

TEMPORARY RULE

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: Board of Elections

RULE CITATION: All Rules Submitted

RECOMMENDED ACTION:

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

COMMENT:

Session Law 2018-144 is "An Act to Implement the Constitutional Amendment Requiring Photographic Identification to Vote." The General Assembly passed the bill on December 6, 2018 and overrode the Governor's veto on December 19, 2018.

This law established several general statutes, including G.S. 163A-1145.1, "Requirement for Photo Identification to Vote in Person," and changed G.S. 163A-1309, "Method of Requesting Absentee Ballots." These temporary rules address the changes made to those laws.

The Board began the temporary rulemaking process set forth in G.S. 150B-21.1 by submitting the temporary rules to the Codifier on June 14, 2019. The agency held a public hearing on July 11, 2019. The Board closed the comment period on July 12, 2019. Therefore, the agency had a 14-business day comment period, rather than the 15-business day comment period. In addition, the agency adopted on July 28, 2019, and did not give the Codifier or its interested persons the 30-business day notice required by G.S. 150B-21.1(a3)(1) and (2). The Codifier had 29 business days, and the interested persons had 24 business days notice.

In addition, S.L. 2018-144 became effective December 19, 2018 and the Board did not adopt the rules until July 28, 2019, which was 221 days after the bill became law.

Amanda J. Reeder
Commission Counsel
Issued August 14, 2019

Staff notes G.S. 150B-21.1(a)(11) states:

§ 150B-21.1. Procedure for adopting a temporary rule.

(a) Adoption. - An agency may adopt a temporary rule when it finds that adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

(11) The need for the Bipartisan State Board of Elections and Ethics Enforcement to adopt a temporary rule after prior notice or hearing **or upon any abbreviated notice or hearing the agency finds practical** for one or more of the following:

- a. In accordance with the provisions of G.S. 163A-742.
- b. To implement any provisions of state or federal law for which the Bipartisan State Board of Elections and Ethics Enforcement has been authorized to adopt rules.
- c. The need for the rule to become effective immediately in order to preserve the integrity of upcoming elections and the elections process.

Staff notes that the former Bipartisan State Board of Elections and Ethics Enforcement was reconstituted as the Board of Elections in S.L. 2018-146, which became effective on December 27, 2018. Therefore, staff believes that this temporary rulemaking process is governed by G.S. 150B-21.1(a)(11), and the timelines set forth in G.S. 150B-21.1(a2) and (a3) do not apply.

Staff further notes that S.L. 2018-144, Section 1.2.(i) states:

SECTION 1.2.(i) The State Board of Elections and Ethics Enforcement shall develop temporary rules in accordance with G.S. 163A-1309, [Method of Requesting Absentee Ballots] as amended by this section, no later than July 1, 2019, and permanent rules no later than January 1, 2020. In the development of these rules, the State Board shall consult with Disability Rights North Carolina to develop forms and instructions that are accessible to the disabled community. **At least 14 days prior to adoption of the temporary and permanent rules**, the State Board shall report to the Joint Legislative Elections Oversight Committee on the content of the proposed rules. In addition, the State Board shall report to the Joint Legislative Elections Oversight Committee no later than March 1, 2019, on the following:

- (1) Any other recommendations to secure the absentee voting by mail process, including, but not limited, to the following:
 - a. Increasing the potential criminal penalty for violations of that process.
 - b. Increasing training and education for absentee voters by mail.
 - c. Improved technological or administrative methods to ensure the proper chain of custody of absentee voting by mail.

Amanda J. Reeder
Commission Counsel
Issued August 14, 2019

- (2) Any recommended statutory changes related to security of absentee voting by mail, including legislation recommended for implementation of subsections (d) and (e) of this section.

Staff is aware that the Commission has strictly construed statutory deadlines for temporary rulemaking in the past. The Board did not adopt Rule 08 NCAC 17 .0109, the rule affected by G.S. 163A-1309, until July 28, 2019, which is beyond the deadline set in law. However, staff notes that the General Assembly directed the agency to “develop” rules by the deadlines. In a later sentence, it uses the defined term “adopt.” [See G.S. 150B-2(1b)] Staff believes that this difference in terminology shows that the General Assembly intended “develop” to be different from “adopt.” And given that the agency published the rules on June 21, 2019, staff believes that the agency has met the mandated deadline and did in fact “develop” the rules in the timeframe required.

Staff recommends approval of all rules submitted for inclusion in the NC Administrative Code as temporary rules.

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017**

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

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

G.S. 163A-914. A voter shall be permitted to vote unless the judges of election present unanimously agree that the photo identification presented does not bear a reasonable resemblance to that voter.

(c) Provisional Ballot Required Without Photo Identification. – If the registered voter cannot produce the identification as required in subsection (a) of this section, the registered voter may cast a provisional ballot that is counted only if the registered voter brings an acceptable form of photograph identification listed in subsection (a) of this section to the county board of elections no later than the end of business on the business day prior to the canvass by the county board of elections as provided in G.S. 163A-1172. The State Board shall provide the registered voter casting a provisional ballot due to failure to provide photo identification an information sheet on the deadline to return to the county board of elections to present photo identification, and what forms of photo identification are acceptable, in order for the voter's provisional ballot to be counted.

(d) Exceptions. – The following exceptions are provided for a registered voter who does not produce an acceptable form of identification as required in subsection (a):

- (1) Religious Objection. – If a registered voter does not produce an acceptable form of photograph identification due to a religious objection to being photographed, the registered voter may complete an affidavit under penalty of perjury at the voting place and affirm that the registered voter: (i) is the same individual who personally appears at the voting place; (ii) will cast the provisional ballot while voting in person; and (iii) has a religious objection to being photographed. Upon completion of the affidavit, the registered voter may cast a provisional ballot.
- (2) Reasonable Impediment. – If a registered voter does not produce an acceptable form of photograph identification because the registered voter suffers from a reasonable impediment that prevents the registered voter from presenting photograph identification, the registered voter may complete an affidavit under the penalty of perjury at the voting place and affirm that the registered voter: (i) is the same individual who personally appears at the voting place; (ii) will cast the provisional ballot while voting in person; and (iii) suffers from a reasonable impediment that prevents the registered voter from presenting photograph identification. The registered voter also shall complete a reasonable impediment declaration form provided in subsection (d1) of this section, unless otherwise prohibited by state or federal law. Upon completion of the affidavit, the registered voter may cast a provisional ballot.
- (3) Natural Disaster. – If a registered voter does not produce an acceptable form of photograph identification due to being a victim of a natural disaster occurring within 100 days before election day that resulted in a disaster declaration by the President of the United States or the Governor of this State, the registered voter may complete an affidavit under penalty of perjury at the voting place and affirm that the registered voter: (i) is the same individual who personally appears at the voting place; (ii) will cast the provisional ballot while voting in person; and (iii) was a victim of a natural disaster occurring within 100 days before election day that resulted in a disaster declaration by the President of the United States or the Governor of this State. Upon completion of the affidavit, the registered voter may cast a provisional ballot.

(d1) Reasonable Impediment Declaration Form. – The State Board shall adopt a reasonable impediment declaration form that, at a minimum, includes the following as separate boxes that a registered voter may check to identify the registered voter's reasonable impediment:

- (1) Inability to obtain photo identification due to:
 - a. Lack of transportation.

- b. Disability or illness.
- c. Lack of birth certificate or other underlying documents required.
- d. Work schedule.
- e. Family responsibilities.
- (2) Lost or stolen photo identification.
- (3) Photo identification applied for but not yet received by the registered voter voting in person.
- (4) Other reasonable impediment. If the registered voter checks the "other reasonable impediment" box, a further brief written identification of the reasonable impediment shall be required, including the option to indicate that State or federal law prohibits listing the impediment.

(e) County Board Review of Exceptions. – If the county board of elections determines that the registered voter voted a provisional ballot only due to the inability to provide proof of identification and the required affidavit required in subsection (d) of this section is submitted, the county board of elections shall find that the provisional ballot is valid unless the county board has grounds to believe the affidavit is false.

(f) Purpose. – The purpose of the identification required pursuant to subsection (a) of this section is to confirm the person presenting to vote is the registered voter on the voter registration records. Any address listed on the identification is not determinative of a registered voter's residence for the purpose of voting. A registered voter's residence for the purpose of voting is determined pursuant to G.S. 163A-842."

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

"§ 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 the State Board under penalty of perjury that the following are true:
 - a. The identification cards that are issued by the university or college contain photographs of students taken by the university or college or its agents or contractors.
 - b. The identification cards are issued after an enrollment process that includes methods of confirming the identity of the student that include, but are not limited to, the social security number, citizenship status, and birthdate of the student.
 - c. The equipment for producing the identification cards is kept in a secure location.
 - d. Misuse of the equipment for producing the identification cards would be grounds for student discipline or termination of an employee.
 - e. University or college officials would report any misuse of student identification card equipment to law enforcement if G.S. 163A-1389(19) was potentially violated.
 - f. The cards issued by the university or college contain a date of expiration, effective January 1, 2021.
 - g. The university or college provides copies of standard identification cards to the State Board to assist with training purposes.
 - h. The college or university will provide a copy to students, when issuing the student identification card, of the documentation developed by the

State Board on the requirements related to identification for voting; the requirements to vote absentee, early, or on election day; a description of voting by provisional ballot; and the availability of a free North Carolina voter photo identification card pursuant to G.S. 163A-869.1 to rural, military, veteran, elderly, underserved, minority, or other communities as determined by local needs; and the requirements of North Carolina residency to vote, including applicable intent requirements of North Carolina law, and the penalty for voting in multiple states.

(2) The university or college complies with any other reasonable security measures determined by the State Board to be necessary for the protection and security of the student identification process.

(b) 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) every four years.

(c) The State Board shall produce a list of participating universities and colleges every four years. The list shall be published on the State Board's Web site and distributed to every county board of elections.

(d) If a participating college or university with a student identification card approved for use by the State Board as provided in subsection (b) of this section changes the design of the student identification card, that college or university shall provide copies of the new design of the student identification cards to the State Board to assist with training purposes."

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

"§ 163A-1145.3. Approval of employee identification cards for voting identification.

(a) The State Board shall approve the use of employee identification card issued by a state or local government entity, including a charter school, for voting identification under G.S. 163A-1145.1 if the following criteria are met:

(1) The head elected official or lead human resources employee of the state or local government entity or charter school submits a signed letter to the Executive Director of the State Board under penalty of perjury that the following are true:

- a. The identification cards that are issued by the state or local government entity contain photographs of the employees taken by the employing entity or its agents or contractors.
- b. The identification cards are issued after an employment application process that includes methods of confirming the identity of the employee that include, but are not limited to, the social security number, citizenship status, and birthdate of the employee.
- c. The equipment for producing the identification cards is kept in a secure location.
- d. Misuse of the equipment for producing the identification cards would be grounds for termination of an employee.
- e. State or local officials would report any misuse of identification card equipment to law enforcement if G.S. 163A-1389(19) was potentially violated.
- f. The cards issued by the state or local government entity contain a date of expiration, effective January 1, 2021.
- g. The state or local government entity provides copies of standard 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 State Board shall approve the use of 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.

(c) The State Board shall produce a list of participating employing entities every four years. The list shall be published on the State Board's Web site and distributed to every county board of elections."

SECTION 1.2.(d) G.S. 163A-1307 reads as rewritten:

"§ 163A-1307. Absentee ballots, applications on container-return envelopes, and instruction sheets.

(a) Absentee Ballot Form. – In accordance with the provisions of G.S. 163A-1308, persons entitled to vote by absentee ballot shall be furnished with official ballots.

