



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency:

State Board of Elections

2. Rule citation & name:

08 NCAC 17 .0108 Requests for Approval of Student Identification Cards and Employee Identification Cards

3. Action:

☒ Adoption

☐ Amendment

☐ Repeal

4. Was this an Emergency Rule:

☐ Yes

Effective date:

☒ No

5. Provide dates for the following actions as applicable:

a. Proposed Temporary Rule submitted to OAH: February 8, 2019

b. Proposed Temporary Rule published on the OAH website: February 13, 2019

c. Public Hearing date: March 13, 2019

d. Comment Period: February 8 to March 15, 2019

e. Notice pursuant to G.S. 150B-21.1(a3)(2): February 8, 2019

f. Adoption by agency on: April 4, 2019

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

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

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

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☒ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite: NC Session Law 2018-144, sec. 1.1.(a) and 1.1.(b) and Session Law 2019-22 sec. 4
Effective date: December 19, 2018 and June 3, 2019
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☐ A recent court order.
Cite order:
- ☐ State Medical Facilities Plan.
- ☐ Other:

Explain:

Section 4 of SL 2019-22 requires rulemaking regarding reasonable security measures for use of student and employee identification cards by September 15, 2019.

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

See above regarding rulemaking mandate. The State Board is required to approve student and employee identification cards by November 1, 2019. It is necessary to complete rulemaking on a compressed timeframe due to this approval date and the allow sufficient time to outreach to affected institutions to inform them about changes in the law and requirements to have an institution's ID card approved for use for voting purposes.

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

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator:

Katelyn Love

Phone:

919-814-0756

E-Mail:

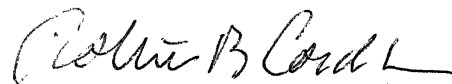
katelyn.love@ncsbe.gov

Agency contact, if any:

Phone:

E-Mail:

10. Signature of Agency Head*:



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

Typed Name:

Robert R. Cordle

Title:

Chair, State Board of Elections

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

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) Any of the following that is valid and unexpired, or has been expired for one year or less:
 - a. A North Carolina drivers license.
 - b. A special identification card for nonoperators issued under G.S. 20-37.7 or other form of nontemporary identification issued by the Division of Motor Vehicles of the Department of Transportation.
 - c. A United States passport.
 - d. A North Carolina voter photo identification card of the registered voter issued pursuant to G.S. 163A-869.1.
 - e. A tribal enrollment card issued by a State or federal recognized tribe.
 - g. A student identification card issued by a constituent institution of The University of North Carolina, a community college, as defined in G.S. 115D-2(2), or eligible private postsecondary institution as defined in G.S. 116-280(3), provided that card is issued in accordance with G.S. 163A-1145.2.
 - h. An employee identification card issued by a state or local government entity, including a charter school, provided that card is issued in accordance with G.S. 163A-1145.3.
 - i. A drivers license or special identification card for nonoperators issued by another state, the District of Columbia, or a territory or commonwealth of the United States, but only if the voter's voter registration was within 90 days of the election.
- (2) Any of the following, regardless of whether the identification contains a printed expiration or issuance date:
 - a. A military identification card issued by the United States government.
 - b. A Veterans Identification Card issued by the United States Department of Veterans Affairs for use at Veterans Administration medical facilities.
- (3) Any expired form of identification allowed in this subsection presented by a registered voter having attained the age of 65 years at the time of presentation at the voting place, provided that the identification was unexpired on the registered voter's sixty-fifth birthday.

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

PART V. EFFECTIVE DATE

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

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

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

s/ Tim Moore
Speaker of the House of Representatives

VETO Roy Cooper
Governor

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

s/ James White
House Principal Clerk

AN ACT TO CLARIFY THE APPROVAL PROCESS FOR STUDENT AND EMPLOYEE IDENTIFICATION CARDS FOR VOTING PURPOSES; TO PROVIDE AN ADDITIONAL WINDOW FOR APPROVAL OF STUDENT AND EMPLOYEE IDENTIFICATION CARDS FOR THE 2020 ELECTIONS; AND TO PROVIDE FLEXIBILITY IN THE NUMBER OF HOURS OF EARLY ONE-STOP VOTING IN ODD-NUMBERED YEAR ELECTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163A-1145.1(a)(1)e. is recodified as G.S. 163A-1145.1(a)(2)c.

