



STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS

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August 21, 2018

Katelyn Love, Rulemaking Coordinator  
Board of Elections and Ethics Enforcement  
**Sent via email only: [katelyn.love@ncsbe.gov](mailto: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
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## 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”*

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

*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.

1 08 NCAC 10B .0101 is readopted as published in 31:23 NCR 2311 as follows:

2  
3 **08 NCAC 10B .0101 TASKS AND DUTIES OF PRECINCT OFFICIALS AT VOTING PLACES**

4 (a) This Rule a Summary - The provisions of this Section provide a nonexclusive summary of the tasks and duties  
5 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  
6 Chapter, unless otherwise noted, the term "precinct officials" shall mean chief judge, precinct judge, assistants,  
7 emergency election-day assistants, and ballot counters. Observers are not precinct officials and shall not act or presume  
8 to act on behalf of a county board of elections. Observers shall only be allowed in partisan or ABC elections and are  
9 not legally authorized in any non-partisan election involving either candidates or issues.

10 (b) Tasks of Precinct Chief Judge - Precinct Chief Judges, in accordance with election statutes, within the Rules of  
11 the State Board of Elections, and under the supervision of the county board of elections, shall have the following tasks  
12 to perform as to each primary or election. Where the precinct chief judge does not have the exclusive statutory mandate  
13 to perform a task or duty, a precinct judge may be designated to perform such task or duty.

14 (1) Attend an instructional meeting presented by the county board of elections prior to each primary or  
15 election as required by G.S. 163-46.

16 (2) Upon learning that any parent, spouse, child, or sibling has filed for elective office, to inform the  
17 county board of elections so that the provisions of the law prohibiting a precinct official from serving  
18 in an election with a close relative as a candidates can be followed.

19 (3) Inform the county board of elections if any blood relative of kinship of first cousin or nearer or a  
20 parent in-law, child in-law or sibling in-law is a precinct official/worker serving with you in the  
21 same precinct, and not to serve with that relative in the same precinct. Also inform the county board  
22 of elections of any relationship, as described in the previous sentence, that you may have with an  
23 emergency election-day assistant and not serve with that person in the same precinct.

24 (4) Prior to day of the primary or election, receive and review from the county board the precinct  
25 observer list and promptly make any objection for good cause to the county board as provided in  
26 G.S. 163-45.

27 (5) Receive, prior to the election or primary, sample ballots from the county board of elections, and to  
28 post a sample ballot at the voting place prior to opening on the primary or election day as set out in  
29 G.S. 163-165.2.

30 (6) Promptly notify the county board of elections of any sickness, emergency, or other circumstances  
31 that will or might prevent the person from performing as precinct chief judge on a primary or  
32 election day.

33 (7) Receive, prior to the day of the primary or election, from the county board of elections any security  
34 keys or codes as to any voting systems or units that are to be operated at the precinct.

35 (8) Prior to the opening of the polls, administer to any precinct official, not previously sworn, the oath  
36 of office as set out in G.S. 163-41.