(b) Application on Container-Return Envelope. – In time for use not later than 60 days before a statewide general election in an even-numbered year, and not later than 50 days before a statewide primary, other general election or county bond election, the county board of elections shall print a sufficient number of envelopes in which persons casting absentee ballots may transmit their marked ballots to the county board of elections. However, in the case of municipal elections, sufficient container-return envelopes shall be made available no later than 30 days before an election. Each container-return envelope shall have printed on it an application which shall be designed and prescribed by the State Board, providing for all of the following:

- (1) The voter's certification of eligibility to vote the enclosed ballot and of having voted the enclosed ballot in accordance with this Part.
- (2) A space for identification of the envelope with the voter and the voter's signature.
- (3) A space for the identification of the two persons witnessing the casting of the absentee ballot in accordance with G.S. 163A-1310, those persons' signatures, and those persons' addresses.
- (4) A space for the name and address of any person who, as permitted under G.S. 163A-1298(a), assisted the voter if the voter is unable to complete and sign the certification and that individual's signature.
- (5) A space for approval by the county board of elections.
- (6) A space to allow reporting of a change of name as provided by G.S. 163A-880.
- (7) A prominent display of the unlawful acts under G.S. 163A-1298 and G.S. 163A-1389, except if there is not room on the envelope, the State Board may provide for that disclosure to be made on a separate piece of paper to be included along with the container-return envelope.
- (8) An area to attach additional documentation necessary to comply with the identification requirements in accordance with State Board rules, as provided in G.S. 163A-1309.

The container-return envelope shall be printed in accordance with the instructions of the State Board.

(c) Instruction Sheets. – In time for use not later than 60 days before a statewide general election in an even-numbered year, and not later than 50 days before a statewide primary, other general or county bond election, the county board of elections shall prepare and print a sufficient number of sheets of instructions on how voters are to prepare absentee ballots and return them to the county board of elections. However, in the case of municipal elections, instruction sheets shall be made available no later than 30 days before an election."

SECTION 1.2.(e) G.S. 163A-1309 reads as rewritten:

"§ 163A-1309. Method of requesting absentee ballots.

(a) Valid Types of Written Requests. – A completed written request form for an absentee ballot as required by G.S. 163A-1308 is valid only if it is on a form created by the State Board and signed by the voter requesting absentee ballots or that voter's near relative or verifiable legal guardian. The State Board shall make the form available at its offices, online, and in each county board of elections office, and that form may be reproduced. A voter may make a request in person or by writing to the county board for the form to request an absentee ballot. The request form for an absentee ballot shall require at least the following information:

- (1) The name and address of the residence of the voter.
- (2) The name and address of the voter's near relative or verifiable legal guardian if that individual is making the request.
- (3) The address of the voter to which the application and absentee ballots are to be mailed if different from the residence address of the voter.
- (4) ~~One or more of the following in the order of preference:~~
 - a. ~~The number of the voter's North Carolina drivers license issued under Article 2 of Chapter 20 of the General Statutes, including a learner's permit or a provisional license.~~
 - b. ~~The number of the voter's special identification card for nonoperators issued under G.S. 20-37.7.~~
 - e. ~~The last four digits of the applicant's social security number.~~

The identification required in accordance with State Board rules, as provided in subsection (f) of this section.
- (5) The voter's date of birth.
- (6) The signature of the voter or of the voter's near relative or verifiable legal guardian if that individual is making the request.

(b) A completed request form for an absentee ballot shall be deemed a request to update the official record of voter registration for that voter and shall be confirmed in writing in accordance with G.S. 163A-877(d).

(c) The completed request form for an absentee ballot shall be delivered to the county board of elections. If the voter does not include the information requested in subdivision (a)(4) of this section, a copy of a document listed in G.S. 163A-1144(a)(2) shall accompany the completed request form.

(d) Upon receiving a completed request form for an absentee ballot, the county board shall confirm that voter's registration. If that voter is confirmed as a registered voter of the county, the absentee ballots and certification form shall be mailed to the voter, unless personally delivered in accordance with G.S. 163A-1308(b). If the voter's official record of voter registration conflicts with the completed request form for an absentee ballot or cannot be confirmed, the voter shall be so notified. If the county board cannot resolve the differences, no application or absentee ballots shall be issued.

(e) Invalid Types of Written Requests. – A request is not valid if it does not comply with subsection (a) of this section. If a county board of elections receives a request for an absentee ballot that does not comply with subsection (a) of this section, the board shall not issue an application and ballot under G.S. 163A-1308.

(f) Rules by State Board. – The State Board shall adopt rules for the enforcement of this section, including rules to provide for the forms of identification that must be included with the written request for an absentee ballot. At a minimum, the rules shall include the following:

- (1) Acceptable forms of readable identification that are substantially similar to those required under G.S. 163A-1145.1.**
- (2) A process for a voter without acceptable readable identification under subdivision (1) of this section to complete an alternative affidavit in accordance with G.S. 163A-1145.1(d)(1), (d)(2), or (d)(3) that includes lack**

of access to a method to attach an electronic or physical copy of the identification card to the written request as a reasonable impediment to compliance with the identification requirement.

- (3) A process for a voter to request the option to return the information required by subdivision (1) or (2) of this section with the absentee ballot container-return envelope, as provided in G.S. 163A-1307."

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, 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. 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 1, 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.

SECTION 1.2.(g) Notwithstanding G.S. 163A-1145.1, 163A-1145.2, and 163A-1145.3, 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) or an employee identification card issued by state or local government entity that does not contain an expiration date shall be eligible for use in any election held before January 1, 2021.

SECTION 1.2.(h) Notwithstanding G.S. 163A-1145.1(d)(2), for elections held in 2019, any voter who does not present a photograph identification listed as acceptable in G.S. 163A-1145.1(a) when presenting to vote in person shall be allowed to complete a reasonable impediment affidavit and cast a provisional ballot, listing as the impediment not being aware of the requirement to present photograph identification when voting in person or failing to bring photograph identification to the voting place.

SECTION 1.2.(i) The State Board of Elections and Ethics Enforcement shall develop temporary rules in accordance with G.S. 163A-1309, as amended by this section, no later than July 1, 2019, and permanent rules no later than January 1, 2020. In the development of these rules, the State Board shall consult with Disability Rights North Carolina to develop forms and instructions that are accessible to the disabled community. At least 14 days prior to adoption of the temporary and permanent rules, the State Board shall report to the Joint Legislative Elections Oversight Committee on the content of the proposed rules. In addition, the State Board shall report to the Joint Legislative Elections Oversight Committee no later than March 1, 2019, on the following:

- (1) Any other recommendations to secure the absentee voting by mail process, including, but not limited, to the following:
 - a. Increasing the potential criminal penalty for violations of that process.
 - b. Increasing training and education for absentee voters by mail.
 - c. Improved technological or administrative methods to ensure the proper chain of custody of absentee voting by mail.
- (2) Any recommended statutory changes related to security of absentee voting by mail, including legislation recommended for implementation of subsections (d) and (e) of this section.

SECTION 1.3.(a) G.S. 20-37.7 reads as rewritten:

"§ 20-37.7. Special identification card.

...

(d) Expiration and Fee. – A special identification card issued to a person for the first time under this section expires when a drivers license issued on the same day to that person would expire. A special identification card renewed under this section expires when a drivers license renewed by the card holder on the same day would expire.

The fee for a special identification card is the same as the fee set in G.S. 20-14 for a duplicate license. The fee does not apply to a special identification card issued to a resident of this State as follows:

- (1) The applicant is legally blind.
- (2) The applicant is at least ~~70~~17 years old.
- (3) The applicant or who has been issued a drivers license but the drivers license is cancelled under G.S. 20-15, in accordance with G.S. 20-9(e) and (g), as a result of a physical or mental disability or disease.
- (4) The applicant is homeless. To obtain a special identification card without paying a fee, a homeless person must present a letter to the Division from the director of a facility that provides care or shelter to homeless persons verifying that the person is homeless.
- (5) ~~The applicant is registered to vote in this State and does not have photo identification acceptable under G.S. 163A-1145. To obtain a special identification card without paying a fee, a registered voter shall sign a declaration stating the registered voter is registered and does not have other photo identification acceptable under G.S. 163A-1145. The Division shall verify that voter registration prior to issuing the special identification card. Any declaration shall prominently include the penalty under G.S. 163A-1389(13) for falsely making the declaration.~~
- (6) ~~The applicant is appearing before the Division for the purpose of registering to vote in accordance with G.S. 163A-883 and does not have other photo identification acceptable under G.S. 163A-1145. To obtain a special identification card without paying a fee, that applicant shall sign a declaration stating that applicant is registering to vote and does not have other photo identification acceptable under G.S. 163A-1145. Any declaration shall prominently include the penalty under G.S. 163A-1389(13) for falsely making the declaration.~~
- (7) The applicant has a developmental disability. To obtain a special identification card without paying a fee pursuant to this subdivision, an applicant must present a letter from his or her primary care provider certifying that the applicant has a developmental disability. For purposes of this subdivision, the term "developmental disability" has the same meaning as in G.S. 122C-3.

...

(d2) Notwithstanding subsection (b) of this section, for a person whose valid drivers license, permit, or endorsement, is required to be seized or surrendered due to cancellation, disqualification, suspension, or revocation under applicable State law, the Division shall issue a special identification card to that person without application, if eligible to receive a special identification card, upon receipt by the Division of the seized or surrendered document. The Division shall issue and mail, via first-class mail to that person's address on file, a special identification card pursuant to this subsection at no charge.

...."

SECTION 1.3.(b) The issuance of special identification cards without application for any person whose valid drivers license, permit, or endorsement is received by the Division

upon seizure or surrender, as required by G.S. 20-37.7(d2), as enacted by this act, shall begin no later than May 1, 2019.

SECTION 1.4.(a) G.S. 163A-1137(a) reads as rewritten:

"(a) Checking Registration. – A person seeking to vote shall enter the voting enclosure through the appropriate entrance. A precinct official assigned to check registration shall at once ask the voter to state current name and residence address. The voter shall answer by stating current name and residence address and presenting photo identification in accordance with ~~G.S. 163A-1145.~~G.S. 163A-1145.1. In a primary election, that voter shall also be asked to state, and shall state, the political party with which the voter is affiliated or, if unaffiliated, the authorizing party in which the voter wishes to vote. After examination, that official shall state whether that voter is duly registered to vote in that precinct and shall direct that voter to the voting equipment or to the official assigned to distribute official ballots. If a precinct official states that the person is duly registered, the person shall sign the pollbook, other voting record, or voter authorization document in accordance with subsection (c) of this section before voting."

SECTION 1.4.(b) G.S. 163A-1300(b) reads as rewritten:

"(b) Not earlier than the third Wednesday before an election, in which absentee ballots are authorized, in which a voter seeks to vote and not later than 7:00 P.M. on the last Friday before that election, the voter shall appear in person only at the office of the county board of elections, except as provided in G.S. 163A-1303. That voter shall enter the voting enclosure at the board office through the appropriate entrance and shall at once state his or her name and place of residence to an authorized member or employee of the board and present photo identification in accordance with ~~G.S. 163A-1145.~~G.S. 163A-1145.1. In a primary election, the voter shall also state the political party with which the voter affiliates and in whose primary the voter desires to vote, or if the voter is an unaffiliated voter permitted to vote in the primary of a particular party under G.S. 163A-989, the voter shall state the name of the authorizing political party in whose primary he wishes to vote. The board member or employee to whom the voter gives this information shall announce the name and residence of the voter in a distinct tone of voice. After examining the registration records, an employee of the board shall state whether the person seeking to vote is duly registered. If the voter is found to be registered that voter may request that the authorized member or employee of the board furnish the voter with an application form as specified in G.S. 163A-1391. The voter shall complete the application in the presence of the authorized member or employee of the board, and shall deliver the application to that person."

SECTION 1.4A. G.S. 163A-741 is amended by adding a new subsection to read:

"(o1) The State Board shall include in all forms prepared by the Board a prominent statement that submitting fraudulently or falsely completed declarations is a Class I felony under Chapter 163A of the General Statutes."

SECTION 1.5.(a) The Bipartisan State Board of Elections and Ethics Enforcement (State Board) shall establish an aggressive voter education program concerning the provisions contained in this legislation. The State Board shall educate the public as follows:

- (1) Post information concerning changes contained in this legislation in a conspicuous location at each county board of elections, the State Board's office, and their respective websites.
- (2) Train precinct officials at training sessions required as provided in G.S. 163A-889 to answer questions by voters concerning the changes in this legislation.
- (3) Require documentation describing the changes in this legislation to be disseminated by precinct officials at every election held following the effective date of this act.
- (4) Coordinate with each county board of elections so that at least two seminars are conducted in each county prior to September 1, 2019.