SECTION 2. G.S. 163A-1145.2, as amended by S.L. 2019-4, reads as rewritten:

"§ 163A-1145.2. Approval of student identification cards for voting identification.

(a) The State Board shall approve the use of student identification cards issued by a constituent institution of The University of North Carolina, a community college, as defined in G.S. 115D-2(2), or eligible private postsecondary institution as defined in G.S. 116-280(3) for voting identification under G.S. 163A-1145.1 if the following criteria are met:

(1) The chancellor, president, or registrar of the university or college submits a signed letter to the Executive Director of documentation satisfactory to the State Board under penalty of perjury that the following are true: have been met and will not knowingly be violated with regard to student identification cards issued during the approval period:

- a. The identification cards that are issued by the university or college contain photographs of students taken-obtained by the university or college or its agents or ~~contractors~~ contractors, provided the photograph obtained (i) is a frontal image that includes the student's face and (ii) represents a clear, accurate likeness of the student to whom the identification card is issued. If the photograph is one not produced by the university or college or its agents, the university or college shall certify in detail the process used by the university or college to ensure the photograph is that of the student to whom the identification card is issued and shall certify that the process is designed to confirm the identity of the student to whom the identification card is issued.
- b. The identification cards are issued after an enrollment or other process that includes one or more methods of confirming the identity of the student using information that may include, but are not limited to, the social security number, citizenship status, and birthdate of the student.
- c. ~~The Access to the equipment for producing the identification cards is kept in a secure location~~ restricted through security measures.
- d. Misuse of the equipment for producing the identification cards would be grounds for student discipline or termination of an employee.

be violated with regard to employee identification cards issued during the approval period:

- a. The identification cards that are issued by the ~~university or college~~ state or local government entity or charter school contain photographs of ~~students taken~~ employees obtained by the ~~university or college~~ state or local government entity or charter school or its agents or ~~contractors~~ contractors, provided the photograph obtained (i) is a frontal image that includes the employee's face and (ii) represents a clear, accurate likeness of the employee to whom the identification card is issued. If the photograph is one not produced by the state or local government entity or charter school, the state or local government entity or charter school shall certify in detail the process used by the state or local government entity or charter school to ensure the photograph is that of the employee to whom the identification card is issued and shall certify that the process is designed to confirm the identity of the employee to whom the identification card is issued.
 - b. The identification cards are issued after an employment application or other process that includes one or more methods of confirming the identity of the employee using information that include, but are not limited to, the social security number, citizenship status, and birthdate of the employee.
 - c. ~~The Access to the~~ equipment for producing the identification cards is ~~kept in a secure location~~ restricted through security measures.
 - d. Misuse of the equipment for producing the identification cards would be grounds for termination of an employee.
 - e. State or local ~~or charter school~~ officials would report any misuse of identification card equipment they have knowledge of to law enforcement if G.S. 163A-1389(19) was potentially violated.
 - f. The cards issued by the state or local government entity ~~or charter school~~ on or after January 1, 2021, contain a date of ~~expiration,~~ effective January 1, 2021.~~expiration.~~
 - g. The state or local government entity ~~provides~~ or charter school will provide copies of ~~standard~~ employee identification cards to the State Board to assist with training purposes.
- (2) The state or local government entity complies with any other reasonable security measures determined by the State Board to be necessary for the protection and security of the employee identification process.

(b) ~~The~~ The State Board shall establish a schedule for such submissions and approvals. The State Board shall permit a State or local government entity or charter school with no changes to the prior election cycle's approval to submit a statement indicating no changes have been made by the State or local government entity or charter school. When the State Board ~~shall approve the~~ approves for use of the employee identification cards issued by a state or local government entity, including a charter school, for voting identification under ~~G.S. 163A-1145.1 every four years.~~ G.S. 163A-1145.1, such approval shall be valid for the period from January 1 of an odd-numbered year through December 31 of the next even-numbered year.