- 1       (9) Prior to the opening of the polls, to ensure there is open means of phone/radio communication  
2       between the voting place and the county board of elections office or director.
- 3       (10) If at the time of opening the voting place, a judge has not appeared, to appoint another person to act  
4       as precinct judge, until the chairman of the county board of elections appoints a replacement as set  
5       out in G.S. 163-41, or ratifies the selection of the chief judge.
- 6       (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.  
7       as mandated by G.S. 163-166 and any Rules promulgated under that statute.
- 8       (12) Respond to any voter's request to have assistance to vote as set out in the provisions of G.S. 163-  
9       166.8(b).
- 10       (13) Ensure the continued arrangement of the voting enclosure as required in G.S. 163-166.2.
- 11       (14) Supervise the orderly closing of the voting place at 7:30 p.m. in compliance with procedures set out  
12       in G.S. 163-166.10 and any rules promulgated under that statute.
- 13       (15) Handle challenges made on election or primary day in accordance with G.S. 163-87, and to conduct  
14       the hearing upon said challenge in accordance with G.S. 163-88.
- 15       (16) Be responsible, as mandated by G.S. 163-182.3, for adherence to all rules pertaining to counting,  
16       reporting, and transmitting official ballots.
- 17       (17) Be responsible for the maintenance of and appearance of efficient, impartial, and honest election  
18       administration at the precinct as required by G.S. 163-166.5(3).
- 19       (18) Be responsible for the maintenance of the voting place buffer zone, and ensure compliance with the  
20       same.
- 21       (19) Ensure peace and good order at the voting place as required by G.S. 163-48.
- 22       (20) Ensure that voters are able to cast their votes in dignity, good order, impartiality, convenience, and  
23       privacy as required in G.S. 163-166.7(c) and any rules promulgated under that statute.
- 24       (21) If needed, to check or assist in checking the registration of voters at the voting place.
- 25       (22) If ballot counters are needed, receive the list of counters from the county board, or appoint counters  
26       if authorized to do so by the county board. Swear in any ballot counters prior to their county votes.  
27       Report to the county board of elections the names and addresses of any ballot counters to the county  
28       board at the county canvass as set out in G.S. 163-163-43.
- 29       (23) Perform the required legal duties of chief precinct judge/judge or face criminal consequences as set  
30       out in G.S. 163-274 (1).
- 31       (24) Not accept money from candidates, commit fraud, false statements, or false writings in performing  
32       election duties, or face the criminal consequences set out in G.S. 163-275(3)(8)(9) and (12).

33 (c) Tasks of Precinct Judge- Precinct Judges, in accordance with election statutes, within rules of the State Board of  
34 Elections, and under the supervision of the county board of elections, shall have the following tasks to perform as to  
35 each primary or election. A precinct judge may be designated to perform tasks and duties of a chief precinct judge,  
36 where those duties are not statutorily made exclusive to the chief precinct judge.

- 1           (1) Attend an instructional meeting presented by the county board of elections prior to each primary or  
2           election as required by G.S. 163-46.
- 3           (2) Upon learning that any parent, spouse, child, or sibling has filed for elective office, to inform the  
4           county board of elections so that the provisions of the law prohibiting a precinct official from serving  
5           in an election with a close relative as a candidates can be followed.
- 6           (3) Inform the county board of elections if any blood relative of kinship of first cousin or nearer or a  
7           parent in-law, child in-law or sibling in-law is a precinct official/worker serving with you in the  
8           same precinct, and not to serve with that relative in the same precinct. Also inform the county board  
9           of elections of any relationship, as described in the previous sentence, that you may have with an  
10          emergency election-day assistant and not serve with that person in the same precinct.
- 11          (4) If the chief judge fails to appear at the opening of poll, to appoint, with the other precinct judge, a  
12          person to act as chief judge until the chairman of the county board appoints a new chief judge as per  
13          G.S. 163-41.
- 14          (5) Promptly notify the county board of elections of any sickness, emergency, or other circumstances  
15          that will or might prevent the person from performing as precinct chief judge on a primary or  
16          election day.
- 17          (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.  
18          as mandated by G.S. 163-166 and any rules promulgated under that statute.
- 19          (7) Perform the required legal duties of chief precinct judge/judge or face criminal consequences as set  
20          out in G.S. 163-274 (1).
- 21          (8) Not accept money from candidates, commit fraud, false statements, or false writings in performing  
22          election duties, or face the criminal consequences set out in G.S. 163-275(3)(8)(9) and (12).
- 23          (9) To aid and cooperate with the precinct chief judge, as requested or needed, as to those duties noted  
24          in Subparagraphs (12) through (21) of Paragraph (b) of this Rule.

25 (d) Tasks of Election Assistants- Election Assistants, in accordance with election statutes, within the rules of the State  
26 Board of Elections, and under the supervision of the county board of elections, shall have the following tasks to  
27 perform as to each primary or election: Aid the chief judge and other precinct judges in the performances of their tasks  
28 and duties as needed or directed.