- (5) Coordinate with local and service organizations to provide for additional informational seminars at a local or statewide level.
- (6) Coordinate with local media outlets, county boards of commissions, and county boards of elections to disseminate information in a way that would reasonably inform the public concerning the changes in this legislation. In executing these duties, the Board shall ensure that it makes necessary efforts to inform the public regarding the provisions of this act; the requirements to vote absentee, early, or on election day; a description of voting by provisional ballot; and the availability of a free North Carolina voter photo identification card pursuant to G.S. 163A-869.1 to rural, military, veteran, elderly, underserved, minority, or other communities as determined by local needs.
- (7) In conducting the educational program under this section, the educational program shall, when appropriate, inform the public regarding the requirements of North Carolina residency to vote, including applicable intent requirements of North Carolina law, and the penalty for voting in multiple states.
- (7a) Make available on the State Board's Web site a document that provides the information in subdivisions (6) and (7) of this subsection regarding the provisions of this act; the requirements to vote absentee, early, or on election day; a description of voting by provisional ballot; and the availability of a free North Carolina voter photo identification card pursuant to G.S. 163A-869.1 to rural, military, veteran, elderly, underserved, minority, or other communities as determined by local needs; and the requirements of North Carolina residency to vote, including applicable intent requirements of North Carolina law, and the penalty for voting in multiple states.
- (8) Notify each registered voter who does not have a North Carolina issued drivers license or identification card a notice of the provisions of this act by no later than September 1, 2019. This notice must include the requirements to vote absentee, early, or on election day and a description of voting by provisional ballot. It must also state the availability of a free North Carolina voter photo identification card pursuant to G.S. 163A-869.1.
- (9) Mail information to all North Carolina residential addresses, in the same manner as the Judicial Voter Guide, twice in 2019 and twice in 2020 that, at a minimum, describes forms of acceptable photo identification when presenting to vote in person, the options for provisional voting for registered voters who do not present the required photo identification, and a description of voting mail-in absentee.
- (10) Prominently place the following statement in all voter education materials mailed to citizens and on informational posters displayed at one-stop voting sites and precincts on election day: "All registered voters will be allowed to vote with or without a photo ID card. When voting in person, you will be asked to present a valid photo identification card. If you do not have a valid photo ID card, you may obtain one from your county board of elections prior to the election, through the end of the early voting period. If you do not have a valid photo ID card on election day, you may still vote and have your vote counted by signing an affidavit of reasonable impediment as to why you have not presented a valid photo ID."
- (11) In addition to the items above, the State Board may implement additional educational programs in its discretion.

SECTION 1.5.(b) The State Board is directed to create a list containing all registered voters of North Carolina who are otherwise qualified to vote but do not have a North Carolina drivers license or other form of identification containing a photograph issued by the Division of

Motor Vehicles of the Department of Transportation, as of September 1, 2019. The list must be made available to any registered voter upon request. The State Board may charge a reasonable fee for the provision of the list in order to recover associated costs of producing the list. The Division of Motor Vehicles must provide the list of persons with a North Carolina drivers license or other form of identification containing a photograph issued by the Division of Motor Vehicles at no cost to the State Board.

SECTION 1.5.(c) County boards of elections shall make available information describing the changes in this legislation, including acceptable forms of photograph identification, to all voters in the 2019 municipal primary and election and at the 2020 primary election.

SECTION 1.5.(d) By September 1, 2019, the State Board of Elections and Ethics Enforcement shall review, update, and make further recommendations to the Joint Legislative Elections Oversight Committee on steps to implement the use of electronic and digital information in all polling places statewide. The review shall address all of the following:

- (1) Obtaining digital photographs of registered voters and verifying identity of those voters, including transfer of digital photographs for registered voters held by the Department of Transportation, Division of Motor Vehicles.
- (2) Maintaining information stored electronically in a secure fashion.
- (3) Utilizing electronically stored information, including digital photographs and electronic signatures, to create electronic pollbooks.
- (4) Using electronic pollbooks to assist in identifying individuals attempting to vote more than once in an election.
- (5) A proposed plan for a pilot project to implement electronic pollbooks, including the taking of digital photographs at the polling place to supplement the electronic pollbooks.
- (6) Any other related matter identified by the State Board impacting the use of digital and electronic information in the voting place.

PART II: REPEAL OF UNCODIFIED SECTIONS OF THE VOTER INFORMATION VERIFICATION ACT

SECTION 2.(a) Sections 1.1, 5.2, 5.4, and 5.5 of S.L. 2013-381 are repealed.

SECTION 2.(b) Section 5.3 of S.L. 2013-381, as amended by Section 8.(g) of S.L. 2015-103, is repealed.

PART III: REPEAL OF CODIFIED SECTIONS OF THE VOTER INFORMATION VERIFICATION ACT AND RELATED STATUTES

SECTION 3.1.(a) G.S. 163A-868 is repealed.

SECTION 3.1.(b) G.S. 163A-869(e) reads as rewritten:

"(e) Display of Card May Not Be Required to Vote. – No county board of elections may require that a voter registration card be displayed in order to vote. ~~A county board of elections may notify a voter that the voter's registration card may be used for the required identification in conjunction with a reasonable impediment declaration in accordance with G.S. 163A-1147.~~"

SECTION 3.1.(c) G.S. 163A-913 reads as rewritten:

"§ 163A-913. Challenges allowed on day of primary or election.

On the day of a primary or election, at the time a registered voter offers to vote, any other registered voter of the county may exercise the right of challenge, and when the voter does so may enter the voting enclosure to make the challenge, but the voter shall retire therefrom as soon as the challenge is heard.

On the day of a primary or election, any other registered voter of the county may challenge a person for one or more of the following reasons:

- (1) One or more of the reasons listed in G.S. 163A-911(c).

- (2) That the person has already voted in that primary or election.
- (3) If the challenge is made with respect to voting in a partisan primary, that the person is a registered voter of another political party.
- (4) ~~Except as provided in G.S. 163A-1145(d) and G.S. 163A-1146, the voter does not present photo identification in accordance with G.S. 163A-1145.~~
- (4a) The registered voter does not present photo identification in accordance with G.S. 163A-1145.1.

The chief judge, judge, or assistant appointed under G.S. 163A-815 or 163A-818 may enter challenges under this section against voters in the precinct for which appointed regardless of the place of residence of the chief judge, judge, or assistant.

If a person is challenged under this subsection, and the challenge is sustained under G.S. 163A-911(c)(3), the voter may still transfer that voter's registration under G.S. 163A-878(e) if eligible under that section, and the registration shall not be cancelled under G.S. 163A-919(a) if the transfer is made. A person who has transferred that voter's registration under G.S. 163A-911(c)(3) may be challenged at the precinct to which the registration is being transferred."

SECTION 3.1.(d) G.S. 163A-1140(b) is repealed.

SECTION 3.1.(e) G.S. 163A-1145 is repealed.

SECTION 3.1.(f) G.S. 163A-1146 is repealed.

SECTION 3.1.(g) G.S. 163A-1147 is repealed.

SECTION 3.1.(h) G.S. 163A-1167 is repealed.

SECTION 3.1.(i) G.S. 163A-1168 is repealed.

SECTION 3.1.(j) G.S. 163A-1301 is repealed.

SECTION 3.2.(a) G.S. 130A-93.1(c) reads as rewritten:

"(c) Upon verification of voter registration, the State Registrar shall not charge any fee under subsection (a) of this section to a registered voter who signs a declaration stating the registered voter is registered to vote in this State and does not have a certified copy of that registered voter's birth certificate or marriage license necessary to obtain photo identification acceptable under ~~G.S. 163A-1145~~. G.S. 163A-1145.1. Any declaration shall prominently include the penalty under G.S. 163A-1389(13) for falsely or fraudulently making the declaration."

SECTION 3.2.(b) G.S. 161-10(a)(8) reads as rewritten:

"(8) Certified Copies of Birth and Death Certificates and Marriage Licenses. – For furnishing a certified copy of a death or birth certificate or marriage license ten dollars (\$10.00). Provided however, a register of deeds, in accordance with G.S. 130A-93, may issue without charge a certified birth certificate to any person over the age of 62 years. Provided, however, upon verification of voter registration, a register of deeds, in accordance with G.S. 130A-93, shall issue without charge a certified copy of a birth certificate or a certified copy of a marriage license to any registered voter who declares the registered voter is registered to vote in this State and does not have a certified copy of that registered voter's birth certificate or marriage license necessary to obtain photo identification acceptable under ~~G.S. 163A-1145~~. G.S. 163A-1145.1. Any declaration shall prominently include the penalty under G.S. 163A-1389(13) for falsely or fraudulently making the declaration."

SECTION 3.2.(c) G.S. 163A-1389(13) reads as rewritten:

"(13) For any person falsely to make or present any certificate or other paper to qualify any person fraudulently as a voter, or to attempt thereby to secure to any person the privilege of voting, including declarations made under this Subchapter, ~~G.S. 20-37.7(d)(5), 20-37.7(d)(6), 130A-93.1(e),~~ Subchapter, G.S. 130A-93.1(c), and G.S. 161-10(a)(8)."

SECTION 3.2.(d) G.S. 163A-1389 is amended by adding a new subdivision to read:

"(19) To counterfeit, sell, lend to, or knowingly permit the use of, by one not entitled thereto, a form of photo identification provided in G.S. 163A-1145.1 for the purposes of voting."

SECTION 3.3. G.S. 163A-821 reads as rewritten:

"§ 163A-821. Observers; appointment.

(a) The chair of each political party in the county shall have the right to designate two observers to attend each voting place at each primary and election and such observers may, at the option of the designating party chair, be relieved during the day of the primary or election after serving no less than four hours and provided the list required by this section to be filed by each chair contains the names of all persons authorized to represent such chair's political party. The chair of each political party in the county shall have the right to designate 10 additional at-large observers who are residents of that county who may attend any voting place in that county. The chair of each political party in the State shall have the right to designate up to 100 additional at-large observers who are residents of the State who may attend any voting place in the State. The list submitted by the chair of the political party may be amended between the one-stop period under G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304 and general election day to substitute one or all at-large observers for election day. Not more than two observers from the same political party shall be permitted in the voting enclosure at any time, except that in addition one of the at-large observers from each party may also be in the voting enclosure. This right shall not extend to the chair of a political party during a primary unless that party is participating in the primary. In any election in which an unaffiliated candidate is named on the ballot, the candidate or the candidate's campaign manager shall have the right to appoint two observers for each voting place consistent with the provisions specified herein. Persons appointed as observers by the chair of a county political party must be registered voters of the county for which appointed and must have good moral character. Persons appointed as observers by the chair of a State political party must be registered voters of the State and must have good moral character. No person who is a candidate on the ballot in a primary or election may serve as an observer or runner in that primary or election. Observers shall take no oath of office.

(b) Individuals authorized to appoint observers must submit in writing to the chief judge of each precinct a signed list of the observers appointed for that precinct, except that the list of at-large observers authorized in subsection (a) of this section shall be submitted to the county director of elections. Individuals authorized to appoint observers must, prior to 10:00 A.M. on the fifth day prior to any primary or general election, submit in writing to the chair of the county board of elections two signed copies of a list of observers appointed by them, designating the precinct or at-large status for which each observer is appointed. Before the opening of the voting place on the day of a primary or general election, the chair shall deliver one copy of the list to the chief judge for each affected precinct, except that the list of at-large observers shall be provided by the county director of elections to the chief judge. The chair shall retain the other copy. The chair, or the chief judge and judges for each affected precinct, may for good cause reject any appointee and require that another be appointed. The names of any persons appointed in place of those persons rejected shall be furnished in writing to the chief judge of each affected precinct no later than the time for opening the voting place on the day of any primary or general election, either by the chair of the county board of elections or the person making the substitute appointment.

If party chairs appoint observers at one-stop sites under G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304, those party chairs shall provide a list of the observers appointed before 10:00 A.M. on the fifth day before the observer is to observe. At-large observers may serve at any one-stop site.

...."

SECTION 3.4.(a) G.S. 163A-867(g)(2) reads as rewritten:

"(2) If the Postal Service has returned as undeliverable a notice sent within 25 days before the election to the applicant under subsection (c) of this section, then the applicant may vote only in person in that first election and may not vote by absentee ballot except in person under G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304. The county board of elections shall establish a procedure at the voting site for:

- a. Obtaining the correct address of any person described in this subdivision who appears to vote in person; and
- b. Assuring that the person votes in the proper place and in the proper contests.