(c) The State Board shall produce a list of participating employing entities every ~~four~~ two years. The list shall be published on the State Board's Web site and distributed to every county board of elections. The State Board shall publish sample employee identification cards for each participating State or local government entity or charter school."

SECTION 4. Section 1.2(f) of S.L. 2018-144, as amended by S.L. 2019-4, reads as rewritten:

"SECTION 1.2.(f) Notwithstanding G.S. 163A-1145.1, 163A-1145.2, and 163A-1145.3, the State Board shall approve (i) tribal enrollment cards issued by a tribe recognized by this State under Chapter 71A of the General Statutes; (ii) student identification cards issued by a constituent institution of The University of North Carolina, a community college, as defined in G.S. 115D-2(2), or eligible private postsecondary institution as defined in G.S. 116-280(3); and (iii) employee identification cards issued by a state or local government entity, including a charter school, for use as voting identification under G.S. 163A-1145.1 no later than ~~March 15, 2019; November 1, 2019, for use in primaries and elections held in 2019 and 2020, and again no later than May 15, 2021, for elections held on or after that date. 2020.~~ The State Board shall adopt temporary rules on reasonable security measures for use of student or employee identification cards for voting identification in G.S. 163A-1145.2 and G.S. 163A-1145.3 no later than ~~February 4, 2019; September 15, 2019.~~ The State Board shall adopt permanent rules on reasonable security measures for use of student or employee identification cards for voting identification in G.S. 163A-1145.2 and G.S. 163A-1145.3 no later than May 15, 2021. The State Board shall produce the ~~initial~~ list of participating institutions and employing entities ~~no later than April 1, 2019 for use in primaries and elections held in 2020.~~"

SECTION 5. Section 1.2(g) of S.L. 2018-144, as amended by S.L. 2019-4, reads as rewritten:

"SECTION 1.2.(g) ~~Notwithstanding G.S. 163A-1145.1, 163A-1145.2, and 163A-1145.3, For elections held in 2020 only,~~ a student identification card issued by a constituent institution of The University of North Carolina, a community college, ~~college~~ as defined in G.S. 115D-2(2), or eligible private postsecondary institution as defined in G.S. 116-280(3) or an employee identification card issued by state or local government ~~entity that does not contain an entity,~~ including a charter school, may not be denied approval under G.S. 163A-1145.2 or G.S. 163A-1145.3 solely due to a lack of a ~~printed expiration date~~ date. ~~Notwithstanding G.S. 163A-1145.1, an approved student identification card or employee identification card without a printed expiration date shall be eligible for use in any election held before January 1, 2021.~~"

SECTION 6.(a) Any student identification card issued by a constituent institution of The University of North Carolina, a community college as defined in G.S. 115D-2(2), or eligible private postsecondary institution as defined in G.S. 116-280(3), or an employee identification card issued by a State or local government entity or charter school approved by the State Board of Elections on or before March 15, 2019, for use in elections held on or after January 1, 2019, until December 31, 2022, shall continue to be eligible for use in an election prior to December 31, 2022, without further submission by the constituent institution of The University of North Carolina, community college as defined in G.S. 115D-2(2), or eligible private postsecondary institution as defined in G.S. 116-280(3), or State or local government entity or charter school.

SECTION 6.(b) Any constituent institution of The University of North Carolina, a community college as defined in G.S. 115D-2(2), or eligible private postsecondary institution as defined in G.S. 116-280(3), or State or local government entity or charter school denied approval by the State Board of Elections on or before March 15, 2019, shall be granted until November 15, 2019, to submit a revised application for approval. The State Board shall approve the identification cards for use as voting identification under G.S. 163A-1145.1 no later than December 1, 2019, for use in primaries and elections held in 2020.