- 29           (1) Check the registration of voters at the voting place as per G.S. 163-166.7(a).
- 30           (2) Guide voters to voting units or provide voters ballots as per G.S. 163-166.7(b).
- 31           (3) Prior to performing duties and tasks after being duly appointed, take the oath required by G.S. 163-  
32           41.
- 33           (4) Promptly notify the county board of elections of any sickness, emergency, or other circumstances  
34           that will or might prevent the person from performing as an election assistant on a primary or  
35           election day.

1           (5) Upon learning that any parent, spouse, child, or sibling has filed for elective office, to inform the  
2           county board of elections so that the provisions of the law prohibiting a precinct official from serving  
3           in an election with a close relative as a candidates can be followed.

4           (6) Inform the county board of elections if any blood relative of kinship of first cousin or nearer or a  
5           parent in-law, child in-law or sibling in-law is a precinct official/worker serving with you in the  
6           same precinct, and not to serve with that relative in the same precinct. Also inform the county board  
7           of elections of any relationship, as described in the previous sentence, that you may have with an  
8           emergency election-day assistant and not serve with that person in the same precinct.

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

12           (1) To be prepared prior to and on the day of a primary or election to serve, on short notice given by the  
13           county board of elections, to travel to and work at any voting place within the county.

14           (2) Perform all the tasks and duties of an election assistant as set out in Paragraph (d) of this Rule.

15           (3) Promptly notify the county board of elections of any sickness, emergency, or other circumstances  
16           that will or might prevent the person from performing as an election assistant on a primary or  
17           election day.

18           (4) Upon learning that any parent, spouse, child, or sibling has filed for elective office, to inform the  
19           county board of elections so that the provisions of the law prohibiting a precinct official from serving  
20           in an election with a close relative as a candidates can be followed.

21           (5) Inform the county board of elections if any blood relative of kinship of first cousin or nearer or a  
22           parent in-law, child in-law or sibling in-law is a precinct official/worker serving with you in the  
23           same precinct, and not to serve with that relative in the same precinct. Also inform the county board  
24           of elections of any relationship, as described in the previous sentence, that you may have with an  
25           emergency election-day assistant and not serve with that person in the same precinct.

26          (f) Tasks of Ballot Counters - All ballot counters, in accordance with election statutes, with the rules of the State  
27          Board of Elections and under supervision of the county board of elections, shall perform all the following. There is  
28          no requirement to have ballot counters appointed or used by a county board of elections unless they are needed.

29           (1) After appointment, to appear at the poll immediately at close of the polls and to be prepared to count  
30           ballots under the direction and control of the chief and other precinct judges.

31           (2) To be sworn into office, by the precinct chief judge prior to starting counting.

32           (3) Upon learning that any parent, spouse, child, or sibling has filed for elective office, to inform the  
33           county board of elections so that the provisions of the law prohibiting a precinct official from serving  
34           in an election with a close relative as a candidates can be followed.

35           (4) Inform the county board of elections if any blood relative of kinship of first cousin or nearer or a  
36           parent in-law, child in-law or sibling in-law is a precinct official/worker serving with you in the  
37           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.

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

1 08 NCAC 10B .0102 is readopted as published in 31:23 NCR 2311 as follows:

2

3 **08 NCAC 10B .0102 SETTING UP POLLING PLACE PRIOR TO VOTING**

4 (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  
5 election.

6 (b) The Chief Judge shall administer the oath to Judges and Assistants who have not taken the oath.

7 (c) The Chief Judge shall assign tasks regarding the set up of the polling place to ensure the participation of judges  
8 and assistants of each represented party. The tasks and duties assigned shall adhere to the rules and orders promulgated  
9 by the State Board of Elections. At least one official shall be directed by the Chief Judge to manage curbside voting  
10 and facilitate the process for voters with special needs.

11 (d) The Chief Judge or designated official shall ensure that the telephone or other approved communications device  
12 is working.