If a notice mailed under subsection (c) or subsection (e) of this section is returned as undeliverable after a person has already voted by absentee ballot, then that person's ballot may be challenged in accordance with G.S. 163A-916."

SECTION 3.4.(b) G.S. 163A-1133(b) reads as rewritten:

"(b) Photographing Voters Prohibited. – No person shall photograph, videotape, or otherwise record the image of any voter within the voting enclosure, except with the permission of both the voter and the chief judge of the precinct. If the voter is a candidate, only the permission of the voter is required. This subsection shall also apply to one-stop sites under G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304. This subsection does not apply to cameras used as a regular part of the security of the facility that is a voting place or one-stop site."

SECTION 3.4.(c) G.S. 163A-1134(e) reads as rewritten:

"(e) Buffer Zone and Area for Election-Related Activity at One-Stop Sites. – Except as modified in this subsection, the provisions of this section shall apply to one-stop voting sites in G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304.

- (1) Subsection (c) of this section shall not apply.
- (2) The notice in subsection (d) of this section shall be provided no later than 10 days before the opening of one-stop voting at the site."

SECTION 3.4.(d) G.S. 163A-1298(a) reads as rewritten:

"(a) Any person who shall, in connection with absentee voting in any election held in this State, do any of the acts or things declared in this section to be unlawful, shall be guilty of a Class I felony. It shall be unlawful:

- (1) For any person except the voter's near relative or the voter's verifiable legal guardian to assist the voter to vote an absentee ballot when the voter is voting an absentee ballot other than under the procedure described in G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304; provided that if there is not a near relative or legal guardian available to assist the voter, the voter may request some other person to give assistance.
- (2) For any person to assist a voter to vote an absentee ballot under the absentee voting procedure authorized by G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304 except as provided in that section.
- (3) For a voter who votes an absentee ballot under the procedures authorized by G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304 to vote that voter's absentee ballot outside of the voting booth or private room provided to the voter for that purpose in or adjacent to the office of the county board of elections or at the additional site provided by G.S. 163A-1302, or to receive assistance except as provided in G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304.

...."

SECTION 3.4.(e) G.S. 163A-1300(a) reads as rewritten:

"(a) Any voter eligible to vote by absentee ballot under G.S. 163A-1295 may request an application for absentee ballots, complete the application, and vote under the provisions of this section and ~~G.S. 163A-1301, 163A-1302, G.S. 163A-1302,~~ 163A-1303, and 163A-1304."

SECTION 3.4.(f) G.S. 163A-1300(i) reads as rewritten:

"(i) Notwithstanding the provisions of G.S. 163A-916(a) and (b), a challenge may be entered against a voter at a one-stop site under G.S. 163A-1303 or during one-stop voting at the county board office. The challenge may be entered by a person conducting one-stop voting under this section and ~~G.S. 163A-1301, 163A-1302, G.S. 163A-1302,~~ 163A-1303, and 163A-1304 or by another registered voter who resides in the same precinct as the voter being challenged. If challenged at the place where one-stop voting occurs, the voter shall be allowed to cast a ballot in the same way as other voters. The challenge shall be made on forms prescribed by the State Board. The challenge shall be heard by the county board of elections in accordance with the procedures set forth in G.S. 163A-916(e)."

SECTION 3.4.(g) G.S. 163A-1303 reads as rewritten:

"§ 163A-1303. Sites and hours for one-stop voting.

(a) Notwithstanding any other provision of G.S. 163A-1300, ~~163A-1301, 163A-1302,~~ this section, and G.S. 163A-1304, a county board of elections by unanimous vote of all its members may provide for one or more sites in that county for absentee ballots to be applied for and cast under these sections. Every individual staffing any of those sites shall be a member or full-time employee of the county board of elections or an employee of the county board of elections whom the board has given training equivalent to that given a full-time employee. Those sites must be approved by the State Board as part of a Plan for Implementation approved by both the county board of elections and by the State Board which shall also provide adequate security of the ballots and provisions to avoid allowing persons to vote who have already voted. The Plan for Implementation shall include a provision for the presence of political party observers at each one-stop site equivalent to the provisions in G.S. 163A-821 for party observers at voting places on election day. A county board of elections may propose in its Plan not to offer one-stop voting at the county board of elections office; the State Board may approve that proposal in a Plan only if the Plan includes at least one site reasonably proximate to the county board of elections office and the State Board finds that the sites in the Plan as a whole provide adequate coverage of the county's electorate. If a county board of elections has considered a proposed Plan or Plans for Implementation and has been unable to reach unanimity in favor of a Plan, a member or members of that county board of elections may petition the State Board to adopt a plan for it. If petitioned, the State Board may also receive and consider alternative petitions from another member or members of that county board. The State Board may adopt a Plan for that county. The State Board, in that plan, shall take into consideration factors including geographic, demographic, and partisan interests of that county.

(b) The State Board shall not approve, either in a Plan approved unanimously by a county board of elections or in an alternative Plan proposed by a member or members of that board, a one-stop site in a building that the county board of elections is not entitled under G.S. 163A-1046 to demand and use as an election-day voting place, unless the State Board finds that other equally suitable sites were not available and that the use of the sites chosen will not unfairly advantage or disadvantage geographic, demographic, or partisan interests of that county. In providing the site or sites for one-stop absentee voting under G.S. 163A-1300, ~~163A-1301, 163A-1302,~~ this section, and G.S. 163A-1304, the county board of elections shall make a request to the State, county, city, local school board, or other entity in control of the building that is supported or maintained, in whole or in part, by or through tax revenues at least 90 days prior to the start of one-stop absentee voting under these sections. The request shall clearly identify the building, or any specific portion thereof, requested the dates and times for which that building or specific portion thereof is requested and the requirement of an area for election related activity. If the State, local governing board, or other entity in control of the building does not respond to the

request within 20 days, the building or specific portion thereof may be used for one-stop absentee voting as stated in the request. If the State, local governing board, or other entity in control of the building or specific portion thereof responds negatively to the request within 20 days, that entity and the county board of elections shall, in good faith, work to identify a building or specific portion thereof in which to conduct one-stop absentee voting under G.S. 163A-1300, ~~163A-1301~~, 163A-1302, this section, and G.S. 163A-1304. If no building or specific portion thereof has been agreed upon within 45 days from the date the county board of elections received a response to the request, the matter shall be resolved by the State Board.

...."

SECTION 3.4.(h) G.S. 163A-1306 reads as rewritten:

"§ 163A-1306. Register of absentee requests, applications, and ballots issued; a public record.

The State Board shall approve an official register in which the county board of elections in each county of the State shall record the following information:

- (1) Name of voter for whom application and ballots are being requested, and, if applicable, the name and address of the voter's near relative or verifiable legal guardian who requested the application and ballots for the voter.
- (2) Number of assigned voter's application when issued.
- (3) Precinct in which applicant is registered.
- (4) Address to which ballots are to be mailed, or, if the voter voted pursuant to G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304, a notation of that fact.
- (5) Date request for application for ballots is received by the county board of elections.
- (6) The voter's party affiliation.
- (7) The date the ballots were mailed or delivered to the voter.
- (8) Whatever additional information and official action may be required by this Part.

The State Board may provide for the register to be kept by electronic data processing equipment, and a copy shall be printed out each business day or a supplement printed out each business day of new information.

The register of absentee requests, applications and ballots issued shall constitute a public record and shall be opened to the inspection of any registered voter of the county within 60 days before and 30 days after an election in which absentee ballots were authorized, or at any other time when good and sufficient reason may be assigned for its inspection."

SECTION 3.4.(i) G.S. 163A-1308(c) reads as rewritten:

"(c) Delivery of Absentee Ballots and Container-Return Envelope to Applicant. – When the county board of elections receives a completed request form for applications and absentee ballots, the board shall promptly issue and transmit them to the voter in accordance with the following instructions:

- (1) On the top margin of each ballot the applicant is entitled to vote, the chair, a member, officer, or employee of the board of elections shall write or type the words "Absentee Ballot No. ____ " or an abbreviation approved by the State Board and insert in the blank space the number assigned the applicant's application in the register of absentee requests, applications, and ballots issued. That person shall not write, type, or print any other matter upon the ballots transmitted to the absentee voter. Alternatively, the board of elections may cause to be barcoded on the ballot the voter's application number, if that barcoding system is approved by the State Board.
- (2) The chair, member, officer, or employee of the board of elections shall fold and place the ballots (identified in accordance with the preceding instruction)

in a container-return envelope and write or type in the appropriate blanks thereon, in accordance with the terms of G.S. 163A-1307(b), the absentee voter's name, the absentee voter's application number, and the designation of the precinct in which the voter is registered. If the ballot is barcoded under this section, the envelope may be barcoded rather than having the actual number appear. The person placing the ballots in the envelopes shall leave the container-return envelope holding the ballots unsealed.

- (3) The chair, member, officer, or employee of the board of elections shall then place the unsealed container-return envelope holding the ballots together with printed instructions for voting and returning the ballots, in an envelope addressed to the voter at the post office address stated in the request, seal the envelope, and mail it at the expense of the county board of elections: Provided, that in case of a request received after 5:00 p.m. on the Tuesday before the election under the provisions of subsection (b) of this section, in lieu of transmitting the ballots to the voter in person or by mail, the chair, member, officer, or employee of the board of elections may deliver the sealed envelope containing the instruction sheet and the container-return envelope holding the ballots to a near relative or verifiable legal guardian of the voter.

The county board of elections may receive completed written request forms for applications at any time prior to the election but shall not mail applications and ballots to the voter or issue applications and ballots in person earlier than 60 days prior to the statewide general election in an even-numbered year, or earlier than 50 days prior to any other election, except as provided in G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304. No election official shall issue applications for absentee ballots except in compliance with this Part."

SECTION 3.4.(j) G.S. 163A-1310(c) reads as rewritten:

"(c) For purposes of this section, "Delivered in person" includes delivering the ballot to an election official at a one-stop voting site under G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304 during any time that site is open for voting. The ballots shall be kept securely and delivered by election officials at that site to the county board of elections office for processing."

SECTION 3.4.(k) G.S. 163A-1315 reads as rewritten:

"§ 163A-1315. Counting absentee ballots by county board of elections.

All absentee ballots returned to the county board of elections in the container-return envelopes shall be retained by the board to be counted by the county board of elections as herein provided.

...

- (6) As each ballot envelope is opened, the board shall cause to be entered into a pollbook designated "Pollbook of Absentee Voters" the name of the absentee voter, or if the pollbook is computer-generated, the board shall check off the name. Preserving secrecy, the ballots shall be placed in the appropriate ballot boxes, at least one of which shall be provided for each type of ballot. The "Pollbook of Absentee Voters" shall also contain the names of all persons who voted under G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304, but those names may be printed by computer for inclusion in the pollbook.

After all ballots have been placed in the boxes, the counting process shall begin.

If one-stop ballots under G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304 are counted electronically, that count shall commence at the time the polls close. If one-stop ballots are paper ballots

counted manually, that count shall commence at the same time as other absentee ballots are counted.

If a challenge transmitted to the board on canvass day by a chief judge is sustained, the ballots challenged and sustained shall be withdrawn from the appropriate boxes, as provided in G.S. 163A-916(e).

As soon as the absentee ballots have been counted and the names of the absentee voters entered in the pollbook as required herein, the board members and assistants employed to count the absentee ballots shall each sign the pollbook immediately beneath the last absentee voter's name entered therein. The county board of elections shall be responsible for the safekeeping of the pollbook of absentee voters.

- (7) Upon completion of the counting process the board members shall cause the results of the tally to be entered on the absentee abstract prescribed by the State Board. The abstract shall be signed by the members of the board in attendance and the original mailed immediately to the State Board. The county board of elections may have a separate count on the abstract for one-stop absentee ballots under G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304.

...."

SECTION 3.4.(l) G.S. 163A-1368 reads as rewritten:

"§ 163A-1368. Absentee voting at office of board of elections.

Notwithstanding any other provisions of this Subchapter, any covered voter under this Part shall be permitted to vote an absentee ballot pursuant to G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304 if the covered voter has not already voted an absentee ballot which has been returned to the board of elections, and if the covered voter will not be in the county on the day of the primary or election.

In the event an absentee application or ballot has already been mailed to the covered voter applying to vote pursuant to G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304, the board of elections shall void the application and ballot unless the voted absentee ballot has been received by the board of elections. The covered voter shall be eligible to vote pursuant to G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304 no later than 5:00 P.M. on the day next preceding the primary, second primary or election."