SECTION 7. G.S. 163A-1303 is amended by adding a new subsection to read:

"(e) Notwithstanding G.S. 163A-1300 and subdivisions (c)(2) and (c)(3) of this section, a county board of elections by unanimous vote of all its members may propose a Plan for Implementation providing for sites in that county for absentee ballots to be applied for and cast in elections conducted in odd-numbered years. The proposed Plan for Implementation shall specify the hours of operation for the county board of elections for an election conducted in that

SECTION 8. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of May, 2019.

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

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 11:30 a.m. this 3rd day of June, 2019

TEMPORARY RULES
REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Elections

RULE CITATION: 08 NCAC 17 .0108

DEADLINE FOR RECEIPT: Tuesday, July 16, 2019

NOTE WELL: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

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

In (a), line 6, what are the contents of this form? If it is to certify statutory requirements, state that. "... shall submit to the State Board the form that certifies statutory compliance posted on ..."

On line 7, either spell out what the instructions are included in the form to "complete, execute, and return" the form or delete all language after "website." You cannot write the rule to state that the form will control those requirements, as that would be rulemaking outside of formal rulemaking and violate the APA.

On lines 9-10, what parts of the Session Law in (2) are you referring to? I realize it may not be codified, but can you at least cite to G.S. 163A-1145.2(b), as well?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 15, 2019

08 NCAC 17 .0108 is adopted under temporary procedures as follows:

**08 NCAC 17 .0108 REQUESTS FOR APPROVAL OF STUDENT IDENTIFICATION CARDS AND
EMPLOYEE IDENTIFICATION CARDS**

(a) Request for Approval. An institution requesting the State Board of Elections' approval of an identification card for voting purposes pursuant to G.S. 163A-1145.2 or 163A-1145.3 shall submit to the State Board the form posted on the State Board's website completed, executed, and returned in the manner specified therein. The request shall be submitted at least five business days prior to the deadline for State Board approval of identification cards as specified in G.S. 163A-1145.2(b), 163A-1145.3(b), and Section 1.2.(f) of Session Law 2018-144. Section 2 of Session Law 2019-22, and every two years thereafter.

(b) Image of Sample Identification. An institution submitting a request under Paragraph (a) of this Rule shall provide the State Board a digital image representative of the layout, coloring, and insignia appearing on the front and back of the identification card(s). The images shall be submitted with the request for approval required under Paragraph (a). The images may be used to publicize acceptable forms of photo identification, educate the public, and instruct elections officials on the enforcement of photo identification requirements in G.S. 163A-1145.1, 163A-1307, and 163A-1309, and submission of the images shall grant a royalty-free, perpetual, irrevocable right to use, reproduce, modify, adapt, publish, translate, create derivative works, distribute, and display the images or derivative images in any medium or platform. Submission of the digital images required under this section shall waive any cause of action against the State Board arising from or associated with the State Board's use of the images.

(c) Notice of Altered Procedures or Images. The institution requesting approval under Paragraph (a) and submitting images under Paragraph (b) shall notify the Executive Director of the State Board of Elections in writing if it alters its procedures in a manner that violates the requirements in G.S. 163A-1145.2(a) or 163A-1145.3(a) or if it alters its identification cards from the images previously submitted. Timing of the notification shall occur as follows:

(1) If the alteration is made fewer than 90 days before the date of an election in the State, the institution shall provide notice within five business days after implementation of the alteration; and

(2) If the alteration is made more than 90 days before the date of an election in the State, the institution shall provide notice within 30 calendar days after implementation of the ~~alteration~~ alteration.

(d) Approval Process. The Executive Director shall approve the use of identification cards from an institution ~~the~~ that meets the requirements of this Rule and of G.S. 163A-1145.2 or 163A-1145.3. The Executive Director shall produce a list of approved institution and shall cause the list to be published on the State Board's website and to the county boards of elections.

*Authority G.S. 163A-741; 163A-1145.2; 163A-1145.3; Session Law 2018-144 § 1.2.(f); Session Law 2018-146 § 3.2.(e); Session Law 2019-22 § 2.
Temporary Adoption Eff. July 26, 2019.*