13 (e) The members of the County Board of Elections shall ensure that each voting system is delivered to the voting  
14 place and placed in the custody of the Chief Judge or designated official within three days before the election with the  
15 ballot labels or other necessary identifiers already in place on each unit. Keys and other security devices necessary  
16 for the operation of the voting system shall be delivered to the Chief Judge in a sealed container. Together, a board  
17 member or agent of the County Board of Elections and the Chief Judge or designated official shall inspect the contents  
18 of the sealed container to ensure that all necessary mechanisms are provided to the Chief Judge. All numbers stamped  
19 on the keys and security devices should correspond to the number of the voting units. Together they shall also ensure  
20 that the ballots are correctly in position and that no votes have been cast or recorded on any unit, and that the units are  
21 in good working order. Voting tabulating units should be locked and sealed (or otherwise secured in the manner  
22 recommended by the manufacturer) and should remain that way until the polls are closed.

23 (f) The Chief Judge, with the cooperation of at least one official of the other major political party shall verify the  
24 delivery of all election supplies, records and equipment necessary for the conduct of the election.

25 (g) The Chief Judge shall ensure that all applicable instructions, signs, and sample ballots are posted around the  
26 polling place, including signs designating the voting place, the buffer zone, temporary and/or permanent accessible  
27 parking, and the curbside voting area.

28 (h) The Chief Judge shall ensure that the polling place is arranged to provide private spaces so voters may cast votes  
29 unobserved. The Chief Judge shall also ensure that there is continual adequate space and furniture for separate areas  
30 for voter registration records, ballot distribution, and private discussions with voters concerning irregular situations.  
31 The voting enclosure must be set up so that all equipment and furniture can be generally seen. The exterior of the  
32 voting units and every part of the voting enclosure shall be in plain view of the Chief Judge and Judges.

33 (i) The door to the voting place/enclosure should be sufficiently wide to accommodate voters in wheelchairs. The  
34 door width, hardware, and thresholds shall comply with the Americans with Disabilities Act Accessibility Guidelines  
35 (ADAAG) or shall be made to comply on election day. The County Board of Elections must approve any plan that  
36 would cause a deviation in the set up and arrangement of the voting enclosure. For example, generally the door into  
37 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

1 08 NCAC 10B .0103 is readopted as published in 31:23 NCR 2311 as follows:

2  
3 **08 NCAC 10B .0103 VOTING PROCEDURES**

4 (a) From the time the polls are opened until the precinct count has been completed, the returns signed, and the results  
5 declared, no person shall take or remove from the voting enclosure election supplies and materials, including official  
6 ballots, containers of official ballots, provisional official ballots, spoiled ballots, the pollbook or voter authorization  
7 slip(s), the registration record(s) or any voting units or devices that are part of the voting system, except as authorized  
8 by law to accommodate curbside voters. Provisions for secure removal of election supplies and materials at any time  
9 would be permissible under the emergency management plan of a county board of elections in the cases of natural or  
10 man-made emergencies.

11 (b) A person seeking to vote shall enter the voting enclosure at the voting place through the designated entrance and  
12 shall clearly communicate the person's name and place of residence to one of the judges of election. In some cases,  
13 the precinct judge may prompt the voter to provide this information. In a primary election, the voter shall also state  
14 the political party with which the voter affiliates and in whose primary the voter desires to vote, or if the voter is an  
15 unaffiliated voter permitted to vote in the primary of a particular party, the voter shall state the name of the authorizing  
16 political party in whose primary the voter wishes to vote. This information, including the political party's primary in  
17 which the voter elected to participate, provided by the voter shall be recorded in the precinct pollbook or on the voter  
18 authorization slip. The judge or assistant to whom the voter gives this information shall announce the name and  
19 residence of the voter so that the information may be heard by the necessary officials and observers. After examining  
20 the precinct registration records, the judge or assistant shall state whether the person seeking to vote is registered. The  
21 precinct judge or assistant shall not presume the identity/name, address, or party affiliation of any person seeking to  
22 vote.