SECTION 3.4.(m) G.S. 163A-1411(41) reads as rewritten:

"(41) The term "electioneering communication" means any broadcast, cable, or satellite communication, or mass mailing, or telephone bank that has all the following characteristics:

- a. Refers to a clearly identified candidate for elected office.
- b. In the case of the general election in November of the even-numbered year is aired or transmitted after September 7 of that year, and in the case of any other election is aired or transmitted within 60 days of the time set for absentee voting to begin pursuant to G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304 in an election for that office.
- c. May be received by either:
 1. 50,000 or more individuals in the State in an election for statewide office or 7,500 or more individuals in any other election if in the form of broadcast, cable, or satellite communication.
 2. 20,000 or more households, cumulative per election, in a statewide election or 2,500 households, cumulative per

election, in any other election if in the form of mass mailing or telephone bank."

SECTION 3.4.(n) G.S. 163A-1520(a) reads as rewritten:

"(a) Judicial Voter Guide. – The State Board shall publish a Judicial Voter Guide that explains the functions of the appellate courts and the laws concerning the election of appellate judges, the purpose and function of the Public Campaign Fund, and the laws concerning voter registration. The State Board shall distribute the Guide to as many voting-age individuals in the State as practical, through a mailing to all residences or other means it deems effective. The distribution shall occur no more than 28 days nor fewer than seven days before the one-stop voting period provided in G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304 for the primary and no more than 28 days nor fewer than seven days before the one-stop voting period provided in G.S. 163A-1300, ~~163A-1301~~, 163A-1302, 163A-1303, and 163A-1304 for the general election."

PART IV. APPROPRIATION

SECTION 4.(a) There is appropriated from the General Fund to the State Board of Elections and Ethics Enforcement the sum of two million two hundred fifty thousand dollars (\$2,250,000) for the 2018-2019 fiscal year. Of the funds appropriated, the sum of seven hundred fifty thousand dollars (\$750,000) shall be used to implement the provisions of this act and may be used to create temporary positions at the State Board of Elections and Ethics Enforcement. The State Board of Elections and Ethics Enforcement shall transfer to the Highway Fund one million five hundred thousand dollars (\$1,500,000) for the 2018-2019 fiscal year to address the loss of revenues resulting from implementation of this act.

SECTION 4.(b) There is appropriated from the General Fund to the North Carolina Public Campaign Fund the sum of eight hundred fifty thousand dollars (\$850,000) for the 2018-2019 fiscal year. Notwithstanding any other law to the contrary, the State Board of Elections and Ethics Enforcement shall allocate these funds to county boards of elections for maintenance grants for printing equipment or to assist in the implementation of this act.

PART V. EFFECTIVE DATE

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

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

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

s/ Tim Moore
Speaker of the House of Representatives

VETO Roy Cooper
Governor

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

s/ James White
House Principal Clerk



TEMPORARY 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 10B .0103 Voting Procedures

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: June 14, 2019
- b. Proposed Temporary Rule published on the OAH website: June 21, 2019
- c. Public Hearing date: July 11, 2019
- d. Comment Period: June 21 to July 12, 2019
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): June 21, 2019 (but see explanation below in #6 as to notice requirement)
- f. Adoption by agency on: July 28, 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: Session Law 2018-144
Effective date: December 19, 2018
- ☐ 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: G.S. 150B-21.1(a)(11)b. authorizes the State Board to adopt temporary rules "after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical" to "implement the provisions of state or federal law for which the [State Board of Elections] has been authorized to adopt rules." As such, it is the agency's belief, in consultation with Rules Review Commission staff, that temporary rules adopted under this authority are subject to notice and hearing requirements but are not subject to the 210-day timeline in G.S. 150B-21.1(a2) nor the timeline set forth in G.S. 150B-21.1(a3).

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

Notice and hearing requirements are contrary to the public interest and the immediate adoption of the rule is required because Session Law 2018-144 (attached) requires the State Board to adopt temporary rules for the implementation of voter ID. In addition, this rule needed to be amended due to the ruling in *NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016) (also attached) which held that the prior voter ID law was unconstitutional.

Because some of the requirements for voter ID are currently in effect and others will become effective for elections beginning in 2020, the State Board needs to be able to provide timely and accurate information to the public and to election officials on the law's implementation. The State Board has begun training on voter ID requirements and has been conducting seminars across the state.

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

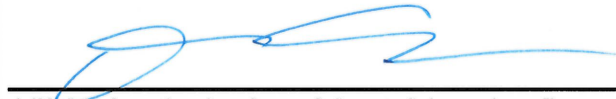
E-Mail: katelyn.love@ncsbe.gov

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: Damon Circosta

Title: Chair, State Board of Elections

E-Mail: damon.circosta.board@ncsbe.gov

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

TEMPORARY RULES
REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Elections

RULE CITATION: All Rules Submitted

DEADLINE FOR RECEIPT: 5 p.m. Wednesday, August 14, 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 each History Note, please insert an "Temporary Amendment Eff." or "Temporary Repeal Eff." or "Temporary Adoption Eff." line and a date that you wish for the Rules to become effective. I believe that the earliest possible effective date will be August 23, 2019.

Wherever you cite to statutes in G.S. 163, rather than 163A (both within Rule text and the History Notes), is the intent to retain those citations since the law is reverting to 163 and to update the citations to G.S. 163A once the Revisor of Statutes updates them to be in Chapter 163?

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: August 13, 2019

TEMPORARY RULES
REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Elections

RULE CITATION: 08 NCAC 10B .0103

DEADLINE FOR RECEIPT: 5 p.m. Wednesday, August 14, 2019

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 5, please insert "voting" before "place" to be consistent with the earlier language on line 5.

On line 9, authorized by what law?

On line 9, what is "secure"?

On line 10, please replace "would be" with "are"

On line 10, what is this plan?

In (b), line 13, please define "clearly"

On line 14, what are these "some cases"?

On line 21, who are these "necessary" officials and observers? Who determines this?

On line 25, I suggest deleting "be required to" and just state "Each precinct shall have an electronic device..."

On lines 25-26, consider stating "device (such as a smart phone, tablet, or laptop computer) that can be used..."

On line 27, please don't include language that is both struck through and underlined.

On line 27, please end the sentence after "cards." Then state "Alternatively, a printed..."

In (c), line 29, what is the "responsible" election official here?

On lines 35 – 37, why do you need this note?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: August 13, 2019

If you do need it, please capitalize “State” on line 36, as I believe you mean “NC”

In (d), Page 2, lines 5-6, delete “but are not limited to”

Delete the “or” at the end of the line in (d)(1), line 8, (d)(2), line 10, and (d)(3), line 11.

In (d)(3), line 11, what is “continuous eligibility” here?

In (d)(4), what is “ballot style”? Does your regulated public know?

In (e), line 20, what is the “proper” voting place?

In (g), line 25, what is “technical information”?

In (h), line 28, who decides what is “possible”?

On line 31, I suggest you insert a comma after “appointed”

On line 31, what is a “proper” column?

In (i), line 35, what is “kept secure”?

On line 36, what does “properly” mean here? And what is the difference between “properly designated” as an observer here versus “properly appointed” as an observer on Page 3, line 5?

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

08 NCAC 10B .0103 is proposed for amendment under temporary procedures as follows:

08 NCAC 10B .0103 VOTING PROCEDURES

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

(b) A person seeking to vote shall enter the voting enclosure at the voting place through the designated entrance and shall clearly communicate the person's name and place of residence and present photo identification in accordance with G.S. 163A-1145.1(a) to one of the judges of election, election officials, In some cases, the election official precinct judge may prompt the voter to provide this information. In a primary election, the voter shall also state the political party with which the voter affiliates and in whose primary the voter desires to vote, or if the voter is an unaffiliated voter permitted to vote in the primary of a particular party, the voter shall state the name of the authorizing political party in whose primary the voter wishes to vote. This information, including the political party's primary in which the voter elected to participate, provided by the voter shall be recorded in the precinct pollbook or on the voter authorization slip. The judge or assistant election official to whom the voter gives this information shall announce the name and residence of the voter so that the information may be heard by the necessary officials and observers. After examining the precinct registration records, the judge or assistant election official shall state whether the person seeking to vote is registered. The precinct judge or assistant election official shall not presume the identity/name, address, or party affiliation of any person seeking to ~~vote~~, and shall follow the procedures set forth in 08 NCAC 17 .0101. Each precinct shall be required to have an electronic device, including a smart phone, tablet, or laptop computer, which can be used for viewing the list of approved student and employee photo identification cards under G.S. 163A-1145.2(a) and G.S. 163A-1145.3(a) and examples of those approved ~~cards.~~ cards; or, in the alternative, a printed list of approved student and employee photo identification cards and examples of those approved cards.

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

(d) ~~If the person is found to not be registered to vote in the precinct, the responsible judge of election shall inform the person of the fail safe voting process. First, based [Based] on information provided by the person the responsible judge shall determine whether or not the person may be eligible to vote an official provisional ballot. The person is eligible to vote an official provisional ballot if the person resides in the precinct and either: [person:]~~ No person shall be denied the option to vote a provisional ballot. Reasons a person may vote a provisional ballot include, but are not limited to, that the person:

- (1) is a registered voter in the county and has moved into the precinct 30 days or more prior to the election and has not reported the change to the board of elections; or
- (2) claims to have applied for voter registration in the county but there is no record of the person's name on the registration records; or
- (3) was removed from the list, but the person maintains continuous eligibility within the county; or
- (4) disputes the ~~voting districts (and ballots)~~ ballot style to which the person has been ~~assigned.~~ assigned; or
- (5) cannot produce the identification as required in ~~[G.S. 163A-1145.1(a) of this section.]~~ G.S. 163A-1145.1(a).

~~[No person shall be denied an option to vote a provisional ballot.]~~

(e) If on Election Day the person is found to not be registered to vote in the precinct and the responsible ~~judge of election~~ election official learns from the person that the person resides in a different precinct, the responsible ~~judge~~ election official shall ~~provide the person with adequate information in order to direct the person~~ inform the person that the person may vote a provisional ballot at the precinct or may go to the proper voting place.

(f) It is the duty of the election official ~~chief judge and judges~~ to gather any voter information regarding changes of name and address in order to assist the county board of elections in updating voter records. If the county board of elections has identified a voter's record pursuant to law to gather additional information, the responsible judge election official shall require the voter to update the information.

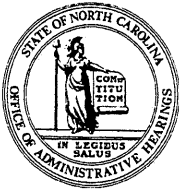
(g) It is the duty of the ~~chief judge and judges~~ election officials to give any voter any technical information the voter desires in regard to ballot items. In response to questions asked by the voter, the ~~chief judge and judges~~ election official shall communicate to the voter only technical information necessary to enable the voter to vote the ballot.

(h) ~~The~~ On Election Day the Chief Judge shall assign two precinct officials, one from each political party if possible, to keep the pollbook or other voting record and to keep the registration list. The names of all persons voting shall be checked on the registration record and entered on the pollbook or other voting record. In an election where observers may be appointed each voter's party affiliation shall be entered in the proper column of the pollbook or other approved record opposite the voter's name. The designated official shall make each entry at the time the ballots are handed to the voter. The information about the voter's political party registration shall be obtained from the registration record and not from the voter.

(i) ~~The chief judge, judges, and assistants~~ Election officials must ensure that registration records are kept secure and do not leave the voting enclosure for any purpose. Properly designated observers are entitled to obtain a list of the persons who have voted in the precinct so far in that election day at least at the following times: 10 a.m., 2 p.m. and

1 4 p.m. Counties using authorization to vote documents as opposed to traditional pollbooks may comply with the
2 requirement by permitting each observer to inspect election records so that the observer may create a list of persons
3 who have voted in the precinct. A party may designate more than two observers for each precinct, but only two may
4 serve in the voting place at the same time. Observers may serve in shifts, as long as the shifts are at least four hours
5 long and the persons serving in the shifts have been properly appointed as observers.

