and cast his or her ballot.
29

30 *History Note: Authority G.S. 163-22; G.S. 163-166.8;*
31 *Temporary Adoption Eff. April 15, 2002;*
32 *Eff. August 1, 2004.*
33 *Readopted Eff. September 1, 2018.*