23 (c) If the person is found to be registered and is not challenged, or if the challenge is overruled, the responsible judge  
24 of election shall provide the voter with each official ballot the voter is entitled to vote. In a primary election the voter  
25 shall be allowed to vote the political party ballot(s) the voter is entitled to vote and no others, except non-partisan  
26 ballots. Unaffiliated voters may choose to participate in only one party's primary and no others on the same day. In  
27 the case of a second primary, unaffiliated voters who participated in a party's primary in the first primary may only  
28 vote that party's ballot in the second primary. However, if an unaffiliated voter did not participate in the first primary,  
29 the voter may choose which party's primary to participate in during the second primary. Note that unaffiliated voter  
30 participation in party primaries is subject to authorization by the respective state party executive committees.  
31 Unaffiliated voters who are otherwise qualified may always participate in non-partisan primaries.

32 (d) If the person is found to not be registered to vote in the precinct, the responsible judge of election shall inform the  
33 person of the fail-safe voting process. First, based on information provided by the person the responsible judge shall  
34 determine whether or not the person may be eligible to vote an official provisional ballot. The person is eligible to  
35 vote an official provisional ballot if the person resides in the precinct and either:

- 36 (1) is a registered voter in the county and has moved into the precinct 30 days or more prior to the  
37 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

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 .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.

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

1 08 NCAC 10B .0104 is readopted as published in 31:23 NCR 2311 as follows:

2  
3 **08 NCAC 10B .0104 LEAVING THE VOTING ENCLOSURE, SPOILED OR INCOMPLETE**  
4 **BALLOTS**

5 (a) When the voter has been presented with the official ballots by the judge, the voter shall be deemed to have begun  
6 the act of voting, and the voter shall not leave the voting enclosure until the voter has finalized the act of voting by  
7 performing whatever action is necessary to cause the act of voting to be finalized. On receiving the ballots, the voter  
8 shall immediately retire alone to one of the voting booths unless the voter is entitled to assistance and without any  
9 undue delay, the voter shall mark the ballots. The voter shall return any unvoted ballot(s) to the precinct officials.

10 (b) If a voter spoils or damages a ballot, the voter may obtain another upon returning the spoiled or damaged ballot  
11 to the chief judge or other designated official. A voter shall not be given a replacement ballot until the voter has  
12 returned the spoiled or damaged ballot. The voter shall not be permitted to receive more than three replacement  
13 ballots. The chief judge shall deposit each spoiled or damaged ballot in the container provided for that purpose.

14 (c) When the voter has marked the ballot the voter shall ensure the ballot(s) are cast. If the voter has been challenged  
15 and the challenge has been overruled, before casting the ballot(s), the voter shall write the voter's name on each of the  
16 ballot so they may be identified in the event the voter's right to vote is again questioned. After casting the ballots in  
17 the proper manner, the voter shall immediately leave the voting enclosure unless the voter is one of the persons  
18 authorized by law to remain within the enclosure for purposes other than voting.

19 (d) No voter shall be permitted to occupy a voting booth already occupied by another voter, provided, however,  
20 husbands and wives may occupy the same voting booth if both wish to do so. Excluded from this prohibition are  
21 persons lawfully providing assistance.

22 (e) When the voter leaves the voting enclosure, whether or not the voter has finalized voting, the voter shall not be  
23 permitted to enter the voting enclosure again for the purpose of voting.

24 (f) If a voter leaves the voting enclosure and is found not to have finalized the act of voting by pressing the appropriate  
25 button or touching the screen in the appropriate space in the case of Direct Record Electronic Voting Machines, by  
26 feeding their ballot into the appropriate tabulator in the case of Optical Scan/Marksense and Punchcard Voting  
27 Equipment, by pulling the appropriate lever in the case of Lever Voting Machines, or by depositing the paper ballot  
28 into the ballot box, the chief judge or judges of election may find, by unanimous vote, that the votes marked by the  
29 voter had not been disturbed by any other person and may execute the ballot for the voter who has vacated the voting  
30 enclosure. If the Chief Judge and Judges of election cannot unanimously confirm that the ballot marked by the voter  
31 has not been disturbed, the ballot must be marked as spoiled and placed with other spoiled ballots (or in the case of  
32 direct record electronic and lever machines, the ballot must be cleared according to the voting system specifications).  
33 The fact that a ballot is only partially and not fully marked shall have no bearing on the decision of the Chief Judge  
34 and Judges. In each instance where this type of incident occurs, the Chief Judge and Judges must document the  
35 circumstances and make the information known to the county board of elections.