6
7 *History Note:* Authority G.S. 163-22; 163-166.7; 163-119; NAACP v. McCrory, 831 F.3d 204 (4th Cir. 2016);
8 163A-1145.1;
9 *Temporary Adoption Eff. April 15, 2002;*
10 *Eff. August 1, 2004.*



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 .0101 Verification of Photo Identification at Check-In

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: June 14, 2019
- b. Proposed Temporary Rule published on the OAH website: June 21, 2019
- c. Public Hearing date: July 11, 2019
- d. Comment Period: June 21 to July 12, 2019
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): June 21, 2019 (but see explanation below in #6 as to notice requirement)
- f. Adoption by agency on: July 28, 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: Session Law 2018-144
Effective date: December 19, 2018
- ☐ 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: G.S. 150B-21.1(a)(11)b. authorizes the State Board to adopt temporary rules "after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical" to "implement the provisions of state or federal law for which the [State Board of Elections] has been authorized to adopt rules." As such, it is the agency's belief, in consultation with Rules Review Commission staff, that temporary rules adopted under this authority are subject to notice and hearing requirements but are not subject to the 210-day timeline in G.S. 150B-21.1(a2) nor the timeline set forth in G.S. 150B-21.1(a3).

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

Notice and hearing requirements are contrary to the public interest and the immediate adoption of the rule is required because Session Law 2018-144 (attached) requires the State Board to adopt temporary rules for the implementation of voter ID. In addition, this rule needed to be amended due to the ruling in *NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016) (also attached) which held that the prior voter ID law was unconstitutional.

Because some of the requirements for voter ID are currently in effect and others will become effective for elections beginning in 2020, the State Board needs to be able to provide timely and accurate information to the public and to election officials on the law's implementation. The State Board has begun training on voter ID requirements and has been conducting seminars across the state.

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: Damon Circosta

Title: Chair, State Board of Elections

E-Mail: damon.circosta.board@ncsbe.gov

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

TEMPORARY RULES
REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Elections

RULE CITATION: 08 NCAC 17 .0101

DEADLINE FOR RECEIPT: 5 p.m. Wednesday, August 14, 2019

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 (b), lines 13 - 17, consider breaking this into a list, like so:

“(b) The election official shall not require a photo identification of a person who:

(1) has a sincerely held religious... G.S. 163A-1145.1(d)(1);

(2) suffers from ...G.S. 163A-1145.1(d)(2); or

(3) is a victim... G.S. 163A-1145.1(d)(3).

Persons falling within any exception...”

In (c)(1), lines 25-26, why do you need this language regarding the passport, given the language in you are citing to?

In (e), Page 3, line 9, please make the (c) in “Paragraph (c)” lowercase.

In (e)(2), line 19, I take it “acceptable” is meeting the requirements of Paragraph (c) of this Rule?

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: August 13, 2019

08 NCAC 17 .0101 is proposed for amendment under temporary procedures as follows:

**08 NCAC 17 .0101 ~~DETERMINATION OF REASONABLE RESEMBLANCE~~VERIFICATION OF
PHOTO IDENTIFICATION AT CHECK-IN**

(a) An election official shall check the registration status of all persons presenting to vote in-person on election day or during one-stop early voting pursuant to G.S. 163-166.7, and shall require that all persons presenting to vote provide one of the forms of photo identification listed in G.S. ~~163-166.13(e); 163A-1145.1(a)~~, subject to the exceptions outlined in Paragraph (b) of this Rule. If a person not satisfying the exceptions described in Paragraph (b) of this Rule does not provide any photo identification, the election official shall inform the person presenting to vote of applicable options specified in G.S. ~~163-166.13(e); 163A-1145.1(c)~~. If the person presenting to vote wishes to choose the option of voting a provisional ballot, the election official shall provide the person presenting to vote with information on the provisional voting process and the address of the county board of elections office.

(b) The election official shall not require photo identification of a person who has a sincerely held religious objection to being photographed and meets the requirements of G.S. ~~163-166.13(a)(2); 163A-1145.1(d)(1)~~, who suffers from a reasonable impediment that prevents the registered voter from presenting photograph identification and meets the requirements of G.S. 163A-1145.1(d)(2), or who is the victim of a natural disaster and meets the requirements of G.S. ~~163-166.13(a)(3); 163A-1145.1(d)(3)~~. Persons falling within any exception listed in this Paragraph who complete the [required] affidavit required by G.S. 163A-1145.1(d) shall be allowed to proceed pursuant to G.S. 163-166.7. G.S. 163-166.7 and shall cast a provisional ballot. The county board of elections shall find that a provisional ballot cast by a person who meets the qualifications of this Paragraph is valid unless the county board [has grounds to believe the affidavit is false.] unanimously decides that the affidavit is false, pursuant to 08 NCAC 17 .0109(f).

(c) The election official shall inspect any photo identification provided by the person presenting to vote and shall determine the following:

- (1) That the photo identification is of the type acceptable for voting purposes pursuant to G.S. ~~163-166.13(e); 163A-1145.1(a)~~. A valid United States passport book or a valid United States passport card is acceptable pursuant to G.S. ~~163-166.13(e)(3); 163A-1145.1(a)(1)c.~~;
- (2) That the photo identification is unexpired or is otherwise acceptable pursuant to G.S. ~~163-166.13(e); 163A-1145.1(a)~~;
- (3) That the photograph appearing on the photo identification depicts bears any reasonable resemblance to the person presenting to vote. The election official shall make this determination based on the totality of the circumstances, construing all evidence, along with any explanation or documentation voluntarily proffered by the person presenting to vote, in the light most favorable to that person. Perceived differences of the following features shall not be grounds for the election official to find that the photograph appearing on the photo identification fails to depict does not bear any reasonable resemblance to the person presenting to vote:

(A) weight;

- (B) hair features and styling, including changes in length, color, hairline, or use of a wig or other hairpiece;
- (C) facial hair;
- (D) complexion or skin tone;
- (E) cosmetics or tattooing;
- (F) apparel, including the presence or absence of eyeglasses or contact lenses;
- (G) characteristics arising from a perceptible medical condition, disability, gender transition, or aging;
- (H) photographic lighting conditions or printing quality; and
- (4) That the name appearing on the photo identification is the same or substantially equivalent to the name contained in the registration record. The election official shall make this determination based on the totality of the circumstances, construing all evidence, along with any explanation or documentation voluntarily proffered by the person presenting to vote, in the light most favorable to that person. The name appearing on the photo identification shall be considered substantially equivalent to the name contained in the registration record if differences are attributable to a reasonable explanation or one or more of the following reasons:
- (A) Omission of one or more parts of the name (such as, for illustrative purposes only, Mary Beth Smith versus Beth Smith, or Patrick Todd Jackson, Jr. versus Patrick Todd Jackson, or Maria Guzman-Santana versus Maria Guzman);
- (B) Use of a variation or nickname rather than a formal name (such as, for illustrative purposes only, Bill versus William, or Sue versus Susanne);
- (C) Use of an initial in place of one or more parts of a given name (such as, for illustrative purposes only, A.B. Sanchez versus Aaron B. Sanchez);
- (D) Use of a former name, including maiden names (such as, for illustrative purposes only, Emily Jones versus Emily Gibson), names changed during the gender transition process (such as, for illustrative purposes only, Catherine Smith versus Dan Smith), or a variation that includes or omits a hyphenation (such as, for illustrative purposes only, Chantell D. Jacobson-Smith versus Chantell D. Jacobson);
- (E) Ordering of names (such as, for illustrative purposes only, Maria Eva Garcia Lopez versus Maria E. Lopez-Garcia);
- (F) Variation in spelling or typographical errors (such as, for illustrative purposes only, Dennis McCarthy versus Denis McCarthy, or Aarav Robertson versus Aarav Robertsson).
- (d) The election official shall not require any additional evidence outside the four corners of the photo identification. The election official shall not require that any person remove apparel for the purposes of rendering a determination under Paragraph (c). If the face of the person presenting to vote is covered such that the election official cannot render a determination under Subparagraph (c)(3), then the election official shall give the person the opportunity to remove the covering but shall not require that removal. If the person declines to remove the covering, the election official shall

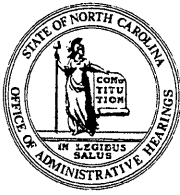
1 inform the person presenting to vote that he or she may cast a provisional ballot, which shall be counted in accordance
2 with ~~G.S. 163-182.1A, or, if applicable, may complete a written request for an absentee ballot as set out in G.S. 163-~~
3 ~~166.13(c)(3), and shall inform the voting site's judges of election that the election official cannot affirmatively~~
4 ~~determine that the person bears any reasonable resemblance to the photo identification. G.S. 163A-1145.1.~~

5 (e) Differences between the address appearing on the photo identification meeting the requirements of Subparagraph
6 (c)(1) and the address contained in the registration record shall not be construed as evidence that the photographic
7 identification does not bear any reasonable resemblance pursuant to Subparagraphs (c)(3) and (c)(4) of this Rule, nor
8 shall it be construed as evidence that the photographic identification does not otherwise meet the requirements of any
9 other provision of Paragraph (C).

10 (f) The election official shall construe all evidence, along with any explanation or documentation voluntarily proffered
11 by the person presenting to vote, in the light most favorable to that person. After an examination performed in the
12 manner set out in Paragraphs (a) through (d) of this Rule, the election official shall proceed as follows:

- 13 (1) If the election official determines that the photo identification meets all the requirements of
14 Paragraph (c), then the person presenting to vote shall be allowed to proceed pursuant to G.S. 163-
15 166.7 and ~~163-166.13(b);~~ 163A-1145.1; or
- 16 (2) If the election official determines that the photo identification does not meet all of the requirements
17 of Subparagraphs (c)(1) and (c)(2), the election official shall inform the person presenting to vote
18 of the reasons for such determination (such as, for illustrative purposes only, that the photo
19 identification is expired) and shall invite the person to provide any other acceptable photo
20 identification that he or she may have. If the person presenting to vote does not produce photo
21 identification that meets all the requirements of Subparagraph (c)(1) and (c)(2), then the election
22 official shall inform the person presenting to vote of applicable options specified in G.S. ~~163-~~
23 ~~166.13(c);~~ 163A-1145.1(c) and (d). If the person presenting to vote wishes to choose the option of
24 voting a provisional ballot, the election official shall provide the person presenting to vote with
25 information on the provisional voting process and the address of the county board of elections office.
- 26 (3) If the election official determines that the photo identification does not meet all the requirements of
27 Subparagraphs (c)(3) and (c)(4), the election official shall notify the voting site's judges of election
28 that the person presenting to vote does not bear any reasonable resemblance to the photo
29 identification.

30
31 *History Note:* Authority G.S. 163-82.6A; 163-82.15; 163-166.7; ~~163-166.13; 163-166.14; 163-182.1A; NAACP v.~~
32 ~~McCrary, 831 F.3d 204 (4th Cir. 2016); 163A-1145.1; S.L. 2018-144, s. 3.1(e);~~
33 ~~Eff. January 1, 2016.~~
34



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 .0102 Determination of Reasonable Resemblance By Judges of Election

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: June 14, 2019
- b. Proposed Temporary Rule published on the OAH website: June 21, 2019
- c. Public Hearing date: July 11, 2019
- d. Comment Period: June 21 to July 12, 2019
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): June 21, 2019 (but see explanation below in #6 as to notice requirement)
- f. Adoption by agency on: July 28, 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: Session Law 2018-144
Effective date: December 19, 2018
- ☐ 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: G.S. 150B-21.1(a)(11)b. authorizes the State Board to adopt temporary rules "after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical" to "implement the provisions of state or federal law for which the [State Board of Elections] has been authorized to adopt rules." As such, it is the agency's belief, in consultation with Rules Review Commission staff, that temporary rules adopted under this authority are subject to notice and hearing requirements but are not subject to the 210-day timeline in G.S. 150B-21.1(a2) nor the timeline set forth in G.S. 150B-21.1(a3).

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

Notice and hearing requirements are contrary to the public interest and the immediate adoption of the rule is required because Session Law 2018-144 (attached) requires the State Board to adopt temporary rules for the implementation of voter ID. In addition, this rule needed to be amended due to the ruling in *NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016) (also attached) which held that the prior voter ID law was unconstitutional.

Because some of the requirements for voter ID are currently in effect and others will become effective for elections beginning in 2020, the State Board needs to be able to provide timely and accurate information to the public and to election officials on the law's implementation. The State Board has begun training on voter ID requirements and has been conducting seminars across the state.

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

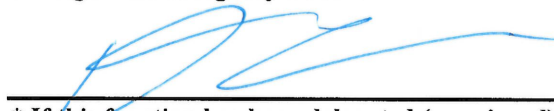
E-Mail: katelyn.love@ncsbe.gov

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: Damon Circosta

Title: Chair, State Board of Elections

E-Mail: damon.circosta.board@ncsbe.gov

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

TEMPORARY RULES
REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Elections

RULE CITATION: 08 NCAC 17 .0102

DEADLINE FOR RECEIPT: 5 p.m. Wednesday, August 14, 2019

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 (b), lines 9-11, I note that that this language "The judges of the election... in the light most favorable to the person presenting to vote." is contained in Rule .0101(c)(3) and (4). Do you need to repeat it here?

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: August 13, 2019

08 NCAC 17 .0102 is proposed for amendment under temporary procedures as follows:

08 NCAC 17 .0102 DETERMINATION OF REASONABLE RESEMBLANCE BY JUDGES OF ELECTION

(a) The judges of election shall make a determination as to reasonable resemblance pursuant to G.S. ~~163-166.14~~163A-1145.1(b) only if the person presenting to vote is referred to them by an election official as set out in 08 NCAC 17 .0101(f)(3).

(b) The judges of election shall inspect the photo identification provided by the person presenting to vote and shall make a determination as to all requirements set out in 08 NCAC 17 .0101(c)(3) and (4). The judges of election shall make their determinations based on the totality of the circumstances, construing all evidence in the light most favorable to the person presenting to vote. The judges of election shall consider the following, if presented:

(1) Any information contained in the photo identification meeting the requirements of 08 NCAC 17 .0101(c)(1) and the registration record (such as, for illustrative purposes only, date of birth, sex, or race);

(2) Any explanation proffered by the person presenting to vote or by other persons; and

(3) Any additional documentation provided by the person presenting to vote or by other persons.

(c) The judges of election shall follow 08 NCAC 17 .0101(e) with regard to addresses appearing on the photo identification.

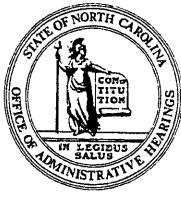
(d) After considering the evidence, the judges of election shall vote to determine whether the photo identification bears any reasonable resemblance to the person presenting to vote. All judges of election must vote either yea or nay, and the result shall be governed by the following:

(1) Unless the judges of election unanimously find that the photo identification does not bear any reasonable resemblance to the person appearing before them as set out in Subparagraph (e)(2), the person presenting to vote shall be allowed to proceed pursuant to G.S. 163-166.7 and ~~163-166.13(b)~~163A-1145.1.

(2) If the judges of election unanimously find that the photo identification does not meet all the requirements of 08 NCAC 17 .0101(c)(3) and (4), the judges of election shall enter a determination that the photo identification does not bear any reasonable resemblance to the person presenting to vote, and shall record their determinations in the manner set out in Paragraph (e) of this Rule. The judges of election shall inform the person presenting to vote that he or she may cast a provisional ballot, which shall be counted in accordance with G.S. ~~163-88.1~~163A-1145.1(c).

(e) The judges of election shall record their determination as to reasonable resemblance on a form provided by the State Board of Elections that provides the date and time, the voting site, the names of the judges of election, the name of the person presenting to vote, ~~and the determination of each individual judge of election~~, and if the judges of election unanimously determine that the photo identification does not bear any reasonable resemblance to the person presenting to vote, a brief explanation as to why that determination was made.

1 *History Note:* *Authority G.S. 163-166.7; 163-82.6A; 163-82.15; 163-88.1; 163-166.7; ~~163-166.13; 163-166.14;~~*
2 *NAACP v. McCrory, 831 F.3d 204 (4th Cir. 2016); 163A-1145.1; S.L. 2018-144, s. 3.1(e);*
3 *Eff. January 1, 2016.*



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 .0103 Identification Required of Curbside Voters

3. Action: ☐ Adoption ☐ Amendment ☒ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: June 14, 2019
- b. Proposed Temporary Rule published on the OAH website: June 21, 2019
- c. Public Hearing date: July 11, 2019
- d. Comment Period: June 21 to July 12, 2019
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): June 21, 2019 (but see explanation below in #6 as to notice requirement)
- f. Adoption by agency on: July 28, 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: Session Law 2018-144
Effective date: December 19, 2018
- ☐ 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: G.S. 150B-21.1(a)(11)b. authorizes the State Board to adopt temporary rules "after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical" to "implement the provisions of state or federal law for which the [State Board of Elections] has been authorized to adopt rules." As such, it is the agency's belief, in consultation with Rules Review Commission staff, that temporary rules adopted under this authority are subject to notice and hearing requirements but are not subject to the 210-day timeline in G.S. 150B-21.1(a2) nor the timeline set forth in G.S. 150B-21.1(a3).

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

Notice and hearing requirements are contrary to the public interest and the immediate adoption of the rule is required because Section 3.1(d) of Session Law 2018-144 (attached) repeals the prior voter ID provisions with respect to curbside voters.

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: Damon Circosta

Title: Chair, State Board of Elections

E-Mail: damon.circosta.board@ncsbe.gov

RULES REVIEW COMMISSION USE ONLY

Action taken:

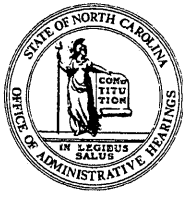
Submitted for RRC Review:

☐ Date returned to agency:

08 NCAC 17 .0103 is proposed for repeal under temporary procedures as follows:

08 NCAC 17 .0103 IDENTIFICATION REQUIRED OF CURBSIDE VOTERS

History Note: Authority ~~G.S. 163-166.9; 163-166.13~~; NAACP v. McCrory, 831 F.3d 204 (4th Cir. 2016); S.L. 2018-144, s. 3.1(d);
Eff. January 1, 2016.



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 .0104 Opportunity to Update Name or Address After Reasonable Resemblance Is Determined	
3. Action: <input type="checkbox"/> Adoption <input checked="" type="checkbox"/> Amendment <input type="checkbox"/> Repeal	
4. Was this an Emergency Rule: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Effective date:	
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: June 14, 2019 b. Proposed Temporary Rule published on the OAH website: June 21, 2019 c. Public Hearing date: July 11, 2019 d. Comment Period: June 21 to July 12, 2019 e. Notice pursuant to G.S. 150B-21.1(a3)(2): June 21, 2019 (but see explanation below in #6 as to notice requirement) f. Adoption by agency on: July 28, 2019 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:	
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <input type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input checked="" type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: Session Law 2018-144 Effective date: December 19, 2018 <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> State Medical Facilities Plan. <input type="checkbox"/> Other: Explain: G.S. 150B-21.1(a)(11)b. authorizes the State Board to adopt temporary rules "after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical" to "implement the provisions of state or federal law for which the [State Board of Elections] has been authorized to adopt rules." As such, it is the agency's belief, in consultation with Rules Review Commission staff, that temporary rules adopted under this authority are subject to notice and hearing requirements but are not subject to the 210-day timeline in G.S. 150B-21.1(a2) nor the timeline set forth in G.S. 150B-21.1(a3).	

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

Notice and hearing requirements are contrary to the public interest and the immediate adoption of the rule is required because Section 3.1(e) of Session Law 2018-144 (attached) repeals the prior voter ID provisions. As a result, the rule needed to be updated to reflect the correct statutory reference.

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: Damon Circosta

Title: Chair, State Board of Elections

E-Mail: damon.circosta.board@ncsbe.gov

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

TEMPORARY RULES
REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Elections

RULE CITATION: 08 NCAC 17 .0104

DEADLINE FOR RECEIPT: 5 p.m. Wednesday, August 14, 2019

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:

On line 7, I see that "current" is used in statutes, but what is "true"?

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: August 13, 2019

08 NCAC 17 .0104 is proposed for amendment under temporary procedures as follows:

**08 NCAC 17 .0104 OPPORTUNITY TO UPDATE NAME OR ADDRESS AFTER REASONABLE
RESEMBLANCE IS DETERMINED**

A person able to vote a regular ballot but whose name or address does not match the name or address appearing in the registration record shall be provided the opportunity to update his or her name or address in the registration record pursuant to G.S. 163-82.15(d) and 163-82.16(d) to reflect the person's true and current name and address. If the person updates his or her name or address, the person shall be permitted to vote as set out in G.S. 163-166.7 and ~~163-166.13(b)~~, 163A-1145.1, so long as the person remains eligible to vote based on residence within the county of the voting place.

History Note: *Authority G.S. 163-82.15(d); 163-82.16(d); 163-166.7; ~~163-166.13(b)~~; NAACP v. McCrory, 831 F.3d 204 (4th Cir. 2016); 163A-1145.1; S.L. 2018-144, s. 3.1(e);*
Eff. January 1, 2016.



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 .0105 Declaration of Religious Objection to Photograph

3. Action: ☐ Adoption ☐ Amendment ☒ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: June 14, 2019
- b. Proposed Temporary Rule published on the OAH website: June 21, 2019
- c. Public Hearing date: July 11, 2019
- d. Comment Period: June 21 to July 12, 2019
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): June 21, 2019 (but see explanation below in #6 as to notice requirement)
- f. Adoption by agency on: July 28, 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: Session Law 2018-144
Effective date: December 19, 2018
- ☐ 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: G.S. 150B-21.1(a)(11)b. authorizes the State Board to adopt temporary rules "after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical" to "implement the provisions of state or federal law for which the [State Board of Elections] has been authorized to adopt rules." As such, it is the agency's belief, in consultation with Rules Review Commission staff, that temporary rules adopted under this authority are subject to notice and hearing requirements but are not subject to the 210-day timeline in G.S. 150B-21.1(a2) nor the timeline set forth in G.S. 150B-21.1(a3).

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

Notice and hearing requirements are contrary to the public interest and the immediate adoption of the rule is required because Sections 3.1(a), (e), and (h) of Session Law 2018-144 (attached) repeal the prior voter ID provisions with respect to the religious objection to being photographed.

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: Damon Circosta

Title: Chair, State Board of Elections

E-Mail: damon.circosta.board@ncsbe.gov

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

08 NCAC 17 .0105 is proposed for repeal under temporary procedures as follows:

08 NCAC 17 .0105 DECLARATION OF RELIGIOUS OBJECTION TO PHOTOGRAPH

History Note: *Authority* ~~G.S. 163-82.7A; 163-166.12(a)(2); 163-166.13(a)(2); 163-182.1A(b)(2); 163-275;~~
~~NAACP v. McCrory, 831 F.3d 204 (4th Cir. 2016); S.L. 2018-144, s. 3.1.(a),(e),(h);~~
Eff. January 1, 2016.



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 .0106 Signage Notifying One-Stop Voters of the Option to Request an Absentee Ballot

3. Action: ☐ Adoption ☐ Amendment ☒ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: June 14, 2019
- b. Proposed Temporary Rule published on the OAH website: June 21, 2019
- c. Public Hearing date: July 11, 2019
- d. Comment Period: June 21 to July 12, 2019
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): June 21, 2019 (but see explanation below in #6 as to notice requirement)
- f. Adoption by agency on: July 28, 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: Session Law 2018-144
Effective date: December 19, 2018
- ☐ 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: G.S. 150B-21.1(a)(11)b. authorizes the State Board to adopt temporary rules "after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical" to "implement the provisions of state or federal law for which the [State Board of Elections] has been authorized to adopt rules." As such, it is the agency's belief, in consultation with Rules Review Commission staff, that temporary rules adopted under this authority are subject to notice and hearing requirements but are not subject to the 210-day timeline in G.S. 150B-21.1(a2) nor the timeline set forth in G.S. 150B-21.1(a3).

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

Notice and hearing requirements are contrary to the public interest and the immediate adoption of the rule is required because Section 3.1(j) of Session Law 2018-144 (attached) repeals the prior voter ID provisions with respect to requiring that signage be displayed at every one-stop site notifying voters of their options under that law.

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: Damon Circosta

Title: Chair, State Board of Elections

E-Mail: damon.circosta.board@ncsbe.gov

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

08 NCAC 17 .0106 is proposed for repeal under temporary procedures as follows:

**08 NCAC 17 .0106 SIGNAGE NOTIFYING ONE-STOP VOTERS OF THE OPTION TO REQUEST
AN ABSENTEE BALLOT**

History Note: Authority ~~G.S. 163-166.12(b),(b2); 163-227.2(b1),(j); 163-230.1; NAACP v. McCrory, 831 F.3d~~
~~204 (4th Cir. 2016); S.L. 2018-144, s. 3.1.(j);~~
Eff. March 1, 2016.