36  
37 *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

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 .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

1 08 NCAC 10B .0105 is readopted as published in 31:23 NCR 2311 as follows:

2

3 **08 NCAC 10B .0105 PROCEDURES AT THE CLOSE OF VOTING**

4 (a) Before each primary and election, the chairman of the county board of elections shall furnish each chief judge  
5 written instructions on how ballots shall be marked and counted. Before starting the counting of ballots in the precinct,  
6 the chief judge shall instruct all of the judges, assistants, and ballot counters in how differently marked ballots shall  
7 be counted and tallied.

8 (b) The Chief Judge shall announce or have it announced that the polls are closed at 7:30 p.m. unless the time has  
9 been extended until 8:30 p.m. Time shall be determined by the same timepiece used to determine the opening of the  
10 polls.

11 (c) Any person who is in line at the close of polls shall be afforded an opportunity to vote. A list shall be made,  
12 starting at the end of the line and moving forward, of everyone standing in line at the close of polls and anyone whose  
13 name is on that list shall be permitted to vote. No person entering the voting enclosure after the close of polls has  
14 been announced, other than those whose names are on the list, shall be permitted to vote under any circumstance.

15 (d) The Chief Judge and Judges must subscribe their names to each pollbook.

16 (e) Only official ballots shall be voted and counted. No official ballot shall be rejected because of technical errors in  
17 marking it, unless it is impossible to determine the voter's choice under the rules for counting ballots. Such  
18 determination shall be made by the county board of elections if the chief judge and judges are unable to determine the  
19 voter's choice, or whether a particular ballot should be counted.

20 (f) No person shall purposely deface or tear an official ballot in any manner, and no person, other than the voter, shall  
21 purposely erase any name or mark written on a ballot by a voter.

22 (g) The Chief Judge, along with a Judge of another political party, shall "close the polls" on each voting unit. The  
23 results sheet from each unit shall be placed in an "Official Precinct Returns Envelope." As soon as the polls are closed  
24 the chief judge and judges shall, without adjournment or postponement, count the ballots. The counting of ballots at  
25 the precinct shall be continuous until completed. More than one voting unit may be counted at the same time by the  
26 precinct officials, assistants, and ballot counters, but the chief judge and judges shall supervise the counting of all  
27 units and shall be responsible for them. From the time the first unit is read or opened and the count of votes begun  
28 until the votes are counted and the statement of returns made out, signed, certified and provided to the chief judge or  
29 judge responsible for delivering them to the county board office, the precinct chief judge and judges shall not separate,  
30 nor shall any one of them leave the voting place except in case of unavoidable necessity as determined by the Chief  
31 Judge.

32 (h) The counting of the ballots shall be made in the presence of the precinct election officials and witnesses and  
33 observers who are present and desire to observe the count. Observers shall not interfere with the orderly counting of  
34 the ballots. As soon as the votes have been counted and the precinct returns certified, the chief judge, or one of the  
35 judges selected by the chief judge, shall report the total precinct vote for each ballot item to the witnesses and observers  
36 who are present and also by telephone or other electronic means to the county board of elections. This report shall be  
37 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

1 08 NCAC 10B .0106 is readopted as published in 31:23 NCR 2311 as follows:

2

3 **08 NCAC 10B .0106 ELECTION SUPPLIES RETURN**

4 (a) After an election or primary, all election supplies shall be immediately taken to the county board of elections  
5 office.