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 .0109 Photo Identification for Absentee Ballots

3. Action: ☒ Adoption ☐ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: June 14, 2019
- b. Proposed Temporary Rule published on the OAH website: June 21, 2019
- c. Public Hearing date: July 11, 2019
- d. Comment Period: June 21 to July 12, 2019
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): June 21, 2019 (but see explanation below in #6 as to notice requirement)
- f. Adoption by agency on: July 28, 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: Session Law 2018-144
Effective date: December 19, 2018
- ☐ 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: G.S. 150B-21.1(a)(11)b. authorizes the State Board to adopt temporary rules "after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical" to "implement the provisions of state or federal law for which the [State Board of Elections] has been authorized to adopt rules." As such, it is the agency's belief, in consultation with Rules Review Commission staff, that temporary rules adopted under this authority are subject to notice and hearing requirements but are not subject to the 210-day timeline in G.S. 150B-21.1(a2) nor the timeline set forth in G.S. 150B-21.1(a3).

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

Notice and hearing requirements are contrary to the public interest and the immediate adoption of the rule is required because Session Law 2018-144 (attached) requires the State Board to adopt temporary rules for the implementation of voter ID for absentee by mail voters.

Because some of the requirements for voter ID are currently in effect and others will become effective for elections beginning in 2020, the State Board needs to be able to provide timely and accurate information to the public and to election officials on the law's implementation. The State Board has begun training on voter ID requirements and has been conducting seminars across the state.

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: Damon Circosta

Title: Chair, State Board of Elections

E-Mail: damon.circosta.board@ncsbe.gov

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

TEMPORARY RULES
REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Elections

RULE CITATION: 08 NCAC 17 .0109

DEADLINE FOR RECEIPT: 5 p.m. Wednesday, August 14, 2019

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 (c)(1), lines 28-31, consider breaking this further into a list. If you do so, you will use (A), (B), and (C) to show the break, rather than (i), (ii), or (iii).

In (c)(2), line 34, I do not understand the cross-reference to G.S. 163A-1298. Please confirm this is the statute you intended to cite to.

In (c)(4) on Page 2, what specific authority are you relying upon for this exemption? Is it G.S. 163A-1319? Please add the authority to the History Note.

In (e)(1)(F), line 31, I suggest you insert either "as required" or "as determined" before "pursuant to Paragraph (b)"

In (f), Page 3, line 9, replace "Subparagraph (1) of Paragraph (e)" with "Subparagraph (e)(1) of this Rule."

How does Paragraph (g) of this Rule work? Is this if the individual brings the documentation directly to the county office?

In (i), line 33, please entirely strike (j) and replace it with (i) so it reads "(i)"

On line 35, please capitalize "Statewide"

On line 36 and Page 4, lines 1-2, why are you entirely reciting Paragraph (c)? Could you not state "... G.S. 163A-874 until the voter ends this exemption pursuant to Subparagraphs (c)(1)(A) through (C)." Or, "...G.S. 163A-874 until the voter ends this exemption pursuant to the methods listed in Paragraph (c) of this Rule."

If you need to repeat the language, please consider breaking it into a list, as suggested for Paragraph (c).

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: August 13, 2019

08 NCAC 17 .0109 is proposed for adoption under temporary procedures as follows:

08 NCAC 17 .0109 PHOTO IDENTIFICATION FOR ABSENTEE BALLOTS

(a) Definitions. The following definitions apply to this Rule:

(1) “Readable” means that the name on the identification can be read and that the photograph is not blurry and depicts a person who is distinct and distinguishable from another person.

(2) “Copy” means a duplicate of an original document, including a ~~photostatic or other~~ photographic copy of the original document. **It does not include displaying an image on an electronic device.**

(b) Identification Requirement for Absentee Ballot Request Form. A completed written request form for an absentee ballot shall include a readable electronic or physical copy of the identification required by G.S. 163A-1145.1(a) displaying a name that is the same or substantially equivalent to the name contained in the registration record as provided in 08 NCAC 17 .0101(c)(4). The election official shall make this determination based on the totality of the circumstances, construing all evidence, along with any explanation or documentation voluntarily proffered by the person presenting to vote, in the light most favorable to that person. The election official shall not require any additional evidence outside the four corners of the photo identification. If the name on the identification is substantially similar to the name listed on the registration record and the identification is readable, the county board of elections shall presume that the person depicted in the photograph on the identification provided is the voter. It is not required that the address on the identification match the residential address provided on request form or the address on the registration record.

(c) Exceptions. The exceptions provided in G.S. 163A-1145.1(d) for voters voting in person shall apply to absentee by mail voters. The reasonable impediment exception under G.S. 163A-1145.1(d)(2) shall include lack of access to a method to attach an electronic or physical copy of the identification card to the request. The following additional exceptions shall apply to absentee by mail voters:

(1) Religious Objection Exception. After the voter’s ballot is counted, if a voter claims the religious objection exception under G.S. 163A-1145.1(d)(1) and completes the prescribed affidavit, the religious objection exception shall be noted on the voter’s registration record. In future elections that voter shall not be required to show photo identification under G.S. 163A-1145.1 or this Rule, or claim an exception under G.S. 163A-1145.1(d), until the voter either (i) notifies the county board of elections in writing that the voter no longer holds a religious objection to being photographed, (ii) provides photo identification in a future election, or (iii) claims an exception under G.S. 163A-1145.1(d)(2) or (d)(3) in a future election.

(2) Annual Requests by Persons with Sickness or Physical Disability. If an applicant for an absentee request form reports in the application that the voter has a sickness or physical disability that is expected to last the remainder of the calendar year pursuant to G.S. 163A-1298(b) and satisfies the photo identification requirement under Paragraph (b) of this Rule or the voter completes an alternative affidavit pursuant to G.S. 163A-1145.1(d), the photo identification requirement shall be

1 met for all of the primaries and elections held during the calendar year when the application is
2 received.

3 (3) Applications for Absentee Ballots for Voting in Second Primary or Runoff Election. A voter who is
4 automatically issued an application and absentee ballot for a second primary pursuant to G.S. 163A-
5 1299 or a runoff election shall not be required to submit a copy of acceptable photo identification
6 under Paragraph (b) of this Rule or claim an exception under G.S. 163A-1145(d) with the absentee
7 ballot and container-return envelope for the second primary or runoff election.

8 (4) Covered Voters Under the Uniform Military and Overseas Voter Act. A covered voter who is casting
9 a ballot pursuant to Part 2 of Article 21 of Chapter 163A of the General Statutes shall not be required
10 to submit a copy of acceptable photo identification under Paragraph (b) of this Rule or claim an
11 exception under G.S. 163A-1145(d).

12 (d) Delivery of Absentee Ballots and Certification Form. If a voter is confirmed as a registered voter of the county,
13 the absentee ballots and certification form shall be mailed to the voter, unless personally delivered in accordance with
14 G.S. 163A-1308(b), even if the voter does not provide the identification required by G.S. 163A-1309(a)(4) and this
15 Rule with the request. However, the voter shall provide identification or claim an exception under G.S. 163A-
16 1145.1(d) prior to the counting of the voter's absentee ballot. If the voter provides the identification required by this
17 Rule or claims an exception under G.S. 163A-1145.1(d) with the absentee ballot request form, the voter is not required
18 to attach additional documentation to the container-return envelope.

19 (e) Valid Absentee Ballot Request Forms Requiring Further Action.

20 (1) The county board of elections shall include with the absentee ballots and certification form a letter
21 notifying the voter that the voter's request is valid under G.S. 163A-1309(a) but that further action
22 is needed by the voter to comply with the identification requirements, if any of the following apply:

23 (A) The voter does not submit the identification required by G.S. 163A-1309(a)(4).

24 (B) The voter does not claim an exception under G.S. 163A-1145.1(d).

25 (C) The voter includes an unreadable copy of the identification required by G.S. 163A-
26 1309(a)(4).

27 (D) The identification does not meet the expiration date requirements under G.S. 163A-
28 1145.1(a).

29 (E) The voter provides a type of identification not listed under G.S. 163A-1145.1(a).

30 (F) The voter provides identification displaying a name that is not the same as or substantially
31 similar to the name on the voter record pursuant to Paragraph (b) of this Rule.

32 (G) The exception affidavit is incomplete, either because there is no signature or, in the case of
33 a reasonable impediment exception under G.S. 163A-1145.1(d)(2), the voter did not
34 complete the reasonable impediment declaration form under G.S. 163A-1145.1(d1).

35 (H) The voter indicates she or he will provide identification at a later time.

36 (2) The letter required in Subparagraph (1) of this Paragraph shall provide the voter with the following
37 options:

(A) At any point between the submission of the absentee ballot request form and ~~the transmission of the executed absentee ballot to the county board of elections,~~ 5:00 P.M. on the day before the county canvass, provide the documentation necessary to comply with the identification requirements via email, mail, or in person.

(B) Attach to the absentee ballot container-return envelope the documentation necessary to comply with the identification requirements pursuant to G.S. 163A-1307(b)(8).

(f) Counting of Absentee Ballots. Prior to the transmission of absentee ballots pursuant to G.S. 163A-1308(c), the county board of elections shall notate the voter's ID status on the container-return envelope for a voter who requires further action pursuant to Subparagraph (1) of Paragraph (e). The county board of elections shall, at the first meeting held pursuant to G.S. 163A-1308(f) to pass upon applications for absentee ballots after the absentee ballot is received, consider whether the voter has complied with the photo identification requirements in G.S. 163A-1145.1(a) and this Rule or whether an exception applies under G.S. 163A-1145.1(d). In its determination, the county board shall construe all evidence in the light most favorable to the voter. If an exception applies, the county board of elections shall review the affidavit provided. Absent any other reason provided by law for disapproving absentee ballots, if the county board of elections determines that the registered voter is unable to provide proof of identification and the voter has completed the required affidavit in G.S. 163A-1145.1(d), the county board of elections shall find that the absentee ballot is valid unless the county board has grounds to believe the affidavit is false. A decision that the absentee ballot is not approved because the affidavit provided under G.S. 163A-1145.1(d) is false shall require a unanimous vote by the county board of elections. If the voter fails to submit acceptable photo identification pursuant to G.S. 163A-1145.1(a) and this Rule or fails to submit a completed alternative affidavit pursuant to G.S. 163A-1145.1(d) with the container-return envelope, the mailed ballot shall be treated in the same manner as mail-in absentee ballot under G.S. 163A-1144(e).

(g) Photocopy Requirement. The county board of elections shall allow any person seeking to vote by absentee ballot the use a photocopying device to make one photocopy of the voter's form of photo identification.

(h) Return of original form of identification. If a voter sends his or her original form of photo identification with either the absentee request form or in the container-return envelope, the county board of elections shall make a photocopy of the identification and mail the identification back to the voter.

~~[(i) Reasonable Impediment Informational Letter. If on the absentee request form a voter completes a valid reasonable impediment affidavit in accordance with G.S. 163A-1145.1(d)(2), the county board of elections shall send that voter a letter, for information purposes only, explaining the way to obtain a free voter photo identification card pursuant to G.S. 163A-869.1, notifying the voter of his or her ability to make one free photocopy of the photo identification at the county board of elections office pursuant to this Rule, and giving the voter the opportunity to provide acceptable photo identification by exercising the options provided in Subparagraph (e)(2).]~~

~~(j)~~ Retention of Copies of Photo Identification and Exception Affidavits. Copies of photo identification and alternative affidavits shall be retained according to the same schedule for absentee ballot applications under G.S. 163A-1313, except that copies of religious objection affidavits shall be retained in the statewide computerized voter registration system maintained under G.S. 163A-874 until the voter either (i) notifies the county board of elections in

1 writing that the voter no longer holds a religious objection to being photographed, (ii) provides photo identification in
2 a future election, or (iii) claims an exception under G.S. 163A-1145.1(d)(2) or (d)(3) in a future election.
3
4 *Authority G.S. 163A-1145.1; 163A-1307; 163A-1309(f); S.L. 2018-144, s. 1.2.(e), (i);*