6 (b) Election materials and supplies, used or unused, shall not remain in the custody of the Chief Judge, Judges, or any  
7 other person in unsecured locations overnight. However, if it is not possible for a county board of elections to have  
8 all precincts return materials and supplies on the night of the election, the county board of elections must submit a  
9 security plan to the Executive Director of the State Board of Elections 30 days prior to the election. The Executive  
10 Director will provide either approval or required modifications to the plan in writing no later than 15 days prior to the  
11 election. The board of elections shall have an emergency backup plan that will enable board of elections employees  
12 or other authorized persons to retrieve the items from the custody of the Chief Judge and Judges and transport them  
13 to the board of elections office. A county board must have an alternative security plan approved by the Executive  
14 Director in order to use it.

15 (c) All materials shall be transported with a "chain of custody" form that includes the signatures and times in which  
16 the supplies are in the custody of each official. All supplies, once received at the board of elections, will be verified  
17 and signed for by a board of elections representative.

18

19 *History Note: Authority G.S. 163-22; 163-166.10;*  
20 *Temporary Adoption Eff. April 15, 2002;*  
21 *Eff. August 1, 2004.*  
22 *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.

- (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.

1 08 NCAC 10B .0107 is readopted as published in 31:23 NCR 2311 as follows:

2  
3 **08 NCAC 10B .0107 ASSISTANCE TO VOTERS IN PRIMARIES AND GENERAL ELECTIONS**

4 (a) In any primary or election, including one-stop absentee voting, a registered voter qualified to vote in the primary  
5 or election shall be entitled to assistance in getting to and from the voting booth, entering and exiting the voting booth,  
6 and in preparing their ballots in accordance with the following:

7 (1) Any assistance rendered must be performed in person, and shall not be allowed by electronic, paper,  
8 or mechanical means of communication with a person outside the voting booth, except in  
9 circumstances of disabled voters with special needs. The use of electronic, paper, or mechanical  
10 devices by the voter, while alone in the voting booth and not in contact with another person outside  
11 the voting booth, shall not be considered voting assistance;

12 (2) Any voter shall be entitled to assistance from a near relative, as defined in G.S. 163-166.8(a)(1), of  
13 his choice. Under no circumstances shall any other relative, friend, guardian, person holding a power  
14 of attorney, or any other person be allowed to render assistance except as allowed under G.S. 163-  
15 166.8(a)(2) and in Paragraph (b) of this Rule; and

16 (3) The person rendering assistance shall not in any manner seek to persuade or induce any voter to cast  
17 any vote in any particular way.

18 (b) Any voter in any of the following four categories shall be entitled to assistance from any person of the voter's  
19 choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union:

20 (1) One who, on account of physical disability, is unable to enter the voting booth without assistance;

21 (2) One who, on account of physical disability, is unable to mark his or her ballot without assistance;

22 (3) One who, on account of illiteracy, is unable to mark his or her ballot without assistance;

23 (4) One who, on account of visual impairment, is unable to enter the voting booth or mark the ballot  
24 without assistance.

25 No precinct official may refuse the voter's choice of the person to assist him, unless the person so named is legally  
26 excluded, does not appear at the voting place to assist the voter prior to the close of the polls, or refuses to assist the  
27 voter. If the voter's choice of the assisting person cannot be met on the ground(s) set out herein, the voter shall be  
28 allowed to make an additional choice until a willing assisting person is available to assist the voter. There shall be no  
29 limitation on the number of voters a person can assist, as long as the assisting person is properly chosen by each voter  
30 to assist.

31 (c) A person seeking assistance in any election shall, upon arriving at the voting place, first request the chief judge to  
32 permit him to have assistance, communicating the reasons. If the chief judge determines that the voter is entitled to  
33 assistance, the chief judge shall ask the voter to identify the person the voter desires to provide assistance. If that  
34 person is not present, the voter is entitled to contact the person and to wait for the person at the voting place, but  
35 outside the voting enclosure. When that person is available to assist or is already present to assist, the voter, along  
36 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.*